



RIGHTS STUFF

A Publication of The City of Bloomington
Human Rights Commission

City of Bloomington

June 2015
Volume 190

Social Anxiety May Be A Disability Under the ADA

Christina Jacobs has suffered from mental illnesses since she was a child. One of her conditions is social anxiety disorder, defined as a "marked and persistent fear of . . . social or performance situations in which [a] person is exposed to unfamiliar people to possible scrutiny by others." The American Psychiatric Association says that social anxiety disorder "can create a vicious cycle of anticipatory anxiety leading to fearful cognition and anxiety . . . which leads to actual or perceived poor performance . . . which leads to embarrassment and increased anticipatory anxiety."

Jacobs was hired in 2009 as an office assistant in the criminal division of the North Carolina Administrative Office of the Courts. Her duties included micro-filming and filing. Within a month, she was promoted to deputy clerk, one of 30 deputy clerks in the office. Four or five deputy clerks worked the front counter, providing customer service. The remaining clerks had filing and record-keeping tasks, with minimal interaction with the public.

Jacobs was assigned to work the front counter four days a week and found it to be quite stressful. She experienced extreme stress, nervousness and panic attacks. When she was asked a question that she didn't know the answer to - not unusual for a new employee working with the public - she became particularly panicked. In May of 2009, she told her supervisor, Debra Excell, that she had social anxiety disorder but was not

currently seeing a doctor. Excell suggested she see a doctor, and Jacobs soon was receiving medical treatment for anxiety and depression.

Excell in turn told her supervisor that Jacobs found her job to be "too stressful," that she had "nerve issues," that she had an "anxiety disorder" and that she might need to go see a doctor.

In September of 2009, Jacobs told her three immediate supervisors, including Excell, that she had social anxiety disorder and asked for an accommodation, possibly in the form of not having to work the front counter more than one day a week. She was told that she would have to wait for an answer for three weeks until the clerk of the courts, Brenda Tucker, returned from vacation. She sent Tucker an e-mail explaining her situation as well.

When Tucker got back, she called Jacobs into her office for a meeting. A copy of Jacobs's e-mail was on her desk. Jacobs recorded the meeting. She told Tucker she wanted to talk about the e-mail. Tucker said she was firing Jacobs because she was not "getting" her job and they didn't have any place that could use her services. (Before this, Jacobs had never been disciplined and in fact had received a quick promotion.) Jacobs asked if she was being fired because of the e-mail;

(Continued on page 2)

BHRC Staff

*Barbara E. McKinney,
Director*

*Barbara Toddy,
Secretary*

Commission Members

Byron Bangert, Chair

*William Morris,
Vice Chair*

*Birk Billingsley,
Secretary*

Carolyn Calloway-Thomas

Valeri Haughton

Beth Applegate

Mayor

Mark Krusan

Corporation Counsel

Margie Rice

**BHRC
PO BOX 100
Bloomington, IN
47402
812.349.3429
human.rights@
bloomington.in.gov**



Social Anxiety Under the ADA (continued from page 1)

Tucker said it had nothing to do with the e-mail.

Jacobs filed a complaint with the Equal Employment Opportunity Commission, alleging that she had been fired because she had a disability and had requested a reasonable accommodation. Eventually the matter went to court. The clerk's office won summary judgment at the trial level, meaning Jacobs had no case to make, but that decision was overturned by the Court of Appeals.

The District Court found that Jacobs had not told anyone at work that she had a disability; the Court of Appeals said that finding was disputed by the testimony of

several witnesses. The District Court found that Jacobs had said only that she had social issues, but the evidence was clear that she had said she had social anxiety disorder. The District Court said that a doctor had found that Jacobs did not have a disability, ignoring a second doctor who said quite the opposite. (Summary judgment is not appropriate when facts like this are disputed.) And the District Court found that Jacobs had never requested an accommodation, when the paper trail and testimony quite clearly showed she had. (Tucker claimed in court that she had not read the e-mail requesting an accommodation until during or after her meeting with Jacobs, but Jacobs's recording showed that was not likely true. In addition, Tucker

had been called while on vacation and told about the request.)

