



## The GSH

# 60-Second Memo

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### Rules Are Not Always Made to Be Broken: When Disabilities Cause Conduct Violations

By Alejandro Valle, Esq.

After twenty years of experience with the Americans with Disabilities Act, many employers are familiar with the Act's general requirements, especially regarding the need for an interactive process and accommodations. Yet, there persists a belief among some employers - and even some employees - that an employee gets a "Get Out of Jail Free" card for any and all policy violations by claiming the violations result from a disability.

But that's not the case.

Several recent cases demonstrate the lesson that allowing or forgiving an employee's violation of workplace conduct rules is not always required as an accommodation when that conduct violation results from a disability, whether claimed or actual. As these cases show, these rulings are based on the reasoning that employees are not qualified for their positions if their disabilities cause them to violate essential workplace conduct rules and policies.

In *Budde v. Kane County Forest Preserve*, a 2010 case from the United States Court of Appeals for the Seventh Circuit (covering Illinois, Indiana and Wisconsin), a police chief for a forest preserve district claimed that he was discriminated against for his disability of alcoholism when he was terminated after a drunk-driving accident. 597 F.3d 860 (7th Cir. 2010). The trial court decided in favor of the employer, and the court of appeals agreed, reasoning that in order to prevail against the employer with his ADA claim, the employee needed to establish not only that he was disabled but also that he was a *qualified* individual with a disability. The employee in *Budde* could not establish that he was a *qualified* employee with a

disability because his drunk driving violated his employer's rules against public intoxication and against violation of public laws by its employees. The employee's conduct also caused his driver's license to be suspended, thus preventing him from being able to drive, which the court found was an essential job function for the employee's position. In the end, the employer was not required to provide any accommodation to the employee for his alcoholism and was allowed by the court to terminate his employment without penalty, even when his alcoholic condition was accepted by the court as a disability for ADA purposes. According to the court in *Budde*, "Violation of a workplace rule, even if it is caused by a disability, is no defense to discipline up to and including termination."

Similarly, the 2009 Seventh Circuit case of *Bodenstab v. County of Cook*, 569 F.3d 651 (7th Cir. 2009), held that a hospital could terminate the employment of an anesthesiologist who threatened to kill his supervisor and co-workers. In *Bodenstab*, Dr. Bodenstab had been employed by Cook County Hospital in Chicago for nine years when he was diagnosed with cancer. In a telephone call with a friend, Bodenstab stated that if further tests revealed that his cancer had metastasized, he was going to kill his supervisor and other co-workers. He also stated that it was possible he would die in an ensuing gun battle with the police. Concerned, the friend contacted the police and the FBI.

The FBI and police investigated and contacted the hospital, telling the Medical Director that Bodenstab's death threats were credible. The hospital first suspended Bodenstab with pay. During his leave, Bodenstab was admitted to an out-of-state medical center, where he was diagnosed to be suffering from paranoid and narcissistic personality disorders.

Cook County Hospital held a pre-disciplinary hearing regarding Bodenstab's conduct and concluded that Bodenstab's threats warranted discharge. Bodenstab brought a lawsuit under the ADA, claiming, among other things, that the hospital failed to accommodate his personality disorders. The Seventh Circuit rejected that argument, noting the well-established principle that "[t]here is no legal obligation to 'accommodate' conduct, as opposed to a disability." *Id.* at 659. As it further held, this is true "even if [the conduct] was somehow related to a disability." *Id.*

It is important to keep in mind that in each of these cases the violated workplace rules were conduct rules, and the question turned on whether the employer needed to accommodate the conduct, as opposed to the disability. Violation of other workplace rules, such as attendance policies, are not as clear cut, and employers should be cautious when assessing any situation where an employee is incurring attendance policy violations because of a disability. That said, when an employee is violating conduct rules but claims the violations are the result of a disability, employers should consult with legal counsel to determine what disciplinary steps are available. It very well may be more than they think.

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