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Flesh Eating Bacteria Ate My Homework

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If you're like most folks, you've been wondering "when am I going to see a story mentioning both flesh-eating bacteria and reasonable accommodation." Wonder no more.

Gary Brunckhorst worked for the City of Oak Park Heights Minnesota for more than fifteen years. In April 2014, he was serving as the Senior Accountant/Payroll Technician (Senior Accountant), a position that paid $72,000 per year and required him to perform payroll and information technology (IT) functions. Because the City is a small organization with approximately twenty-one employees, Brunckhorst also performed back-up duties for accounts payable and utility billing assisted the front office in answering phones and covered for other employees during their lunch breaks. Although Brunckhorst performed his job at City Hall, he was able to perform certain IT functions from a computer at his home.

In April 2014, Brunckhorst contracted Fournier's gangrenous necrotizing fasciitis—a rare, life-threatening disease commonly known as "flesh-eating" bacteria. Brunckhorst requested and was approved for leave under the FMLA that expired on July 15, 2014. He was then offered and accepted a series of additional unpaid leaves pursuant to a City ordinance. By January, however, the City had decided it did not need a Senior Accountant. Rather than eliminating the position and offering a severance package, the City assigned Brunckhorst to the position of Utility Billing Clerk/Accounting Technician so that he would have a job when he returned, albeit at a lower salary of $50,000. The new position included the same benefits and was classified for union representation.

Brunckhorst was not happy and insisted that he be returned to his original position. Brunckhorst still had not returned to work by February 25, 2015 and the City sent him a letter asking him to request any reasonable accommodations he might need to perform the essential functions of the new position by March 23, 2015, and confirm that he could assume the position by April 23 or his employment with the City would be terminated.

Brunckhorst refused and insisted on being returned to his original position and be allowed to work from home for the first 120 days. He submitted a Work Ability Report from his physician that restricted him to four-hour work days with some physical limitations beginning March 18 and ending on May 18. The physician did not limit Brunckhorst to working from home.

The City informed Brunckhorst that he could not return to his original position, nor could he work from home because he could not perform the essential functions of the new position from a remote location. The City instead offered to allow Brunckhorst to work at City Hall four hours per day from April 20 to May 18. Brunckhorst refused. The City fired him and he sued.

In his lawsuit, Brunckhorst claimed that the City violated the ADA and the state analog because, among other things, it failed to offer him a reasonable accommodation and failed to engage in an interactive dialogue. The District Court for the District of Minnesota—Minneapolis, granted the City's Motion for Summary Judgement. On appeal, the Court of Appeals for the 8th Circuit affirmed.

The Court of Appeals found that because Bronckhurst did not return to work prior to the expiration of his FMLA leave he was not entitled to be restored to the Senior Accountant position. In doing so, the court rejected the Enforcement Guidance from the EEOC stating that the ADA requires that an employer hold open the original position of an employee that has been granted leave unless the employer can demonstrate that holding open the position would impose an undue hardship. The Court held that the EEOC document was not binding authority.

The Court also held that Brunckhorst's request that he be allowed to work from home was not a reasonable accommodation in light of his testimony that he could work at City Hall but that it "would have been easier" to work from home and the form filled out by his physician did not state that he must work from home. Instead, the City's proposed accommodation was consistent with the doctor's decision that Brunckhorst be allowed to work four hours per day up to May 18, 2015.

The Court of Appeals also held that Brunckhorst failed to show that he could have performed the essential functions of his job remotely. He testified that others at work would have needed to perform some of his duties. Careful readers of this Blog know that an employer is not obligated to hire additional employees or reassign existing workers to assist an employee to perform his essential duties.

Finally, the court found that no reasonable juror could conclude that the City had failed to participate in the interactive process. Brunckhorst attempted to narrow the window of the interactive process to the last few days prior to his termination but the record showed that for months regarding his return to work, the City extended his leave multiple times, made multiple requests for information regarding what accommodations he required, and offered accommodations consistent with his doctor's restrictions.