Bates v. Dura Automotive Systems, Inc.

2009 WL 1108479, No. 1:08-0029
U.S. District Court for the Middle District of Tennessee
April 23, 2009

Facts of the Case: The seven plaintiffs in this case were employees at a manufacturing facility of the defendant, Dura Automotive (Lawrenceburg, Tennessee) that produced glass windows for motor vehicles. While at Dura, the plaintiffs performed many jobs, including the assembly of windows, quality control, and the driving of machinery.

Responding to rumors of widespread drug use, a high rate of accidents, and a specific accident where the injured employees tested positive for drugs, Dura hired Freedom From Self (FFS) to set up a program to test for drug use. Dura decided the program would screen for twelve substances, including legal prescription drugs, which Dura believed could cause some dangerous side effect for operators of machinery and assembly line workers. FFS began to institute the program in May 2007 testing all Dura employees by requiring them to urinate in a cup in a controlled environment. An "initial panel test" would determine presence of any of the twelve banned substances. Any positive test result meant an employee would be sent home indefinitely.

After a positive result, the urine sample went to a doctor for confirmation. If the positive substance was a legal prescription drug, the employee would be contacted; and if the employee provided a medical explanation, the doctor would change the result to negative and contact Dura. Dura's human resource manager then would suspend the employee for thirty days to transition to a less risky medication or stop prescription drug use altogether. Moreover, regardless of a change to negative, all employees that originally had a positive result were required by Dura to provide a list of all current prescription drugs to FFS and Dura. Any employee with a positive result could re-take the after 30 days. A clean test would allow them to return to work, but a second positive test would result in automatic termination.

The plaintiffs in this case had an initial positive panel test based on legal prescription drug use, had the result changed by a doctor to a negative result, and received documentation from their doctors indicating the identified prescription medications would not affect work performance. Nonetheless they were suspended for 30-days based on a positive result in the initial panel test or terminated after a second positive test. They brought suit in the U.S. District Court for the Middle District of Tennessee under the Americans with Disabilities Act (ADA) and the Tennessee Disability Act.

Prepared by the legal research staff of the Burton Blatt Institute (BBI): Centers of Innovation on Disability at Syracuse University (http://bbi.syr.edu/) for the DBTAC: Southeast ADA Center (Southeast DBTAC) (http://www.sedbtac.org/). This document does not provide legal advice. If you have further questions about the issues of this case that relate to you, please consult an attorney licensed in your state.

Issues of the Case: (1) Whether plaintiffs established a prima facie case of discrimination under the ADA; and (2) whether Dura's screening test was discriminatory under the ADA.

Arguments & Analysis:

1. Prima Facie Discrimination Claim Under ADA

The plaintiffs alleged a prima facie discrimination claim under the ADA seeking a reasonable accommodation from Dura. In order to establish a claim of discrimination on the basis of disability under the ADA a plaintiff must show first he/she has a disability, that is: (1) a physical or mental impairment that substantially limits a major life activity, (2) a record of such impairment, or (3) is regarded as having such impairment. First, the plaintiffs failed to demonstrate a substantial limitation of a major life activity because they were all able to perform their jobs at the time they were terminated by Dura. Second, the plaintiffs did not show that they had a record of impairment merely by demonstrating they needed to miss time to recover from unrelated surgeries and incidents. Third, the fact that Dura regarded the plaintiffs as a safety risk after taking certain medications was insufficient in demonstrating that the plaintiffs were significantly restricted in a class or broad range of jobs such that they were regarded as having a disability by Dura. Since the plaintiffs could not demonstrate a disability, the court rejected this claim, and consequently the plaintiffs were not entitled to reasonable accommodation from Dura.

2. Was the Screening Test Discriminatory?

Alternately, the plaintiffs argued that the initial panel test was an "impermissible medical examination." Under the ADA, a covered entity cannot require medical examinations or make inquiries as to whether an employee has a disability unless such an inquiry is "job related and consistent with business necessity." The ADA forbids "selection criteria that screen out or tend to screen out an individual [or class of individuals] with a disability."

The court dismissed the defendant's argument that the examination did not screen out persons with disabilities, since the test clearly filtered out those persons who had chemicals in their body designed to treat physical and mental disabilities. More significantly, the court dismissed the claim by Dura that the medical screening was "job related and consistent with business necessity." The business necessity exception allows employers to conduct some medical examinations for the purpose of "workplace safety." However, the court reasoned that a jury could find the screenings were "broader [and] more intrusive than necessary because Dura automatically excludes all employees that take certain medications from working in any capacity" at the manufacturing plant.

Additionally, the court noted that it cannot as a matter of law say that the screenings were not consistent with the business necessity exception since the plant is a dangerous workplace environment and Dura only screened drugs that it believed to cause impairment.

Rulings: (1) The court held that the plaintiffs could not establish a prima facie discrimination claim under the ADA because they were not individuals with disabilities. (2) Further the court determined that neither the plaintiffs nor the defendant were entitled to summary judgment on whether the medical screening program was discriminatory as a matter of law. First, the court ruled that a drug policy as expansive as Dura's, which forbade even prescription drugs that Dura deemed to pose a safety hazard for plant workers, did not as a matter of law fall under the business necessity exception to screening tests under the ADA. Second, the plaintiffs were similarly denied summary judgment since Dura was a dangerous place to work and workplace safety may in many cases trigger the business necessity exception. Consequently, the case must proceed to a jury for determinations instead of being decided by the court.

Policy & Practice:

Inflexible Screening Programs May Constitute Violations of the ADA

The reasoning in *Bates* is consistent with other Sixth Circuit decisions, such as the 2008 decision by the District Court for the Eastern District of Michigan, *Wice v. General Motors*. That court upheld the General Motors (GM) drug testing program where employees were required to submit to a physical and medical examination if they drove equipment in GM's plant, but were allowed to have the examination done by their own doctor. The court reasoned that the program was valid since GM did not automatically exclude employees who drove equipment from driving in the plant because of certain medical conditions. *Bates* also affirms the 2002 Middle District of Tennessee decision in *EEOC v. Murray.* There, the court did not grant defendant's motion for summary judgment, where defendant's drug testing program excluded all persons with certain medical conditions. The court reasoned that the program was not, as a matter of law, compliant with the ADA, since defendant was unable to demonstrate that "all individuals with the specified conditions necessarily exhibit" the limitations that prevent them from performing essential job functions.

This line of cases is drawn from the "business necessity exception" standard as set down by the Second Circuit in *Conroy v. New York State Department of Correctional Services*. The court there held that the party seeking to show business necessity must demonstrate that the screening program is "vital to the business," the examination "genuinely serves the asserted business necessity," and the "request is no broader or more intrusive than necessary."

The *Bates* decision, taken in conjunction with *Wice* and *Murray*, suggests that the district courts within the Sixth Circuit are consistently applying this standard. As such, for a drug screening policy to be held valid under the ADA, it appears that courts in the Sixth Circuit require some flexibility in the testing policy, and ultimately that the policy identifies only those individuals that actually are incapable of the essential functions of the job, like safe operation of machinery.

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