SUPREME COURT DENIES REVIEW ON DECIDING IF DRIVING IS A MAJOR LIFE ACTIVITY IN RURAL AREAS

By

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High school adolescents were often the envy of their fellow classmates if they lived in a state where driver's licenses were granted early due to hardships. Remember when every teenager wanted to pass Go and collect their license before the standard legal driving age. However, on April 6, 2009, the U.S. Supreme Court recently denied review of the Tenth Circuit Court of Appeals ruling in *Kellogg v. Energy Safety Servs., Inc.* (544 F.3d 1121) that held driving in rural areas is not a major life activity for purposes of the Americans With Disabilities Act ("ADA").

Energy Safety Services, Inc., operating as Oilind Safety, LLC, terminated Ireane Kellogg, an oil field safety worker, after she failed to provide the company with a release from her doctor for her epileptic condition. Kellogg's job frequently required her to drive between jobs sites in a company vehicle to provide customers with safety services. While working for the company, Kellogg was diagnosed with complex partial seizures, a form of epilepsy, and her physician ordered her to cease driving. Subsequently, the company notified Kellogg that her job was "safety sensitive" and that she would be terminated unless her physician provided a "full release" allowing her to drive a vehicle.

After her termination, Kellogg sued for discrimination under the ADA, as well as for overtime compensation under the Fair Labor Standards Act ("FLSA"). At trial, the federal trial court judge gave a jury instruction that concluded driving is a major life activity, partially because of the lack of public transportation in the area and the economic conditions often required residents to obtain employment outside of the local community. The federal trial court granted a jury verdict on both the disability and FLSA claim.

On appeal by the employer, the Tenth Circuit Court of Appeals reversed the judgment on the ADA claim. Energy Safety Services successfully argued that it is well settled that driving is not a major life activity for purposes of the ADA. The company also argued that the recent amendments to the ADA failed to include driving in its expanded list of major life activities and Congress could have easily chosen to. Furthermore, the appeals court held that the importance of a major life activity, such as driving, is not dependent on whether the individual lives in a rural or metropolitan area.

Although this was a significant victory for Energy Safety Services, employers are urged to carefully consider every decision relating to an employee who asserts a disability. The recent amendments to the ADA make clear that the definition of "disability" must be construed in favor of broad coverage for individuals to the maximum extent permitted by law.