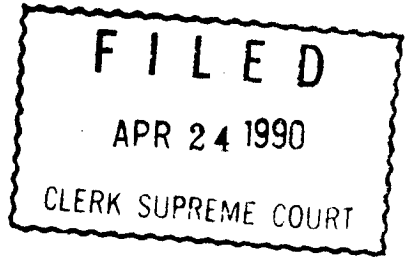


IN THE COURT OF APPEALS OF IOWA

No. 9-587 / 88-1871



VERNON SOLOMAN, SR.,

Appellee,

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vs.

STATE OF IOWA and the IOWA DEPARTMENT OF TRANSPORTATION,

Appellants.

Appeal from the Iowa District Court for Polk County,
Raymond Hanrahan, Judge.

Appellants appeal from a jury verdict finding that they discriminated against appellee on the basis of a disability. **AFFIRMED.**

Thomas J. Miller, Attorney General; Charles J. Krogmeier, Special Assistant Attorney General; and Mark Hunacek, Assistant Attorney General, for defendants-appellants.

Thomas M. Werner, Des Moines, for plaintiff-appellee.

Heard by Hayden, P.J., and Sackett and Habhab, JJ., but considered by Donielson, P.J., and Hayden and Sackett, JJ. Habhab, J., takes no part.

DONIELSON, P.J.

Appellants, State of Iowa and the Iowa Department of Transportation (DOT), appeal from a jury verdict finding that they discriminated against appellee on the basis of a disability. We affirm.

Appellee commenced employment with the DOT as an Equipment Operator I on October 29, 1979. The DOT's internal employment evaluations of appellee revealed that approximately 76% of appellee's time was spent operating a variety of machinery, with the remainder of his time spent "in traffic direction and flagging highway traffic."

On May 17, 1984, appellee suffered a heart attack while at work. Subsequently appellee underwent surgery and rehabilitation. Upon completion of his rehabilitation in August of 1984, appellee was given a medical release to return to work with the restrictions "that he should restrict his lifting to no greater than 50 pounds and probably should not do physical work if the temperature is greater than 85 degrees or less than 20 degrees."

The DOT, however, refused to reinstate appellee. Appellee then went on leave without pay, renewing his status every ninety days. When the DOT determined that appellee had failed to seek another extension in March of 1985, it terminated his employment.¹

1. Appellee asserts that he made timely application for renewal of his leave without pay.

Appellee filed a complaint with the Iowa Civil Rights Commission and was ultimately granted a right-to-sue letter. He then filed the present action alleging age discrimination, disability discrimination, and wrongful discharge in violation of public policy. The jury returned a verdict for appellee on his claim of disability discrimination and awarded him \$27,384 for lost past earnings.

I.

We review on errors assigned. Iowa R. App. P. 4. The first issue we consider is appellants' assertion that the trial court erred in denying their motions for directed verdict and judgment notwithstanding the verdict on the question of whether appellee had a protected disability. In ascertaining whether a jury question is engendered when a party seeks a directed verdict, we apply the identical tenets as the trial court; that is, we review the evidence in that light most favorable to the nonmoving party, regardless of whether such evidence is contradicted, to determine if reasonable minds might differ on the issue. Pearson v. Ossian, 420 N.W.2d 493, 495 (Iowa App. 1988); Harvey v. Palmer College of Chiropractic, 363 N.W.2d 443, 444 (Iowa App. 1984).

Section 601A.6(1)(a), Iowa Code (1985), prohibits, as an unfair or discriminatory practice, a person from discharging or discriminating against an employee on the basis of disability, unless the discrimination is "based

upon the nature of the occupation." Iowa Code § 601A.6(1)(a). In order to obtain relief under this statute, however, a claimant must first demonstrate that the claimant belongs to a class which the statute protects. See Probasco v. Iowa Civil Rights Comm'n, 420 N.W.2d 432, 434 (Iowa 1988); Brown v. Hy-Vee, 407 N.W.2d 598, 599 (Iowa 1987).

