In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1231

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff-Appellant,

v.

CHARTER COMMUNICATIONS, LLC,

Defendant-Appellee.

Appeal from the United States District Court for the
Eastern District of Wisconsin.
No. 2:18-cv-01333-BHL — **Brett H. Ludwig**, *Judge.*

ARGUED SEPTEMBER 22, 2022 — DECIDED JULY 28, 2023

Before WOOD, HAMILTON, and ST. EVE, *Circuit Judges*.

HAMILTON, *Circuit Judge*. In this case we apply the Americans with Disabilities Act to an employee whose disability made it difficult to commute safely to his workplace. The main question is whether the employee was entitled to a modified work schedule as an accommodation to make his commute safer. We conclude that the answer is "maybe" and that the case should not have been resolved on summary judgment.

To summarize, James Kimmons worked in a call center for defendant Charter Communications. Cataracts in both eyes made his vision blurry and made seeing in the dark difficult, and thus made nighttime driving unsafe. Public transit was not an option on his schedule. Kimmons asked for an earlier work schedule to reduce his nighttime driving for his long drive home from work. Charter granted his first request for a thirty-day change but denied his request to extend the schedule. Alleging that Charter unlawfully failed to accommodate Kimmons' disability, the Equal Employment Opportunity Commission filed this suit. The district court granted summary judgment to Charter, holding that the employer had no obligation to accommodate Kimmons' commute because his disability did not affect his ability to perform any essential function of his job once he arrived at the workplace. *EEOC v. Charter Commc'ns LLC*, No. 18-cv-1333-bhl, 2021 WL 5988637 (E.D. Wis. Dec. 17, 2021).

The broad question here is whether an employee with a disability can be entitled to a work-schedule accommodation to allow him to commute more safely. Different circuits have articulated different approaches, though as we explain below, we do not disagree with the results they have reached. Compare *Colwell v. Rite Aid Corp.*, 602 F.3d 495, 504 (3d Cir. 2010) (reversing summary judgment for employer; employee's vision problems made driving at night dangerous, and ADA could require schedule change to accommodate disability), and *Lyons v. Legal Aid Society*, 68 F.3d 1512, 1516–17 (2d Cir. 1995) (reversing dismissal on pleadings; employee's difficulty in walking could require accommodation in the form of parking space near work), with *Unrein v. PHC-Fort Morgan, Inc.*, 993 F.3d 873, 878–79 (10th Cir. 2021) (affirming judgment for employer; where employee became legally blind and had

long commute, ADA did not require employer to allow unpredictably flexible schedule depending on employee's ability to obtain rides), and *Regan v. Faurecia Automotive Seating, Inc.*, 679 F.3d 475, 479–80 (6th Cir. 2012) (affirming summary judgment for employer; employee's narcolepsy affecting safety of long commute posed problem outside work environment, so ADA did not require accommodation).

Based on the ADA's language, its history, and our circuit's precedents, and taking guidance from other circuits, we decline to adopt a bright-line rule to the effect that an employer never has a duty of reasonable accommodation under the ADA regarding how its employees with disabilities get to work. We have no doubt that getting to and from work is in most cases the responsibility of an employee, not the employer. But if a qualified employee's disability interferes with his ability to get to work, the employee *may* be entitled to a work-schedule accommodation if commuting to work is a prerequisite to an essential job function, such as attendance in the workplace, and if the accommodation is reasonable under all the circumstances. The requested accommodation here, a second thirty-day change to the employee's work schedule, was not, at least as a matter of law, unreasonable given Kimmons' circumstances and his job with this particular employer. His vision impairment interfered with commuting to work safely, and attendance was an essential function of his job. There is also a genuine dispute of material fact as to whether Kimmons was actually disabled.

Before going further, we must note that the parties, the district court, and we have approached this case as one in which Kimmons' physical presence at the workplace was an essential function of the job. During the Covid-19 pandemic,

of course, many employers and tens of millions of employees found ways to accomplish work without having many employees physically present at the workplace. We do not address here issues about whether and when physical presence is an essential job function.

I. *Factual and Procedural Background*

We review the district court's summary judgment decision de novo, viewing all evidence and drawing all reasonable inferences in the non-moving party's favor. *EEOC v. Sears, Roebuck & Co.*, 417 F.3d 789, 796 (7th Cir. 2005) (*Sears II*). We may affirm summary judgment only if the record shows "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).

A. *Kimmons' Vision Impairment*

James Kimmons was diagnosed in 2016 with early cataracts in the center of his vision that might qualify for surgery. Although Kimmons' cataracts were rated as mild, even mild cataracts at the center of a person's vision can cause problems. In low-light conditions, traffic lights glare, and road objects blur. An optometrist recommended that even if he wore glasses, Kimmons ought to avoid driving at night.

