

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 22, 2021

Lyle W. Cayce
Clerk

No. 20-50218

JOHN THOMPSON,

Plaintiff—Appellant,

versus

MICROSOFT CORPORATION,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:18-CV-680

Before HIGGINBOTHAM, SOUTHWICK, and ENGELHARDT, *Circuit Judges.*

PATRICK E. HIGGINBOTHAM, *Circuit Judge:*

John Thompson appeals the district court’s grant of summary judgment for his employer, Microsoft, on his claims under the Americans with Disabilities Act (“ADA”) for failure to accommodate, discrimination, and creation of a hostile work environment. We affirm.

I

Thompson’s appeal arises from his efforts to obtain accommodations for his Autism Spectrum Disorder (“ASD”). He first requested

No. 20-50218

accommodations from Microsoft's human resources group in 2015 when he was an account technology strategist. Some of his requested accommodations included working on only one project at a time, provision of an assistant for administrative tasks, and permission to work from home. During negotiations about his requests, Thompson expressed interest in transferring to an Enterprise Architect ("EA") role, which is "a senior-level executive position" serving as a liaison between Microsoft and its clients.

Microsoft informed Thompson that some of his requested accommodations were incompatible with the EA role because the role required "strong leadership and people skills" and "[e]xecutive-level interpersonal, verbal, written and presentation skills." Thompson withdrew his request for accommodations and asked that his new manager not be informed about his ASD diagnosis. He then applied for an EA position and was recommended as a good fit for the role. Thompson was hired as an EA in Austin, Texas. He relocated there from New Jersey and began work in the fall of 2015.

Thompson's performance as an EA did not go smoothly. His first, and only, assignment was with Enterprise Holdings. Despite giving Thompson some initial positive feedback, his manager soon indicated "concerns with [Thompson's] skillset, experience and ability to lead and develop the required business architecture and framework." Specifically, Thompson was not submitting deliverables on time and the quality of the work he did complete was subpar. At one point, the client itself requested that Thompson not continue on the engagement. As a result of these issues and the client's dissatisfaction, Microsoft removed Thompson from the Enterprise Holdings engagement shortly after joining it in January 2016.

In subsequent conversations about his poor performance, Thompson revealed to his EA manager that he was autistic. His manager then contacted

No. 20-50218

Microsoft's human resources and benefits group in February and temporarily removed Thompson from the EA pool, meaning he was not considered to be staffed on any future EA engagements during this time. Thompson again began requesting accommodations.

Thompson submitted a second formal request for accommodations on April 2, 2016. His requests were

- A noise-cancelling headset;
- A specialized job coach with experience coaching executives and/or technologists with ASD;
- Training classes on managing ASD and ADHD in the workplace,
- An individual to assist in translating/interpreting information provided verbally by Thompson into the appropriate written format (i.e. PowerPoint, Word, email, etc.);
- A scribe to record meeting notes for Thompson;
- An individual to assist with administrative tasks, such as travel booking, time and expense reporting, meeting scheduling, routine paperwork, etc., as well as with monitoring timeliness and providing reminders;
- A handheld voice recorder and access to a voice transcription service;
- Specialized software to support time management and organization for individuals with ASD and ADHD;
- Provision of specialized training in managing individuals with ASD and ADHD to Thompson's managers; and
- Permission for Thompson to bring an advocate to performance reviews.

On May 16, Microsoft informed Thompson that it agreed to some of the requests—such as the noise-cancelling headset, specialized job coach,

No. 20-50218

time-management and organization software, and providing training to Thompson's managers on managing employees with ASD—but found others unreasonable. In particular, Microsoft raised concerns about providing Thompson with an individual to assist in translating his verbal information into writing because EAs were expected to clearly communicate their ideas to clients and “[t]he work product would be unacceptably watered down if filtered through a person with less or no experience in basic role requirements of architecture, strategic development, business alignment . . . , and other areas.” Microsoft was also concerned that Thompson's request for individuals to help him with administrative tasks and recording meeting notes was unreasonable because the EA role requires responding to clients and others quickly and under dynamic conditions. Finally, Microsoft noted that Thompson's requests would require it to hire full-time assistance to handle basic email and administrative tasks for Thompson. As such, Microsoft concluded that these requests would excuse him from performing essential EA functions.

Thompson and Microsoft engaged in additional negotiations through July as to whether Thompson could suggest alternate accommodations that Microsoft would find reasonable. Thompson continued to insist on the accommodations Microsoft found unreasonable, including requests for a person(s) to assist in translating Thompson's verbal thoughts into written form, record meeting notes, and assist with administrative tasks. Microsoft informed Thompson that it continued to find these accommodations unreasonable. Ultimately, Microsoft deemed it could not reasonably accommodate Thompson as an EA, removed him from the EA role, and decided to place him in a job-reassignment process.

Thompson objected to being reassigned, stating that he was willing to accept the accommodations Microsoft was willing to provide and make alternative arrangements for his outstanding needs. On July 21, Microsoft

No. 20-50218

nevertheless proceeded with placing him on job reassignment and began working with him to find an open position with Thompson's requested accommodations in mind. Thompson provided his résumé to the Microsoft employee assisting him with job reassignment but did not express interest in any new positions because he would not consider jobs outside of the Austin area or those that paid a lower salary. Instead, Thompson took long-term disability leave in September 2016 and has not returned to work.¹

II

In 2018, Thompson sued Microsoft, raising claims of failure to accommodate, discrimination, and hostile work environment under the ADA based on his time both as an account technology strategist and an EA.² Microsoft moved for summary judgment on each claim. In responding to Microsoft's motion, Thompson only focused on his claims as they related to his time as an EA. The district court referred the motion to the magistrate, and the magistrate recommended granting the motion. Thompson objected to each conclusion by the magistrate. The district court conducted a de novo review, overruled Thompson's objections, and adopted the magistrate's report and recommendations, granting Microsoft's motion for summary judgment in full.

Thompson now appeals and argues that the district court erred in granting Microsoft summary judgment on his failure-to-accommodate,

¹ Microsoft clarified at oral argument that Thompson remains a Microsoft employee while on long-term disability leave.

² Thompson also raised a retaliation claim in his complaint, but the district court found that he "abandoned that claim by failing to defend it in his Response to Microsoft's Motion for Summary Judgment." Thompson does not attempt to raise the retaliation claim on appeal.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.