12-21-2016

Snead v. Florida Agricultural and Mechanical University, Board of Trustees

Judge Robert L. Hinkle

Snead v. Florida Agricultural and Mechanical University, Board of Trustees

Keywords
Florida A&M University, 4:15cv325-RH/CAS, Failure to Accommodate, Disability, ADA

Snead v. Fla. Agric. & Mech. Univ. Bd. of Trs.

United States District Court for the Northern District of Florida, Tallahassee Division

December 21, 2016, Decided; December 21, 2016, Filed

CASE NO. 4:15cv325-RH/CAS

STANLEY SNEAD, Plaintiff, v. FLORIDA AGRICULTURAL & MECHANICAL UNIVERSITY BOARD OF TRUSTEES, Defendant.

Subsequent History: Affirmed by Snead v. Fla. Agric. & Mech. Univ. Bd. of Trs., 2018 U.S. App. (11th Cir. Fla., Feb. 21, 2018)

Judges: Robert L. Hinkle, United States District Judge.

Opinion by: Robert L. Hinkle

Opinion

ORDER DENYING THE MOTION FOR JUDGMENT AS A MATTER OF LAW

The principal issue in this case is whether an employer may be required to accommodate a disability by allowing an employee who works the same number of hours as others with the same job to break those hours up into shorter shifts. After a full and fair trial, a jury found the plaintiff's request for such an accommodation reasonable. This order denies the defendant's motion for judgment as a matter of law.

I

The Florida Agricultural & Mechanical University ("FAMU") employed the plaintiff Stanley Snead as a police officer. Mr. Snead alleged that he had a disability, that he was able to work 40 hours per week (the same **[*2]** as required of other officers), and that, because of the disability, he could work only 8-hour shifts, not 12-hours shifts (as other officers were required to work). Mr. Snead requested a schedule change as an accommodation for his disability and provided his physician's written opinion in support of the request. FAMU said no.

Mr. Snead retired and brought this action against the FAMU Board of Trustees. He asserted federal and state-law claims of disability discrimination, as well as other claims that were settled or dropped or on which summary judgment was granted for the Board. The disability claims proceeded to a trial by jury. The Board admitted that Mr. Snead had a disability.

The properly instructed jury returned a verdict consisting of answers to interrogatories. The findings on liability were as follows. Mr. Snead requested a schedule change as an accommodation for his disability. The requested accommodation was reasonable. With the accommodation, Mr. Snead would have been able to perform the essential functions of his position as a FAMU police officer. And providing Mr. Snead's requested accommodation would not have imposed an undue hardship on the FAMU Police Department.

The **[*3]** jury awarded damages for past lost wages and benefits and for mental and emotional anguish. As a prerequisite to the award for mental and emotional anguish, the jury found, in response to an interrogatory, that FAMU did not make a good-faith effort, in consultation with Mr. Snead, to identify and make a reasonable accommodation for his disability that would not cause an undue hardship to the FAMU Police Department. *See* 42 U.S.C. § 1981a(a)(3) (allowing damages of this kind only if the defendant did not make such a good-faith effort).

II

On the Board's motion for judgment as a matter of law, the evidence must be viewed in the light most favorable to Mr. Snead. *See, e.g., Howard v. Walgreen Co.*, 605 F.3d 1239, 1242 (11th Cir. 2010). This means all credibility choices must be made, and all reasonable inferences from the evidence must be drawn, in Mr. Snead's favor. *See, e.g., United States EEOC v. St. Joseph's Hosp., Inc.*, 842 F.3d 1333, 2016 WL 7131479, at *6 (11th Cir. 2016). When so viewed, the evidence is sufficient to support the jury's findings.

III

The critical issues are these: whether working a 12-hour shift is an essential function of a FAMU police officer's job; whether accommodating Mr. Snead by allowing him to work 8-hour shifts, while still working 40 hours per week, would be reasonable; whether Mr. Snead requested such an accommodation; and whether such an **[*4]** accommodation would impose an undue hardship on FAMU. Mr. Snead won on all four of these issues.

Issues of this kind are often, though not always, factual issues that are properly resolved by a jury. *See, e.g., Samson v. Federal Express Corp.*, 746 F.3d 1196, 1200-01 (11th Cir. 2014). That is so in large part because these are all fact-intensive issues. In some (but not all) circumstances, "job restructuring" and "modified work schedules" are reasonable accommodations that an employer must make available. *See* 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o)(2)(ii).

