In the

United States Court of Appeals

For the Seventh Circuit

No. 23-1275

IRMA LEIBAS,

Plaintiff-Appellant,

v.

THOMAS J. DART, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 1:19-cv-07592 — **Rebecca R. Pallmeyer,** *Chief Judge*.

ARGUED MARCH 29, 2024 — DECIDED JULY 29, 2024

Before ROVNER, ST. EVE, and PRYOR, *Circuit Judges*.

ROVNER, *Circuit Judge*. Irma Leibas is employed by the Cook County Department of Corrections ("DOC") as a correctional officer. Due to certain diagnoses that predate her employment with the DOC, Leibas requires accommodations at work, including up to three additional breaks per shift. After the DOC denied Leibas's request for additional breaks, she brought suit alleging violations of the Americans with Disabilities Act ("ADA"). Because Leibas does not offer evidence

sufficient to create a dispute of material fact that she is a qualified individual under the ADA, we affirm.

I.

The following facts are undisputed and, where disputed, are relayed in the light most favorable to Leibas, against whom summary judgment was granted. The DOC hired Leibas as a correctional officer on May 10, 2010. The DOC is one of three offices within the Cook County Sheriff's office, and it operates one of the largest single site pre-trial detention facilities in the United States. Sheriff Thomas J. Dart is the elected head of the Sheriff's office. Correctional officers are responsible for maintaining the safety and security of the DOC's staff, inmates, and visitors. Neither party disputes that doing so is one of the correctional officers' essential functions.

Security incidents occur regularly in the DOC. Correctional officers must respond to security incidents in their assigned area, and some security incidents might require the response of all correctional officers. Correctional officers must respond to security incidents appropriately so that any threats are quickly and effectively diffused. Failure to do so could result in fatal consequences.

Before the DOC hired her as a correctional officer, Leibas was diagnosed with Scleroderma, Irritable Bowel Syndrome, Lupus, and Raynaud's Syndrome. At times, these conditions flare up. To respond to these flare ups, Leibas sought accommodations from the DOC.

Initially, the DOC accommodated Leibas by putting her on a modified duty assignment at the Visitor Information Center. However, following budget cuts, the DOC was faced with a severe staffing shortage. In response, Human Resources

sought to maximize the existing DOC workforce. Specifically, Human Resources sent a letter to all employees in light or modified duty assignments, including Leibas. The letter stated that the recipients were unable to perform the essential functions of their position. The letter asked the recipients to respond in one of three ways: 1) provide updated medical documentation indicating the recipient no longer had work restrictions; 2) request a reasonable accommodation under the ADA; or 3) take a skills assessment to determine whether the recipient qualified for a vacant position at the DOC.

Leibas was on medical leave when she received the letter in 2018. In February of 2019, Leibas briefly returned to full-duty work at the DOC before taking disability leave in March of 2019. Since that time, Leibas has been "off the … payroll," and her disability benefits have expired.

On May 29, 2019, Leibas provided an "ADA Accommodation Form" completed by her physician, Dr. Monica Aloman. The form opined about Leibas's ability to perform the essential functions of her position, Leibas's functional limitations, and the accommodations Leibas would require to perform her position's essential functions. Dr. Aloman wrote, "[Leibas] requires more frequent breaks to avoid standing for long periods" and "is unable to stand for long periods without relief/rest." R. 96-10, Exh. 82. The form also stated that Leibas could perform the essential functions of her position if she is "allowed more frequent breaks and rest periods and bathroom breaks, up to three additional times per shift." *Id.* Leibas completed a similar form. Leibas wrote that she was "unable to stand for long periods without relief/rest," and she requested the same accommodations Dr. Aloman required. *Id.*

Rebecca Reierson, the Director of Employee Services for Human Resources at the DOC, called and emailed Leibas about her requested accommodations. Leibas asked Reierson to speak to her attorney instead. Following that request, Leibas did not respond to any of Reierson's further communication attempts. On November 11, 2019, Reierson contacted Leibas by email and informed her that no reasonable accommodations existed that would assist Leibas in performing the essential functions of her position.

