

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Bush v. Mukasey

268 F. App'x 41 (2d Cir. 2008) · Decided February 29, 2008

SUMMARY

The Second Circuit affirmed summary judgment for the defendants in two Rehabilitation Act employment-discrimination actions brought by Kenneth Bush and Mark Smith. The court held that the plaintiffs presented evidence that defendants regarded them as unsuitable for the particular position of Court Security Officer, but not as unable to perform a broader class of law-enforcement jobs, and therefore failed to establish a prima facie case.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
JURISDICTION	Federal
DECIDED	February 29, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from separate orders granting defendants summary judgment in Rehabilitation Act employment-termination suits.
STANDARD OF REVIEW	De novo review of summary judgment, construing the evidence in the light most favorable to the appellant and drawing all reasonable inferences in the appellant's favor.
PRECEDENTIAL VALUE	nonprecedential summary order
PARTIES	Kenneth Bush, Mark Smith v. Mukasey, other defendants-appellees

TOPICS

disability discrimination regarded as disabled appellate procedure standard of review
federal employment law

PRACTICE AREAS

employment law federal employment law disability discrimination civil rights appellate procedure

QUESTIONS PRESENTED

1. Whether the plaintiffs established a prima facie Rehabilitation Act discrimination claim by showing that defendants regarded them as disabled.
2. Whether the plaintiffs' evidence showed that defendants regarded them as unable to perform a class of jobs rather than merely unable to perform the particular job of Court Security Officer.
3. Whether summary judgment for defendants was proper.

HOLDINGS

1. A plaintiff asserting a regarded-as disability claim based on the major life activity of working must show that the employer regarded the plaintiff as unable to perform a class of jobs; evidence that the employer regarded the plaintiff as unable to perform only a particular job is insufficient.
2. Summary judgment for defendants was proper because the plaintiffs failed to establish a prima facie case of discrimination under the Rehabilitation Act.

KEY QUOTATIONS

"If the major life activity in question is working, a plaintiff must show that the covered entity regarded him as 'unable to perform a class of jobs.'" (268 F. App'x at 42)

"Showing that the covered entity regarded a plaintiff as 'unable to perform only a particular job' is insufficient." (268 F. App'x at 42)

FACTUAL BACKGROUND

Kenneth Bush and Mark Smith alleged that defendants terminated their employment in violation of the Rehabilitation Act. The plaintiffs presented evidence that defendants regarded them as unsuitable for the particular position of Court Security Officer, and evidence that medical examiners regarded them as unsuitable for law-enforcement positions. They did not present evidence that defendants themselves regarded them as unsuitable for positions in the broader area of law enforcement.

PROCEDURAL HISTORY

The District Court granted summary judgment for defendants in Bush's action on December 12, 2005, and in Smith's action on February 7, 2006. Bush and Smith appealed, and the Second Circuit affirmed both orders.

DISPOSITION

affirmed

CASES CITED

- *Jeffreys v. City of New York*, 426 F.3d 549, 553 (2d Cir. 2005)
- *Heilweil v. Mount Sinai Hospital*, 32 F.3d 718, 722 (2d Cir. 1994)
- *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516, 521-22, 525 (1999)
- *Capobianco v. City of New York*, 422 F.3d 47, 57 (2d Cir. 2005)

