

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30057
Summary Calendar

WILLIE GRINSTEAD,

Plaintiff-Appellant,

versus

POOL COMPANY OF TEXAS,

Defendant-Appellee.

Appeal from the United States District Court for
the Eastern District of Louisiana
(CA 93-2320 "A")

(June 13, 1994)

Before REAVLEY, HIGGINBOTHAM and EMILO M. GARZA, Circuit Judges.

PER CURIAM:*

Willie Grinstead complains that Pool Company of Texas fired him because of his disability in violation of the Americans with Disabilities Act, 42 U.S.C. § 12102 et seq. Finding that Grinstead produced no evidence showing that Pool even knew of his disability, the trial court granted Pool's motion for summary judgment. We affirm.

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

In July 1988, while working for ODECO, an offshore company, Grinstead sustained a back injury requiring surgery, prompting him to file a worker's compensation claim. Shortly after recovering from surgery, Grinstead began working as an auto mechanic. Feeling that he could handle the physical labor of a derrickhand, the lure of higher pay led Grinstead to apply for a job with Pool.

The job application required Grinstead to list all prior employment, but he intentionally omitted his employment with ODECO. When asked about this employment gap, Grinstead said he was self-employed. Grinstead now justifies this omission on his belief that employers in the offshore industry often discriminate against workers who have experienced a work-related injury. At the bottom of the application, he signed the following certification:

I certify that all the information on this application and accompanying documentation (e.g., resume), if any, is true and complete to the best of my knowledge. I also agree that falsified information or significant omissions of data may disqualify me from further consideration for employment and if employed may result in immediate dismissal.

Pool hired Grinstead, and he worked two seven-day hitches without incident. Prior to his third hitch, Pool received an unsolicited call from a woman claiming to be Grinstead's sister-in-law, according to its phone records. She disclosed that Grinstead failed to list ODECO as a prior employer on his job application and claimed that he intended to file a fraudulent worker's compensation claim against Pool. Pool called

Grinstead's wife and ODECO, both of which verified Grinstead's employment with ODECO from 1987 to 1990. Pool fired Grinstead on February 2, 1993 for failing to list ODECO on his job application.

Grinstead filed a complaint with the Equal Employment Opportunity Commission alleging disability discrimination, but the EEOC dismissed the complaint for failure to "establish a basis for filing under the [ADA]." He then filed this lawsuit, claiming Pool fired him because of his disability. To support his claim, Grinstead offered the affidavits of his sisters-in-law, all stating that they did not call Pool, as well as his own affidavit in which he states that his doctor gave him a 20% disability rating after his surgery. Pool parried with the affidavit of the Vice-President for Human Resources, Richard Sanders, who stated that he had no knowledge of any "disability, limitation or impairment."

To survive a motion for summary judgment, Grinstead must show a disputed issue of material fact. *Celotex Corp. v. Catrett*, 106 S. Ct. 2548, 2553 (1986). In this case, the pivotal inquiry is whether Pool had knowledge of Grinstead's disability. The trial court properly granted Pool's motion for summary judgment because Grinstead offered no summary judgment evidence to support a finding that Pool had any knowledge of his disability. Grinstead was not visibly disabled, and knowledge of Grinstead's previously filed worker's compensation claim is well short of knowing that he is permanently disabled. Grinstead's statement

in his affidavit concerning his 20% disability rating is not enough to nudge him over the summary judgment wall; he must also present evidence showing that Pool knew of his disability, which he did not.

AFFIRMED.