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Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0573

Beth A. Layeux,
Appellant,

vs.

Dedicated Logistics Services, LLC,
Respondent.

Filed December 27, 2021
Reversed and remanded
Kirk, Judge*
Dissenting, Johnson, Judge

Hennepin County District Court
File No. 27-CV-20-6852

Darron C. Knutson, New Brighton, Minnesota (for appellant)

Holly M. Robbins, Lauren E. Clements, Littler Mendelson P.C., Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Jesson, Judge; and Kirk, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant challenges the district court's award of summary judgment in favor of respondent. Because we conclude from the record that this case presents genuine issues of material fact for trial, we reverse and remand to the district court for further proceedings.

FACTS

Appellant Beth A. Layeux was hired by respondent Dedicated Logistics Services, LLC (DLS) as an accounts receivable analyst on January 30, 2018. She was interviewed for the position by the accounting operations manager who told her she would be working in a friendly and relaxed atmosphere where she would have flexibility to perform the work in her own manner. DLS company policy allowed employees to take unlimited vacation time and personal leave, subject to their supervisors' approval. Layeux accepted the salaried position at DLS and chose a work schedule from 8:00 A.M. to 4:30 P.M. At the start of employment, Layeux needed to complete her employee data which contained a spot for employees to list known disabilities and accommodations. Layeux suffers from diagnosed anxiety and depression disorder which, when exacerbated by stress, causes insomnia. Layeux did not identify the disorders on the employee data form, nor did she request an accommodation upon starting employment.

Layeux initially performed her work very well, and quickly reduced the backlog of accounts receivable. On a few occasions shortly into her employment, Layeux was late for work because of appointments, traffic, oversleeping, or feeling sick, but would notify her supervisor in advance via email or text. Layeux's absences from work became more

frequent beginning in early June 2018 due to severe dental problems which eventually led to a full extraction of all her teeth. Layeux's tardiness or absences during this time were often on short notice, but she nearly always provided notice to her supervisor if she would be more than 15 minutes late.

On June 13, Layeux emailed her supervisor with details about her dental procedures, explaining the impact on her anxiety and depression. The email stated in relevant part: "This past week has been a struggle for me. I have had non-stop horrible pain, swelling, that awful extraction, lack of sleep, and no solid food besides noodles. I have anxiety and depression, and I am feeling overwhelmed." Layeux apologized for missing work, explaining that her anxiety caused her to overanalyze the text message from her supervisor. She requested two days off "to take a mental health break."

Shortly after sending the email in June, Layeux's supervisor started emailing her up to twenty times a day and the two began disagreeing on work styles. Layeux sat in a cubicle near three other employees and, in her deposition, testified that her supervisor would comment loudly on her work in front of others, making her upset and disrupting her workflow. She asserted that the constant interferences exacerbated her anxiety and depression. She became increasingly concerned after learning that her supervisor had contacted her clients without her knowledge. Layeux testified that her supervisor would record her arrival times and would criticize her in front of others when she arrived late, though other employees did not face the same criticism if they were tardy.

To resolve these issues and prevent disruptions during the workday, Layeux suggested that she and her supervisor hold private weekly meetings to discuss client

accounts and address non-urgent work matters to limit the email inquiries during the week. According to her deposition testimony, Layeux told her supervisor that his constant emails aggravated her anxiety, and she hoped their meetings would reduce the numerous daily disruptions. Her supervisor agreed, and they met weekly for about a month in late June to early July. But by late August, the emails from her supervisor again increased.

In August 2018, Layeux was tardy three days which she attributed to traffic and an issue with a neighbor in texts and emails to her supervisor. As a result, on August 27 her supervisor issued a disciplinary report, which Layeux signed. To make up for her tardiness, Layeux agreed to work during her lunch break and to stay late when needed to ensure she reached a 40-hour workweek. Her tardiness continued into September when she was again late on two or more occasions due to traffic and sickness. But Layeux continued to provide notice via email, text, or phone call to her supervisor.

On October 16, Layeux emailed her supervisor stating that their weekly meetings did not seem to be effective and asked for a meeting with him and a human resources (HR) representative to work through the issues they were having at work. Her supervisor replied that he would try to get a meeting scheduled later that same day. After hearing nothing from her supervisor or HR for six days, Layeux emailed her supervisor on October 22 to ask about the status of the meeting. Her supervisor replied that he had not yet heard back from HR. In her deposition, Layeux testified that she was up all night with anxiety and worry and, as a result, was late to work the next day by over an hour. She testified that she spoke with a coworker about how the pressure to get a meeting with HR was worsening her anxiety and insomnia and making it difficult to come into work.

