



# Employee with Performance Problems Could Not Prove ADA Claim

By Jennifer Carsen, J.D.

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**A** district manager with cancer who also had a record of performance problems was unable to show that his disability caused his termination, the 7th U.S. Circuit Court of Appeals ruled.

It was undisputed that the district manager had a covered disability under the Americans with Disabilities Act (ADA) and that he was qualified to perform the essential functions of his job with or without reasonable accommodation. The issue at stake was whether he was fired due to his disability.

The district manager underwent treatment for various forms of cancer during his employment. In his role, he was responsible for managing stores and store managers, a job that included recruiting, training and ensuring that employee paperwork and background checks were properly completed.

He reported to two regional managers, one of whom allegedly told him to search for a missing GPS device that was not in fact missing. That same regional manager also identified deficiencies in the district manager's stores, including out-of-stock items, high employee turnover and stores that were not customer-ready. A performance plan was implemented.

The other regional manager allegedly mocked and demeaned the district manager, making him get on his hands and knees to straighten a product and telling him, "I know [sic] three people who had what you had, and they all died."

The district manager was placed on another performance improvement plan following concerns that he had not completed the hiring process for some employees and had insufficiently trained others.

HR eventually identified additional ongoing issues, including a nonemployee attending an employee meeting and a continued failure to process employment documents. The district manager was fired on the basis that he was unwilling to take responsibility and remedy violations in his stores.

A federal district court granted summary judgment in favor of the employer, which the district manager appealed.

*[SHRM members-only how-to guide: How to Handle an Employee's Request for an ADA Accommodation*

*([www.shrm.org/resourcesandtools/tools-and-samples/how-to-guides/pages/requestreasonableaccommodation.aspx](http://www.shrm.org/resourcesandtools/tools-and-samples/how-to-guides/pages/requestreasonableaccommodation.aspx))*

The appeals court noted that the district manager tried to prove that the evidence, considered as a whole, would permit a reasonable factfinder to conclude that he had been fired because of his cancer.

But while the district manager claimed that comments and actions from both regional managers provided a discriminatory motive regarding cancer, the 7th Circuit said he provided no evidence that the comments or conduct were contemporaneous with, or part of, the decision to fire him. Therefore, the district manager failed to meet the requisite showing of discriminatory intent.

He also claimed that his employer had exhibited discriminatory intent by firing him but not his subordinate. The court said he had improperly delegated to the subordinate his district manager responsibilities of hiring and completing payroll documents, and that his termination could not be compared "with discipline of a subordinate whose district manager [had] imposed responsibilities beyond the scope of her employment." Again, no discriminatory motive was shown.

Finally, the district manager argued that the stated reasons for his termination were pretextual. The court rejected this argument, saying he had failed to disprove the evidence showing his deficiencies as district manager.

Additionally, he presented no evidence that would allow for a reasonable inference that his employer lacked honest concerns about his professionalism and work ethic. Accordingly, the court affirmed the ruling of summary judgment in favor of the employer.

*Castetter v. Dolgencorp LLC, 7th Cir., 19-2026 (March 25, 2020).*

**Professional Pointer:** Well-documented evidence of performance problems is essential to substantiating the legitimacy of adverse employment actions.

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