



 NYU | LAW

# MOOT COURT BOARD

Marcia Flanders,  
Petitioner

-against-

Fishing Corp. USA,  
Respondent.

Record

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## **QUESTIONS PRESENTED**

- (1) Whether intentional discrimination claims under the Americans with Disabilities Act (“ADA”) require a showing of deliberate indifference or animus.
- (2) Whether Petitioner can demonstrate Respondent’s intentional discrimination.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF GROVE

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Marcia Flanders,

Plaintiff,

-against-

Fishing Corp. USA,

Defendant.

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Docket No. 17-CV-9824312

OPINION AND ORDER ON  
MOTION FOR SUMMARY  
JUDGMENT

BARROS, J.:

**INTRODUCTION**

The matter comes before the Court upon the Motion of Defendant, Fishing Corp. USA (“Defendant” or “Fishing Corp.”), for Summary Judgment as to Plaintiff’s intentional discrimination claim under the Americans with Disabilities Act (“ADA”). The question presented in this case is whether a plaintiff must demonstrate a defendant’s deliberate indifference or animus to prevail on a claim for intentional discrimination under the ADA.

**BACKGROUND**

Marcia Flanders (“Plaintiff”) is a former cashier at Fishing Corp., a retailer that sells fishing gear. Plaintiff held this position for seven years until the events of this case transpired. On January 9, 2020, Plaintiff was in a serious car accident resulting in injuries to her spinal cord and paralysis requiring the use of a wheelchair. Plaintiff returned to her job soon after the accident and, according to a job performance report, her injuries did not negatively affect her performance.

On October 16, 2022, Defendant relocated to a smaller location due to budgetary constraints. The new Fishing Corp. location is not wheelchair accessible. Plaintiff attended the grand opening to work her shift but was unable to enter. Since the company’s move, Plaintiff has been functionally unemployed because she is unable to access the building, though she has neither quit nor been fired.

Plaintiff requested reasonable accommodations such as installing a ramp and modifying the restroom. Plaintiff repeatedly spoke to Sam, the store manager, about possible accommodations. Sam was receptive to the meetings with Plaintiff and

listened to her concerns. He promised Plaintiff that he would find a solution. However, Defendant has yet to implement any of the proposed accommodations.

After over a month of waiting, Plaintiff filed an ADA complaint against Defendant with the Equal Employment Opportunity Commission (“EEOC”) on December 20, 2022. On January 28, 2023, the EEOC issued Plaintiff a right to sue letter for Defendant’s failure to provide reasonable accommodations, and soon after Plaintiff brought this action.

Discovery has concluded and Defendant has moved for summary judgment. Defendant argues that in order to prove intentional discrimination under the ADA, a plaintiff must demonstrate the defendant’s animus against people with disabilities, and Defendant maintains that Plaintiff has not satisfied that standard.

## **DISCUSSION**

This Court is tasked with determining whether, in order to prevail in a claim for intentional discrimination under the ADA, a plaintiff must demonstrate a defendant’s deliberate indifference or animus, and whether Defendant’s conduct constitutes intentional discrimination under the ADA.

### **I. When Analyzing Intentional Discrimination Under the ADA, Animus Is the Standard.**

Under the ADA, employers are required to make reasonable accommodations as long as these accommodations do not impose an undue burden on the employer. 42 USCS § 12112(b)(5)(A). However, the circuits disagree as to the precise standard to apply. The First, Fifth, and Sixth Circuits have applied an animus standard for establishing intentional discrimination. *Carmona-Rivera v. Puerto Rico*, 464 F.3d 14, 18 (1st Cir. 2006) (holding that evidence of intentional discrimination that demonstrates animus beyond deliberate indifference must be established to recover under the ADA); *Smith v. Harris Cnty., Texas*, 956 F.3d 311, 318 (5th Cir. 2020) (stating that “[u]nlike other circuits, we have not held that deliberate indifference suffices”); *Anderson v. City of Blue Ash*, 798 F.3d 338, 357 (6th Cir. 2015) (stating that “evidence of animus against the protected group was a significant factor in the position taken”).

The animus standard prohibits an employer from creating a policy or treating an employee with ill-will or malice but permits an employer to be deliberately indifferent to discriminatory effects insofar as they are not the goal of the policy.

The majority of circuits have adopted a deliberate indifference standard for establishing intentional discrimination under the ADA. *See, e.g., Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 275 (2d Cir. 2009) (“The standard for intentional violations is ‘deliberate indifference to the strong likelihood [of] a violation.’”) (quoting

*Bartlett v. N.Y. State Bd. of L. Exam'rs*, 156 F.3d 321, 331 (2d Cir. 1998); *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 263 (3d Cir. 2013) (“[A] showing of deliberate indifference may satisfy a claim for compensatory damages under § 504 of the RA and § 202 of the ADA.”); *Meagley v. City of Little Rock*, 639 F.3d 384, 389 (8th Cir. 2011) (holding that intentional discrimination does not require animus or ill-will to be shown because a strong likelihood that a violation of federally protected rights will occur as a result of their actions is enough).

