

DISCRIMINATION AND RETALIATION FOR DISABILITY, AGE, FMLA OR ALL OF THE ABOVE?



A former employee sued the Texas Water Development Board (TWDB) and its Executive Administrator, alleging violations of the Americans with Disabilities Act (ADA), the Rehabilitation Act, the Age Discrimination in Employment Act (ADEA) and the Family and Medical Leave Act (FMLA). He claimed discrimination based on disability and age, and retaliation for taking medical leave. The man began working at TWDB in May 1997. His numerous medical conditions, such as ischemic heart disease, functional class IV angina and major digestive disorder, limited his ability to walk, bend or handle certain daily tasks. He was also experiencing symptoms from his 1992 quadruple coronary bypass and the cancer diagnosed in 1993. Accordingly, he was provided with telecommuting options. In 2004, his position, along with others, was threatened with outsourcing. His physician recommended that he work a job with flexible hours and chances for telecommuting to help reduce stress caused by the outsourcing possibility. Due to the doctor's recommendation, the HR director asked about creating a position, and the administrative director decided that the man was qualified to provide back-up for an employee in another department. The position was offered to the plaintiff, with a suggestion that he might apply for disability benefits, as the job entailed regular hours and could not accommodate telecommuting at that time. The man accepted the position, despite his health issues, and he claims that he remained on the outsourcing list and had his office moved four times within a year. TWDB asserted that the employee could indeed telecommute if his



supervisor approved it.

The man took intermittent medical leave for bronchitis from May 2006 to April 2007. He received cardiac stem-cell treatment in Thailand in January 2007. He returned in March, but TWDB did not provide him with any assignments because he was still on sick leave and not expected to work. His physician submitted another FMLA request in April 2007, but, as his leave was exhausted, he could only be provided with sick-pool leave (leave made available by employee contributions). Two months later, budget cuts required two positions be eliminated, one of which was the plaintiff's. He was subsequently terminated. The man then sued for ADA, ADEA, FMLA and Rehabilitation Act violations. The district court granted summary judgment for the defendants. The plaintiff appealed all counts except the ADEA charge. The ADA states that a "qualified individual" for coverage can perform job functions with or without reasonable accommodations. The appeals court found that, as the man was clearly unable to work or even come into work near the end of his employment, he was not qualified for ADA, or, by extension, the Rehabilitation Act. The court acknowledged that the plaintiff was protected by the FMLA, despite exhausting all benefits, but because TWDB had offered 720 hours of sick-pool leave and 20 hours of emergency leave, it saw no causal link between the protected FMLA activity and his termination based on budgetary concerns. The district court's ruling was affirmed.