The Interactive Process Is a Two-Way Street: Ninth Circuit Finds Employee’s Inadequate Effort Doomed ADA Claim

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“Once an employer becomes aware of the need for accommodation, that employer has a mandatory obligation under the ADA to engage in an interactive process with the employee to identify and implement appropriate reasonable accommodations.” Nonetheless, in a recent opinion, the Ninth Circuit Court of Appeals clarified that the interactive process requires direct communication on both sides, between the employer and employee, to explore in good faith the possible accommodations. Phillips v. Victor Community Support Services, Inc., No. 15-15862, Unpublished (July 3, 2017).

Factual Background

Mary Phillips commenced her employment with Victor Community Support Services, Inc. in November of 2001, when she served as a clinician, and by January of 2006, the company had promoted Phillips to clinical supervisor. In her position, Phillips managed cases and files involving behavior and mental health services being provided to children and families by Victor Community Support Services.

In 2007 and 2008, Phillips had surgeries due to complications from a prior case of shingles. She began experiencing recurring bouts of pneumonia in September of 2009, and she experienced pneumonia a minimum of 10 times in 2009. Due to this illness, she missed work—sometimes for several weeks at a time.

Phillips testified that between February of 2009 and her discharge, she verbally requested extensions to complete work, including requests for extensions to close cases, but did not always do so in writing. On the other hand, her supervisor kept written records, including supervision notes that were signed by Phillips, showing that the company had addressed the reduction of Phillips’s caseload—including the opening and closing of specific cases—with Phillips multiple times after she requested the reduction. The same supervision notes provided a detailed picture of Phillips either working on or attempting to close cases. For example, the supervision notes, based on weekly meetings with Phillips, described questions, concerns, kudos, and anything else that the supervisor explained to Phillips for work purposes. During these meetings, Phillips could raise any concerns she had. Phillips reviewed these supervision notes and signed them.

The Courts’ Analyses on the Interactive Process Claim

Phillips alleged that Victor Community Support Services (1) discriminated against her because of a disability; (2) failed to make reasonable accommodations to enable her to perform the essential functions of her job; and (3) retaliated against her for
engaging in protected activity. The lower court found that the supervision notes indicated that Phillips did not make an adequate effort to reduce her case load, and that the breakdown of the interactive process was due to her “inadequate effort and lack of communication.”

**Key Takeaways**

The interactive process requires the employer to identify the precise limitations resulting from an individual’s disability and potential reasonable accommodations that could overcome those limitations. While documenting the interactive process may not always be easy, this case is an example of how consistently documenting accommodation efforts in response to an employee’s requests for reasonable accommodation may demonstrate that an employer complied with the law and also may be fruitful in court.