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Disabilities

US Airways' 'Sincere Belief' Averts Bias Claim



By Jon Steingart

Jan. 27 — US Airways Inc. didn't discriminate against an Arizona station coordinator when it fired him for being asleep in the break room despite his later claim that he was experiencing a dissociative state related to his general anxiety and panic disorder, a federal judge ruled Jan. 26 (*Paolino v. US Airways, Inc.*, 2016 BL 20251, D. Ariz., No. 2:14-cv-01672, 1/26/16).

The company official who decided to terminate Jonathan Paolino didn't know Paolino had an anxiety disorder, Judge Neil V. Wake of the U.S. District Court for the District of Arizona said, granting summary judgment to the airline.

Without that knowledge, there was no way the decision could have been “on the basis of disability,” which is required by the Americans with Disabilities Act.

The ruling illustrates that employees with disabilities “need to be proactive in informing supervisors that they have a disability,” Paolino's attorney, Kelly Mendoza at the Rose Law Group P.C., told Bloomberg BNA Jan. 27.

The U.S. Court of Appeals for the Ninth Circuit's ruling in *Kimbrow v. Atlantic Richfield Co.*, 889 F.2d 869, 1 AD Cases 1537, 57 FEP Cases 363 (9th Cir. 1989), which held that a supervisor's knowledge may be imputed to other officials, “does not apply” in cases such as Paolino's, where an employer is accused of failure to accommodate a disability, Wake said.

Paolino said knowledge of his disability could be imputed to the official who fired him because there were several occasions when his anxiety disorder was brought to other officials' attention. In one example, he complained to a human resources manager that his supervisor exacerbated his anxiety over an upcoming dental procedure by discussing potential complications with him, Wake said.

Decision Based on Inaccurate Information?

Paolino was diagnosed with general anxiety disorder before he began working at US Airways. Prior to the break room incident, he experienced a panic attack severe enough that paramedics were summoned, the judge said. Nevertheless, Paolino didn't inform anyone at work about his disorder, Wake said.

The official who fired Paolino knew about the earlier incident, but he testified that he didn't know details about why paramedics were called, Wake said.

Even if the official had known about Paolino's condition, there was no evidence to suggest it provided a basis for his decision to fire Paolino, Wake found. It was enough that the official had a “sincere belief” that Paolino was asleep, he said. That belief can be “foolish or trivial or even baseless,” but it doesn't have to be accurate, the judge added.

Paolino e-mailed supervisors the day after he was discovered in the break room to apologize for “falling asleep” at work, Wake said. He was fired the same day.

Daniel Farrington, an attorney for US Airways, told Bloomberg BNA Jan. 27 he couldn't comment on the case. A company spokesman, Matt Miller, told Bloomberg BNA Jan. 27 that US Airways is “pleased with the Court's decision.”

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BNA Snapshot

***Paolino v. US Airways, Inc.*, 2016 BL 20251, D. Ariz., No. 2:14-cv-01672, 1/26/16**

Holding: Airline station coordinator loses disability discrimination claim that he was experiencing a panic attack when he appeared to be asleep at work.

Takeaway: Employees with disabilities should notify company officials before problems connected to the disability arise.

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For More Information

Text of the opinion is available at http://www.bloomberglaw.com/public/document/Paolino_v_US_Airways_Incorporated_Docket_No_214cv01672_D_Ariz_Jul.

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