

## **EEOC V. AUTOZONE – FAILURE TO ACCOMMODATE**

Publication  
Apr 23, 2013

On February 15 of this year, a federal Court of Appeals ruled that a jury was justified in finding an employer had willfully violated an employee's federal rights and knowingly disregarded the purpose of the Americans with Disabilities Act (the "ADA") when it denied an employee's repeated requests for an accommodation.

John Shepherd began working for an AutoZone store in Illinois in 1998. He had already suffered a permanent back injury while working for a different employer in 1996. The lingering results of the injury were that any repetitive twisting of his torso aggravated his condition and caused "flare-ups" of severe pain and swelling in his back and neck. He began working at AutoZone as a sales clerk and was promoted to parts sales manager a year later. He was successful in sales and even won AutoZone's prestigious "Extra Miler" award. He also was responsible for training new employees. Most of his work involved sales and customer service, but one of his job requirements was to mop the store floor.

At first, Shepherd's store manager allowed Shepherd to perform other duties rather than mopping the floor. The District Manager, however, disapproved and insisted that Shepherd should continue mopping the floor. Shepherd's condition caused him to have to take medical leaves of absence during the years 2001, 2002, and 2003. Shepherd testified at trial that he sent medical forms to AutoZone officials regarding his back condition but that he never received an accommodation. In September 2003, Shepherd severely injured his back while wringing out a mop and had to take another medical leave of absence. Due to the restrictions imposed by his doctor after that injury, the company did not allow Shepherd to return to work but instead required him to stay on involuntary medical leave. Shepherd was terminated in 2005.

Shepherd filed a charge with the EEOC. The EEOC pursued the lawsuit against AutoZone on Shepherd's behalf, asserting claims relating to the company's alleged failure to accommodate, its failure to allow Shepherd to return to work after 2003, and its termination of Shepherd's employment in 2005.

A trial judge earlier dismissed Shepherd's failure to accommodate claim without having a trial (on summary judgment) because it found that Shepherd's back injury did not meet the definition of "disability" under the ADA. The EEOC appealed that decision. In a 2010 opinion, the Court of Appeals found that there was in fact evidence to support a finding that Shepherd was disabled within the meaning of the ADA. The Court of Appeals remanded the case to the trial court for a trial on the merits, where the jury found in favor of Shepherd on this issue and awarded him a significant amount of compensatory damages, back pay, and punitive damages.

The Court noted that the AutoZone employees involved had all received ADA training, and so it was clear that they were aware of Shepherd's federal rights. While the implementation of training may appear to be a double-edged sword under these circumstances, it is far too important to risk going without it. A well-designed and consistently implemented anti-harassment/anti-discrimination program is a crucial preventative measure that should not be ignored. An employer would be hard-pressed to argue that its employees did not know that discrimination on the basis of certain federally-protected rights was illegal.

To mop, or not to mop – the only accommodation Shepherd had asked for was to be relieved of his mopping duties because the repetitive motion caused flare-ups in his back condition. The testimony at trial revealed that, although Shepherd had been requesting this accommodation for a couple of years, his request was not addressed by the company's disability coordinator until three days after he sustained the debilitating injury (at work, mopping) that rendered him unable to return to work in 2003.

In summary, the Court of Appeals mentioned more than once that a company's failure to enforce an anti-discrimination policy and its failure to follow established procedures can provide evidence that its conduct was not merely negligent but that it may have been reckless, intentional, and, under certain circumstances, reprehensible. Employers who do not want to find themselves in that predicament should take heed and ensure they have policies that are written, taught, and followed.

This article appeared in the April 2013 issue of *HR Professionals of Greater Memphis*.