



Doe v. United States Postal Service

317 F.3d 339 (2003)

Country: United States

Region: Americas

Year: 2003

Court: District of Columbia Circuit Court of Appeals

Health Topics: Disabilities, Health information, HIV/AIDS, Infectious diseases

Human Rights: Right to privacy

Facts

The Appellant, Doe, brought an action against his employer, the U.S. Postal Service, for the Postal Service's disclosure of his HIV status in violation of both the Privacy Act and the Rehabilitation Act.

Doe's status was first revealed to Postal Service officials as part of a request for leave pursuant to the Family and Medical Leave Act (FMLA). In accordance with the FMLA, in order to take leave the Postal Service instructed Doe to complete and submit an administrative form, including a medical certificate explaining the nature of [his] illness. Doe was told that failure to produce the certificate could lead to disciplinary action, as he would be considered absent without leave. Doe had not informed anyone at the Postal Service about his HIV status and he was hesitant to reveal this information to his direct supervisor. He instead submitted the certificate to an administrative assistant.

Section 552a of the Privacy Act generally forbids federal agencies from disclosing any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains (552a(b)).

Section 701 of the Rehabilitation Act prohibits federal government employers from disclosing employees' private medical records, incorporating by reference the medical examination confidentiality provision in 12112(d) of the Americans with Disabilities Act (ADA). ADA 12112(d)(4)(B) provides two exceptions to the prohibition from disclosure, including "inquiries into the ability of an employee to perform job-related functions." Medical information obtained under either exception must be treated as a confidential record according to ADA 12112(d)(4)(C).

Decision and Reasoning

The court first examined whether Doe produced sufficient evidence to establish that his medical information had been unlawfully disclosed in violation of the Privacy Act. The court held that two pieces of evidence were sufficient to indicate that a US Postal Service official retrieved information about Doe's HIV status from protected medical records in violation of the Privacy Act. These were: (1) evidence from Postal Service employees indicating that Doe's management-level supervisor had told co-workers about his HIV status, and (2) circumstantial evidence suggesting that the same supervisor obtained the information from the FMLA form in the normal course of business.

The court explained that the issue of improper disclosure also formed the first prong of the two stage test under the Rehabilitation Act; the second stage being whether the FMLA form amounted to an "inquiry," which must be kept confidential under ADA 12112(d)(4)(C).

The court then examined whether the FMLA form amounted to an "inquiry" into Doe's medical condition within the meaning of ADA 12112(d), and therefore whether the information had to remain confidential under ADA 12112(d)(4)(C). The court held that Doe's submission of the FMLA form was clearly a response to an employer inquiry, rather than a voluntary disclosure, and was therefore subject to the Rehabilitation Act's confidentiality requirement. The Court further held that the plain language of the Rehabilitation Act required the Postal Service to treat Doe's response to the inquiry as confidential.

In finding that Doe's disclosure was not voluntary, the court noted that Doe revealed his medical diagnosis to his employer only after being informed in writing that he would face disciplinary proceedings if he did not.

Furthermore, the receipt of FMLA leave was conditional on the receipt of supporting medical documentation, as authorized under the FMLA. The court rejected the Postal Service's argument that Doe could have avoided disclosing his medical condition by forgoing his statutory entitlement to FMLA leave. It noted that, if accepted, this view would force employees to choose between waiving their right to avoid being publicly identified as having a disability and exercising their statutory rights. The court held that this would be contrary to the statutory intent of the ADA.

Specifically, the court held that the FMLA form clearly fell within the second category of permissible employer inquiries subject to the confidentiality requirement of ADA §12112(d), i.e., inquiries into the ability of an employee to perform job-related functions. The court also referred to FMLA §2612(a)(1)(D), which states that the FMLA provides for medical leave only when the applicant suffers from a serious health condition that makes the employee unable to perform the functions of the position of such an employee. The court found that the FMLA certification itself required health care providers to attest that the applicant had suffered from a serious health condition that has resulted in a period of incapacity, defined in the FMLA as the inability to work.

Decision Excerpts

As we view the record, Doe offered two pieces of evidence from which a reasonable jury could conclude that a Postal Service employee retrieved information about his HIV status from protected medical records. First, Doe's co-workers' deposition testimony indicates that the disclosures occurred after Doe submitted his FMLA form. As Doe points out, this circumstantial evidence suggests that Tahir got the information from the form. Second, deposition testimony indicates that in the normal course of business, Tahir obtained and reviewed leave requests. Not only did former acting supervisor Eddie Lowe testify that Tahir was in charge of handling FMLA requests, but Tahir's boss, Thomas Duchesne, stated in his EEO affidavit that the maintenance department forwarded such medical documentation to the employee's manager or supervisor "as necessary." 317 U.S., pp. 342-343.

Under the circumstances of this case, we think Doe's submission of the FMLA form was clearly a response to an employer inquiry, and not a voluntary disclosure. According to the Postal Service, however, section 12112(d) is nevertheless inapplicable because the FMLA form falls into neither of the two categories of permissible employer inquiries subject to section 12112(d)'s confidentiality requirement, 42 U.S.C. §§ 12112(d)(4)(C). Although we agree the FMLA form does not constitute the first type of section 12112(d)(4)(B) inquiry "it does not seek information in connection with a voluntary medical examination[] ... which [is] part of an employee health program available to employees at that work site" the form clearly falls within the second category, "inquiries into the ability of an employee to perform job-related functions." 42 U.S.C. §§ 12112(d)(4)(B). The FMLA provides for medical leave only when the applicant suffers from "a serious health condition that makes the employee unable to perform the functions of the position of such employee." 29 U.S.C. § 2612(a)(1)(D). The FMLA certification form itself requires health care providers to attest that the applicant suffers from a "serious health condition" that has resulted in a period of incapacity and notifies the certifying health care provider that "incapacity," for purposes of the FMLA, means "inability to work." 29 U.S.C. § 2612(a)(1)(D). 317 U.S., pp. 344-345.