

Emly v. Steve Park Apiaries (decision)

DEPT. OF LABOR & INDUSTRY - HUMAN RIGHTS

DISABILITY DISCRIMINATION claim for not rehiring apiary laborer following leg amputations rejected as inconsistent with SSD representations of inability to do former tasks (claimant estopped from arguing that he is qualified individual with disability) ... punitives not available in Title 42 Ch. 2 proceedings ... Gregory Hanchett.

Clinton Emly worked for Steve Park Apiaries as a laborer for many years including loading and unloading bee hives from semi trailers. In 2/08 his right leg was amputated below the knee due to diabetes complications and he stopped working at SPA. He was fitted with a prosthetic. In 4/08 he applied for SSD. His claim was denied in 7/08. He retained Kevin Chapman, who requested reconsideration on the basis that he is "significantly disabled and cannot perform substantial, gainful activity." In 8/08 his doctor released him to work with no restrictions. He did not return to work at that time because he needed eye surgery, which resulted in a 6-week no-heavy-lifting restriction. In 1/09 he returned to SPA seeking work. SPA did not hire him. In 9/09 his left leg was amputated below the knee and Chapman advised SSA that now he "has absolutely no ability to engage in substantial work activity." In 10/09 an ALJ ruled that he was disabled from 2/15/08. SPA requests summary judgment that because he took the position in his SSD claim that he cannot perform his job, he should be estopped from claiming disability discrimination because he should not be permitted to claim that he is a qualified individual with a disability. It also seeks summary judgment on his punitives claim.

Emly's representations and statements to SSA were "unconditional assertions as to disability and work" which are virtually identical to cases where the circuits have found judicial estoppel appropriate. Such inconsistent representations of a purely factual matter, by their very nature, create a situation where the claimant has engaged in fraudulent conduct or is playing fast and loose with the courts. It is these specific representations as to his limitations and essential functions of his job with SPA which distinguish his case from all the authority he has relied on. His argument that after he applied for (and was denied) SSD his condition improved to where he could perform his SPA job does not explain the contradiction; it merely highlights it. It ignores the crucial fact that he represented to SSA beginning in 2/08, almost a year before the alleged discrimination, and continued to represent to SSA until he received benefits, that his disability prevented him from SPA tasks. He prevailed in his SSD claim by showing that his disability rendered him completely disabled from SPA duties. The contradiction of his present assertion that he can perform the job is patent when measured against his assertions to SSD. Moreover, he never reported any improvement to SSD while pursuing his application despite the requirement to do so. This is the essence of the type of contradiction that is not permitted. Emly asserts that there may have been other accommodations by SPA and that it had accommodated him in the past with his diabetes (prior to his first amputation). However, he has not suggested what they might be, nor has he made any effort to counter SPA's properly supported assertions as to what the SPA job entailed. Emly's SSD claim estops him from arguing that he is a qualified individual with a disability. Summary judgment for SPA as to liability.

Emly asserts that punitives are recoverable under 42 USC 2000e-5, MCA Title 27. Those statutes do not apply to proceedings in this forum. The statute that does apply, § 49-2-506(2), specifically prohibits punitives. Romero (Mont. 1989) (punitives not available in proceeding under Title 42 Ch. 2).

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William Mattix (Crowley Fleck), Billings, for Emly; Jared Dahle and Rochelle Loveland (Nelson & Dahle), Billings for SPA.

