

No ADA Claim for Maryland Bus Driver

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On May 20, 2013, the Court of Appeals of Maryland in *Ze v. Maryland Transit Administration*, held that a bus operator employed by the Maryland Transit Administration (MTA), and who suffered from cardiovascular disease was, as a matter of law, not a “qualified individual” under the Americans with Disabilities Act (ADA). In simpler terms, the bus driver was not entitled to the protections of the ADA after his termination for failing to meet physical qualification standards for the job. The case appears to be the first of its kind in Maryland. Employers should be aware that federal and state regulations may provide defenses to claims of disability discrimination and may also, in limited circumstances, reduce the need to perform an individualized assessment and to provide a reasonable accommodation.

In general, the ADA protects “qualified individuals” with disabilities from discrimination in employment. A “qualified individual” is “an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position . . .” Under the ADA, an employer may set qualification standards as long as those standards are “job-related” and “consistent with business necessity.” If an employer’s qualification standards are permissible – that is, job-related and of business necessity – an employee or applicant who fails to meet those standards is not a “qualified individual” under the ADA and cannot maintain a discrimination claim based on disability.

The MTA voluntarily applies the Federal Motor Carrier Safety Regulations (FMCSRs) to its bus drivers. Under those regulations, a person is not physically qualified to operate a bus if he or she suffers from cardiovascular disease. *Ze*, the bus driver, failed to meet these qualifications and was subsequently discharged from his position. He argued that question of whether the qualification was job-related and of business necessity must be determined after an individualized assessment of his ability to perform the job. The MTA argued that the regulations rendered a bus driver with cardiovascular disease unqualified as a matter of law.

To resolve this fundamental dispute, the Court of Appeals engaged in a three-part analysis. First, it examined at length the history of the ADA and the FMCSRs and determined that both Congress and the Department of Transportation considered the cardiovascular disease qualification as job-related and of business necessity. Based on this determination, the Court held, that as a matter of law, the qualifications satisfied the job-related and business necessity requirements of the ADA.

The Court then considered whether Maryland’s voluntary, rather than mandatory, adoption of the federal regulations changed its earlier holding. The Court reviewed the exemption for state-run transportation from the FMCSRs and concluded that the exemption was primarily caused by federalism concerns and that, in fact, Congress and the Federal Highway Administration encouraged states to comply with the FMCSRs. Moreover, the Court found that Congress created a clear federal policy to induce states to adopt and apply the regulations for qualification standards by conditioning federal grant money on the adoption of the FMCSRs. As such, the Court held that “Maryland may adopt, and the MTA may rightfully apply”, the qualification standards set forth in the FMCSRs, including the cardiovascular disease standard.

Lastly, the Court had to assess whether the MTA could have made a reasonable accommodation for the bus driver’s condition. The Court succinctly rejected the possibility of a reasonable accommodation. The only reasonable accommodation argued for by the bus driver was a lowering of the standards regarding minimal qualifications. The Court concluded that such an accommodation was not reasonable as it would do nothing to enable the bus driver to operate the bus safely.

This case must be narrowly construed to its specific facts, including the history of the ADA and FMCSRs, as well as Maryland’s adoption of those regulations. However, employers should be aware of federal or state regulations applicable to their businesses that may provide qualification standards. This is both to ensure compliance with those standards, and also so that the regulations may be examined for defenses against any disability discrimination claim.