B. *Kimmons' Request for an Accommodation*

In 2016, Kimmons lived in Racine, Wisconsin, and began working at Charter's call center in Milwaukee, a one-hour drive away. Kimmons' shift started at 12:00 PM and ended at 9:00 PM, so his commute home required nighttime driving. To reduce the hazard of driving after dark, Kimmons asked Charter to modify his work schedule in August 2016. He asked to start earlier and leave earlier. Charter granted his request, allowing him to start at 10:00 AM and end at 7:00 PM,

but for only thirty days. Though not a perfect solution, the accommodation at least allowed Kimmons to be off the highway sometime before dark at that time of year.

Before the thirty days ended, Kimmons asked to extend his modified schedule for another thirty days while he tried to move closer to the workplace. Charter's internal policy permitted work-schedule changes, but Charter summarily denied this request the same day. When Kimmons appealed the company's decision, the company responded that "assistance with your commute" is "not required under the ADA. The Company has been kind enough to temporarily change your shift while you attempted to find alternative assistance for your commute, even though it had no legal obligation to do so." Charter recommended that Kimmons try public transportation or carpooling with other employees who lived near him, and "consider all of your own options to manage your transportation."

Back to his later work schedule, Kimmons tried other options for commuting. He tried public transportation, but a check with the local bus system confirmed that no buses operated after 9:00 PM. He tried carpooling with other employees. But when Kimmons asked the company for names of other employees who lived near him, the company said the information was confidential. As for other options, it was clear that a taxi or ride-share service would cost more money than Charter was paying him. Kimmons alleges there was never a time he worked in the Milwaukee call center when he drove himself to the office. Instead, through a combination of public transportation and friends, Kimmons managed to get to work, a travel arrangement that was frequently unreliable. Because Kimmons discovered he could not afford it, he

ultimately did not move to Milwaukee. For unrelated reasons, Kimmons' employment with Charter ended in January 2017.

C. *The District Court Proceedings*

Kimmons filed a charge with the Equal Employment Opportunity Commission, which invited Charter to conciliate in 2018. Those efforts failed. The EEOC then filed this suit against Charter alleging that the company violated the Americans with Disabilities Act by failing to accommodate Kimmons' disability. 42 U.S.C. § 12112(b)(5). The EEOC sought damages and injunctive relief.

Charter moved for summary judgment, which the district court granted. The court read our decision in *Brumfield v. City of Chicago*, 735 F.3d 619, 631–32 (7th Cir. 2013), as foreclosing Kimmons' request for a work-schedule accommodation because he did not need any accommodation to perform an essential job function once he arrived at work. *EEOC v. Charter Commc'ns*, 2021 WL 5988637, at *4.

II. *Whether Kimmons Had a Disability*

The parties dispute whether Kimmons had a disability within the meaning of the ADA. The district court assumed that he did, *EEOC v. Charter Commc'ns*, 2021 WL 5988637, at *3, and based on the evidence and the standard for a motion for summary judgment, we do the same. A "disability" under the ADA includes "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." 42 U.S.C. § 12102(1). The definition of "substantially limits" was broadened by the ADA Amendments Act of 2008. Under those amendments, "substantially limits" is to be interpreted consistently with the findings and purposes of the 2008 amendments, 42 U.S.C. § 12102(4)(B), which are set forth

in Sections 2 and 3 of the ADA Amendments Act of 2008, Pub. L. No. 110–325, 122 Stat. 3553 (2008). Those amendments' findings and purposes expressly reject case law previously holding that for an impairment to be substantially limiting, it must "prevent[ ] or severely restrict[ ] the individual from doing activities that are of central importance to most people's daily lives." ADA Amendments Act of 2008 § 2(b)(4). The 2008 amendments further expressed "Congress' expectation" that the EEOC would revise its regulations accordingly. § 2(b)(6). Under those revised regulations, "'substantially limits' shall be construed broadly in favor of expansive coverage," such that an impairment is a disability if it "substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population." 29 C.F.R. § 1630.2(j)(1)(ii), as amended, 76 Fed. Reg. 16978, 17000 (Mar. 25, 2011).

The EEOC argues that Kimmons' cataracts amounted to a disability. Kimmons testified that "everything is just … opaque…. You just get glare. You don't actually see an object." His optometrist explained that having cataracts is like "throwing debris against a window in your house. If you have enough of that block the window, you can't see anymore." Kimmons' testimony about his inability to drive safely at night is evidence of how his vision impairment affects major life activities, such as walking, seeing, and working. See 42 U.S.C. § 12102(2) (list of major life activities).