On October 24, Layeux was called into a disciplinary meeting with her supervisor. Mr. Sayther, a third party from the sales department whom Layeux had consulted with in the past, was also present.[1] Layeux was told that DLS would be imposing a one-day suspension without pay because of her tardiness the day before. The disciplinary note stated: "Beth came in to work yesterday (10/23/2018) after 9:30 when she has a start of 8:00 a.m. Beth has been excessively late 3 times now on 8/27/18, 10/15/18, and now again on 10/23/18. Next offense will result in termination." Layeux questioned how it was possible that the disciplinary meeting with her supervisor and a third party was set up so quickly when she had requested a meeting with a third party over a week prior. Mr. Sayther responded that he was unaware of her request for a meeting. Layeux did not sign the disciplinary note but agreed to serve the one-day suspension. She again verbally requested a third-party meeting and explained that she wanted the meeting to discuss how her working conditions could be changed to fit her needs. Her supervisor stated they could have the meeting that same day but Layeux requested some time to prepare for it.

Later in the afternoon of October 24, despite her request for preparation time, a meeting with Layeux, her supervisor, and an HR representative took place. Layeux tried to explain why she requested the meeting but was cut off by the HR representative who stated the sole purpose of the meeting was to discuss the imposition of her suspension. Layeux expressed her frustration that she felt she was being denied a meeting with HR to discuss the difficulties she was facing at work. The HR representative stated she was not

[1] The district court order incorrectly states this meeting occurred on October 23 but the disciplinary meeting and meeting with HR both occurred on October 24.

aware that Layeux requested a meeting to resolve issues between her and her supervisor. After the meeting, Layeux reached out to set up a meeting with Mr. Sayther from the sales department with whom she felt comfortable discussing work issues.

Layeux served her one-day suspension on October 25 but testified in her deposition that her depression and anxiety spiraled throughout the day and she could not leave her bed. Layeux emailed Mr. Sayther to postpone their meeting, and the meeting was pushed to October 29. During their meeting, Layeux explained to Mr. Sayther that, despite multiple requests, she was still unable to get a meeting with HR. He advised her to email HR directly, and she immediately did so. The HR representative then scheduled a meeting with Layeux and her supervisor for October 31. In her deposition, Layeux testified that by this time in her employment, her relationship with her supervisor was very poor and she wanted the meeting with HR to discuss how her issues at work exacerbated her insomnia, anxiety, and depression. But on October 30, Layeux arrived 6 minutes late to work and DLS terminated her employment.

Layeux filed two claims against DLS in district court under the Minnesota Human Rights Act (MHRA) for disability discrimination and failure to reasonably accommodate a disability, but she later dropped the disability-discrimination claim. DLS moved for summary judgment, arguing that the company was unaware of her need for an accommodation.

The district court held a hearing on DLS's motion for summary judgment. Following the hearing, the district court granted DLS's motion for summary judgment, concluding that Layeux did not put DLS on notice that she needed an accommodation for

her disability and "a fact[-]finder has no authority to second-guess DLS's judgment in terminating her." In its decision, the district court noted that "[i]t is truly unfortunate for Ms. Layeux that she was six minutes late on October 30, the day before her meeting with HR in which she might have made clear how her disability was affecting her work and that she needed an accommodation." Because the district court concluded that DLS was unaware of Layeux's need for a reasonable accommodation, the district court did not address whether DLS failed to accommodate Layeux. Layeux now appeals the district court's grant of summary judgment.

DECISION

Layeux argues that the district court improperly granted summary judgment because whether DLS was aware of her depression and anxiety disorder and failed to make a reasonable accommodation presents a question of material fact. Summary judgment is appropriate when the record as a whole shows "that there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.01. Summary judgment should not be granted "when reasonable persons might draw different conclusions from the evidence presented." *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017). On appeal from summary judgment, we review de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law to the facts. *Commerce Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015). The evidence is viewed in the light most favorable to the party against whom summary judgment was granted. *Id*.

