

Court Refuses to Order Employer to Accommodate Commuting Anxiety

by Dennis J. Merley - Monday, February 04, 2019



There is no consensus in the federal courts as to whether employers must offer accommodations to assist a disabled employee in commuting to and from work. The majority seems to conclude that such accommodations are not needed because commuting is not part of the employee's job responsibilities or work environment. A recent [decision](#) from the Fifth Circuit Court of Appeals falls squarely within this camp.

Heather Trautman worked for Time Warner Cable in Texas on an 8:00 am to 5:00 pm schedule. She began experiencing anxiety and panic attacks while driving to and from work in heavy traffic. She therefore asked if she could revise her schedule so that she could work at the office from 7:00 am to 2:00 pm, then finish her remaining work hours at home. The company declined the request, explaining that her job required her to be on site, especially during the department's busy time in the early afternoon hours.

Employee Seeks Alternative Route

Trautman then suggested that she could come in from 7:00 am 11:00 am, then head home and be available to work through the busy afternoon rush. Time Warner again said no but did offer that she could move her schedule up by an hour so that she still worked a full day but could leave by 4:00 pm.

Trautman did not give this a try. Instead, she just kept submitting doctor's notes and FMLA requests affirming her difficulties with her daily commute but never really addressing whether she could or could not perform her actual job responsibilities. At the same time, she continued racking up attendance infractions for late arrivals and early departures, and she was eventually

terminated for excessive absenteeism.

Trautman sued in federal court on a variety of claims, the most interesting being an alleged failure to accommodate in violation of the Americans with Disabilities Act (ADA). The lower court dismissed the claim and Trautman appealed to the Court of Appeals for the Fifth Circuit.

Accommodation Request Hits a Detour

One of the big questions presented in this case was whether the ability to commute effectively is a work function for which accommodation might be necessary. The Appeals Court dodged that issue, however, and decided instead that even if accommodation was required, Trautman failed to show that her employer failed to offer one. They explained that Time Warner met their duty to engage in an interactive process by offering the proposed one-hour change in her work schedule.

Unfortunately, Trautman never took them up on that offer, nor did she investigate public transportation or ride-sharing options. She also never took any initiative to alter her work environment to reduce her anxiety, such as more frequent breaks or a different location where she would not be able to see the busy traffic through her office window. She simply chose to keep leaving early and incurring attendance infractions. The Court therefore affirmed the dismissal with the conclusion that the ADA does not permit “an employee to leave work early and then sue her employer for being unreasonable.”

Bottom Line

This case aligns with the majority of other federal court decisions on this issue. However, the Equal Employment Opportunity Commission (EEOC) believes that accommodation is in fact required, and the Eighth Circuit Court of Appeals in which Minnesota sits has not yet ruled one way or the other.

Therefore, Minnesota employers responding to a request for commuting accommodations should bear in mind that the EEOC will likely rule against you if you decline the request, and you do not know how well your refusal will be received by the Eighth Circuit. Until there is more certainty, Minnesota employers should carefully consider engaging in the interactive process regarding commuting issues and giving serious thought to possible accommodations

While the request in the *Trautman* case may have been a bit extreme, modified working hours, purchasing bus passes and other similar considerations might be useful roads to travel in preserving an employee’s ability to work when commuting issues and disabilities intersect.