Charter argues that Kimmons is not disabled, citing among other things progress notes from a different doctor who evaluated Kimmons. That doctor's note did not indicate that Kimmons expressed any concerns about his vision or driving at night. And that doctor added information about

how Kimmons' vision affected major life activities only because Kimmons requested it. The factual dispute means that we cannot affirm summary judgment on the alternative ground that Kimmons did not have a disability. See, e.g., *EEOC v. Sears, Roebuck & Co.*, 233 F.3d 432, 439 (7th Cir. 2000) (*Sears I*) (reversing summary judgment granted on similar ground).

III. *Effects on an Essential Job Function*

The next question is whether Kimmons was entitled to a modified schedule to accommodate his disability-related difficulties in commuting. To answer that question, we consider the ADA's statutory language, its history, and case law. We determine that if an employee's disability substantially interferes with his ability to travel to and from work, the employee may be entitled to a reasonable accommodation if commuting to work is a prerequisite to an essential job function, including attendance in the workplace, and if the accommodation is reasonable under all the circumstances.

The Americans with Disabilities Act begins with Congress's findings, which include that "individuals with disabilities continually encounter … the discriminatory effects of … transportation … barriers." 42 U.S.C. § 12101(a)(5). To counter these effects, among others, the ADA requires an employer to make "reasonable accommodations" for an employee with a disability, absent undue hardship on the employer's operations. § 12112(b)(5)(A). The ADA provides a non-exclusive, illustrative list of potential accommodations. That list includes "part-time or modified work schedules." § 12111(9)(B). That's what Kimmons wanted here.

Modified work schedules also appear in the ADA's legislative history. The report of the House Committee on Education and Labor explained that reasonable accommodations could include "modified work schedules" to accommodate some people with disabilities who are "denied employment opportunities because they cannot work a standard schedule." H.R. Rep. No. 101-485, pt. 2, at 62–63 (1990), as reprinted in 1990 U.S.C.C.A.N. 303, 335–36. The House Report added: "Other persons who may require modified work schedules are persons who depend on a public transportation system that is not currently fully accessible." *Id.* The report also said that an accommodation could extend to helping an employee get to work, noting that a qualified person with a disability seeking employment at a store that is "located in an inaccessible mall" would be entitled to reasonable accommodation in helping him "get to the job site." H.R. Rep. No. 101-485, pt. 2, at 61, as reprinted in 1990 U.S.C.C.A.N. at 334. The report of the Senate Committee on Labor and Human Resources also endorsed modified work schedules as potentially reasonable accommodations and noted that "modified work schedules can be a no-cost way of accommodation." S. Rep. No. 101-116 at 31 (1989).

Consistent with this statutory language and its history, our cases have recognized that a work-schedule accommodation can sometimes be required. For example, in *Gile v. United Airlines, Inc.*, 213 F.3d 365, 368 (7th Cir. 2000) (*Gile II*), we affirmed a jury verdict for an employee who asked for a modified work schedule—daytime shifts—to accommodate her disabilities. Although "a shift transfer may not have cured" the employee's condition, a "rational jury easily could conclude that a shift transfer would have alleviated [the

employee's] symptoms such that [the employee] could have performed her job." *Id.* at 373.

In *Sears II*, we addressed mobility issues, though at and around the workplace rather than in a commute. 417 F.3d 789. There, the employee worked in retail but developed a condition that limited her ability to walk more than one city block. *Id.* at 792–94. She asked for accommodations that would shorten her walk through the large retail store and avoid the need to take a long walk to a mall food court for lunch breaks. The employer effectively denied these requested accommodations, and we reversed summary judgment for the employer. The employee was "able to perform all of the aspects of her job but simply had trouble getting to and from her workstation within the store." *Id.* at 802. Getting to the employee's workstation was a prerequisite for her performing *any* essential function of her job.

Gile II and *Sears II* inform our analysis but do not control this case since neither addressed commuting between home and workplace. We find more pointed guidance from four decisions by four other circuits, though their language tends to point in opposite directions. We address them in chronological order.

In *Lyons v. Legal Aid Society*, the plaintiff was an attorney who had been severely injured in a traffic accident. 68 F.3d at 1513. After years of surgery and therapy, she was able to return to work, but she could walk only short distances and with great difficulty. She could not manage public transit from her home to her office. She asked her employer to accommodate her disability by paying for a parking space near her office and the courts where she would practice. The employer refused, so the employee spent between 15 and 26

percent of her net salary for a parking space. She sued under the ADA and the Rehabilitation Act. The district court dismissed on the pleadings.

