NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued February 15, 2023
Decided July 18, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 21-2645

JAMES SHAW,
Plaintiff-Appellant,

v.

ILLINOIS SPORTSERVICE, INC.,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:19-cv-08415

Matthew F. Kennelly,
Judge.

O R D E R

Plaintiff James Shaw sued Illinois Sportservice, Inc., for violating the Americans with Disabilities Act after Sportservice declined to hire Shaw. The district court granted summary judgment for Sportservice, holding that Shaw was not a "qualified individual" under the ADA because he had not shown that he could perform the essential job functions of the position, with or without reasonable accommodations. We affirm.

I

The district court thoroughly explained the undisputed facts of this case, see *Shaw v. Ill. Sportservice, Inc.*, 2021 WL 3497348 (N.D. Ill. Aug. 9, 2021), and so we will only briefly summarize them here. In 2009, James Shaw suffered a gunshot wound to the head; he was left with significant long-term physical and mental impairments. Since the incident, Shaw has been primarily nonverbal, unable to read or write. He makes mistakes with basic arithmetic, struggles to identify words and pictures, and sometimes cannot follow simple commands.

In February 2019, Shaw interviewed for a job as a "porter" with Illinois Sportservice, Inc., a company that provides and manages concession services at Guaranteed Rate Field (the baseball stadium where the Chicago White Sox play). The porter job posting included a section titled "Knowledge, Skills, and Abilities," which (according to Sportservice) sets forth the prerequisites for the position:

- Must be pleasant, courteous with ability to adhere to the Company's GuestPath Universal Service Standards
- Ability to work in a fast paced environment
- Ability to work cooperatively with others
- Ability to read and interpret delivery forms and purchase orders
- Basic math skills for counting inventory
- Ability to follow job procedures and supervisor instructions

The job posting also included a section titled "Essential Functions" which listed the following:

1. Delivers food, beverages and other products throughout the facility, in an efficient and timely manner,
2. Stocks products in commissary; ensures that inventory levels are maintained,
3. Reports all needed commissary repairs to the supervisor,
4. Keeps work area and equipment neat and clean,
5. Performs other duties as assigned.

The interview for the porter position involved a series of questions followed by a few basic arithmetic problems. Shaw was unable to respond to the interview questions, though his mother provided answers on his behalf. He was unable to answer any of the basic arithmetic questions correctly. Sportservice declined to extend a job offer. Shaw then sued the company for discriminating against him on the basis of his disability in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq*.

The district court granted summary judgment for Sportservice. Viewing the record as favorably to Shaw as it could, the court first held that Sportservice had not provided sufficient evidence that the job's prerequisites were consistent with business necessity, and that therefore a genuine dispute of material fact existed regarding whether the prerequisites barred Shaw's candidacy outright. But the court nevertheless concluded that summary judgment was proper because Shaw had not shown that he could perform the essential job functions of the porter position, with or without reasonable accommodations.

II

We evaluate *de novo* a district court's grant of a motion for summary judgment, drawing all inferences in favor of the nonmoving party. *Pontinen v. U.S. Steel Corp.*, 26 F.4th 401, 405 (7th Cir. 2022). Summary judgment is appropriate only when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

The ADA prohibits an employer from discriminating against a "qualified individual" on the basis of disability in its hiring process. 42 U.S.C. § 12112(a). A qualified individual is a person "who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). To determine whether a plaintiff is a qualified individual, we use a two-step test. First, we consider whether the plaintiff satisfies the "prerequisites" for the position, which "might include an appropriate education background, employment experience, particular skills and licenses." *Rodrigo v. Carle Found. Hosp.*, 879 F.3d 236, 241–42 (7th Cir. 2018); 29 C.F.R. § 1630.2(m). Second, we consider whether the plaintiff can perform the essential functions of the position, with or without reasonable accommodations. *Rodrigo*, 879 F.3d at 241. The plaintiff carries the burden of showing that she is a qualified individual. *Taylor-Novotny v. Health All. Med. Plans, Inc.*, 772 F.3d 478, 493 (7th Cir. 2014).

The district court determined that there was a genuine dispute of material fact as to the first step, but not the second. Though we are inclined to think that Sportservice has shown that at least some of its specified prerequisites stem from legitimate business necessity, we need not reach this issue. We agree with our district-court colleague that Shaw has not shown that he can perform the essential functions of the porter position. That is enough to foreclose his ADA claim.

On appeal, only three essential functions are at issue. (Sportservice does not dispute that Shaw can fulfill the fourth essential function—keep the work area and equipment neat and clean—nor does it dispute the district court's finding that performing other duties as assigned (the fifth duty) is not an essential function of the

porter position.) For present purposes, Sportservice and Shaw agree that "porters" must:

> 1. Deliver[ ] food, beverages and other products throughout the facility, in an efficient and timely manner,
> 2. Stock[ ] products in commissary; ensure[ ] that inventory levels are maintained,
> 3. Report[ ] all needed commissary repairs to the supervisor … .

