A Timely Analysis of Legal Developments

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A recent California Court of Appeal decision highlights the need for employers to pay specific attention to the interplay between workers' compensation disability ratings and the reasonable accommodation requirements dictated by state and federal disability discrimination laws.

Cuiellette v. City of Los Angeles, a Tale of Two Standards

By Robert W. Conti

Employers frequently fail to distinguish an employee's disability rating arising from an industrial injury that traveled through the workers' compensation system from the obligations imposed by disability discrimination laws. Often, an employer learns that an injured employee has received a high disability rating, sometimes one as high as 100% disabled, and decides, based only on that information, that the person is unemployable. Making such a decision, without first undergoing the reasonable accommodation process, however, can prove costly. And in the case of the *Cuiellette v. City of Los Angeles*, No. B224303 (Cal. Ct. App. Apr. 22, 2011), it was a $1.5 million dollar mistake.

Case Background

Rory Cuiellette, was a field officer with the Los Angeles Police Department. After several years serving on the force, he became injured on the job and was placed on a disability leave of absence. After receiving a 100% disability rating from the California Department of Industrial Relations, he sought reinstatement with the Police Department. At the same time, Cuiellette's doctor released him to return to work, albeit limited to administrative work. On the strength of the doctor's release, the department assigned the officer to a desk job, consistent with an established practice of providing accommodation to disabled police officers by reassigning them to "permanent light duty" positions in areas such as the drug testing or fugitive warrants divisions.

The department learned of the officer's 100% disability rating within a week of his return to light duty position. A supervisor told Cuiellette that he could not continue to work with a 100% rating, even though he performed his new permanent light duty job's essential (and apparently marginal) functions without problem.

At trial, the officer presented evidence that the city had a long-standing practice of assigning administrative, light duty jobs to its disabled police officers on a permanent basis. Moreover, the officer showed that he could perform the essential functions of his light duty job. In response, the city tried, unsuccessfully, to show that "100% disabled" meant incapable of performing any essential functions of any departmental job and/or that a 100% disability rating meant there was no possible form of reasonable accommodation.

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Unfortunately for the city, the officer showed that the decision to remove him from duty was not based on an assessment from any LAPD supervisors about his job performance or his present or future ability to perform the tasks assigned to him. Instead, the evidence showed that the decision to remove the officer from the light duty position was premised on the concern of the third party administrator (TPA) that adjusted the city's workers' compensation matters that a 100% disability rating was inconsistent with continued, active employment with the department. In fact, the court found that the TPA "instigated the decision to send [the officer] home because of its concern that the City could not place someone in the workplace who, for purposes of workers' compensation was '100% disabled.'"

The TPA's conclusion underscores the conflict faced by employers: the standard for determining a disability rating under the workers' compensation system is often at odds with employer obligations under discrimination laws like the California Fair Employment and Housing Act (FEHA) and the Americans with Disabilities Act Amendments Act (ADAAA). While the workers' compensation analysis focuses on whether the employee is able to perform the *usual and customary duties* of the "job of injury," the FEHA, ADAAA and its ilk examine what the employee can do with regard to the original job, or any other position offered as an alternative, *i.e.*, as reasonable accommodation, to a disabled worker.

Here, while the officer could not perform the tasks of a field officer, he had no difficulty performing his desk job. As the trial court noted, "In addition to considering [the TPA's] advice regarding workers' compensation issues, the City should have independently evaluated Plaintiff's situation with reference to FEHA." In the view of the court, none of the officer's restrictions stemming from his industrial injury impeded his ability to perform the desk job. The court indicated that "if the City had concerns about these restrictions, it had an affirmative duty to engage in an interactive process and to make an effort to accommodate Plaintiff, rather than simply take him off the job."

As this case makes clear, an employer cannot base its decision refusing reinstatement or continued employment solely upon the restrictions and permanent disability rating emanating from the workers' compensation system. Rather, an employer is obligated to engage in the interactive process to determine whether there are any accommodations that can be provided to get the employee back to his original job. Barring such, the employer is obligated to look within its workforce to determine whether there are any open positions for which the employee is qualified. The city's failure to implement this process in favor of bright-line reliance on a disability rating, proved to be a costly mistake.

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