The Second Circuit reversed, recognizing the broad and flexible reach of reasonable accommodations under both statutes. 68 F.3d at 1515–16. The employer argued that it did not provide parking or commuting help for any other employees, so it should not be required to help the plaintiff. The Second Circuit disagreed: "whether it is reasonable to require an employer to provide parking spaces may well be susceptible to differing answers depending on, *e.g.*, the employer's geographic location and financial resources, and … the determination of the reasonableness of such a requirement will normally require some development of a factual record." *Id.* at 1516.

In observations that we endorse here, the Second Circuit wrote that "the accommodation obligation does not require the employer to make accommodations that are 'primarily for the [individual's] personal benefit,' such as an 'adjustment or modification [that] assists the individual throughout his or her daily activities, on and off the job,' or to provide 'any amenity or convenience that is not job-related.'" 68 F.3d at 1516, quoting EEOC's Interpretive Guidance on Title I of the Americans with Disabilities Act, 29 C.F.R. pt. 1630, app. at 412 (1995); accord, 29 C.F.R. pt. 1630, app. at 424 (2022). On the pleadings, at least, the *Lyons* court rejected the employer's contention that a paid parking space would be only "an additional fringe benefit in the nature of a 'personal amenity' unrelated to the 'essential functions'" of the employee's job. *Id.* at 1517. The reasoning of *Lyons* favors the EEOC's position in

this case, treating the reasonableness of the requested accommodation as a disputed issue of fact.

The Third Circuit took a similar approach in a case with facts remarkably close to this case. In *Colwell v. Rite Aid Corp.*, the plaintiff was a retail clerk in a pharmacy who worked both daytime and evening shifts. 602 F.3d at 498. After she was employed, she lost her vision in one eye, which made it dangerous and difficult for her to drive to work at night. Public transit was not available at night. The plaintiff asked to be assigned only daytime shifts, but the employer refused. The plaintiff sued under the ADA for a modified work schedule. The district court granted summary judgment for the employer on the theory adopted by the district court here, that the plaintiff did not need any accommodations to do her work once she arrived at the workplace.

The Third Circuit reversed. Its opinion noted the statutory, regulatory, and legislative history points we have cited above, as well as the Second Circuit's decision in *Lyons*. 602 F.3d at 505. "We therefore hold that under certain circumstances the ADA can obligate an employer to accommodate an employee's disability-related difficulties in getting to work, if reasonable. One such circumstance is when the requested accommodation is a change to a workplace condition that is entirely within an employer's control and that would allow the employee to get to work and perform her job." *Id.* at 505–06, citing 29 C.F.R. § 1630.2(o)(1)(ii)–(iii) (2005) (defining reasonable accommodations). Rejecting a sharp line between on-site accommodations and transportation accommodations, the Third Circuit wrote: "As a cashier, Colwell was certainly required to be at work to perform any of the functions of her job, and any change in shifts is clearly a change in a workplace

condition entirely under the employer's control." *Id.* at 506. The plaintiff in *Colwell* was also not actually asking for help "in the method or means of her commute," but only a change in schedule *that was within the employer's control*. *Id*. The reasoning of *Colwell* squarely supports the EEOC's position in this case.

On the other hand, defendant Charter finds support for its position in the Sixth Circuit's decision in *Regan v. Faurecia Automotive Seating, Inc.*, which affirmed summary judgment for the employer. 679 F.3d at 480. There, the employee had narcolepsy but had managed her commute until two changes occurred. First, she moved seventy-nine miles away from her job, so that her commute took two to four hours each way. Second, her employer changed the schedule for her department for efficiency reasons. The later schedule meant that the employee had to commute during heavier traffic, which she found much more tiring and dangerous for her. She asked to modify her work schedule back to the earlier time she had managed to cope with, but the employer refused. She sued under the ADA, and the district court granted summary judgment for the employer.

The Sixth Circuit affirmed, citing a non-precedential Ninth Circuit decision and several district court decisions denying similar accommodations on the theory that the relevant barriers were outside the work environment. 679 F.3d at 480. The opinion did not cite *Colwell* or *Lyons*. The Sixth Circuit also noted that the plaintiff had not presented evidence or argument supporting her theory that her proposed schedule would actually provide a commute with lighter traffic. The court summarized its decision in terms of convenience: the

ADA "does not require [defendant] to accommodate Regan's request for a commute during more convenient hours." *Id.*

