

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Immigration

A Romanian couple who came to the United States in 1991 were deported in 1993 after their visas expired in 1992. They returned in 1995 when the husband obtained a work visa. In 1999, the wife was chosen by the INS in a lottery and was told that she was eligible to apply for permanent resident alien status. She applied and was denied based upon her 1-year presence in the U.S. after her visa expired in 1992. The INS stated that she was statutorily ineligible. The plaintiffs filed an action in federal court seeking declaratory and injunctive relief. The INS filed a motion to dismiss for lack of subject matter jurisdiction arguing that the 1996 Immigration Act "reforms" stripped United States District Courts of jurisdiction to review Immigration status determinations.

Judge Robert E. Jones examined the text of the statute and noted that this was an issue of first impression within this Circuit. Judge Jones also noted that absent district court review, the plaintiffs had no other means of appeal.

The court concluded that the 1996 Act did not alter the court's jurisdiction to review final INS decisions on adjustment of status not involving a removal order. Mart v. Beebe, CV 99-1391-JO (Opinion, May, 2000).

Plaintiffs' Counsel:

John Marandas

Defense Counsel:

Craig Casey

Employment

A former employee filed an action against her former employer claiming that she had been wrongfully, constructively discharged based upon her jury service. She prevailed at trial and was awarded \$25,000 in non-economic damages, \$85,000 in economic damages and \$250,000 in punitive damages. Defendant filed post-trial motions for a new trial and remittitur of each of the jury's damage awards.

Judge Dennis James Hubel denied the defense motions in their entirety. In so doing, the court refused to follow a First Circuit decision in which that court held that an attorney's failure to disclose an "impeachment" exhibit that also

fell within the ambit of a substantive trial exhibit constituted misconduct under Rule 60 and a justification for a new trial. Judge Hubel reasoned that the First Circuit took too restrictive a view of impeachment exhibits under Fed. R. Civ. P. 26(a)(3).

Judge Hubel also refused to apply O.R.S. 18.537(3) to his review of the jury's punitive damage award, concluding that the Oregon statute was unconstitutional. The statute provides that a court may reduce punitive damage awards based upon a defendant's subsequent remedial measures.

Judge Hubel first noted that the defense attorney's declaration regarding the defendant's post-event activities failed to constitute appropriate evidence. The court concluded that the statute itself was unconstitutional based primarily upon concerns that: (1) any reduction to the punitive award was not directly tied to the excessiveness issue; and (2) the statute provides no opportunity for the prevailing party to choose a new trial over a damage award reduction. Halbasch v. Med-

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Data, Inc., CV 98-882-HU
(Opinion, May 16, 2000).

Plaintiff's Counsel:

Victor Calzaretta

Defense Counsel: Alan Willert

7 Judge Redden granted defendant's summary judgment motion on plaintiff's ADA claim. In 1994, plaintiff began experiencing emotional problems, including mood swings. In 1997, plaintiff's mental problems grew worse. In 1998, he was diagnosed with depression and a mood disorder, for which he began taking antidepressant medications. Plaintiff's supervisor commented to plaintiff that he should to seek treatment for his mood swings because the supervisor recognized similarities in plaintiff's behavior to that of his daughter, diagnosed several years earlier with a bipolar disorder. Eventually, friction developed between plaintiff and his supervisor, which resulted in a confrontation and plaintiff taking a stress-related leave of absence. Plaintiff was diagnosed with post-traumatic stress disorder (PTSD) relating to the confrontation. Plaintiff returned to work briefly, and incidents and conversations occurred that defendant viewed as threatening to the safety of defendant's employees. Plaintiff took another leave and was

terminated before he was to return to work.

Plaintiff claimed he was terminated in violation of the ADA because of his disabilities (PTSD, depression, mood swings) or, in the alternative, because defendant believed he had a disability (bipolar disorder). Defendant claimed the termination was because plaintiff had engaged in actions and made comments that threatened violence against other employees. Judge Redden concluded that even if the conditions from which plaintiff alleged he suffered (mood swings, depression, PTSD) can be considered "disabilities" for purposes of the ADA, plaintiff failed come forth with sufficient evidence to support his contention that any of them substantially limited his major life activities. Plaintiff relied solely on doctors' chart notes and work release forms (no opinions) and his own declaration to establish his conditions are "disabilities" under the ADA. Plaintiff's declaration noted that he has been better since he began medication in 1998, except when he runs out of or forgets to take his medications. Plaintiff last saw a physician for his conditions in late 1998. This evidence was insufficient to meet plaintiff's prima facie burden that he had a "disability." Judge Redden also found that there was insufficient

evidence that defendant regarded plaintiff as disabled; rather, the evidence showed that defendant knew plaintiff had sought medical help for mood swings, and was concerned about his emotional health and whether he might be a threat to management or other employees. Peterson v. Hanna-Sherman, CV 99-497-RE (Opinion, May 2000, 12 pages). Plaintiff's Counsel: Eric Fjelstad
Defense Counsel: Michael Cox

Disability Law

A paraplegic college student who claimed that her college failed to accommodate her needs during an educational program in Australia was permitted to proceed with her claims under Title III of the ADA, the Rehabilitation Act and state law claims for breach of fiduciary duty, negligence and fraud.

Judge Ann Aiken rejected a defense motion for summary judgment finding material issues of fact regarding the accommodations actually provided and whether or not some of the defendant's actions constitute accommodations at all. The court also denied the plaintiff's cross-motion for summary judgment on liability. Bird v. Lewis & Clark College, CV 98-691-AA (Opinion, May, 2000).