The general framework for analysis is set out in *St. Joseph's*. There an employee sought reassignment to a different position—a position with different assigned tasks and responsibilities—as an accommodation for a disability. The court noted that reassignment is sometimes but not always a reasonable accommodation; it depends on the circumstances. Relying on *US Airways, Inc. v. Barnett*, 535 U.S. 391, 122 S. Ct. 1516, 152 L. Ed. 2d 589 (2002), the Eleventh Circuit said the first question is whether an accommodation of the kind at issue is reasonable "in the run of cases." *St. Joseph's*, 842 F.3d 1333, 2016 WL 7131479, at *8-9. If so, the next question is whether the accommodation would impose an undue hardship on the employer "in the particular circumstances of the case." *Id.*

In our case the jury found that Mr. Snead's requested accommodation was reasonable and would not impose an undue **[*5]** hardship on FAMU. These are findings that, under *St. Joseph's*, entitle Mr. Snead to prevail, so long as the evidence adequately supported the findings.

Framed more specifically, the question is whether a requested accommodation can be reasonable when it conflicts with an employer's otherwise-applicable general policy. In *St. Joseph's*, the employer had a general policy requiring an employee seeking to transfer to another position to compete for the position on the merits—to beat out other applicants. The Eleventh Circuit held that the plaintiff was not entitled to a noncompetitive reassignment as an accommodation but was instead entitled only to an opportunity to compete. The general policy trumped the requested accommodation.

Similarly, in *U.S. Airways*, the question was whether a requested accommodation—again transfer to a position with different assigned tasks and responsibilities—trumped an employer's general policy. The policy provided for hiring or retaining the most senior candidate for a position. The Court emphasized the many benefits of a consistently applied seniority policy and held that such a policy ordinarily trumps a requested accommodation. But the Court also said there **[*6]** might be circumstances when a requested accommodation would be reasonable despite a conflict with a seniority policy.

St. Joseph's and *U.S. Airways* each involved a requested transfer to a different position—a position with different assigned tasks and responsibilities. A case factually closer to ours is *Terrell v. USAir*, 132 F.3d 621 (11th Cir. 1998). There an employee with a disability sought to reduce her shift from 8 hours to 4. The Eleventh Circuit affirmed summary judgment for the employer, concluding that the shortened shift was not a reasonable accommodation.

But Mr. Snead's case is different. The employee in *Terrell* sought to work only part-time—not the same number of hours per week as others with the same job. Mr. Snead, in contrast, sought to work full-time, 40 hours per week, the same as other officers. He sought only to rearrange the hours—to work 8-hour shifts. Other officers worked

primarily 12-hour shifts. But each other officer also worked a single 8-hour shift in each two-week period. This made allowing Mr. Snead to work 8-hour shifts more reasonable than it otherwise would have been.

A fair summary of these three cases, all presenting a conflict between an employer's general policy and an employee's request for an **[*7]** accommodation, is this. For these cases, the score is 3-0 for the employer. But none of the cases purports to adopt a hard-and-fast rule. Quite the contrary: *U.S. Airways* explicitly recognizes that particular circumstances may call for a different result. And none of the cases involved facts quite like those now before the court. More importantly, any assertion that a general policy always trumps a requested accommodation would render the ADA's reasonable-accommodation requirement a dead letter, or nearly so. The whole point of the reasonable-accommodation requirement is that employers sometimes must accommodate a disability—sometimes must bend a general rule to make room for an employee with a disability.

The evidence was sufficient to support a finding, based on the written opinion of Mr. Snead's physician as provided to FAMU at the time, that Mr. Snead was able to perform every task that other officers performed. He just could not perform those tasks for as many continuous hours. On this record, a jury could reasonably find, and this properly instructed jury did find, these facts: working 12 hours at a stretch was not an essential function of the job; allowing Mr. Snead to work 8-hour **[*8]** shifts would have been a reasonable accommodation for his disability; Mr. Snead's request for an accommodation, when reasonably construed, encompassed such a change; and granting the request would not have imposed an undue hardship on FAMU.

This case presented a jury question. The Board of Trustees is not entitled to judgment as a matter of law.

IV

For these reasons,

IT IS ORDERED:

The defendant's motion for judgment as a matter of law as made on the record at the close of all the evidence, and as renewed in writing, ECF No. 55, is denied.

SO ORDERED on December 21, 2016.

/s/ Robert L. Hinkle

United States District Judge