Also supporting defendant Charter's position is the Tenth Circuit's decision in *Unrein v. PHC-Fort Morgan, Inc.*, which also presented facts close to this case, but with a few key differences. 993 F.3d at 878–79. The employee there had been a dietitian at a hospital for nearly twenty years, with a one-way commute of sixty miles. But she then developed an eye disease that rendered her legally blind. Once she got to work, she could do her job with magnifying equipment the employer had provided at her request. Getting to work was the problem. She could not drive herself, and public transportation and ride services were not available to her. She tried to count on family and friends for rides, but she could not get to work on a reliable schedule. She asked for an accommodation in the form of a flexible schedule, which she and the employer tried for fifteen months. The experiment was a failure. The employee's attendance was erratic and unreliable, and her employment ultimately ended. She sued under the ADA for failure to accommodate her vision disability. Entering judgment against her, the district court found that the plaintiff's physical presence at the hospital on a set and predictable schedule was an essential job function.

The Tenth Circuit affirmed. It found that the requested accommodation was "unreasonable, both as a matter of law and common sense." 993 F.3d at 878. The accommodation would not have allowed plaintiff to fulfill the essential job function of being physically present on a predictable schedule. The opinion observed more broadly that the plaintiff was seeking an accommodation for a transportation barrier, "a problem she faces outside the workplace unrelated to an essential job

function or a privilege of employment." *Id.* The employer did not and could not control where the plaintiff lived, whether public transit was available, or whether friends and family could give her rides, whereas plaintiff had the power on her own to eliminate the transportation barrier by moving closer to the hospital or finding more reliable rides. *Id.* at 878–79. "Whether a transportation barrier is caused by a broken car or legal blindness and unreliable rides, the analysis of an employer's obligations should not change if transportation is unrelated to an essential job function and not a privilege of employment." *Id*. at 879.[1]

We could not follow all of the language in all four of these opinions, but we do not necessarily disagree with the results of any of these cases. The plaintiff in *Regan* had chosen to move much farther away from her job, and that choice aggravated the effects of her disability on her ability to commute safely. The plaintiff in *Unrein* was asking for an accommodation that would have made it impossible for her to meet the

[1] *Regan* and *Unrein* both cited a non-precedential Ninth Circuit decision, *Robinson v. Bodman*, 333 F. App'x 205 (9th Cir. 2009), in which the employer refused plaintiff's requested accommodation of being allowed to work from home full-time. Plaintiff's work from home had not been satisfactory. *Id.* at 208. The Ninth Circuit also said the employer was not required to accommodate the plaintiff's transportation problems: "the employer is not required to eliminate barriers outside the workplace that make it more difficult for the employee to get to and from work (unless the employer makes such accommodations for its employees who do not have disabilities, which the [the employer] does not)." *Id*., citing *Salmon v. Dade Cty. Sch. Bd*., 4 F. Supp. 2d 1157, 1163 (S.D. Fla. 1998), an opinion by Judge Gold granting summary judgment that has been cited frequently in cases on accommodation requests involving commuting and work schedules. *Robinson* is not precedential and is easily distinguishable from this case on its facts.

essential job function of being physically present on a reliable schedule.

We offer two general observations about these cases: First, where a disability makes it difficult for an employee to travel to and from work safely, the employee usually controls some key variables, most important where the employee lives, but the employer controls another key variable, the work schedule. As if looking through opposite ends of a telescope, concentrating on the variables the employee controls weighs in favor of the employer, while concentrating on the employer's control over work schedules can weigh in favor of the employee. These cases present problems that arise from the *combination* of employee choices and employer choices. Charter nonetheless invites us to draw a bright line between barriers inside the workplace, versus outside the workplace, directing us to EEOC enforcement guidance, *EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the ADA*, No. 915.002 (Oct. 17, 2002), https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada. Yet that guidance did not go so far as Charter argues. Rather, it advised that workplace barriers may include "rules concerning when work is performed." *Id.*; see also *Colwell*, 602 F.3d at 506 (change in shifts could be reasonable accommodation for effects of disability on commuting safely). Given the statutory reference to modified work schedules as reasonable accommodations and the explanatory references in the legislative history, we decline to draw a bright line between accommodations at the employer's workplace and accommodations that address transportation problems.

Second, we repeat that in most cases, an employer has no duty to help an employee with a disability with the method and means of his commute to and from work, assuming the employer does not offer such help to employees without disabilities. Charter warns of "potential unfettered abuse" in accommodation requests, again directing our attention to further EEOC guidance. See *EEOC Informal Discussion Letter, ADA: Reasonable Accommodation* (June 20, 2001), https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-47. That guidance also did not go as far as Charter argues. Rather, it recognized, just as we have, that "it is the employee's responsibility to arrange how s/he will get to and from work" while also recognizing that "[r]easonable accommodation may be required to address other issues involving an employee's commute to and from work," such as "adjustment to his/her working hours if [public] transportation is limited … ." *Id.* In the relatively rare cases like this one, where an employee with a disability seeks an accommodation to make commuting safer, we expect the ADA's terms requiring that any accommodation be reasonable under the circumstances and not impose an undue burden on the employer (including other employees), as well as the statutory requirement that the employee with a disability be able to carry out the essential job functions, should protect employers from unreasonable demands. See 42 U.S.C. §§ 12111(8), (9) & (10), 12112(b)(5).