Under the MHRA, it is an unfair employment practice of employers with a certain number of employees "not to provide a reasonable accommodation for a job applicant or qualified employee with a disability" unless doing so would impose an undue hardship on the employer. Minn. Stat. § 363A.08, subd. 6 (2020). Thus, to maintain a reasonable accommodation claim, Layeux must establish that DLS knew of her disability and failed to make a reasonable accommodation for that disability. The district court determined that although DLS conceded knowledge of Layeux's disability, the company did not know her attendance problems resulted from her disability, and Layeux failed to put DLS on notice that she needed an accommodation. The district court determined that summary judgment was proper because a fact-finder lacks the authority to second-guess DLS's judgment in terminating Layeux. We disagree.

The record in this case is sufficient to establish genuine issues of material fact as to whether DLS knew of Layeux's disability and her need for an accommodation. We reach that conclusion based on the following evidence, viewed—as we must—in the light most favorable to Layeux. In her deposition, Layeux asserted that she told her supervisor and colleagues about how her depression and anxiety disorder caused insomnia, and her email in June specifically put her employer on notice of her anxiety disorder and need for mental health breaks. She also asserted that her supervisor's constant emails starting in June aggravated her anxiety and insomnia, and she specifically requested the weekly meetings with him as an attempt to resolve non-urgent work matters to calm her anxiety.

Layeux testified that she requested a meeting with HR through her supervisor at least twice with the purpose of explaining the causes for her tardiness and absences as it

relates to insomnia caused by anxiety and depression disorders. In total, Layeux made five requests in one month to meet with HR to discuss a potential accommodation at work. The first request occurred on October 16 when she emailed her supervisor asking for a meeting with a third party to work out the issues she was having at work. The second request occurred on October 22 after Layeux still had not heard back about the meeting with HR. The third request happened on October 24 during a disciplinary meeting. The fourth request occurred on the afternoon of October 24 after Layeux discovered HR was not even aware of her request for a meeting. And finally, Layeux made a request to HR directly on October 29 and was successful in getting a meeting scheduled. But Layeux did not have a chance to discuss potential accommodations because she was terminated a day before the meeting was set to occur. As noted by the district court, if DLS had timely offered Layeux the opportunity for the meeting, she might have made clear how her disabilities affected her work, and her need for an accommodation. Instead, her supervisor, and HR at the initial meeting, arguably stonewalled her ability to have a meeting to address her concerns.

In *Hoover v. Norwest Private Mortg. Banking*, the Minnesota Supreme Court rejected the notion that an individual requesting a reasonable accommodation at work must specifically tie the request to the disorder or disability. 632 N.W.2d 534, 547-48 (Minn. 2001). In *Hoover*, the plaintiff told her supervisors that she suffered from fibromyalgia and described its effect on her ability to work. *Id.* at 548. The plaintiff further claimed that two days before her termination, she informed her supervisor that she was planning to obtain assistance for completing her work. *Id.* The court held that was enough to survive a motion for summary judgment. *Id.* In this case, the evidence in the record may be slightly

less than it was in *Hoover* and is primarily circumstantial, but it is enough to establish genuine issues of material fact as to whether DLS knew of Layeux's disability and her efforts to obtain an accommodation. Where different inferences can be drawn from the circumstances alleged in the record, we must let the fact-finder decide which inference the evidence supports. *See Staub v. Myrtle Lake Resort, LLC*, 964 N.W.2d 613, 629 (Minn. 2021) (explaining that a plaintiff may rely solely on circumstantial evidence to establish causation in a negligence action).

On a motion for summary judgment, the facts *and the reasonable inferences to be drawn from those facts* must be resolved in Layeux's favor. While Layeux did not specifically request an accommodation for her disorder as did the employee in *Hoover*, the record contains enough evidence supporting reasonable inferences that Layeux was seeking an accommodation for her disorders and that her supervisor and HR realized why she wanted a meeting and acted in concert to stonewall her requests for the meeting. A strong inference of pretext could be drawn from her discharge from employment after being just six minutes late the day before her finally scheduled meeting with HR where she would have likely asked for an accommodation. Thus, we conclude that a factual issue exists that should be resolved by the trier of fact at trial. For these reasons, the district court erred in granting DLS's motion for summary judgment.

Reversed and remanded.

