

ADA: When is a job function not really essential?

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Courtney Cox and Jack Brown had worked for the City of Anderson Transit System (CATS) for many years as a bus driver and then a dispatcher. When the mayor's election caused a change from one political party to another he was demoted to a mechanic's helper. When the political winds blew in his favor after the next election, Brown was promoted to a street-supervisor position. In this position Brown made sure the drivers left the bus garage with the requisite paperwork and operational vehicles.

Along the way, before he was promoted to the street-supervisor position, Brown developed diabetes and was unable to maintain his commercial driver's license (CDL). The street-supervisor position job description required the person holding that position to have a CDL.

When the political winds blew ill again and a mayor of the opposite party was elected, Brown was fired from the street-supervisor position. His termination notice listed his inability to obtain a CDL as required in the job description as the reason for his discharge. An employee is only a "qualified employee" under the ADA if he or she can perform the essential functions of the job, with or without accommodations.

Brown sued the city for failing to accommodate his disability in violation of the Americans with Disabilities Act. The jury sided with Brown on his ADA claim and awarded him damages. The city appealed, pointing to the job description as proof that holding a CDL was an essential function of the job which Brown could not perform.

The Seventh Circuit said not so fast. The job description is merely one of several factors court considers when determining whether a job function is essential. The court also considers other factors –

- The employer's judgment as to which functions are essential
- The amount of time the employee spends on the job performing the function
- The consequences of not requiring the employee to perform the function

Here, the job function at issue was driving the bus, which Brown could not do without a CDL. The Court noted Brown's supervisor admitted he knew Brown did not have a CDL when he promoted him, indicating the employer did not consider the function of driving to be essential. Brown testified he had worked in the job for four years and never had to drive a bus, indicating he spent no time on the job performing this function. Finally, the court noted testimony that when a replacement driver was needed one could be obtained in 10 minutes, so the consequences of Brown not driving were minimal.

In the end, the Court affirmed the jury's decision, noting that the issue what is an essential job function is a question of fact for the jury.

Brown v. Smith, et al, No. 15-1114 (7th Cir. June 28, 2016).