Before turning to the details as to whether Kimmons' request for an accommodation in this case was reasonable, we also explain why our decision in *Brumfield v. City of Chicago*, 735 F.3d 619 (7th Cir. 2013), does not resolve this case. The district court here understood *Brumfield* to hold that the ADA requires no accommodation if the employee's disability does not affect his ability to perform essential job functions once

the employee is at work. *EEOC v. Charter Commc'ns*, 2021 WL 5988637, at *3. We do not read *Brumfield* so broadly. The plaintiff in *Brumfield* was a police officer who had been fired after several incidents, including one in which she feigned an injury in front of her supervisor. 735 F.3d at 622–23. She had unspecified psychological problems that led to several evaluations of fitness for duty, but she passed those evaluations without anyone identifying any need for any workplace accommodations. The case presented a complex procedural history including several different suits and issues of claim preclusion, and our opinion addressed primarily the relationship between Title I and Title II of the ADA, holding that Title II does not apply to public employment issues, which are governed by Title I.

The concluding portion of our opinion addressed the plaintiff's attempt to assert a claim for failure to accommodate, but, remarkably, the plaintiff never seems to have identified an accommodation she needed or wanted, and our opinion did not identify one either. See 735 F.3d at 630. The principal point of our rather abstract discussion of the duty to accommodate was that if the employee can do his or her job without any accommodation, the ADA does not require the employer to provide any. *Id.* at 632. That was clearly correct as applied to Brumfield, who apparently did not identify any accommodation she needed or even wanted, other than possibly the right to engage in unprofessional conduct at work, such as feigning injuries. We simply did not address in *Brumfield* the more nuanced problems that can arise regarding attendance at work, as in this case, including the statutory reference to modified work schedules and the legislative history references to employees without accessible public transit, or accommodations that may be needed for an employee with a

disability to perform essential job functions more safely or less painfully. See, e.g., *Hill v. Associates for Renewal in Educ., Inc.*, 897 F.3d 232, 234, 239 (D.C. Cir. 2018) (reversing summary judgment against employee and holding that employee's disability from amputated leg made job functions "difficult and painful" and a "reasonable jury could conclude that forcing [the employee] to work with pain when that pain could be alleviated by his requested accommodation violates the ADA."). Our opinion in *Brumfield* should not be read as holding that the ADA imposes no duty to offer reasonable accommodations that affect safety or pain that an employee may be motivated to overcome. In any event, the parties all agree here that attendance at work was an essential job function for Kimmons, and evidence would support a finding that the requested accommodation here would have allowed him to meet that requirement more safely.

IV. *Kimmons' Requested Accommodation*

A. *Case-by-Case Evaluation of Scheduling Issues*

From what we have said, deciding whether a work-schedule accommodation of a disability that affects a commute is reasonable depends on a highly fact-specific inquiry that considers the needs of both employer and employee. The employee bears the burden to make a preliminary showing that his requested accommodation is reasonable on its face. 42 U.S.C. §§ 12111(10) & 12112(b)(5)(A); *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 401–02 (2002). An employer may defend on the grounds that no accommodations would be reasonable and/or that the proposed accommodations would impose an undue hardship on its operations, with the employer bearing the burden of showing undue hardship. § 12112(b)(5)(A); *Conners v. Wilkie*, 984 F.3d 1255, 1260 (7th Cir. 2021). Many factors

may be relevant, including the efficacy of a proposed accommodation and its effects on the employer's business operation, effects on other employees' workloads and schedules, and in some cases effects on seniority systems and collective bargaining agreements. See generally § 12111(10); *Barnett*, 535 U.S. at 400–02. The analysis should emphasize employee responsibility for the factors within the employee's control, without losing sight of the employer's control over work schedules.

