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### Legal Research Paper

Theresa Hill, age 37, was hired at Green Solutions, a private construction company that focuses on providing environmentally friendly home and building improvement solutions. Green Solutions has 575 employees and requires all employees to have a high school degree or equivalent. Hill was hired as an Administrative Assistant, a position which was described by the recruiter as being primarily desk-based at the company headquarters in Santa Clara, CA. Hill was offered the position and she accepted in March 2020. When signing the offer letter, Hill was surprised to read that the position may require her to visit construction sites and lift boxes up to 20 pounds. She realized this might be difficult due to a back injury from 2019.

Since Hill's job was fully remote and desk-based because of the pandemic, Hill worked from home for the next eight months. In November 2021, Green Solutions required that all employees return to in-person work. In January 2022, Hill's manager and Design Director, Xavier Alvarez, asked that Hill join the design team on a construction site to meet with their client and follow up with any action items. Given Hill's passive involvement in the meeting, she didn't expect to be limited in any way due to her previous back injury. When Hill arrived at the construction site, Alvarez asked that she move a few boxes of paperwork and design material from the on-site portable building to a small shed on the other side of the site. Hill attempted to pick up the first box and felt a pain shoot up her back. She decided to leave the boxes, join the team for the meeting, and tell Alvarez after. After the meeting, Hill told Alvarez that because of an injury from 2019 the boxes were too heavy for her, and she asked if there was a hand truck she could use instead. Alvarez said there wasn't one on-site that day, but that he would see about

getting one. The next day, Hill saw a Design Engineer using a hand truck in the office. Alvarez never followed up with Hill regarding this issue.

Two weeks later, Hill received her first performance review for her time with Green Solutions. Although Alvarez praised her positive interactions with clients and other employees as well as her ability to coordinate with multiple construction sites and their teams, he also brought up the fact that she was late to work about three days per week and she consistently lost important documents. One week after her performance review, Hill was called into Alvarez' office and was told she was being terminated. Although Hill received criticism during her performance review, her and Alvarez left the conversation on a good note, so she was surprised to hear this news. After consulting with a friend, Hill decided to file a lawsuit for unlawful discrimination based on her disability, specifically a failure-to-accommodate claim.

Under the principle of stare decisis, this situation would follow the precedents established by appellate cases. The first case used as precedent for Hill's situation is *Nunies v HIE Holdings*. Herman Nunies was a delivery driver for HIE Holdings who suffered from a shoulder injury. In June 2013, Nunies requested to switch to a part-time warehouse position citing shoulder pain as the reason, but his supervisor attributed the request to Nunies' interest in focusing on his side-business. Nunies' supervisor told him the switch had been approved, and three days later Nunies made his supervisors aware of his shoulder pain which was noted by HR. Two days after that, Nunies' supervisor told him he needed to resign because his job no longer existed due to budget cuts. One week after his resignation, Nunies saw an ad in newspaper for the part-time warehouse position. *Nunies v HIE Holdings* considers the ADA's ruling that an employee has been regarded as having a disability if an adverse employment decision has been made because of an actual or perceived impairment, whether or not the impairment limits a major life activity. The

ADA dismisses this definition if the impairment is expected to last less than six months (transitory) and is minor.

During Hill's performance review, her supervisor offered legitimate, non-discriminatory reasons that may have led to her termination. Since Hill's performance review highlighted negative workplace behavior, there was no legitimate reason for her to believe that her work was ideal. With that, Hill is unable to establish that she was regarded as having a disability because she cannot prove that she was terminated because of her back injury. Per her performance review, Hill was terminated because she is often late to work and loses important documents. Using *Nunies v HIE Holdings* as precedent, Hill is unable to establish that she was intentionally discriminated against.

The second case used to conduct legal research for Hill's claim is *Anthony v TRAX International Corporation*. Sunny Anthony was terminated from her Technical Writer position at TRAX after she failed to provide a full work release regarding her PTSD, anxiety, and depression. Anthony filed a lawsuit for disability discrimination, claiming that she was terminated because of her disability and that TRAX failed to engage in the interactive process to find reasonable accommodation. However, during litigation, TRAX became aware that Anthony never earned the bachelor's degree required for her position. Under the ADA, Anthony must first prove that she was a qualified individual which meant she could perform the job duties with or without reasonable accommodation. The Equal Employment Opportunity Commission (EEOC) added to the qualified individual definition to include whether or not the employee satisfies the prerequisites of the position. In Anthony's case, the prerequisite was a bachelor's degree which she didn't have. Regardless of Anthony's disability status, she lacked the prerequisite for the position and is not considered a qualified individual. Therefore, Anthony could not establish a

prima facie case because she could not perform the job duties without a bachelor's degree, the prerequisite for the position. Anthony V TRAX International Corporation established that TRAX had no obligation to engage in the interactive process for reasonable accommodation because Anthony was not a qualified individual under the ADA.

