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11th Circ. Gives Diabetic 2nd Shot At FedEx For Denied Job

By **Jeff Sistrunk**

Law360, Los Angeles (March 27, 2014, 9:06 PM EDT) -- The Eleventh Circuit revived a suit alleging Federal Express Corp. unlawfully denied a man a vehicle technician job after he failed a U.S. Department of Transportation medical examination due to his diabetes, finding Thursday that factual disputes remained on whether FedEx used an impermissible qualification standard.

In a 2-1 ruling, the appeals court reversed U.S. District Judge William Terrell Hodges' ruling granting FedEx summary judgment on Richard Samson's disability discrimination claims, which were brought under the Americans With Disabilities Act and Florida law. The majority held that a jury could agree with Samson's position that FedEx imposed a qualification standard that screens out people with disabilities.

In 2009, FedEx offered Samson, an experienced vehicle mechanic and insulin-dependent Type 1 diabetic, a technician position at its Fort Myers, Fla., airport facility. The job responsibilities included occasional test-driving of company vehicles, court documents said.

The offer was conditioned on, among other things, Samson's passing a DOT medical examination, which is required by the Federal Motor Carrier Safety Regulations for any commercial motor vehicle drivers who transport property or passengers in interstate commerce.

However, because insulin-dependent diabetics are automatically disqualified under the regulations from being certified as physically qualified to operate a vehicle in interstate commerce, Samson failed his DOT exam.

FedEx subsequently withdrew the job offer, saying Samson wasn't qualified because he failed the exam and therefore couldn't perform the essential job function of test-driving with or without reasonable accommodation, according to court documents.

Samson filed a disability discrimination suit against FedEx in Florida court in December 2010, alleging the company improperly required that he obtain a DOT medical card even though he had applied for a job as a mechanic, not a commercial truck driver. The case was removed to federal court in January 2011.

FedEx argued that the FMCSRs are a "complete defense" to Samson's claims because the regulations compelled the company to require candidates for the technician job to successfully complete the DOT medical exam.

Judge Hodges granted FedEx's motion for summary judgment in June 2012, holding that Samson wasn't qualified for the technician job because he couldn't perform the essential function of test-driving.

Thursday's opinion said summary judgment was inappropriate because there is a factual dispute as to whether test-driving is an essential function of the technician job. The panel noted that while some factors weigh in favor of such as finding, the amount of time the current technician at the Fort Myers facility spends test-driving is "miniscule." Other FedEx technicians in Florida generally test-drive vehicles an average of less than four hours per year, the opinion said.

"[W]e conclude that reasonable jurors could differ as to whether test-driving FedEx trucks is an essential function of the technician position," Judge Paul C. Huck wrote for the majority.

The issue of whether the FMSCRs mandate FedEx to require Samson to obtain DOT medical certification hinges on whether test-driving constitutes transporting property or passengers in interstate commerce, the panel said.

It concluded that the record shows that test-driving as it relates to the technician job doesn't implicate interstate commerce, pointing out that the current Fort Myers technician has never had to test-drive any FedEx vehicles across state lines.

"[W]e conclude that the occasional test-driving of empty FedEx trucks in the Fort Myers area does not constitute transporting property or passengers in interstate commerce," Judge Huck wrote. "The FMCSRs, therefore, did not oblige FedEx to require Samson to obtain DOT medical certification to be 'qualified' for the technician position. By the same token, the FMCSRs do not afford FedEx a defense to Samson's disability discrimination claims."

Judge James C. Hill disagreed with the majority, writing in dissent that the undisputed evidence established that as a matter of law, Samson had to pass the DOT medical examination to qualify for the position.

"The majority is misplaced when it bases its analysis on the individual employee, who may or may not operate commercial motor vehicles in interstate commerce," Judge Hill wrote. "The pertinent regulations apply to employers who operate commercial motor vehicles in interstate commerce."

Samson's attorney, Ephraim Roy Hess, applauded the Eleventh Circuit's ruling.

"The court was very attentive to the evidence in this case, which showed that this mechanic's position involved virtually no driving, much less interstate driving subject to the DOT medical card requirement," Hess told Law360. "With respect to this area of law, the interplay between regulations is complex, and I think the court did an excellent job of seeing through the various regulations, and how they are correctly applied in this case."

Hess said he hopes Thursday's opinion "will encourage employers to look at the real functions of positions and avoid imposing blanket qualification standards, like having a DOT medical card, that really don't relate to the essential functions of a job."

An attorney for FedEx did not immediately respond to a request for comment late Thursday.

Ephraim Roy Hess of Ephraim Roy Hess PA argued for Samson.

In-house lead counsel Frederick L. Douglas argued for FedEx.

The case is *Samson v. Federal Express Corp.*, case number 12-14145, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Edrienne Su.