Shaw argues, however, that there is not a singular job of "porter." He urges that the record reveals the existence of two distinct jobs: first, a "concession" porter, and second, a "warehouse" porter. Only concession porters, he says, are responsible for the first essential function (delivering products throughout the stadium), while only warehouse porters are responsible for the remaining essential functions (stocking products, maintaining inventory, and reporting needed repairs). Sportservice disputes this characterization. There is only one porter position, it contends, and porters must be willing and able to switch between concession and warehouse assignments.

Even if we were to agree with Shaw—though we find scant support in the record for his view—it would be of no consequence. There is undisputed evidence that Shaw cannot perform the essential functions he ascribes to *either* position.

First, no reasonable jury could find on this record that Shaw could deliver food, beverages, and other products throughout the stadium in a timely and efficient manner. Sportservice is responsible for supplying over 100 concession stands with over 300 products. The differences between products can be nuanced. For example, Sportservice stocks over 70 different kinds of canned beer. To fulfill this essential duty, a "concession porter" must, at a minimum, be able to read order forms, identify each product, and discern how many of each product to deliver to a given stand. But it is undisputed that Shaw cannot read, cannot consistently identify basic objects, and makes mistakes with addition, subtraction, and multiplication.

Shaw relies on an expert report from Dr. Leslie Freels Lloyd, a vocational rehabilitation consultant, as evidence that he can perform this duty with reasonable accommodations. But Dr. Lloyd's report cannot carry the day for Shaw. As an initial matter, we agree with the district court that Dr. Lloyd "does not come right out and say that Shaw would be able to perform the specific functions [Sportservice] deems essential for the job." The report's statements are broad and inconclusive. For example, Dr. Lloyd states that Shaw "*may* require modified training"; that he "would *most likely benefit*" from certain vague accommodations; that Shaw might be able to train for the concession porter position "*[i]f* he were to successfully learn and complete" the

warehouse porter duties; and that her suggested accommodations "could change if [she] were able to perform an on-site job analysis and perform an on-site evaluation of Mr. Shaw *attempting* to perform the job." Lloyd Expert Rep. at 33–34 (emphasis added). We have previously considered expert testimony of this ilk to be too "speculative" and "conclusory" to satisfy a plaintiff's burden at summary judgment, unless there is more in the record. See *Stern v. St. Anthony's Health Ctr.*, 788 F.3d 276, 288–89 (7th Cir. 2015) (holding that an expert's statement that "it is *possible* that [the disabled plaintiff] would be *more likely* to be able to complete" essential functions if certain accommodations were provided was insufficient to carry the plaintiff's burden at summary judgment).

Another problem is that Dr. Lloyd's report does not identify with any specificity the accommodations that would permit Shaw to overcome his limitations with respect to reading, identifying products, and performing basic math—tasks that would be necessary to deliver products throughout the stadium efficiently in either role. As far as we can tell, the expert's only suggestion is that another employee could perform this function on Shaw's behalf or constantly shadow Shaw to ensure that he is performing his duties correctly. But "[w]e have repeatedly held that '[t]o have another employee perform a position's essential function, and to a certain extent perform the job for the employee, is not a reasonable accommodation.'" *Id.* at 289 (quoting *Majors v. Gen. Elec. Co.*, 714 F.3d 527, 534 (7th Cir. 2013)). Therefore, Shaw has not provided evidence that he can perform the first essential function.

No reasonable jury could find on this record that Shaw could stock products in the commissary and maintain Sportservice's extensive inventory as a "warehouse porter." Once again, Shaw's inability consistently to identify basic objects or read labels or delivery forms is fatal. Shaw does not genuinely dispute his inability to do these things. Nor does he propose any accommodation that specifically identifies how he would overcome these impairments. To the extent that Shaw suggests that another employee should read order forms on his behalf or identify and count out the needed products, that argument is a nonstarter. As discussed, requiring someone else to perform an essential job function is not a reasonable accommodation.

Finally, no reasonable jury could find on this record that Shaw has the ability to report needed repairs to a supervisor. It is undisputed that Shaw is primarily nonverbal and cannot communicate in writing. He has provided no evidence to suggest that he would be capable of reporting issues to his supervisor. Moreover, neither Shaw nor his expert proposed a reasonable accommodation that would allow Shaw to perform this function.

In sum, Shaw has not carried his burden of showing that he can perform any of the three essential functions at issue. It is therefore irrelevant, as a legal matter, whether

there are one or two porter positions. Either way, Shaw is not a "qualified individual" under the ADA, and thus his discrimination claim fails.

We AFFIRM the district court's grant of summary judgment for Sportservice.