JOHNSON, Judge (dissenting)

Layeux seeks to hold DLS liable for an alleged failure to make reasonable accommodations for her disability. But Layeux did not ask DLS to make an accommodation for her disability. Layeux cannot prevail on her claim unless she can prove that DLS knew of both her disability and her need for a reasonable accommodation for the disability. The evidence in the summary-judgment record is insufficient to prove that DLS had the requisite knowledge. Thus, I respectfully dissent from the opinion of the court.

A.

The relevant provision of the MHRA states that "it is an unfair employment practice for an employer . . . not to make reasonable accommodation to the known disability of a qualified disabled person." Minn. Stat. § 363A.08, subd. 6(a) (2020).[1] The evidence required to prove such a claim is best illustrated by *Hoover v. Norwest Private Mortgage Banking*, 632 N.W.2d 534 (Minn. 2001). In that case, the plaintiff alleged that her former employer failed to reasonably accommodate her fibromyalgia disability. *Id.* at 542. The employer argued that it did not have a duty to make a reasonable accommodation because the employee "never requested a reasonable accommodation in that she never tied her requests for [an accommodation] to her fibromyalgia." *Id.* at 547. The supreme court did

[1] This sentence was amended in 2021 to provide that "it is an unfair employment practice for an employer . . . not to provide a reasonable accommodation for a . . . qualified employee with a disability." 2021 Minn. Laws 1st Spec. Sess. ch. 11, art. 3, § 13, at 66 (codified at Minn. Stat. § 363A.08, subd. 6(a) (Supp. 2021)). In addition, a new sentence was inserted into the same subdivision that requires an employer to "initiate an informal, interactive process with the individual with a disability in need of the accommodation." *Id.* Neither party has questioned the applicability of the 2020 revision of the statute to this case.

not question the employer's premise that an employee must communicate the connection between a request for an accommodation and the employee's disability. *See id.* at 547-48. Rather, the supreme court rejected the employer's argument because the employee had offered voluminous evidence (which is described in detail below) that she had told the employer that she was disabled and that she needed an accommodation "as a result of" her disability. *See id.* at 548. Consequently, there is no basis for the statement in the majority opinion that the *Hoover* court "rejected the notion that an individual requesting a reasonable accommodation at work must specifically tie the request to the disorder or disability." *See supra* at 9.

Both parties rely on federal caselaw interpreting the reasonable-accommodation provision of the federal Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213 (2018). At oral argument, Layeux's attorney agreed that the requirements of federal caselaw are equivalent to the requirements of Minnesota law. The parties' reliance on federal caselaw is consistent with the supreme court's frequent practice of seeking guidance from federal courts' interpretations of similar federal anti-discrimination statutes when interpretating the MHRA. *See, e.g.*, *Kolton v. County of Anoka*, 645 N.W.2d 404, 407-11 (Minn. 2002) (interpreting disability provisions of MHRA in conformity with federal courts' interpretations of ADA). In this case, the relevant provision of the MHRA is very similar to ADA provisions stating that an employer shall not "discriminate against a qualified individual on the basis of disability" and that discrimination includes "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an . . . employee." 42 U.S.C.

§ 12112(a), (b)(5)(A). Accordingly, it is appropriate for this court to refer to federal caselaw for guidance.[2]

Under well-developed federal caselaw, a disabled employee who wants a reasonable accommodation must inform the employer of the existence of his or her disability, the limitations that arise from the disability, and the need for an accommodation. *Rask v. Fresenius Med. Care*, 509 F.3d 466, 470 (8th Cir. 2007); *Cannice v. Norwest Bank N.A.*, 189 F.3d 723, 727 (8th Cir. 1999); *Mole v. Buckhorn Rubber Prods., Inc.*, 165 F.3d 1212, 1217 (8th Cir. 1999); *Wallin v. Minnesota Dep't of Corrections*, 153 F.3d 681, 689 (8th Cir. 1998); *Miller v. National Cas. Co.*, 61 F.3d 627, 629-30 (8th Cir. 1995). Furthermore, if "the disability, resulting limitations, and necessary reasonable accommodations, are not open, obvious, and apparent to the employer, as is often the case when mental disabilities are involved," then "the initial burden rests primarily upon the employee . . . to specifically identify the disability and resulting limitations, and to suggest the reasonable accommodations." *Rask*, 509 F.3d at 470 (quotation and emphasis omitted). A request for an accommodation "need not contain any magic words" but it "must be sufficient to convey to the employer that the employee is requesting that his disability be accommodated."

