

EMPLOYEE WITH LIMITED VISION FIRED, SUES FORMER BOSSES



A former employee of the U.S. Patent & Trademark Office (USPTO) alleged that he was fired for his disability and in retaliation for a complaint that he'd made. His bosses, however, cited a "lackluster performance." Both sides made their arguments in court. The man worked at the USPTO examining patents. He suffers from monocular vision – blind in his left eye and limited vision in his right. With the use of corrective devices, he was able to perform the duties required by his job, as well as daily tasks such as driving at night. He sought a flexible schedule at work due to ongoing medical treatment, so that he could miss normal working hours but make them up at night and on the weekends. Just a week after starting at the USPTO, the man saw an HR rep for a pay advance. He claimed that when he stopped by her office, she was on the phone and told him to leave immediately and close the door. The HR employee, in contrast, complained that the man had "verbally accosted" her, and he was questioned by his supervisor regarding the incident. He believed that the actions from both the supervisor and the HR rep were racially discriminatory, as he is African American. An informal complaint was drafted by the USPTO's Office of Civil Rights, but the man later testified that, because his supervisor kept asking for updates, he feared termination and did not file a formal complaint. Shortly thereafter, he was fired for missing due dates and not completing assignments. He countered with a second informal complaint and a formal complaint with the EEOC (Equal Employment Opportunity Commission), alleging race and disability discrimination. The EEOC charge was dismissed. He next filed a lawsuit in federal court against the USPTO director, citing violations of the Rehabilitation Act of 1973 – by not reasonably accommodating him and discriminating against him because of his disability – and the Civil Rights Act – by retaliating against him for the informal complaint. The district court ruled in favor of USPTO, stating that the man was not disabled as per the Rehabilitation Act's standards and finding no link between his termination and his



filed complaint. Appellate judges agreed that the man's ocular condition was not a disability. Though he argued that his monocular vision "substantially limits" a major life activity – and indeed "seeing" is legally defined as such an activity – the appeals court believed that the claim ultimately failed since his vision can be corrected. His sight is limited, but the result, with corrective devices in mind, is not substantial. The man also asserted that his supervisor was "uncharacteristically aggressive" in asking about the progress of his informal complaint. But this was not enough to prove that it was the reason behind his firing, and beyond that, his only proof was temporal proximity – that the termination happened soon after the complaint had been lodged. But temporal proximity alone cannot support an assertion of pretext for an employee's termination. Accordingly, appellate judges affirmed the district court's grant of summary judgment.