Leibas subsequently sued the DOC. Leibas alleges that the DOC failed to accommodate her and discriminated against her, in violation of the ADA.[1] The defendants moved for summary judgment before the district court. Initially, the district court denied the defendants' motion for summary judgment on Leibas's accommodation and discrimination claims. However, the defendants moved for reconsideration, and the district court invited both parties to supplement the record. Leibas supplemented the record with declarations from herself, her husband, who is also a correctional officer at the DOC, and another correctional officer at the DOC. The defendants supplemented the record with a declaration from Matthew Burke, the Executive Director for the Human Resources Department of the DOC. After reviewing both parties' submissions, the court granted the defendants' motion for summary judgment on the basis that Leibas is not a qualified individual under the ADA. Leibas appeals, and we affirm.

---

[1] Leibas also brought *Monell v. Department of Social Services*, 436 U.S. 658 (1978) and Equal Protection claims under 42 U.S.C. § 1983. The district court granted summary judgment on these claims, which Leibas does not challenge on appeal.

II.

We review the district court's grant of summary judgment de novo. In doing so, we examine the record in the light most favorable to Leibas, drawing all reasonable inferences in her favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Yahnke v. Kane County, Ill.*, 823 F.3d 1066, 1070 (7th Cir. 2016). Summary judgment is appropriate only if there is no genuine dispute of material fact. Fed. R. Civ. P. 56.

To succeed on either of her claims, Leibas must demonstrate that she is a "qualified individual" under the ADA. *Castetter v. Dolgencorp, LLC*, 953 F.3d 994, 996 (7th Cir. 2020); *Brumfield v. City of Chicago*, 735 F.3d 619, 631 (7th Cir. 2013). A qualified individual is one who, "with or without reasonable accommodation, can perform the essential functions of the employment position." 42 U.S.C. § 12111(8). To determine whether an individual is qualified, we follow a two-step process, evaluating first whether the individual satisfies the necessary prerequisites of the position and then considering whether the individual can perform the essential functions of the position with or without a reasonable accommodation. *Bombard v. Fort Wayne Newspapers*, 92 F.3d 560, 563 (7th Cir. 1996). The DOC does not allege that Leibas is unqualified for the position, so we look only at step two.

An employer must make reasonable accommodations to allow a qualified individual to perform the essential functions of his or her job. *Tate v. Dart*, 51 F.4th 789, 793–94 (7th Cir. 2022). However, if an employee's medical restrictions prevent the employee from performing an essential job function with reasonable accommodation, the employee is not a qualified individual. *See id.* at 794. We review the record in the light most favorable to Leibas, but it is up to Leibas to provide

sufficient evidence to create a genuine dispute of material fact that she can perform the essential functions of her position. *Bombard*, 92 F.3d at 562–63.

There is no disagreement that maintaining the safety and security of the DOC is an essential function of the correctional officer position, so the only question for us is whether Leibas has put forth sufficient evidence for a reasonable jury to conclude that she is a qualified individual capable of performing that function. This depends on the particular circumstances of this case and the needs of this employer.

Prisons are a uniquely violent and unpredictable environment, a sentiment that we have recognized time and again. *See e.g.*, *Tate*, 51 F.4th at 799; *Miller v. Illinois Dep't of Corr.*, 107 F.3d 483, 485 (7th Cir. 1997). Uncontroverted record evidence demonstrates that violent incidents happen regularly at DOC facilities. R. 96-2, ¶ 14. Corrections officers are responsible for responding to these incidents, and they must always be prepared to respond as needed to unpredictable threats. Some scenarios may require that every correctional officer respond to one location at one time.