The Court adopts an animus standard. The Fifth Circuit, for example, has held that in circumstances where the record contains no evidence of “malice, ill-will or efforts . . . to impede” a disabled individual, the court cannot infer intentional discrimination. *See Campbell v. Lamar Inst. of Tech.*, 842 F.3d 375, 380 (5th Cir. 2016) (internal quotations omitted). Interpreting the intentional discrimination standard to require showing less than animus will subject employers to undue burdens, which the ADA was designed to avoid. The ADA specifically states that employers must make reasonable accommodations “unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity.” 42 U.S.C. § 12112(b)(5)(A).

For example, a business may be unable to accommodate a request because it would be too costly and cause the business to fail. If the standard for proving intentional discrimination was deliberate indifference, then a company could be held liable when it simply could not afford the accommodation. As is true here, penalizing small businesses for acting with deliberate indifference runs counter to the plain meaning of the ADA. Plaintiff argues that the ADA was created to ensure equal employment opportunities for people with disabilities and therefore that the lower threshold of deliberate indifference should be the test. However, this Court views Congress’s inclusion of the provision for preventing the imposition of undue burdens on employers as a clear message that a plaintiff must demonstrate more than deliberate indifference to establish intentional discrimination.

## **II. Defendant Fishing Corp. Did Not Act with Animus.**

Plaintiff has not demonstrated that Defendant acted with animus when it failed to provide an accommodation for Plaintiff’s disability. The record suggests that Defendant appreciated having Plaintiff as an employee, and that if Defendant could have accommodated Plaintiff without an undue burden, it would have. This Court sees no other reason for Defendant to exclude Plaintiff besides it being unduly burdensome for Defendant to accommodate Plaintiff’s disability.

As the record demonstrates, Defendant expressed its desire to help. In addition, the fact that Plaintiff worked at the company for years after her injury implies that Defendant held no animus against her. The record suggests that Defendant’s failure to grant an accommodation was the result of its slow-moving

administrative processes, and that the business had undergone significant financial pressures in attempting to stay afloat. *Cf. Carmona-Rivera*, 464 F.3d at 18 (1st Cir. 2006) (finding a lack of evidence in the record indicating that the defendant’s failure to meet the plaintiff’s needs was anything more than “the result of a slow-moving bureaucracy”).

### **CONCLUSION**

For the foregoing reasons, Defendant’s Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

/s/ *A. Barros*

Hon. A. Barros

United States District Judge

Dated: March 7, 2023

Coco, Grove

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTEENTH CIRCUIT

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|                      |   |                      |
|----------------------|---|----------------------|
| Marcia Flanders,     | : | Docket No. 15-243051 |
| Plaintiff-Appellant, | : |                      |
|                      | : | NOTICE OF APPEAL     |
| -against-            | : |                      |
|                      | : |                      |
| Fishing Corp. USA,   | : |                      |
| Defendant-Appellee.  | : |                      |
|                      | : |                      |
|                      | : |                      |

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NOTICE IS GIVEN that Marcia Flanders appeals to the Court of Appeals for the Fourteenth Circuit the granting of Defendant-Appellee's motion for summary judgment in the District of Grove that was rendered on March 7, 2023, and entered on March 8, 2023.

/s/ *Rodolfo A. Martinez*  
Rodolfo A. Martinez, Esq.  
Offices of Rodolfo A. Martinez  
231 Main Street  
Coco, Grove 44234-1111  
Attorney for Plaintiff-Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that a copy hereof has been furnished to Tom E. Sanders, Esq., Attorney for Defendant-Appellee, by electronic service on March 20, 2023.

/s/ *Rodolfo A. Martinez*  
Rodolfo A. Martinez, Esq.  
Attorney for Plaintiff-Appellant

In the  
**United States Court of Appeals**  
**FOR THE FOURTEENTH CIRCUIT**

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DECEMBER TERM 2023  
No. 15-243051

**MARCIA FLANDERS,**

*Plaintiff-Appellant,*

v.

**FISHING CORP. USA,**

*Defendant-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF GROVE

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ARGUED: DECEMBER 12, 2023  
DECIDED: DECEMBER 13, 2023

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Before: STERLING, WILLIAMS, AND BROOKS, *Circuit Judges*.