Using Anthony v TRAX as precedent, if Hill is able to establish that she is a qualified individual under the ADA, then her employer would have been obligated to engage in the interactive process for reasonable accommodation. Hill is able to establish a prima facie case of disability discrimination up to a certain point. Hill is able to prove she has a disability (physical impairment that limits her from lifting,) is qualified for the position whether or not she needs reasonable accommodation, and suffered an adverse employment decision (termination). Since Hill is able to establish prima facie, the burden shifts to Green Solutions to establish a legitimate, non-discriminatory reason for termination which has already been established as her lack of timeliness and organization. However, per Hill's conversation with her employer at the construction site, Hill's employer was aware of her disability and reasonable accommodations were not made despite Hill requesting a hand truck.

The third case used as precedent for Hill's situation is Dunlap v Liberty Natural Products. Tracy Dunlap worked as a shipping clerk for Liberty Natural Products for six years. Dunlap was diagnosed with lateral epicondylitis in both elbows and a notice was sent to both parties classifying the condition as a disability. One month later, Dunlap was terminated and her request for reinstatement was denied. Dunlap filed a failure-to-accommodate claim on the basis that Liberty was aware of Dunlap's disability as well as her request for reasonable accommodation. Dunlap provided evidence that the accommodations she requested were readily available to Liberty and would have enabled her to carry out her duties. Dunlap v Liberty further established

the precedent that once an employer becomes aware of an employees need for accommodation, they are obligated to engage in an interactive process to identify a reasonable accommodation. Failure to do so is defined as discrimination by the ADA.

As established earlier, Hill's employer was aware of her disability and her request for a hand truck, but Hill never received accommodation for her back injury. Hill also provided evidence that she saw another employee using a hand truck, proving that Green Solutions had them readily available. As established by *Dunlap v Liberty*, as soon as Hill asked her supervisor for a hand truck to accommodate her disability, her supervisor became obligated to engage in the interactive process and identify if the hand truck was a reasonable accommodation. Since Green Solutions already owned hand trucks, this accommodation would have been appropriate and reasonable. Green Solution's failure to do so is considered disability discrimination.

After analyzing the facts of Hill's situation, as well as the three original appellate cases, I would advise Green Solutions to settle. As defined by the ADA, a disability is a "physical or mental impairment that substantially limits one or more major life activities" ("Introduction," n.d.). Hill's back injury limits her from lifting and performing other acts of physical exertion, such as pushing or pulling, and puts her in a protected class under Title VII. Although Green Solutions had legitimate, non-discriminatory reasons for terminating Hill, Hill was able to establish a *prima facie* case of disability discrimination and also established that Green Solutions did not provide her a reasonable accommodation despite being obligated to do so. In light of these facts, Green Solutions should settle and avoid trying the case. If the case is tried, I predict that Hill will prevail because of her ability to establish *prima facie* as well as Green Solution's failure-to-accommodate her disability. Should the case be tried and lost, Green Solutions will be forced to pay the legal fees for both parties, and they will be required to pay the amount deemed

appropriate by the court. I predict the total cost of trying the case and likelihood of losing to be higher than settling with Hill outside of the court.

Based on the actions of Hill's supervisor, it seems clear that Alvarez is unaware of employment law in regard to disabled employees. If a supervisor is not aware of their obligations it is in Green Solution's best interest to have the supervisor report the situation to HR. From that point, HR can engage in the interactive process by speaking with the employee about their disability and how to best accommodate them. If the accommodation is reasonable, HR should implement it so as to avoid a failure-to-accommodate claim in the future. Hill's supervisor should be told that he was correct to provide legitimate, non-discriminatory reasons for termination as this is a practice that should be continued for all cases of termination. Regardless of someone's disability status, employees should be given legitimate, non-discriminatory reasons for their termination.

## References

*Introduction to the ADA*. ADA.gov. (n.d.). Retrieved from [https://www.ada.gov/ada\\_intro.htm](https://www.ada.gov/ada_intro.htm)