The Court of Appeals found that social anxiety disorder could be a disability as that term is defined by the Americans with Disabilities Act. A reasonable jury could find that it substantially limited Jacobs's ability to interact with others. And the Court found that being able to work the front counter was not an essential job duty of a deputy clerk - some deputy clerks never performed that task.

The case is Jacobs v. North Carolina Administrative Office of the Clerks, 780 F3d 562 (4th Cir. 2015).

Former Dentist Pays Fine for Violating HIPAA

At the Bloomington Human Rights Commission, we sometimes get calls about the federal Health Insurance Portability and Accountability Act (HIPAA). This federal law requires health care providers to keep patient records confidential. The BHRC does not have expertise in this area of the law, but because of the interest people have in it, we try to help keep the public informed on HIPAA developments.

In January, Joseph Beck, who was a dentist in Kokomo, agreed to pay the State of Indiana a fine of \$12,000 for

improperly disposing of patient files in a dumpster.

In December of 2011, the Indiana Board of Dentistry permanently revoked Beck's license to practice dentistry after he was investigated for fraudulent billing and negligence. In March of 2013, Beck hired Just the Connection, Inc., to retrieve and dispose of his patient records. Those records included names, medical records, phone numbers, birth dates, Social Security numbers, insurance cards, insurance information and state ID numbers. A week later, 63 boxes of patient records were

found in a dumpster. The Indiana attorney general investigated. No identity theft related to the improper disposal of patient records has been identified or reported.

(Article based on Former Kokomo Dentist Agrees to Fine for Violating HIPAA, by Mike Fletcher, Kokomo Tribune, posted on-line on January 9, 2015.)



Improper FMLA Designation May Lead to Employer Liability

Terry Tilley began working for the Kalamazoo County Road Commission in 1993. In 2008, he began reporting to Travis Bartholomew, and the relationship was not a good one. Bartholomew reprimanded Tilley for displaying a disrespectful attitude and for failing to meet deadlines for filing reports. Tilley claimed that he tried to submit the reports, but Bartholomew repeatedly sent them back for corrections, never accepting them.

In 2011, Bartholomew suspended Tilley for five days for failing to meet deadlines and required him to complete two reports by July 28 or risk termination. Tilley said he met the deadline for completing one report when he gave it to another supervisor on July 28, but that supervisor failed to give the report to Bartholomew for several days. He did not turn in the second report because, while he was finishing it up, he had symptoms that made him think he might be having a heart attack. A co-worker took him to the hospital, and he missed several days of work.

Tilley's employer sent him Family and Medical Leave Act (FMLA) paperwork to complete to cover his absence from work. The cover letter said that he was eligible for FMLA leave and that he had to fill out and submit the required forms. The accompanying eligibility notice also said

he was eligible for FMLA leave.

On August 12, the Road Commission sent Tilley a letter, terminating his employment for failing to submit the required reports by the deadline. He sued, alleging age discrimination (he was 59) and/or a violation of his rights under the FMLA. He lost at the trial level but recently won a partial victory at the Court of Appeals level.

The Court found against Tilley on his age discrimination complaint. He had no evidence that he had been replaced by a younger person, or that the Road Commission treated similarly-situated younger people differently from how it treated him. Nor did he have any evidence that Bartholomew treated him badly because of his age. In fact, he testified that his supervisors resented him because he had reported that one of them had driven while intoxicated and because they perceived him to have been responsible for the termination of another supervisor. While treating him badly because of resentment might not be fair or a good practice for supervisors, it's not evidence of age discrimination.

The Road Commission argued that Tilley was not eligible for FMLA because it did not employ at least 50 employees within 75 miles of his worksite. That is a requirement for FMLA coverage.

