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The Tenth U.S. Circuit Court of Appeals (the federal appeals court that governs Colorado) recently ruled that an employee should have been given the opportunity to take her Americans with Disabilities Act (ADA) claim to trial because her employer knew about her mental problems before it terminated her and apparently failed to consider giving her a three-month leave of absence first.

Facts

Helen Sue Whitney was a tenured fourth-grade teacher in the Grand County School District in Utah. She had taught in the county for nearly 20 years but had a history of complaints pertaining to classroom performance problems. At the beginning of the 1996-1997 school year, many parents requested that their children be transferred from her classroom. They expressed concern about the teacher yelling at students, ridiculing students, and crying in the classroom. Whitney maintained that she wasn't made aware of those concerns until January 1997, when the school's principal had a conference with her.

In March 1997, Whitney received a written evaluation from the principal that indicated there were still concerns about her classroom behavior. Later in March, the Utah Department of Human Services submitted a report based on a classroom observation of her to the principal and the school district superintendent, Bill Meador. It described the teacher's behavior as inappropriate and indicated that she had severe mood swings that would cause her to suddenly become angry and verbally abusive. Later that month, one of Whitney's students injured her foot on a piece of metal after the teacher allegedly pushed her. Whitney admitted that she might have leaned into the student while directing her to sit down but that she didn't intend to push her. The local police investigated but didn't file any charges.

The school district placed Whitney on leave pending an investigation by the Utah Division of Child and Family Services (DCFS). The DCFS' report found that allegations of physical and emotional abuse were substantiated. The report also indicated that she might be at high risk for suicide. On April 7, 1997, Meador notified Whitney that she was being formally suspended.

Whitney responded with a letter in which she attributed her recent problems to "either an actual or perceived disability relating to my mental competency." In the letter, she requested a reasonable accommodation. In response, Meador requested evidence of her disability. She refused to provide the evidence he requested. On April 21, 1997, she was given notice of termination for cause. The termination letter explained that the school district was unaware of any disability or

any possible accommodation.

Whitney requested a hearing before the school board and was granted one in June 1997. Her psychologist testified that she became clinically depressed in late 1996. He further testified that she would be able to resume her teaching duties in the fall of 1997 and suggested that she be reevaluated in three months. Nonetheless, the school board terminated her based on Meador's recommendation. The board's written findings and conclusions stated that the termination was based on Whitney's "conduct and performance related issues."

Whitney sued the school board and Meador, claiming the district had failed to accommodate her as required by the ADA, as well as other laws. In September 1999, the district court dismissed her lawsuit, stating she wasn't entitled to a jury trial on the claims. Whitney appealed the trial court's decision to the Tenth Circuit.

Tenth Circuit's decision

Under the ADA, an employer's failure to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability amounts to discrimination. In regard to Whitney's ADA claim, the Tenth Circuit focused on whether the school board knew about her disability at the time of her termination. The school board tried to argue that it couldn't be liable under the Act because it had no knowledge of her alleged disability until after Meador suspended her. The Tenth Circuit, however, focused on the school board's knowledge at the time of termination because Whitney was challenging that action — not her suspension. Since her psychologist testified at the termination hearing, the court concluded that the school board was aware of her condition when it voted to terminate her.

The appeals court agreed, however, with the trial court's dismissal of the case against Meador because he couldn't be held individually liable under the ADA. Whitney v. Board of Education of Grand County, 2002 WL 1316489 (10th Cir. June 18, 2002).

Significance of the decision

This decision is significant because it requires you to go the extra mile for a disabled employee, even when that employee is on the brink of termination. Once you're made aware of a qualified employee's "physical or mental limitations," you may have a duty to accommodate her. In this case, rather than considering giving the teacher a three-month leave of absence, the school board made no effort to accommodate her once it learned of her depression. With hindsight, of course, a three-month leave might have been better for all.

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might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.