

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued March 16, 2018

Decided July 27, 2018

No. 15-7064

BRIEN O. HILL,
APPELLANT

v.

ASSOCIATES FOR RENEWAL IN EDUCATION, INC.,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:12-cv-00823)

Yongo Ding, appointed by the court, argued the cause as *amicus curiae* in support of appellant. With him on the brief was *Anthony F. Shelley*, appointed by the court.

Brien O. Hill, pro se, filed the briefs for appellant.

Jiyoung Yoon argued the cause and filed the briefs for appellee.

Before: ROGERS, KAVANAUGH* and WILKINS, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge WILKINS*.

Concurring Opinion filed by *Circuit Judge WILKINS*.

WILKINS, *Circuit Judge*: This is an Americans with Disabilities Act (“ADA”) employment case. Plaintiff Brien Hill is a single-leg amputee who taught in defendant Associates for Renewal in Education’s (“ARE’s”) afterschool program. The District Court granted partial summary judgment for ARE on two of Hill’s claims, which he now appeals. Three other claims went to trial, where Hill was awarded damages for ARE’s failure to accommodate his disability by refusing his request to teach on a lower floor. The primary issues on appeal are whether ARE also failed to reasonably accommodate Hill’s disability by refusing his request for a classroom aide, and whether ARE’s failures to accommodate Hill’s disability created a hostile work environment. Hill proceeded *pro se* in the District Court and was represented by appointed counsel for this appeal.

We affirm the District Court’s conclusion that Hill has not proffered sufficient undisputed facts for his hostile-work-environment claim to survive summary judgment. We reverse as to Hill’s remaining failure-to-accommodate claim, however, because Hill’s allegations present a triable issue of fact as to whether ARE violated the ADA when it refused his request for a classroom aide.

* Judge Kavanaugh was a member of the panel at the time the case was argued but did not participate in this opinion.

I.

A.

The following facts are taken from the parties' submissions on ARE's motion for summary judgment and are undisputed unless otherwise indicated. ARE is a non-profit that provides care and educational programs to underserved children and adults in Washington, D.C. It is located in a three-story building with no elevator, requiring teachers to climb up and down the stairs "for fire and emergency evacuation drills, supervised outdoor play and scheduled student lavatory breaks located on the basement floor." Supplemental Brief for Plaintiff ("Pl. Supp.") 3, *Hill v. Assoc. for Renewal in Educ.*, No. 12-cv-823, ECF No. 41. Hill, who wears a leg prosthesis, was employed by ARE in various capacities until his employment was terminated in December 2008. As an ARE teacher and program aide, Hill's duties included "instructing participants in the classroom, on field trips or outside activities; prepar[ing] and administer[ing] overall classroom management; counsel[ing] participants on academic and behavioral challenges, as well as, provid[ing] administrative and/or clerical support to the administrative personnel." Affidavit of La'Troy Bailey ("Bailey Aff.") ¶ 5, ECF No. 32-1. Prior to 2007, Hill requested and was granted several accommodations for his disability, including a request for assignment to a lower-level classroom.

In May 2007, Hill fell while walking across the ARE playground, "severely injur[ing his] amputated stump and damag[ing his] prosthesis." Declaration of Brien Hill ¶ 5, ECF No. 33. Upon returning to work, he requested a classroom aide for himself and his pregnant co-teacher. Hill also requested that he be able to continue holding class on the second floor of the building. These requests were granted until August 27,

2007, when Hill was reassigned to a classroom by himself on the third floor and without a classroom aide. Hill alleged that he “expressed [his] concerns” about this reassignment verbally on August 31, 2007; that he made a written request to be “repositioned back to the lower level” and have “the accommodation of having an Aide assigned to [his] classroom;” and that he followed up with “daily verbal request[s]” for these two accommodations throughout the school year. Declaration of Brien Hill (“Hill Decl.”) ¶¶ 8-10, ECF No. 10. These accommodations were not provided. Hill was the only teacher in his program who was not assigned a classroom aide, and Hill taught more students than any of his colleagues.

Around the same period of time, Hill began to have disciplinary issues at work. On September 1, 2007, Hill’s duties were changed to a part-time position due to a reduction in force and due to his “excessive tardiness and inconsistent call-ins.” Bailey Aff. ¶ 4. His supervisor eventually recommended Hill’s termination, and on that same day, Hill submitted a letter to ARE’s Deputy Director of Education requesting review of the denial of his requests for a classroom aide and for assignment to a lower floor, among other issues. Hill was terminated effective December 15, 2008.

B.

Hill filed a *pro se* complaint against ARE asserting, among other things, a hostile work environment and several ADA claims, including failure to accommodate for denying his requests for a classroom aide and for denying his request to teach on a lower floor. Compl. ¶¶ 43-78, ECF No. 1. ARE moved for summary judgment on most of the ADA claims, arguing that Hill did not actually make the accommodation requests. ARE did not argue that the accommodations of a

lower floor or a classroom aide were unreasonable or unnecessary for Hill to perform the essential functions of his job, nor did ARE argue that Hill was unqualified for his position by being physically unable to perform the essential functions of his job with or without accommodation.

After receiving the parties' filings, the District Court issued an order *sua sponte* stating that “[t]he record contains no evidence (or argument) on the third element of plaintiff’s reasonable accommodation claim,” *i.e.*, “whether or not plaintiff could perform [his job’s essential] functions with or without reasonable accommodation.” Order, ECF No. 40, at 1. The order directed the parties “to supplement the record” and “advised [Hill] that he should (1) clearly describe the essential functions of the part-time job he held in September 2007 when he allegedly began requesting the accommodations at issue and (2) explain why he needed ‘the accommodation of an Aide’ and a relocation to a lower level room to perform the essential functions of the job.” *Id.* at 2. Hill responded with a fifteen-page supplemental submission explaining that “his physical disability substantially limited his ability to walk for long distances, stand for long periods of time (as required given that he supervised his classroom alone), . . . [and] supervise[] outdoor play and scheduled student lavatory breaks on the basement floor . . . without the hazard of pain and bruises.” Pl. Supp. 3. Hill’s supplemental submission also stated that “he worked alone and suffered a gradual decline in strength and energy due to injury and fatigue from August ’07 - December ’08,” *id.* at 4, and that he “performed all the DBA Program Aide job(s) . . . alone, from August ’07 - December ’08, and experienced grave hardships in doing so,” *id.* at 12.

In response, ARE argued that Hill admitted he was able to perform the essential functions of his job without accommodation, “but not without pain.” Supplemental Brief

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