But, the Court found that the Road Commission could not use that as a defense - the legal term for this is, they were blocked from doing so by equitable estoppel - because they had told Tilley that he was eligible for FMLA coverage. Its employee manual said employees were covered if they were full-time and worked at least 1250 hours in the previous 12 months. It said nothing about the 75-mile rule. The form and the letter the Road Commission sent Tilley said he was eligible. Tilley testified that he understood that he was covered by the FMLA, and that if he had thought he was not, he would not have gone to the hospital when he did. He would have first finished the report he was working on at the time he experienced possible symptoms of a heart attack.

The Court agreed that a jury or trial judge might doubt Tilley's claim that he would not have gone to the hospital when he did, had he known he was not covered by the FMLA, but said that was a question for a jury, not for the Court. So it remanded the case to the District Court.

The case is Tilley v. Kalamazoo County Road Commission, 2015 WL 304190 (6th Cir. 2015).



Supreme Court Rules Inmate Has Right to Keep Short Beard

Abdul Maalik Muhammad is a devout Muslim who is also an inmate in an Arkansas prison. The prison does not allow inmates to have beards unless they have a dermatological problem; then they may have beards that are no more than one-quarter inch long. Muhammad believes that his religion requires him to grow a beard and never trim it, but was willing to compromise, and asked for permission to have a beard that was no more than one-half inch long.

The prison refused his request, arguing that inmates could hide contraband in even short beards, and that they could change their appearance quickly by shaving. Muhammad sued, losing at the district court and court of appeals level, but in January, won

a unanimous victory from the U.S. Supreme Court.

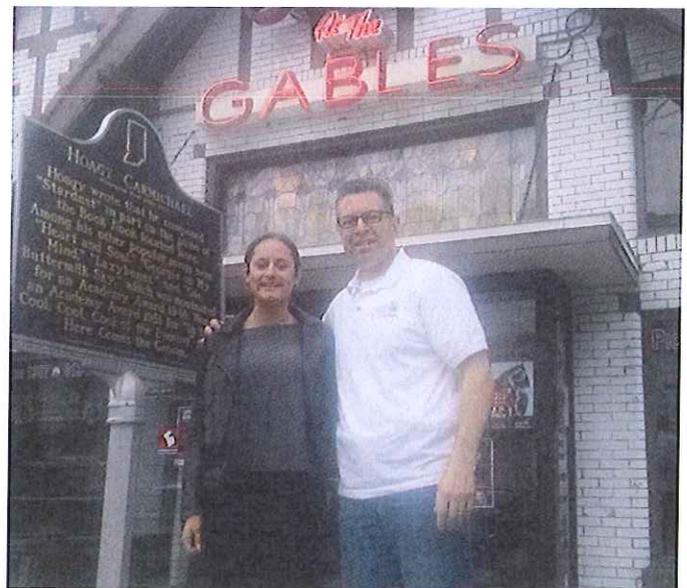
The lower courts relied on the fact that Muhammad could exercise his religion in other ways, on his statement that even if he had to cut off his beard, his religion would give him credit for trying to keep it and on the deference that courts should give to prison authorities. The Supreme Court did not agree.

The Court found it hard to take seriously the prison's argument that inmates could hide anything in a short beard. Anything they could hide in a short beard would be more easily hidden in head hair (which the prison does not require be kept short) or elsewhere.

The Court agreed that it should respect the prison authorities' expertise, but said "that respect does not justify the abdication of the responsibility, conferred by Congress, to apply" religious freedom laws appropriately. The fact that the vast majority of other prisons apparently allow beards of this length makes the Arkansas authorities' arguments even weaker.

Inmates may change their appearance by cutting their head hair, for example, but again, the prison did not require inmates to shave their heads or keep their head hair very short.

The case is Muhammad v. Hobbs, 135 S. Ct. 853 (2015).



Representatives of Nick's English Hut and Buffalouie's celebrate signing on to the BHRC's Fair Labor Initiative. (Photos courtesy of William Morris.)