1. *Accommodating a Disability, Not Personal Preferences*

An employee's proposed accommodation must ameliorate the disability, not merely serve personal preferences or convenience. For disability-related difficulties getting to and from the workplace, the employee must still show how an obstacle or risk of harm could affect an essential function, but that may include workplace attendance. The employee must also show that the requested accommodation would be effective. *Gile II*, 213 F.3d at 372 ("an employer need not grant a disabled employee's request for an accommodation that would be an 'inefficacious change'"), quoting *Vande Zande v. Wisconsin Dep't of Admin.*, 44 F.3d 538, 542 (7th Cir. 1995); see also *Regan*, 679 F.3d at 478–80 (employee failed to show schedule change would actually ease burden on her; request seemed to address convenience rather than need). Without strong justification, all that remains is a "non-work related barrier[ ] created by personal lifestyle choices," which the ADA does not require the employer to help remedy. *Unrein*, 993 F.3d at 874.

We recognize that employees with and without disabilities usually choose where to live and have a variety of options available to reach their workplaces. Employers usually bear

no responsibility for helping an employee with a disability commute to and from work. Reliable and accessible public transportation, carpooling, or simply moving closer to the job may make it "common sense" in many cases that the commute-related barrier is one the employee alone "has the power to eliminate." See *Unrein*, 993 F.3d at 878–79.

At the same time, courts should focus on the precise accommodation at issue, for it may well be that a temporary accommodation at work may enable an employee to stay on the job while making longer-term changes, such as moving closer to the job and/or moving within reach of public transit. That's the sort of temporary accommodation that Charter denied Kimmons in this case when he asked for an additional thirty days of an earlier work schedule while he tried to arrange a move.

Whether an employee with a disability can show that his or her commuting situation is the unusual exception requiring accommodation from an employer will depend on many facts, including the benefits of the accommodation, alternatives to the accommodation, the cost to the employer, and consequences for others. An employee who has chosen to live far from the workplace or failed to take advantage of other reasonable options, including public transportation, will rarely if ever be entitled to an employer's help in remedying the problems. See, e.g., *Regan*, 679 F.3d at 478 (employee chose to move seventy-nine miles away from workplace); *Kimble v. Potter*, No. 06 C 2589, 2009 WL 2045379, at *7–8 (N.D. Ill. July 13, 2009) (granting summary judgment against disabled employee where employee "did not assist herself … by relocating to an area … that substantially lengthened her commute, or by ignoring altogether Chicago's extensive public

transportation system"); but see, e.g., *Fuller v. Belleville Area Cmty. Coll. Dist. No. 522*, No. 3:18-cv-01123-GCS, 2020 WL 1287743, at *1 (N.D. Ill. Mar. 18, 2020) (denying motion to dismiss where employer rejected request for transfer to closer facility after employer relocated its workplace to location that required vision-impaired employee to commute up to eight hours on public transportation).

2. *Undue Hardship on the Employer*

Even if the employee makes his preliminary showing, the employer can show the requested accommodation's costs or other burdens are undue. 42 U.S.C. § 12111(10). For example, the employee's proposed accommodation must not pose a "prohibitively weighty" administrative burden on the employer. In *Filar v. Board of Educ.*, 526 F.3d 1054, 1059 (7th Cir. 2008), the employee was a substitute teacher who was expected to be available to work at schools all over Chicago. Her hip condition made it painful to walk and made her unable to drive. She was denied a request to be staffed at a location "with minimum walking distance from public transportation." She lost her accommodation claim on summary judgment. We affirmed on that claim, partly because it was administratively unreasonable. *Id.* at 1068. Among the hundreds of potential worksites, among the thousands of potential buses, among the over-ten-thousand potential bus stops, the *Filar* employee failed to specify which ones would accommodate her disability, a request "too barebones" to be reasonable. *Id.*

Any analysis for work-schedule accommodations for commuting will likely need to consider whether the accommodation would unduly burden the business operation. In *Unrein*, for example, the employer originally had granted a work-schedule accommodation to help an employee to commute to

work more safely. 993 F.3d at 875. But the accommodation resulted in the employee's unpredictable attendance, worse performance, and worse customer satisfaction. *Id.* In that case, moreover, the employee was asking for an accommodation that would not have enabled her to perform the essential job function of being physically present at the job on a predictable and reliable schedule. *Id.* at 878.

3. *Other Considerations*

We also do not intend to endorse an interpretation of the ADA where "no good deed goes unpunished." If the employer goes further than the law requires, it should not be "punished for its generosity by being deemed to have conceded the reasonableness of so far-reaching an accommodation." *Vande Zande*, 44 F.3d at 545–46 (employer allowed some work from home but should not be required to allow full-time work from home). We have recognized situations where the employer sufficiently accommodated commute-related barriers posed by an employee's disability. See, e.g., *Cloe v. City of Indianapolis*, 712 F.3d 1171, 1178–79 (7th Cir. 2013) (affirming summary judgment for employer who accommodated employee's walking disability by providing closer parking space); *Yochim v. Carson*, 935 F.3d 586, 588, 592–93 (7th Cir. 2019) (affirming summary judgment for employer who accommodated employee's carpal-tunnel disability by providing a flexible schedule so employee could avoid enduring pain on public transportation.); see also *Kramer v. Homeward Bound, Inc.*, No. 14-cv-15-slc, 2015 WL 4459967, at *6–8 (W.D. Wis. July 21, 2015) (granting summary judgment for employer who accommodated employee's epilepsy "by having others drive her to appointments and by paying cab fare" during period employee could not safely drive herself).

