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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001936-MR

KENNETH W. HOOD — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JOHN R. ADAMS, JUDGE
ACTION NO. 98-CI-01488

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC.; PETE GRITTON; MIKE DEPRILLE; MARK DAUGHERTY; AND PAULA MILLS — APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: EMBERTON, CHIEF JUDGE; JOHNSON AND KNOPF, JUDGES.

KNOPF, JUDGE: Kenneth Hood appeals from a summary judgment of the Fayette Circuit Court, entered May 30, 2002, dismissing his employment-discrimination complaint against Toyota Motor Manufacturing of Kentucky, Inc. Hood alleges that Toyota invidiously discharged him from an assembly-line trainee

position because it deemed him to be disabled. The trial court ruled that Hood had failed to proffer proof that he is disabled for the purposes of the anti-discrimination laws and that Hood's discharge was not invidious. We agree with the trial court.

Toyota hired Hood on March 10, 1997, to work on one of its assembly teams. After a week of orientation, Hood began training for one of his team's five assembly processes. The job required Hood to perform repetitive motions with his arms raised above his head. By March 19, he was obliged to seek medical attention for pain in his shoulders. In early April, his treating physician diagnosed chronic bilateral rotator cuff tendonitis with early joint degeneration, likely the result of Hood's nearly twenty years of strenuous weight training. The physician restricted him to work that did not require him to lift more than ten pounds overhead and that did not require him to reach overhead for more than ten seconds at a time. There is no dispute that one cannot perform the assembler job with these restrictions. Upon learning of Hood's restrictions, Toyota placed him on medical leave.

In mid-July 1997, Hood sought to resume his assembler training and presented Toyota with a reevaluation from his physician, which stated, in part, that

> [i]t is my opinion that at this time [Hood] may be released to full duty without restrictions. Mr. Hood has conveyed to me

> that there is a job opportunity at the Toyota plant in which he would be on a team that rotates duties such that although he would be doing overhead work, it would not be repetitive overhead work eight to ten hours per day as his only job description. I think this would be an ideal scenario for Mr. Hood, and thus I have released him to return to work.

Toyota interpreted this note as releasing Hood to a job requiring less overhead work than the assembler position and so refused to reinstate him to the training program. Hood's medical leave expired in September 1997. Because he had not by then supplied the company with an unambiguous release to his former position, Toyota terminated his employment.[1]

[1] Hood asserts that Toyota's policy of limiting medical leave to six months is discriminatory. The reason for this assertion is not entirely clear. If Hood means only that Toyota's decision not to release him from medical leave should not be confused with its decision to terminate him, we agree. The first decision could be discriminatory even if the second were not, and in that case a proper termination under the leave policy would not excuse the prior discrimination. If he means that the six-month leave policy is itself discriminatory, however, we disagree. Hood's assertion to the contrary notwithstanding, that is not the holding of Toyota Manufacturing U.S.A., Inc. v. Epperson, Ky., 945 S.W.2d 413 (1996), a case in which that issue had been raised but not addressed by the trial court and our Supreme Court remanded the issue to the trial court. A company is not obliged to keep its workers on medical leave indefinitely. Gantt v. Wilson Sporting Goods Company, 143 F.3d 1042 (6th Cir. 1998); Monette v. Electronic Data Systems Corporation, 90 F.3d 1173 (6th Cir. 1996). Aside from his mistaken reading of Epperson, Hood has suggested no reason to find Toyota's leave policy discriminatory.

Thereupon Hood brought suit against Toyota,[2] alleging that Toyota had discriminated against him because of its perception that he was disabled. The trial court agreed with the company that the physician's July letter was ambiguous, but permitted Hood to depose the physician to clarify her recommendations. At her deposition, the physician testified that she regarded Hood's shoulder problems as chronic, that she had not intended to release him to the same position that had caused him so much pain before, and that she had intended to limit her release to a position conforming generally to the restrictions she had imposed in April. In light of this testimony, the trial court granted Toyota's motion for summary judgment. It is from that order that Hood has appealed.

To state a prima facie claim of disability discrimination under the Kentucky Civil Rights Act, KRS 344.010 et seq., a plaintiff must prove by a preponderance of the evidence that (1) he was disabled within the meaning of the Act, (2) he was a qualified individual; and (3) he suffered an adverse employment action because of his disability.[3] Hood has

[2] In addition to Toyota, Hood's complaint named Pete Gritton, Mike Deprille, Mark Daugherty, and Paula Mills, Toyota employees. By order entered June 19, 1998, the trial court dismissed Hood's suit against these individuals. Hood has not appealed from that ruling.

[3] Noel v. Elk Brand Manufacturing Company, Ky. App., 53 S.W.3d 95 (2000). In construing the Kentucky Act, courts commonly refer

failed to raise a genuine issue with regard to either of the first two elements.

KRS 344.010(4) defines disability as "(a) A physical or mental impairment that substantially limits one (1) or more of the major life activities of the individual; (b) a record of such impairment; or (c) being regarded as having such an impairment." Hood denies that he is impaired, but contends that Toyota regarded him as having a substantially limiting impairment. We disagree. A substantially limiting impairment is one that significantly interferes with an individual's basic activities.[4] Hood's evidence suggests only that Toyota thought he suffered from a shoulder condition that limited his ability to hold his hands over his head and perform repetitive motions. This is not such an interference with one's basic activities as to amount to a disability for the purposes of the Act.[5]

Neither has Hood adequately alleged that he is a qualified individual. A qualified individual under the Act is

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to decisions construing the similar federal laws. *Id.;* Brohm v. JH Properties, Inc., 149 F.3d 517 (1998). We shall do likewise.

[4] Lusk v. Ryder Integrated Logistics, 238 F.3d 1237 (10th Cir. 2001); McKay v. Toyota Motor Manufacturing, U.S.A., Inc., 110 F.3d 369 (6th Cir. 1997).

[5] Lusk v. Ryder Integrated Logistics, *supra;* McKay v. Toyota Motor Manufacturing, U.S.A., Inc., *supra;* Petty v. Freightliner Corporation, 123 F. Supp. 2d 979 (W.D.N.C. 2000).

one who "with or without reasonable accommodation, can perform the essential functions of the employment position."[6] Hood maintains that as of July 1997 he was able to perform the assembler job for which he had been hired. There is no meaningful dispute, however, that his physician disagreed. As her deposition testimony makes clear, she believes Hood's shoulder problems are chronic and will be aggravated by the sort of overhead lifting and reaching required by the assembler job. Hood proffered no other medical assessment of his condition. We agree with the trial court that Toyota is entitled to rely upon the physician's assessment in judging Hood's qualifications.[7]

In sum, Toyota did not discriminate against Hood. It relied, legitimately, on an individualized and objective medical assessment of Hood's impairment to determine that he was not qualified to perform the assembler job. The Civil Rights Act requires no more. Accordingly, we affirm the May 30, 2002, judgment of the Fayette Circuit Court.

ALL CONCUR.

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[6] KRS 344.030(1).

[7] Gantt v. Wilson Sporting Goods Company, 143 F.3d 1042 (6th Cir. 1998); Blanton v. Inco Alloys International, Inc., 108 F.3d 104 (6th Cir. 1997).

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