

DISTRICT OF COLUMBIA COURT OF APPEALS

Sparrow v. District of Columbia Office of Human Rights

74 A.3d 698 (D.C. 2013) · Decided August 29, 2013

SUMMARY

The District of Columbia Court of Appeals reviewed the Office of Human Rights’ finding of no probable cause on Timothy Sparrow’s claims that R.B. Properties failed to reasonably accommodate his disability and terminated him in retaliation for requesting accommodation. The court held that OHR ignored material evidence concerning the interactive accommodation process, whether Sparrow’s demotion was a reasonable accommodation, and whether the stated performance-based reason for termination was pretextual. The court remanded for further proceedings consistent with its opinion.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Blackburne-Rigsby, Associate Judge; Blackburne-Rigsby; McLeese; Nebeker
JURISDICTION	District of Columbia
DECIDED	August 29, 2013
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the District of Columbia Superior Court's affirmance of the District of Columbia Office of Human Rights' no-probable-cause determination regarding disability-discrimination and retaliation claims.
STANDARD OF REVIEW	The court reviews the Superior Court's ruling on an agency decision in the same manner as it would review the agency decision directly, affirming if the action is supported by substantial evidence and otherwise in accordance with law. An agency decision is not supported by substantial evidence when it ignores material evidence in the record.
PRECEDENTIAL VALUE	Published opinion; precedential value under District of Columbia law.
PARTIES	Timothy Sparrow v. District of Columbia Office of Human Rights, R.B. Properties, Inc.

TOPICS

ada discrimination reasonable accommodation retaliation administrative law
judicial review of agency action

PRACTICE AREAS

employment law disability discrimination administrative law civil rights

QUESTIONS PRESENTED

1. Whether OHR's finding that R.B. Properties engaged Sparrow in an interactive process to identify a reasonable accommodation was supported by substantial evidence.
2. Whether OHR properly determined that R.B. Properties' demotion and reduction in salary and hours constituted a reasonable accommodation rather than an adverse employment action.
3. Whether OHR applied an overly onerous evidentiary burden in determining that Sparrow failed to show that R.B. Properties' stated reason for terminating him was pretextual.

HOLDINGS

1. OHR's finding was not supported by substantial evidence because OHR ignored material evidence showing that the parties' communications consisted only of Sparrow's accommodation request and R.B. Properties' unilateral take-it-or-leave-it demotion offer.
2. OHR improperly determined that the demotion was a reasonable accommodation solely because it reduced Sparrow's hours and time on his feet; the evidence required consideration of whether the action was instead an adverse employment action and whether a reasonable accommodation was provided.
3. OHR applied an overly onerous burden by requiring Sparrow to prove that evidence of poor performance was false; at the investigative stage, Sparrow instead needed to provide credible, probative, and substantial evidence that the stated legitimate reason was not the actual reason and that R.B. Properties intentionally discriminated against him.

KEY QUOTATIONS

"Therefore, the record reveals that the only effort R.B. Properties undertook to address Mr. Sparrow's accommodation request was a "take it or leave it" offer of a demotion." (705)

"Because OHR misconstrued R.B.'s offer as evidence that R.B. Properties engaged Mr. Sparrow in an interactive process and "ignored material evidence in the record" indicating that no meaningful dialogue between Mr. Sparrow and R.B. Properties occurred, its finding that R.B. Properties engaged in the interactive process was not supported by substantial evidence." (705)

"In making this finding, OHR improperly placed an overly onerous burden on Mr. Sparrow to prove that any evidence suggesting poor performance was false." (707)

FACTUAL BACKGROUND

Sparrow, a restaurant director diagnosed with degenerative joint disease in his left hip, informed R.B. Properties of his condition and requested reduced hours and less time on his feet. R.B. Properties eliminated his position, offered him a part-time position with reduced pay, hours, and responsibilities, and terminated him eight days later for alleged poor performance. In the OHR investigation, Sparrow submitted coworker affidavits and emails suggesting discriminatory treatment and pretext, while R.B. Properties submitted affidavits and business records attributing the termination to poor performance and declining catering revenues.

PROCEDURAL HISTORY

Sparrow filed a complaint with OHR alleging that R.B. Properties failed to reasonably accommodate his disability and terminated him in retaliation for requesting an accommodation. OHR conducted a preliminary investigation without a hearing and found no probable cause; it affirmed that determination on reconsideration. The Superior Court affirmed OHR in a written order, and Sparrow appealed. The Court of Appeals remanded through the Superior Court to OHR for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Superior Court with instructions to remand to OHR for further proceedings not inconsistent with the opinion. OHR must reconsider the evidence concerning the interactive process, whether a reasonable accommodation was provided or an adverse employment action occurred, and whether Sparrow presented sufficient evidence of pretext.

CASES CITED

- District of Columbia Office of Human Rights v. District of Columbia Department of Corrections, 40 A.3d 917, 923 (D.C. 2012)
- Vogel v. District of Columbia Office of Planning, 944 A.2d 456, 462 n.10 (D.C. 2008)
- Washington Metropolitan Area Transit Authority v. District of Columbia Department of Employment Services, 827 A.2d 35, 39 (D.C. 2003)
- Darden v. District of Columbia Department of Employment Services, 911 A.2d 410, 416-17 (D.C. 2006)
- Ammerman v. Newman, 384 A.2d 637, 639-40 (D.C. 1978)
- Hunt v. District of Columbia, 66 A.3d 987, 990-93 (D.C. 2013)
- Taylor v. Phoenixville School District, 184 F.3d 296, 311-13 (3d Cir. 1999)
- Fjellestad v. Pizza Hut of America, Inc., 188 F.3d 944, 953 n.7 (8th Cir. 1999)
- Cravens v. Blue Cross & Blue Shield, 214 F.3d 1011, 1021 (8th Cir. 2000)
- Jay v. Internet Wagner, Inc., 233 F.3d 1014, 1017 (7th Cir. 2000)
- Johnson v. United States, 398 A.2d 354, 361 (D.C. 1979)
- Brady v. Office of the Sergeant at Arms, 380 U.S. App. D.C. 283, 290, 520 F.3d 490, 497 (D.C. Cir. 2008)
- Simpson v. District of Columbia Office of Human Rights, 597 A.2d 392, 397 (D.C. 1991)

