ssment?

stipulating whether the ADAAA was retroactive?

to aid disabled workers, then should the ADAAA be

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c.

26 (U.S. Court of Appeals Eighth Circuit)

given to a disabled employee over another individual with superior

RILEY, CIRCUIT JUDGE.

estion: whether an employer who has an established policy ost qualified applicant is required to reassign a qualified dis- although the disabled employee is not the most qualified ap- (Huber) brought an action against Wal-Mart Stores, Inc. under the Americans with Disabilities Act of 1990 (ADA). summary judgment. The district court granted summary rt appeals. For the reasons stated below, we reverse.

a dry grocery order filler earning $13.00 per hour, including ng for Wal-Mart, Huber sustained a permanent injury to her could no longer perform the essential functions of the order er's injury is a disability under the ADA.

r sought, as a reasonable accommodation, reassignment to a pulated was a vacant and equivalent position under the ADA. reassign Huber automatically to the router position. Instead, most qualified applicant for the position, Wal-Mart required router position with other applicants. Ultimately, Wal-Mart plicant and denied Huber the router position. Wal-Mart in- ed with or without an accommodation to perform the duties he most qualified candidate. The parties stipulated the indi- was the most qualified candidate.

at another facility in a maintenance associate position (jani- er hour. Huber continues to work in that position and now

A, arguing she should have been reassigned to the router po- ion for her disability. Wal-Mart filed a motion for summary mate non-discriminatory policy of hiring the most qualified as not required to reassign Huber to the router position.

n a reasonable accommodation claim under the ADA, the ability within the meaning of the ADA, (2) is a qualified indi- employment action as a result of the disability. To be a quali- of the ADA, an employee must (1) possess the requisite skill, for her position; and (2) be able to perform the essential job able accommodation.

ment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Huber contends Wal-Mart, as a reasonable accommodation, should have automatically reassigned her to the vacant router position without requiring her to compete with other applicants for that position. Wal-Mart disagrees, citing its non-discriminatory policy to hire the most qualified applicant. Wal-Mart argues that, under the ADA, Huber was not entitled to be reassigned automatically to the router position without first competing with other applicants.

"[T]he [ADA] is not a mandatory preference act." We conclude the ADA is not an affirmative action statute and does not require an employer to reassign a qualified disabled employee to a vacant position when such a reassignment would violate a legitimate nondiscriminatory policy of the employer to hire the most qualified candidate.

Thus, the ADA does not require Wal-Mart to turn away a superior applicant for the router position in order to give the position to Huber. To conclude otherwise is "affirmative action with a vengeance. That is giving a job to someone solely on the basis of his status as a member of a statutorily protected group."

Here, Wal-Mart did not violate its duty, under the ADA, to provide a reasonable accommodation to Huber. Wal-Mart reasonably accommodated Huber's disability by placing Huber in a maintenance associate position. The maintenance position may not have been a perfect substitute job, or the employee's most preferred alternative job, but an employer is not required to provide a disabled employee with an accommodation that is ideal from the employee's perspective, only an accommodation that is reasonable. In assigning the vacant router position to the most qualified applicant, Wal-Mart did not discriminate against Huber. On the contrary, Huber was treated exactly as all other candidates were treated for the Wal-Mart job opening, no worse and no better.

Case Commentary

The Eighth Circuit decided that Wal-Mart does not have to give preference to a disabled employee over another more qualified employee.

Case Questions

1. Are you in accord with the decision reached in this case?
2. Was it the intent of the ADA to require employers to give preference to disabled workers or to treat them equally?
3. Do you believe the decision in this case was ethical?

EEOC v. Olsten Staffing Services Corp.

Case 17.3

2009 U.S. Dist. LEXIS 88903 (Western District Court of Wisconsin)

The issue is whether an employment agency can be held liable for failing to place someone in violation of the ADA.

CROCKER, MAGISTRATE JUDGE.

This case raises questions about the scope of an employment agency's obligations under the Americans with Disabilities Act. Zachary Schaefer is a deaf person who sought employment