We also emphasize that the employer need not provide the exact accommodation the employee asks for, which we have said repeatedly. E.g., *Sears II*, 417 F.3d at 802; *Jay v. Intermet Wagner Inc.*, 233 F.3d 1014, 1017 (7th Cir. 2000); *Gile v. United Airlines, Inc.*, 95 F.3d 492, 499 (7th Cir. 1996) (*Gile I*). The employer has no duty "to expend even modest amounts of money to bring about an absolute identity in working conditions between disabled and nondisabled workers." *Vande Zande*, 44 F.3d at 546 (affirming summary judgment against disabled employee who could reach workplace bathroom sink but wanted employer to remodel kitchen sink as well). An employer is not required to bend over backwards to accommodate a disabled employee or "expend enormous sums in order to bring about a trivial improvement in the life of a disabled employee." *Id.* at 542–43, 545. Instead, "[t]he duty of reasonable accommodation is satisfied when the employer does what is necessary to enable the disabled worker to work in reasonable comfort." *Id.* at 546.

We also emphasize that this opinion does not attempt to identify all factors that might be relevant in determining whether a proposed accommodation affecting the ability of an employee with a disability to travel to and from work would be reasonable or would impose an undue hardship on an employer's operations. Based on this case and those from other circuits discussed above, we expect that such cases will require a close look at the facts of the specific case rather than rely on bright-line rules.

B. *Kimmons' Requested Accommodation*

We now return more specifically to Kimmons' requested accommodation, an extension of his shift change for another thirty days while he tried to move closer to the workplace. On

this record, a jury could find that would have been a reasonable accommodation. Kimmons ultimately did not move closer, but neither he nor Charter could know this when Charter denied Kimmons' request. His vision impairment could have interfered with his commute due to his difficulty driving safely at night and a lack of safe and reliable transportation alternatives. His disability-related difficulties could have interfered with the essential job function of regular attendance because he was unable to commute safely after his assigned shift.

Charter points out that the proposed accommodation might have been inadequate. That is possible but not undisputed. And even if Kimmons had to drive at least one way in darkness during the winter, the proposed accommodation could still have been reasonable. An accommodation that mitigates the employee's difficulty need not cure all problems. After all, in *Gile II*, "a shift transfer may not have cured" the employee's condition, but "a shift transfer would have alleviated [the employee's] symptoms such that [the employee] could have performed the job." 213 F.3d at 373. In Kimmons' case, avoiding driving at night some of the time could be deemed reasonable.[2]

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[2] We acknowledge some tension among our ADA and Rehabilitation Act cases regarding whether a disabled employee may be entitled to a reasonable accommodation even if his disability does not affect an essential function of the job. Compare *Brumfield*, 735 F.3d at 632–33 (answering no), with *McWright v. Alexander*, 982 F.2d 222, 227 (7th Cir. 1992) (answering yes), and *Fedro v. Reno*, 21 F.3d 1391, 1395–96 (7th Cir. 1994) (answering yes). Because Kimmons' impairment could have affected the essential job function of workplace attendance, we do not try to resolve this tension here.

Charter has not demonstrated as a matter of law that the accommodation would have imposed an undue hardship. Charter also has not shown that the accommodation would have imposed unfair burdens on other employees or would have been too costly. This record simply does not establish beyond dispute that the requested accommodation would have been unreasonable or imposed an undue hardship.

Kimmons was not asking for an unaccountable, work-when-able schedule or a permanent accommodation. He did not demand the company itself transport him to work. He asked only for a temporary work schedule that would start and end two hours earlier while he found time to move closer. A jury could have found his requested accommodation to be reasonable.

Conclusion

We prescribe no bright-line rules as to when an employee's disability interferes with essential job attendance or whether particular accommodations are reasonable. Those questions are reserved for analysis under the facts of a particular case. But if a qualified individual's disability substantially interferes with his ability to get to work and attendance at work is an essential function, an employer may sometimes be required to provide a commute-related accommodation, if reasonable under the circumstances.

The judgment of the district court is REVERSED and the case is REMANDED for further proceedings consistent with this opinion.