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By the EdLaw Group at Lindabury

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## Disability Discrimination Requires Sufficient Medical Evidence and More than a Failure to Make a Reasonable Accommodation

By Anthony P. Sciarrillo

In *Hires v. City of Atlantic City*, the Appellate Division affirmed a trial court's determination that a former police officer failed to establish a prima facie case of handicap discrimination. By affirming summary judgment, the Appellate Division held that employees alleging handicap discrimination must prove their disability with sufficient medical evidence. Additionally, the employer's failure to make "reasonable accommodations" was alone insufficient to meet the employee's prima facie burden of proof.

Walter Hires was employed as an officer with the Atlantic City Police Department ("ACPD") from October 1992 to September 27, 2001. The ACPD relieved Hires from his duty after he became "psychiatrically disabled from a nervous breakdown." Subsequent medical evaluations revealed that Hires would be unable to continue working as a police officer. On August 15, 2003, Hires filed a complaint against his former employer, alleging that the ACPD violated the New Jersey Law Against Discrimination ("LAD"), *N.J.S.A.* 10:5-1 to -49. Specifically, Hires' LAD claim alleged that the ACPD failed to accommodate his disability. The New Jersey Superior Court granted summary judgment in favor of the ACPD and dismissed the LAD claims.

In affirming the decision of the trial court, the Appellate Division held that pursuant to *N.J.S.A.* 10:5-4.1 "[t]he LAD prohibits employment discrimination, unless the nature and extent of the disability reasonably precludes the performance of the particular employment." The plaintiff must first prove a qualifying handicap under the LAD, necessarily meeting the requirements of *N.J.S.A.* 10:5-5(q). Cases involving a non-physical handicap require expert testimony "where the existence of a mental or psychological disability is not readily apparent." Moreover, the plaintiff alleging failure to accommodate must prove that he or she requested such accommodations from the employer.

If an employee makes a request for reasonable accommodations, the LAD then requires that their employer satisfy this (cont'd ►)

request with an “informal interactive process.” However, this interactive process is not required where the disability is to such an extent that no reasonable accommodations could be made. The Appellate Division explained that in cases of permanent disability, “the employer is not even required to offer a temporary accommodation.” Accordingly, employers can avoid LAD liability for failure to make reasonable accommodations if the employee is “permanently disabled” and “cannot perform the job.”

In this case, the Appellate Division opined that Hires failed to meet his burden for several reasons. First, the record was found to be devoid of any medical evidence demonstrating that plaintiff suffered from a disability prior to September 27, 2001, when he was relieved of his duties. Notwithstanding Hires’ proof of disability after September 27, 2001, his claim still fails because he “never requested an

accommodation or assistance... or asked to return to work after that date.” The Appellate Division found further support for the trial court’s grant of summary judgment, holding that “[Hires] was permanently and totally disabled, and he could not perform any of his job duties even with reasonable accommodation.” Finally, the record lacked evidence from which a reasonable jury could find that anyone threatened Hires or interfered with his ability to obtain medical evidence to establish a disability.

Accordingly, the Appellate Division affirmed the trial court’s grant of summary judgment and the denial of Hires’ motion for reconsideration.

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*Seton Hall law student Kevin T. Murphy provided assistance in writing this Alert. The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at [edlawgroup@lindabury.com](mailto:edlawgroup@lindabury.com).*



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