Over the course of litigation, Leibas has described her restrictions and symptoms differently. In the accommodations paperwork Leibas submitted to Human Resources, Leibas stated she was "unable to stand for long periods without relief/rest." R. 96-10, Exh. 82. At her deposition, Leibas testified that she agreed with her doctor's statement, which included the same restrictions. R. 96-10 at 52–53. At summary judgment, Leibas agreed that "[w]hen her conditions flare up she experiences extreme fatigue and needs to rest and limit her movement." R. 109 ¶ 91. On reconsideration, however, Leibas suggested that she only needed additional breaks to go to the

restroom, and that she was able to stand for long periods of time. R. 134, ¶¶ 2, 14. Although Leibas claims on appeal that she has no issue standing for long periods and only needs more frequent breaks to go to the bathroom, Leibas Br. 26–28, an employer is not required to let an employee exceed the treating doctor's restrictions. *Kotaska v. Fed. Express Corp.*, 966 F.3d 624, 631 (7th Cir. 2020). And, in any event, a plaintiff cannot manufacture a genuine dispute of material fact by contradicting her prior deposition testimony with an affidavit. *See Kelley v. Stevanovich,* 40 F.4th 779, 787 (7th Cir. 2022). Thus, we look at what Dr. Aloman concluded about Leibas's restrictions and required accommodations.

Dr. Aloman wrote that Leibas "is unable to stand for long periods without relief/rest" and Leibas "requires more frequent breaks to avoid standing for long periods." R. 96-10 at 121. Dr. Aloman described Leibas's requested accommodation as follows: Leibas requests "that she be allowed more frequent breaks *and rest periods* and bathroom breaks, up to three additional times per shift." *Id.* (emphasis added). Thus, the accommodation at issue is not brief bathroom breaks, the way Leibas tries to describe it on appeal. Instead, we must examine whether Leibas can adequately supervise inmates despite her inability to stand for long periods without rest, and her need to take up to three additional breaks per shift both to go to the restroom and rest.

Uncontroverted record evidence shows that correctional officers must be able to stand unassisted for long periods of time, sometimes for the entirety of their eight-to-ten-hour shift. R. 132 at ¶ 6. In reconsideration and on appeal, Leibas insists that she is able to stand for long periods of time, but, as explained above, we are not required to credit Leibas's

casting of her restrictions over that of her doctor's, which were presented to her employer. *Kotaska*, 966 F.3d at 631. And, in any event, this recasting of her restrictions contradicts the restrictions for which she sought accommodation. *See Kelley*, 40 F.4th at 787.

Despite Leibas's recasting of her accommodation, it is Leibas's burden to "make a prima facie showing 'that the accommodation is reasonable in the sense both of efficacious and of proportional to costs.'" *Filar v. Bd. of Educ. of City of Chicago*, 526 F.3d 1054, 1068 (7th Cir. 2008) (quoting *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 784 (7th Cir. 2002)). "Once the plaintiff has made this showing, the defendant/employer then must show special (typically case-specific) circumstances that demonstrate undue hardship in the particular circumstances." *US Airways, Inc. v. Barnett*, 535 U.S. 391, 402 (2002). Employers are not required to give an employee his or her requested accommodation. *Kersting v. Wal-Mart Stores, Inc.*, 250 F.3d 1109, 1116 (7th Cir. 2001). "Accommodations which require special dispensations and preferential treatment are not reasonable under the ADA." *Hammel v. Eau Galle Cheese Factory*, 407 F.3d 852, 867 (7th Cir. 2005). Employers are not required to hire additional employees to accommodate the plaintiff. *Sieberns v. Wal-Mart Stores, Inc.*, 125 F.3d 1019, 1022 (7th Cir. 1997).

The additional breaks—particularly in the way that they are described by Leibas's doctor—are not a reasonable accommodation at the DOC. Burke's declaration indicated that "unplanned *or additional* breaks" would limit where Leibas can be assigned, thus creating additional staffing issues. R. 132 at ¶ 11 (emphasis added). Although correctional officers bid on specific units, their assignments can change daily, depending