[2] This is so notwithstanding *McBee v. Team Industries, Inc.*, 925 N.W.2d 222 (Minn. 2019), in which the supreme court declined to refer to federal caselaw because the federal caselaw was based not on the ADA itself but on a federal regulation relating to the ADA, 29 C.F.R. § 1630.2(o)(3) (2018). *Id.* at 227-28. In this case, however, the federal regulation concerning reasonable accommodation is silent with respect to the issue on appeal: what an employee must do or say to request an accommodation. *See* 29 C.F.R. § 1630.9 (2021). The EEOC has issued interpretive guidance on that issue, *see* 29 C.F.R. app. § 1630.9 (2021), but the EEOC's interpretive guidance is "not controlling upon the courts," *Young v. United Parcel Service, Inc.*, 575 U.S. 206, 224-25 (2015); *see also Kisor v. Wilkie*, 139 S. Ct. 2400, 2414-18 (2019).

Lowery v. Hazelwood Sch. Dist., 244 F.3d 654, 660 (8th Cir. 2001). Stated differently, "An employee cannot expect an employer to read her mind expecting it to know she wants a particular accommodation." *Burke v. Iowa Methodist Med. Ctr.*, 28 F. App'x 604, 607 (8th Cir. 2002) (*per curiam*).

In light of this well-developed caselaw, the United States Court of Appeals for the Eighth Circuit repeatedly has affirmed the grant of summary judgment on the ground that the plaintiff's evidence is insufficient to prove that the employer knew of the employee's disability, the employee's need for an accommodation, and the nexus between them. For example, in *Wallin*, the court concluded that the plaintiff did not provide enough information to his employer because he "made *no connection* between [his] requests and his disabilities." 153 F.3d at 689 (emphasis added). In *Ballard v. Rubin*, 284 F.3d 957 (8th Cir. 2002), the court stated that "the employer must know of both the disability and the employee's desire for accommodations *for that disability*." *Id.* at 962 (emphasis added) (quotation omitted). In other cases too, the Eighth Circuit has affirmed grants of summary judgment because, in each case, the plaintiff failed to submit evidence that the employer knew both that the employee was disabled and that the employee requested an accommodation for the disability. *See Rask*, 509 F.3d at 470-71; *Cannice*, 189 F.3d at 726-28; *Mole*, 165 F.3d at 1217-18; *Miller*, 61 F.3d at 629-30.

B.

Layeux's evidence does not satisfy the standard described above. To prove that DLS knew that she had a disability, Layeux relies on a single e-mail message that she sent to her supervisor on June 13, 2018, more than four months before the end of her

employment. She wrote that she would be absent for two days while she recovered from a complicated dental procedure and, in addition, made a passing reference to anxiety and depression. She was unable in her deposition to identify any other occasion when she informed her supervisor that she suffered from anxiety or depression, that she had been treated by a medical provider for anxiety or depression, or that she was taking prescription medications. In numerous other e-mail and text messages during Layeux's employment, she provided various other excuses for her absences or tardiness, such as a headache, a sore throat, a fever, doctor and chiropractor appointments, a lost contact, traffic delays due to a crash, and a spilled recycling bin. Nonetheless, DLS has conceded for purposes of summary judgment that it knew of Layeux's disability.

Layeux contends that she was entitled to two forms of reasonable accommodation: a more flexible schedule and weekly meetings with her supervisor. Layeux acknowledges that she did not refer to her disability—anxiety and depression—in her communications concerning these alterations to her job. In her deposition, she was asked whether she ever had requested that her supervisor give her "flexibility to help deal with [her] depression, anxiety disorder, and insomnia." She answered in the negative. She also was asked whether there was "anybody at DLS who you think understood that you were requesting a meeting [with human resources] that was somehow related to a disability?" She answered, "Not that I am aware of."

In light of this evidence, the district court accurately stated that Layeux "never connected for DLS her attendance issues with her disability" and "never informed her supervisor or anyone else at DLS that" a more-flexible schedule and weekly meetings with

her supervisor were "accommodations to minimize exacerbation of her depression and anxiety." In other words, she never requested a reasonable accommodation for her disability.

C.

In her appellate brief, Layeux concedes that she "did not in so many words tell [her supervisor] or DLS's Human Resources department: 'I need an accommodation for my depression and anxiety disorder.'" Indeed, Layeux's evidence is dramatically different from the evidence presented by plaintiffs in other cases whose reasonable-accommodation claims survived summary judgment.

