

Summary Judgment Review

Case Name: *Ball v. Board of Regents of the University System of Georgia*

Nature of the Order: Order

Magistrate Judge: Linda T. Walker

District Judge: Steven D. Grimberg

Claims & Outcomes:

1. **Claim:** Disability Discrimination (Rehabilitation Act, 29 U.S.C. § 701)
 - a. **Outcome:** Summary Judgment Granted
2. **Claim:** Retaliation Discrimination (Rehabilitation Act, 29 U.S.C. § 701)
 - a. **Outcome:** Summary Judgment Denied

Whether R&R Followed: Adopted in part, declined in part

For Race/Gender Discrimination Cases:

Race of Plaintiff: NA

Gender of Plaintiff: NA

Summary

Plaintiff was a Football Video Coordinator (“FVC”) for Georgia Southern University (“Southern”). In October 2018, Plaintiff went on medical leave for surgery to have his foot amputated. When Plaintiff returned in January 2019, he was told that a few changes had been made while he was away, including one that required him to be on the field during practices. Plaintiff was unable to meet that new requirement because the amputation had him wheelchair bound. Plaintiff requested accommodations from the university Human Resources department. His requests were granted.

Soon after his return, the athletic department had also found absences on Plaintiff’s record for which he had been paid as if worked. An investigation was conducted to find the cause of the false time records. The investigation eventually determined Plaintiff had violated school policy by entering incorrect hours. The university’s Employee Relations Director researched the history of time theft incidents at Southern and found that termination had been the common sanction. She recommended that Plaintiff be terminated. The athletic director and head coach took her recommendation and terminated Plaintiff on March 11, 2019. At the time, Plaintiff admitted to entering incorrect hours but not knowingly. Prior to his termination, Plaintiff had not received any disciplinary actions.

In the R&R, Judge Walker concluded that Ball failed to make a prima facie case for either disability discrimination or retaliation and, even if he had, the Board had a legitimate, non-discriminatory reason for terminating him. Specifically, as to Ball's discrimination claim, Judge Walker found that Ball did not cite any evidence adequate to create an inference that he was terminated based on his disability. As for the retaliation claim, Judge Walker found that Ball could not establish a causal connection between the protected activity—his request for accommodation—and his termination, because the fact that he falsified timesheets was an intervening event. Judge Walker also found that, even had Ball made a prima facie case for discrimination or retaliation, the Board offered a legitimate, non-discriminatory reason for his termination and Ball failed to show that the reason was pretextual.

Ball objected on three grounds. First, Ball argued that Judge Walker erred in finding that he failed to present a “convincing mosaic” of circumstantial evidence raising a reasonable inference of discrimination. The circumstantial evidence presented by Ball shows that GSU's head football coach failed to either recognize or appreciate Ball's physical limitations on multiple occasions; Ball's supervisor kept a record of all the times Ball was unable to do something at work due to his disability; and discussions about Ball's disability and his accommodations overlapped with discussions about his falsified timesheets. It would be reasonable for a jury to infer that, at the very least, the investigation into Ball's absences began as an investigation into the limitations presented by his disability.

Second, Ball argued that Judge Walker improperly considered the Board's reason for termination in deciding whether Ball made a prima facie case for retaliation. Judge Walker found that Ball could not make his prima facie case for retaliation because, though the period between the protected activity and the adverse action was short, Ball's admitted violation of GSU policy was an intervening cause, and therefore broke the causal chain. Judge Grimberg agreed.

Finally, Ball argued that Judge Walker wrongfully found that there was no dispute of material fact as to whether the purported reasons for Ball's termination were pretextual. Judge Grimberg disagreed, stating Ball failed to post to show that his termination was pretextual, because he was terminated for falsifying his timesheets – a violation of GSU policy.

Judge Walker found that Ball could not make his prima facie case for retaliation because, though the period between the protected activity and the adverse action was short, Ball's admitted violation of GSU policy was an intervening cause.