

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Davis v. Wormuth

No. 2:24-cv-00989-DJC-CSK (E.D. Cal. Mar. 31, 2025) · No. 2:24-cv-00989-DJC-CSK · Decided March 31, 2025

SUMMARY

The United States District Court for the Eastern District of California addressed a motion to dismiss a disabled veteran’s Rehabilitation Act claims against the Secretary of the Army. The court held that the disability discrimination claim could proceed, but dismissed the failure-to-accommodate claim with prejudice for failure to exhaust administrative remedies and dismissed the retaliation and hostile work environment claims without prejudice. The court also ruled that claims based on the plaintiff’s April 27, 2021 removal from a supervisory position were time barred and permitted amendment of the retaliation and hostile work environment claims.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Daniel J. Calabretta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 31, 2025
DOCKET	2:24-cv-00989-DJC-CSK
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved to dismiss the First Amended Complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The court granted the motion in part and denied it in part, dismissing some claims with prejudice, dismissing others without prejudice, allowing amendment of specified claims, and denying a prior motion to dismiss as moot.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and construes them in the plaintiff's favor, but requires sufficient factual matter to state a facially plausible claim. On a Rule 12(b)(1) motion, the party invoking federal jurisdiction bears the burden of establishing subject-matter jurisdiction; the court may consider properly submitted evidence and judicially noticeable administrative records.

PRECEDENTIAL VALUE	unpublished district court order; persuasive value only
PARTIES	Michael R. Davis v. Christine E. Wormuth, Secretary of the Army, Does 1 through 20

TOPICS

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[hostile work environment](#)
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QUESTIONS PRESENTED

1. Whether claims based on Davis's April 27, 2021 removal from his supervisory position were barred because he did not timely contact an EEOC counselor within 45 days.
2. Whether Davis adequately pleaded a disability-discrimination or disparate-treatment claim under the Rehabilitation Act.
3. Whether the court had subject-matter jurisdiction over Davis's failure-to-accommodate claim when that theory was not raised in his EEOC complaint.
4. Whether Davis adequately pleaded a Rehabilitation Act retaliation claim.
5. Whether Davis adequately pleaded a disability-based hostile-work-environment claim.

HOLDINGS

1. Claims arising from Davis's April 27, 2021 removal from his supervisory position, and the acts forming the basis for that removal, were untimely because Davis did not contact an EEOC counselor within 45 days of the discrete discriminatory act.
2. Davis adequately pleaded a disparate-treatment disability-discrimination claim to survive a Rule 12(b)(6) motion.
3. The court lacked jurisdiction over Davis's failure-to-accommodate claim because he did not raise that claim in his EEOC complaint and it was not like or reasonably related to the claims he did raise.
4. Davis failed to plead a plausible retaliation claim because he did not adequately connect a protected activity to an adverse employment action.
5. Davis failed to plead conduct sufficiently severe or pervasive to alter the conditions of employment and create an abusive work environment, although the claim was dismissed without prejudice with leave to amend.

KEY QUOTATIONS

“Each discrete discriminatory act starts a new clock for filing charges alleging that act, and discrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges.” (at 2)

“Taken together and viewed in the light most favorable to Plaintiff, there could plausibly be a nexus between Plaintiff’s disability and his supervisors’ actions, meeting the criteria to avoid dismissal at this early stage.” (at 6)

“While Plaintiff’s underlying PTSD and anxiety may certainly be severe, a supervisor’s advisement that, generally, an employee must receive approval for time off requests or face punishment, is not evidence of severe or pervasive harassment, nor does Plaintiff sufficiently express how it implicates his disability.” (at 12)

FACTUAL BACKGROUND

Michael R. Davis, a disabled veteran with PTSD, anxiety, and an unstable gait requiring a cane, worked for the U.S. Army Corps of Engineers in Sacramento. He alleged that supervisors drew attention to his disability, required him to telework or face administrative leave because he allegedly scared people, treated him more harshly than nondisabled coworkers, and failed to accommodate him. He was removed from a supervisory position on April 27, 2021, after reprimands concerning work reports, contacting headquarters, missed training, timecard entries, and facility access; he later received an administrative-leave or telework assignment in approximately August 2021.

PROCEDURAL HISTORY

Davis, a disabled veteran employed by the U.S. Army Corps of Engineers, filed a Rehabilitation Act action asserting disability discrimination, failure to accommodate, retaliation, and hostile work environment. Defendant moved to dismiss. The court held that the discrimination claim could proceed, dismissed the failure-to-accommodate claim with prejudice for failure to exhaust administrative remedies, dismissed the retaliation and hostile-work-environment claims without prejudice, and granted in part the motion concerning the time-barred removal from Davis's supervisory position.

DISPOSITION

other

CASES CITED

- *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008)
- *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009)
- *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
- *Nat'l Fed'n of the Blind of Cal. v. Uber Techs., Inc.*, 103 F. Supp. 3d 1073, 1078 (N.D. Cal. 2015)
- *Thompson v. McCombe*, 99 F.3d 352, 353 (9th Cir. 1996)
- *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113-14 (2002)
- *Lyons v. England*, 307 F.3d 1092, 1105 (9th Cir. 2002)
- *Mattioda v. Nelson*, 98 F.4th 1164, 1174-75 (9th Cir. 2024)
- *Lathus v. City of Huntington Beach*, 56 F.4th 1238, 1240 (9th Cir. 2023)

- B.K.B. v. Maui Police Dep't, 276 F.3d 1091, 1099-1100 (9th Cir. 2002)
- Fort Bend Cnty., Tex. v. Davis, 587 U.S. 541 (2019)
- Lacayo v. Donahoe, No. 14-CV-04077-JSC, 2015 WL 993448, at *9 (N.D. Cal. Mar. 4, 2015)
- Sommatino v. United States, 255 F.3d 704, 709 & n.3 (9th Cir. 2001)
- Jefferson v. Time Warner Cable, No. CV 11-5637-GW(CWX), 2012 WL 12887692, at *15 (C.D. Cal. July 23, 2012)
- Green v. Nat'l Steel Corp., 197 F.3d 894, 898 (7th Cir. 1999)
- Brooks v. City of San Mateo, 229 F.3d 917, 928 (9th Cir. 2000)
- Jurado v. Eleven-Fifty Corp., 813 F.2d 1406, 1411-12 (9th Cir. 1987)
- Rodriguez v. City of Colton, 541 F. App'x 738, 739 (9th Cir. 2013)
- Vasquez v. County of Los Angeles, 349 F.3d 634, 642 (9th Cir. 2003), as amended (Jan. 2, 2004)
- Fowler v. Potter, No. C 06-04716 SBA, 2008 WL 2383073, at *9 (N.D. Cal. June 9, 2008)
- Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998)
- Phan v. Emp. Dev. Dep't, No. 2:16-CV-00256-KJM-CKD, 2017 WL 3116826, at *4 (E.D. Cal. July 21, 2017)
- Porter v. Cal. Dep't of Corr., 419 F.3d 885, 893 (9th Cir. 2005)
- Foman v. Davis, 371 U.S. 178, 182 (1962)
- Eminence Cap., LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003)
- Intri-Plex Techs., Inc. v. Crest Group, Inc., 499 F.3d 1048, 1056 (9th Cir. 2007)
- In re Daou Sys., Inc., 411 F.3d 1006, 1013 (9th Cir. 2005)
- Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989)