For example, in *Hoover*, the supreme court concluded that the employee had requested an accommodation for her disability. 632 N.W.2d at 547-48. The supreme court reached that conclusion because the employee had "informed [her supervisor and her team leader] about her fibromyalgia and its effect on her ability to work"; had "told [her supervisor] at least eight times that she needed assistance because of her health"; had "tried to make it very clear to [her supervisor] that [she] had fibromyalgia," "how it affected" her, and that she "needed special help"; and, two days before her termination, had "told [her supervisor] that she needed support help because of her health and was going to the personnel department to obtain it." *Id*. at 548. Layeux's evidence is not nearly as extensive or as detailed.

Layeux cites *Kowitz v. Trinity Health*, 839 F.3d 742 (8th Cir. 2016), for the proposition that employees are required only to "provide the employer with enough information that, under the circumstances, the employer can be fairly said to know of both

the disability and desire for accommodation." *Id.* at 748 (quotation and alteration omitted). But the facts of *Kowitz* illustrate that the standard is not as low as Layeux suggests. The *Kowitz* court reversed a grant of summary judgment to the employer on the ground that the employee had "presented sufficient evidence to raise a genuine issue of material fact as to whether she requested an accommodation." *Id.* at 747. The evidence showed that the plaintiff in *Kowitz* suffered from a degenerative spine disease, had previously taken a three-month leave of absence for neck surgery, had submitted paperwork after her leave with doctor-imposed restrictions on her physical activities, had "notified her supervisor in writing that she was unable to complete [a required] certification until she had been cleared to do so by her doctor," had "advised her supervisor that she had an appointment scheduled with her doctor in a few days, and would inform [the supervisor] of her clearance that day," and had left her supervisor a voice-mail message stating that she needed four months of physical therapy before she could complete the required certification. *Id.* at 744, 747. Again, Layeux's evidence falls far short of the evidence that was presented in *Kowitz*.

Layeux has not cited any reasonable-accommodation case in which a plaintiff has survived summary judgment based on evidence of a request for an accommodation that is similar to her own evidence.

D.

The majority opinion reasons that, even if Layeux is unable to identify particular communications that imposed on DLS a duty to reasonably accommodate her disability, a jury should be permitted to draw reasonable inferences from her circumstantial evidence. *See supra* at 9-10. The majority opinion does not cite any authority for its reliance on

circumstantial evidence of a request for an accommodation. Circumstantial evidence is not mentioned in *Hoover* or in any of the Eighth Circuit opinions cited above. If a plaintiff seeking to prove a failure-to-accommodate claim does not have direct evidence that she made a request for an accommodation, a jury should not be allowed to speculate about that to which the plaintiff is unable to testify based on first-hand knowledge. To be sure, circumstantial evidence may be used to prove a discriminatory motive in a discriminatory-termination case. *See Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99-100 (2003); *Hoover*, 632 N.W.2d at 542; *Friend v. Gopher Co.*, 771 N.W.2d 33, 37 (Minn. App. 2009). Circumstantial evidence is appropriate in such cases because discriminatory decisionmakers rarely confess to unlawful motives. *See, e.g.*, *Hester v. Indiana State Dep't of Health*, 726 F.3d 942, 947 (7th Cir. 2013); *Green v. McDonnell Douglas Corp.*, 463 F.2d 337, 352 (8th Cir. 1972) (revised part V), *remanded on other grounds*, 411 U.S. 792 (1973). But a discriminatory motive is not an element of proof in a claim of failure to reasonably accommodate a disability. *See McBee*, 925 N.W.2d at 230-33; *Hoover*, 632 N.W.2d at 547-48.

In addition, the majority opinion strays beyond the relevant issues by discussing the reasons for Layeux's termination and suggesting that they are pretextual. *See supra* at 10. If a plaintiff seeks to prove a discriminatory termination, the plaintiff may establish pretext by proving that an employer's non-discriminatory reason for its termination decision is false and that the true reason is a discriminatory reason. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 143-49 (2000); *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993); *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996). But Layeux

has not alleged a discriminatory-termination claim, perhaps because DLS had warned her only a few days before her termination that her "next offense will result in termination." Thus, Layeux does not seek to prove that DLS's reasons for terminating her employment are pretextual, and that issue is not relevant to her failure-to-accommodate claim.

For these reasons, I would affirm the judgment of the district court.