Sterling, *Circuit Judge*:

**BACKGROUND**

This case arises from Marcia Flanders’ intentional discrimination claim under the Americans with Disabilities Act (“ADA”). Flanders (“Appellant”) alleged that she has been denied equal opportunity of employment because Fishing Corp. USA (“Appellee” or “Fishing Corp.”) failed to provide a reasonable accommodation for her disability. Appellee’s failure to provide Appellant with an accommodation resulted in her functional unemployment as she is an hourly worker and does not receive wages unless she is in-person.

The district court granted Appellee’s motion for summary judgment, finding that 1) animus is the standard by which ADA intentional discrimination claims are



evaluated, and 2) under an animus standard, Appellee did not intentionally discriminate against Appellant.

Appellant appealed the district court's grant of summary judgment in favor of Appellee. Appellant argues that ADA intentional discrimination claims should be reviewed under a deliberate indifference standard, and that under that standard, Appellant established intentional discrimination. This is a case of first impression in the Fourteenth Circuit.

## **DISCUSSION**

### **I. Deliberate Indifference Is the Standard by Which Intentional Discrimination Under the ADA Is Determined.**

Appellant first disputes the district court's standard by which it analyzed intentional discrimination under the ADA. The district court determined that animus should be the standard to measure whether an entity has intentionally discriminated against one of its employees. We disagree.

The purpose of the ADA is to protect the rights of people with disabilities and ensure that they have access to equal employment opportunities. *See* 42 U.S.C. § 12112(a) (Title I of the ADA prohibits discrimination against individuals with disabilities in seeking and maintaining employment). Raising the standard to animus would undermine that purpose.

For example, in *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, the Third Circuit held that the standard was deliberate indifference when a school district misdiagnosed a child as having a disability for many years and the child was treated differently because of it. 729 F.3d 248, 263 (3d Cir. 2013). The Third Circuit held that “a showing of deliberate indifference may satisfy a claim for compensatory damages under . . . the ADA.” *Id.* The Third Circuit reasoned that the Rehabilitation Act (“RA”) and the ADA are “targeted to address ‘more subtle forms of discrimination’ than merely ‘obviously exclusionary conduct.’” *Id.* at 264 (quoting *Chapman v. Pier 1 Imps. (U.S.), Inc.*, 631 F.3d 939, 945 (9th Cir. 2011)). For this reason, the standard to establish intentional discrimination should be deliberate indifference as it protects people from this more subtle form of discrimination.

Applying the standard of deliberate indifference as opposed to one of animus when analyzing claims of intentional discrimination protects individuals against situations in which they are discriminated against without malice or ill-will. This robust protection for equal opportunity is exactly what the ADA sought out to do. The court in *Lacy v. Cook Cnty.* reasoned that the deliberate indifference standard “is sensible based on the clear purpose and evolution of the ADA” and that “Title II was modeled after section 504 [of the Rehabilitation Act of 1973], which was meant to combat discrimination that is ‘most often the product, not of invidious animus, but

rather of thoughtlessness and indifference—of benign neglect.” 897 F.3d 847, 863 (7th Cir. 2018) (quoting *Alexander v. Choate*, 469 U.S. 287, 295 (1985)). Because the ADA was based on Section 504 of the RA, it makes sense to include both of them in our interpretation. “The legislative history of the RA also shows that Congress intended for § 504 to combat intentional discrimination in general, not just discrimination resulting from ‘invidious animus.’” *Liese v. Indian River Cnty. Hosp. Dist.*, 701 F.3d 334, 348 (11th Cir. 2012) (quoting *Choate*, 469 U.S. at 295). Whether discrimination is rooted in ill-will or not, it is still discrimination.

In this case, the accommodations requested are clearly reasonable under the ADA. Appellant simply requested physical access to the establishment where she was employed. Denying her request for accommodation deprived her of an employment opportunity. Therefore, adopting an animus standard could risk perpetuating discrimination. It enables employers to discriminate by being careful not to demonstrate obvious ill-will or malice while still ignoring requests for reasonable accommodations, thus creating a work-around that allows for intentional discrimination.

## **II. Under a Deliberate Indifference Standard, Appellee Intentionally Discriminated Against Appellant.**

We agree with the Seventh Circuit, and the majority of circuits, in holding that “a plaintiff can establish intentional discrimination in a Title II damage action by showing deliberate indifference.” *Lacy*, 897 F.3d at 863. The Seventh Circuit also went further, specifying that it “adopt[ed] the two-part standard applied by most other courts, ‘requiring both (1) ‘knowledge that a harm to a federally protected right is substantially likely,’ and (2) ‘a failure to act upon that likelihood.’” *Id.* (quoting *S.H. ex rel. Durrell*, 729 F.3d at 263).

