

The U.S. Equal Employment Opportunity Commission

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APPEALS COURT UPHOLDS EEOC DISABILITY SUIT AGAINST SEARS ROEBUCK FOR SECOND TIME

Seventh Circuit Again Reverses District Court Judgment In Favor Of Sears In Long-Running Federal Employment Discrimination Case

CHICAGO -- The U.S. Court of Appeals for the Seventh Circuit, sitting in Chicago, has reversed a lower court decision which granted a judgment without trial in favor of Sears Roebuck in a case brought against the retailer by the U.S. Equal Employment Opportunity Commission (EEOC) under the Americans with Disabilities Act (*EEOC & Keane v. Sears Roebuck & Company*, 7th Cir. Nos. 04-2222 and 04-2493, 8/10/2005). A previous judgment by the lower court in favor of Sears in the same case had also been reversed by the Court of Appeals in 2000.

The case was originally filed by the EEOC in June 1997. It alleged that Sears discriminated against a lingerie saleswoman in the giant retailer's Calumet City, Illinois, store by refusing to provide her with a reasonable accommodation necessitated by medical conditions which prevented her from walking more than short distances (*EEOC v. Sears Roebuck & Co.*, N.D. Illinois No. 97 C 3971). After Sears' refusal to accommodate her, the employee gave up her job. The U.S. District Court for the Northern District of Illinois then held that no reasonable jury could find that the saleswoman was disabled and entered judgment in favor of Sears without a trial.

The Court of Appeals overturned that judgment in 2000 (*See EEOC & Keane v. Sears Roebuck & Co.*, 233 F.3d 432 - 7th Cir. 2000), and sent the case back to the District Court. Sears renewed its motion for judgment, and the District Court – after the Supreme Court's 2002 decision in the *Toyota Motor Manufacturing v. Williams* case (534 U.S. 184) – again entered judgment without trial and in favor of Sears. EEOC again appealed.

In the new 32 page opinion by Chief Judge Joel M. Flaum, again reversing the judgment and sending the case once more back to the District Court, the Seventh Circuit paved the way for the trial of the case before a jury: "Our task has not been to determine whether Keane was disabled when she worked at Sears, whether Sears was aware of her disability, whether Sears reasonably accommodated Keane's disability, or which party caused the break-down of the interactive process."

Judge Flaum continued: "Rather, we have merely concluded that there is sufficient evidence to allow each of these questions to be presented to a jury. Accordingly, we REVERSE the entry of summary judgment in favor of defendant-appellee Sears and REMAND for proceedings consistent with this opinion."

Circuit Judges Michael S. Kanne and Ann C. Williams joined in the Court's unanimous decision. EEOC attorney Gail Coleman and the agency's Appellate Services division were on the brief in the Seventh Circuit, and Ms. Coleman presented the case at oral argument before the Court on May 10, 2005. The Seventh Circuit's opinion is dated August 10, 2005, and is available on the Court's web site.

John Hendrickson, EEOC Regional Attorney in Chicago said, "Our office in Chicago and our appellate staff in Washington have been pressing this case for eight years because, in our judgement, Sears intentionally and illegally discriminated against a disabled employee when it would have been easy to accommodate her. We have always believed this is a case that must be ultimately decided by a jury – that the employee deserves her day in court. The Seventh Circuit has made it clear that day now is going to be coming sooner rather than later."

Hendrickson noted that this is the second recent significant set-back here for Sears in EEOC lawsuits brought against it under the Americans with Disabilities Act (ADA) and challenging the company's compliance with the ADA requirement that it provide reasonable accommodations to disabled employees. On August 2, 2005, EEOC announced that Judge Wayne R. Anderson of the Northern District of Illinois had denied Sears' motion to dismiss in *EEOC v. Sears Roebuck & Co.*, N.D. Illinois No. 04 C 7282, an ADA lawsuit filed November 10, 2004.

In that 2004 case, EEOC is challenging Sears' practice of inflexibly firing employees under its one-year worker's compensation or medical-disability leave policy, and Judge Anderson wrote, "As for the class allegations, the

Complaint alleges that Sears 'maintained an inflexible worker's compensation one year leave policy which does not provide for reasonable accommodation of employees with disabilities.' We find that the issue of whether defendant's leave policy fails to accommodate its disabled employees is an issue upon which defendants have been given notice and is a claim for which [EEOC is] entitled to discovery."

EEOC is the federal agency charged with the administration, interpretation and enforcement of Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination based on race, color, religion, sex, pregnancy or national origin. The EEOC is also responsible for enforcing the Age Discrimination in Employment Act of 1967, as amended; the Equal Pay Act of 1963; and the Americans with Disabilities Act of 1990, which prohibits discrimination based on disability. More information about the EEOC and the laws it enforces can also be found at www.eeoc.gov.

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