on the DOC's needs. Moreover, unplanned breaks may require assigning a second person to the same post to ensure it is covered. *Id.* Leibas does not contradict this directly. Instead, she insists that she would never leave her post without coverage and, in a declaration offered at reconsideration, Leibas claimed that "the accommodation could allow [her] to have to plan for [her breaks]." R. 134, ¶ 17. But this is not what Leibas's doctor stated Leibas needed, nor is it supported by record evidence. As Leibas's counsel conceded at oral argument, the requested accommodation "has discretion built in" thus emphasizing the unplanned nature of Leibas's accommodation. And separately, Leibas attributes her need to rest and go to the restroom to "flare ups" in her conditions. R. 109, ¶ 91; R. 134, ¶¶ 2, 3. There is no evidence that Leibas's flare ups happen at predictable times each day, or that Leibas can effectively plan for them. In short, aside from Leibas's own affidavit, which departs from the accommodations as her doctor described them, Leibas has not offered any evidence that her breaks could be planned in a way that does not interfere with her essential functions. *See* R. 132, ¶ 11.

There is a separate issue that further complicates the reasonability of Leibas's accommodation, and that is the uncontroverted record evidence that the prison does not have enough staff to provide the necessary coverage for her additional breaks due, in part, to budget cuts outside of the DOC's control. Leibas stated the following at her deposition, "From what I understand, we are entitled to receive at least two 15-minute [breaks] and a lot of times you wouldn't get that and that would … create a problem with me if I needed to eat something, you know, or sit down and take a break." R. 96-10 at 30. When the DOC initially denied Leibas's request,

Reierson attributed it to the fact that the prison could not guarantee coverage for additional breaks. *Id.* at 32.

Leibas argues that she can wait to take her breaks until coverage is available—i.e. that someone can assume her post—and that she has never been denied a break in the past. But Leibas's own declaration shows that, at times, she has asked other officers to watch her post in addition to their own so that she could take a break. R. 134, ¶ 8 ("There have also been instances where I needed to use the restroom and was able to ask an officer on the neighboring tier to watch the tier while I did so."). Leibas hypothesizes that supervisors are aware of this practice and in some assignments—although not necessarily the assignment she had when she engaged in this practice—the DOC assigns officers to watch two tiers at the same time. However, another officer noted that despite the widespread use of this practice, it is "not preferred." R. 134-2, ¶ 5. It is clear why this practice would be undesirable and unreasonable as an accommodation at the DOC. If Leibas is away from her post, then the officer watching Leibas's post in addition to his or her own must divide his or her attention between two posts. If an emergency arises in the coverage officer's original post, then Leibas's post would be uncovered while the coverage officer responds to the emergency. The consequences for this can be fatal. R. 132, ¶ 11. Similarly, Leibas suggests that she could be given the first break once coverage becomes available. But such preferential treatment is an unreasonable accommodation, especially considering that some officers do not get their bargained-for breaks as it is. *Hammel*, 407 F.3d at 867.

Leibas's suggestions also do little to answer the question of what happens if Leibas experiences a flare up when no

officer is available to cover her. As Leibas herself admitted, correctional officers often do not receive the breaks to which they are entitled. R. 96-10 at 30. Even though Leibas claims that she would never leave her post unattended, an individual seeking a reasonable ADA accommodation cannot both insist that she requires an accommodation and maintain that she can forgo the same accommodation if necessary. *Tate*, 51 F.4th at 801–02.

Although the ADA does not provide an exemption to the DOC, it also does not require that the DOC compromise the safety and security of its inmate population to provide a reasonable accommodation. *See Gratzl v. Off. of Chief Judges of 12th, 18th, 19th, & 22nd Jud. Cirs.*, 601 F.3d 674, 680 (7th Cir. 2010). Notwithstanding the fact that Leibas's restrictions as described by her doctor and as presented to her employer might be reasonable in other contexts, they are not reasonable under the unique circumstances of the DOC. *See id.* at 682. On this record, Leibas simply has not provided enough evidence to create a genuine dispute of fact that she is a qualified individual.[2]

III.

For the foregoing reasons, we AFFIRM the judgment of the district court.

[2] Although Leibas does not mention it on appeal, she brought an indemnification claim against Cook County. Because there is no underlying liability on Leibas's claims, summary judgment was appropriate.