Under the first part of that two-part standard, Appellee discriminated against Appellant. Appellee knew that Appellant’s federally protected right was being harmed because Appellant repeatedly requested reasonable accommodations. Appellant also satisfied the second part of this two-part standard because Appellee failed to act to remedy the harm by not implementing any of the accommodations Appellant proposed even after repeated complaints.

Under the deliberate indifference standard, Appellant has established that Appellee intentionally discriminated against her. Making a workplace wheelchair accessible is a reasonable accommodation. See 42 USCS § 12111 (9)(A) (“The term ‘reasonable accommodation’ may include making existing facilities used by employees readily accessible to and usable by individuals with disabilities.”). Additionally, Appellee never alleged that it could not provide that reasonable accommodation due to an undue hardship. Therefore, providing that accommodation would not create an undue burden.

It is possible to argue that Appellee's behavior amounts to malice, as it strung Appellant along for over a month. Whether treating someone in a deliberately indifferent way for an extended period of time can amount to animus, however, is a question we decline to answer.

### **CONCLUSION**

For the foregoing reasons, the decision of the district court is **REVERSED**. The district court's order for summary judgment in favor of Appellee Fishing Corp. USA is **VACATED**. The case is **REMANDED** to the district court for subsequent proceedings consistent with this opinion.

IT IS SO ORDERED.

/s/ *Thomas Sterling*  
Hon. Thomas Sterling  
United States Court of Appeals  
For the Fourteenth Circuit

(ORDER LIST: 245 U.S.)

**CERTIORARI GRANTED**

24-372      Marcia Flanders v. Fishing Corp. USA

The petition for a writ of certiorari is granted. The parties will address the following questions:

Whether intentional discrimination claims under the Americans with Disabilities Act ("ADA") require a showing of deliberate indifference or animus.

Whether Petitioner can demonstrate Respondent's intentional discrimination.

EXHIBIT A

**FISHING CORP. USA**

*Quarterly Employee Performance Review*

|  |                              |
|--|------------------------------|
| Employee Name: <b>Marcia Flanders</b>    | Job Title: Cashier           |
| Supervisor/Reviewer: <b>Samuel Jones</b> | Review Period: Jan-June 2022 |

| PERFORMANCE CATEGORY   | RATING  | COMMENTS AND EXAMPLES   |
|--|---|---|
| <b>Quality of Work:</b><br>Work is completed accurately and efficiently with very few errors and minimal supervision                               | <ul style="list-style-type: none"><li>• <del>Exceeds expectations</del></li><li>• Meets expectations</li><li>• Needs improvement</li><li>• Unacceptable</li></ul> | She has been a great cashier for many years and always counts the money left in the box with accuracy.                                |
| <b>Attendance &amp; Punctuality:</b><br>Is at work on time and provides notice in case of an absence   | <ul style="list-style-type: none"><li>• <del>Exceeds expectations</del></li><li>• Meets expectations</li><li>• Needs improvement</li><li>• Unacceptable</li></ul> | Marcia is always at work 15 minutes early and if she asks for a day off (which is rare), she asks in advance.                         |
| <b>Reliability/Dependability</b><br>Completes tasks that are assigned on time and will help out the team when needed.                              | <ul style="list-style-type: none"><li>• <del>Exceeds expectations</del></li><li>• Meets expectations</li><li>• Needs improvement</li><li>• Unacceptable</li></ul> | I trust Marcia very much and she is extremely dependable. I have even had her open up the store on days that I cannot make it to work |
| <b>Communication Skills/<br/>Customer Service Skills:</b><br>Communicates well with the team and customers, and learns from constructive feedback. | <ul style="list-style-type: none"><li>• <del>Exceeds expectations</del></li><li>• Meets expectations</li><li>• Needs improvement</li><li>• Unacceptable</li></ul> | Marcia is very kind and great with customers. No customer has ever complained about her.  |

EXHIBIT B

# REQUEST LETTER TO PROVIDE REASONABLE ACCOMMODATION

Marcia Flanders

Date: October 17, 2022

Subject: Request for Reasonable Accommodations under the Americans with Disabilities Act

Dear Samuel Jones,

I have worked for Fishing Corp. USA for the past seven years as a cashier. I recently found out that Fishing Corp. USA has moved to a smaller location and am requesting that this location be made wheelchair accessible. I have a disability as defined by the Americans with Disabilities Act, and I need this accommodation to perform my job successfully, as it is the only way I can access the building.

I have been working extremely hard at Fishing Corp. USA and am a very loyal employee. If you have alternative suggestions regarding reasonable accommodations, I would be happy to discuss them and work together to find a solution.

If you have any questions about my request or need any additional information, please let me know. I would appreciate a written response soon as I need the work. Thank you.

Sincerely,

Marcia Flanders

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*End of Record*