"Disability," in reference to employment, is statutorily defined to mean "the physical or mental condition of a person which constitutes a substantial handicap, but is unrelated to such person's ability to engage in a particular occupation." Iowa Code § 601A.2(11). The following administrative rule provides additional insight to this definition:

(1) The term "substantially handicapped person" shall mean any person who has a physical or mental impairment² which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

240 Iowa Admin. Code 6.1(1).³

Upon review of the record, we find appellee produced substantial evidence to support his contention that he either has a protected disability or he was perceived as

2. The term "physical or mental impairment" is defined as "any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: . . . cardiovascular" 240 Iowa Admin. Code 6.1(2)(a).

3. This section is now found at 161 Iowa Admin. Code 8.26(1) (1987).

having such a disability. See 240 Iowa Admin. Code 6.1(5). We conclude, as to this issue, that the trial court correctly overruled both appellants' motions for a directed verdict and judgment notwithstanding the verdict.

II.

The second and third issues we need address concern appellants' claim that the trial court erred in overruling its motions for directed verdict and judgment notwithstanding the verdict on the questions of whether appellee's physical limitations were of such a nature that the requirements of the position could not be achieved by appellee, or could not be reasonably accommodated by the DOT.

A. Job Requirements. Appellants point to certain job requirements which require Equipment Operator I individuals to perform lifting in excess of fifty pounds. Appellants assert that appellee's inability to perform such tasks requires eliminating him for consideration for reinstatement. In essence, the question here is "whether there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business." Frank v. American Freight Systems, Inc., 398 N.W.2d 797, 802 (Iowa 1987) (quoting Robinson v. Lorillard Corp., 444 F.2d 791, 798 (4th Cir. 1971)).

Appellee produced substantial evidence that the lifting requirement was not a legitimate business purpose such that

would permit discrimination against him. Appellee's prior job-related activities evidence that the lifting requirement was not applicable to his activities. The DOT's records reveal that a full 76% of appellee's employment activity revolved around the operation of equipment. Additional testimony was produced that several DOT Equipment Operation I individuals did not engage in any heavy physical labor or lift over fifty pounds. Finally, testimony was produced that most of the possibly physically rigorous incidents of employment with the DOT were or could be done through automated or mechanical means rather than physical endeavor. With this as our background, we find the trial court acted appropriately in overruling appellants' motions for directed verdict and judgment notwithstanding the verdict on this issue.

B. Reasonable Accommodation. Appellants also argue the trial court erred in overruling its motions for directed verdict and judgment notwithstanding the verdict on the issue of whether no reasonable accommodation was possible. An employer is required to provide a disabled person with reasonable accommodation for the disability "only if it does not substantially impinge on the rights of other employees or incur more than a de minimus cost to the employer." Brown, 407 N.W.2d at 599. Appellee produced substantial evidence that the DOT failed to make a reasonable accommodation for his disability.

The only medical restrictions on appellee were that he restrict his lifting to no greater than fifty pounds and refrain from physical work when the temperature is greater than 85 degrees or less than 20 degrees. Further, his medical release specifically does not restrict his driving. The DOT's records reveal that approximately one-third of appellee's time was spent driving either a snow plow or a dump truck. Another twenty percent was in operation of a tractor. As such, over fifty percent of appellee's activities were in no way affected by his disability. The remainder of appellee's time was spent operating highway equipment or directing traffic. Appellee's disability would only interfere with these activities to the extent they required lifting amounts in excess of fifty pounds or physical labor in extreme temperatures.

Evidence and testimony was introduced by appellee that these activities had required very little heavy lifting or heavy labor on his part in the past. In addition, testimony was produced that several Equipment Operation I individuals employed by the DOT did not engage in heavy physical labor or lift in excess of fifty pounds. We thus find substantial evidence that a reasonable accommodation on the part of the DOT was possible. We find no error on the part of the trial court in overruling appellants' motion for directed verdict or judgment notwithstanding the verdict on this ground.

III.

Finally, appellants assert the trial court erred in denying their motion for new trial. The trial court has broad discretion in determining whether to grant a motion for new trial on the issue of whether the verdict effectuates substantial justice between the parties. Christensen v. Shelby County, 287 N.W.2d 560, 561-62 (Iowa 1980). Finding substantial evidence to support the jury's verdict, we conclude the trial court did not abuse its discretion in denying appellants' motion for new trial.

AFFIRMED.

Hayden, J., concurs; Sackett, J., specially concurs without opinion.