

### III. Conclusion

We reverse the judgment of the district court, and we remand for entry of judgment in favor of Wal-Mart consistent with this opinion.

### Case Questions

1. Are you more persuaded by the analysis of the Tenth Circuit or the Seventh and Eighth (current case)?
2. Does this case represent a clear win for the employer? What guidance would you give an employer after the holding in this case? What policies might be most effective?
3. What implications might this case have for determining the reasonableness of other forms of accommodation?



## EEOC v. Convergys Customer Management Group, Inc., 491 F.3d 790 (8th Cir. 2007)

Demirelli, who uses a wheelchair due to a rare condition commonly known as brittle bone disease, was hired by Convergys as a call representative to answer telephone calls from customers of Convergys' clients. To keep its call stations consistently attended, Convergys maintains a strict tardy policy and penalizes employees who are more than three minutes late to work or after lunch.

Demirelli was penalized for repeatedly arriving late to work and returning late from lunch. The company, however, didn't have assigned workstations, so employees had to find an open workstation when they arrived and when they returned from work. A jury found for the plaintiff, awarding Demirelli lost wages and compensatory damages. The district court denied Convergys's motions for judgment as a matter of law and Convergys appealed. The Eighth Circuit affirms.

Smith, C. J.

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Records show that Demirelli was late reporting for work 37 times and late returning from lunch 65 times—far in excess of Convergys's 14 tardy allowance. Demirelli's tardiness reporting to work stemmed from the lack of adequate handicapped parking at Convergys's call center. The call center's large parking area only had two van-accessible, handicapped parking spaces—spaces large enough for a special-needs van to operate a ramp or motorized lift. These two spaces were usually occupied when Demirelli arrived, thus causing him to either wait for the space to become unoccupied or find an alternative parking space.

Demirelli made unsuccessful efforts to reduce his tardiness for work. Specifically, Demirelli tried arriving at work earlier—at one point arriving nearly an hour early—however, the two parking spots were still usually occupied. Demirelli then began parking at a

nearby movie theater, but traveling via wheelchair from the theater's parking lot to the call center took over 10 minutes and caused Demirelli considerable physical pain. Finally, Demirelli requested different hours hoping that one of the two special-needs parking spaces might be available at a later hour. But even during a later work-shift, the two special-needs spots were still occasionally occupied.

Demirelli's condition and the layout of Convergys's call center hampered an on-time lunch return. Convergys's call center is a maze of hundreds of cubicles where individual call representatives answer customer calls. Cubicles are not assigned to specific call representatives; when call representatives report for work or return from lunch, they claim the first cubicle that they can find. Most employees simply look over the top of the rows of cubicles to find an available workstation. However, this option

was not available to the wheelchair-confined Demirelli. He was forced to examine each workstation. . . .

. . . When his supervisors approached him to discuss his tardies, Demirelli explained that he was having problems finding a parking space and a workstation. He asked that he be given "a grace period"—a few extra minutes to return from lunch to work. Convergys denied this request. On June 27, 2002, Convergys terminated Demirelli's employment.

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The matter proceeded to trial, and a jury found for the plaintiffs, awarding Demirelli \$14,265.22 in lost wages and \$100,000 in other compensatory damages.

## II. Discussion

Convergys appeals the district court's denial of its motion for judgment as a matter of law, averring that it cannot be held liable for failure to accommodate Demirelli because he did not request a specific, reasonable accommodation. In the alternative, Convergys avers that Demirelli's proposed accommodations were unreasonable. Convergys also challenges the award and amount of compensatory damages.

### A. Judgment as a Matter of Law

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#### 1. The Interactive Process

Convergys avers that, as a matter of law, an employer cannot be held liable for failing to accommodate a disabled employee who has not requested a specific, reasonable accommodation. Similarly, Convergys avers that the district court erred when it declined to instruct the jury that Demirelli was required to request a specific accommodation. We hold that the district court did not err.

Our case law has established a shared responsibility between employers and employees to resolve accommodation requests. A disabled employee must initiate the accommodation-seeking process by making his employer aware of the need for an accommodation. Additionally, the employee must provide relevant details of his disability and, if not obvious, the reason that his disability requires an accommodation.

Once the employer is made aware of the legitimate need for an accommodation, the employer must "make a reasonable effort to determine the appropriate accommodation." "This means that the employer should first analyze the relevant job and the specific limitations imposed

by the disability and then, in consultation with the individual, identify potential effective accommodations."

This division of responsibility is "only logical, as an employee will typically have better access to information concerning his limitations and abilities whereas an employer will typically have better access to information regarding possible alternative duties or positions available to the disabled employee."

Demirelli testified at trial that he requested an accommodation because of limitations created by his wheelchair, thus meeting his initial burden. The record does not show, however, that Convergys fulfilled its obligation to explore possible accommodations for Demirelli's disability. In fact, the record evidence shows that Demirelli assumed Convergys's responsibility by offering several potential accommodations, including a few extra minutes to return from lunch. Demirelli thus exceeded what disabled employees at the initial stage of the interactive process must do. Convergys's argument thus attempts to place the entire responsibility of fashioning an accommodation upon Demirelli.

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We hold that Demirelli was not required to more specifically request accommodation. Accordingly, the district court did not err by denying Convergys's motion for judgment as a matter of law. Similarly, the district court did not err by declining to instruct the jury that Demirelli was required to request a specific accommodation.

#### 2. Reasonable Accommodation

Convergys avers that any accommodation that provided Demirelli with extra time was unreasonable because it required Convergys to eliminate the essential punctuality requirement. We disagree. . . .

The district court determined that punctuality is an essential job function. In order to fulfill this essential job function, the record evidence is clear that Demirelli requested an extra 15 minutes to return from his lunch break. Viewing the evidence in a light most favorable to the jury verdict, we believe that an extra 15 minutes is a reasonable accommodation. First, Convergys puts forth no evidence showing that extending Demirelli's lunch break by 15 minutes would eliminate its punctuality requirement. An additional 15 minutes would merely create a different time for Demirelli to return from his lunch break. Contrary to Convergys's assertion, this modified work schedule would not create an open-ended schedule where Demirelli would be free to return from lunch at his pleasure or at unpredictable times. Second, the record

evidence also shows that by granting Demirelli an extra 15 minutes, 62 of Demirelli's 65 lunch tardies would have been eliminated. . . .

### III. Conclusion

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After a careful review of the record, the judgment of the district court is affirmed.

### Case Questions

1. Do you believe the employer made a good-faith effort to reasonably accommodate the employee?

2. Can you imagine other accommodations that may have been considered by the employer to be less disruptive to its three-minute punctuality requirement? From a relative perspective, do you agree with the court that fifteen minutes is a reasonable accommodation at the beginning of the work day and after lunch?
3. If increasing the number of special needs parking spaces would have allowed Demirelli to arrive at work on time, should the court have simply required that accommodation as an alternative? Cost was not discussed in this excerpted opinion; but do you think there should be a dollar limit on the price of a reasonable accommodation?