

Shirvanyan v. Los Angeles Community College Dist. (59 Cal.App.5th 82)

The Court of Appeal held that a plaintiff must prove that a reasonable accommodation was available at the time an interactive process should have been held by their employer.

FACTS/PROCEDURE

Plaintiff Anahit Shirvanyan worked at the Child Development Center at Los Angeles Valley College since 2007. She was a level three unclassified assistant employee that was assigned to the kitchen. As part of her job duties, she prepared breakfast and lunch by washing dishes, opening large heavy cans, cutting food items, and doing the laundry. In 2014, she developed moderate to severe carpal tunnel syndrome in her right wrist. Many of her job duties caused pain in her wrist. She asked co-workers to assist with some of her duties. She requested the Center purchase an electric can opener, asked if she could help the teachers supervise children, and when the dishwasher broke, she asked for assistance with dish washing or to switch to paper plates. All requests were denied. Plaintiff's supervisors were aware with her struggles due to her right wrist pain, but they never discussed changing Plaintiff's kitchen duties or giving her time off to address the injury in her wrist. On December 18, 2015, Plaintiff injured her right shoulder, neck, and arm while opening a heavy industrial door. She received a medical note, excusing her from work until March 2016. No one from the Center followed up with her regarding her medical leave and she did not return to work after March 2016. Plaintiff made a workers' compensation claim for her shoulder injury. Plaintiff prevailed on a motion in limine excluding the benefits she received from workers' compensation for the physical pain and medical bills of her shoulder injury.

Plaintiff sued the District alleging three causes of action under the Fair Employment and Housing Act: 1) disability discrimination; 2) failure to engage in the interactive process; and 3) failure to provide a reasonable accommodation. She alleges that the District's actions led to her developing a major depressive disorder, which resulted in emotional distress and economic loss. At the conclusion of Plaintiff's case-in-chief, the District moved for nonsuit and argued that Plaintiff failed to prove a key element of her claim – that there was an available and effective reasonable accommodation at the time she claimed the District failed to engage in the interactive process. The court denied the District's motion, stating that the availability of a reasonable accommodation is not an element of the interactive process claim.

The jury rejected Plaintiff's disability discrimination claim but found in favor of her reasonable accommodation and interactive process claims. On appeal, the District claims the availability of the reasonable accommodation is an essential element of an interactive process claim and that the evidence does not support a finding that a reasonable accommodation was available for Plaintiff's wrist and shoulder injuries.

HOLDING/DISCUSSION

The Court of Appeal for the Second District reversed as to Plaintiff's shoulder injury and held the jury result as to her wrist injury. Precedent shows that to succeed on a cause of action for failure to engage in an interactive process, the employee must identify a reasonable accommodation that would have been available at the time the interactive process should have occurred. FEHA only imposes liability on a failure to engage in the interactive process claim when there is evidence that a reasonable accommodation was available. Plaintiff argued there were three types of reasonable accommodations for her disability: 1) restructuring her position; 2) preferential reassignment to another position; or 3) a finite leave of absence. Plaintiff's primary care provider stated that a finite leave of absence to temporarily stop the repetitive actions that were causing her pain in her wrist, would have given Plaintiff time to rehabilitate her wrist. However, no evidence suggested that a finite leave of absence would have been sufficient as a reasonable accommodation for Plaintiff's shoulder injury. Plaintiff's shoulder injury was still ongoing, even at the time of trial in late 2018, and there was no evidence to suggest she would be capable of returning to work within a specific time frame. (The court noted that a medical leave for several years would not be a reasonable accommodation, due to the undue hardship to the employer's business.) A restructuring of job duties could be a reasonable accommodation if it would enable the employee to perform the essential functions of the job. Plaintiff admitted in her complaint that her essential functions included the

repetitive use of her hands to cut foods, load the dishwasher, and wash heavy pots and pans. Plaintiff's inability to lift her right arm prevented her from performing many of the essential functions of her position. Thus, restructuring Plaintiff's duties as a kitchen assistant was not a reasonable accommodation for Plaintiff's shoulder injury. Finally, as to the possibility of Plaintiff being reassigned, she failed to present any evidence that any position, of which she was able to perform the essential functions, were vacant at the time. FEHA does not require employers to reassign an employee if there is no vacant position the employee is qualified to fill.

The court held that a retrial was necessary because the jury award of \$2.89 million dollars did not differentiate between Plaintiff's shoulder injury and wrist injury.

The court briefly discussed the interplay of Plaintiff's wrist and shoulder injury claims with the Workers' Compensation Act. The Workers' Compensation Act is the exclusive remedy for an employee's injury sustained during the course and scope of employment. Plaintiff claims her emotional distress is not a derivative of or because of her injury. Plaintiff claims her emotional distress was a result of her employer continuously denying her requests for reasonable accommodation and for its failure to engage in the interactive process. This is a separate harm and not a derivative of her injury, which would place her in the workers' compensation scheme. Accordingly, Plaintiff's FEHA claims based on the District's management of her wrist injury are not barred by the Workers' Compensation Act.