

September 30, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-20166
Summary Calendar

LARRY ROYE,

Plaintiff-Appellant,

versus

SAFETY-KLEEN (DEER PARK), INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CV-2848

Before EMILIO M. GARZA, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Larry Roye appeals the district court's grant of summary judgment to Safety-Kleen (Deer Park), Inc., (SK) in this Americans with Disabilities Act (ADA) case. Roye argues that the district court erred in determining that his Dumping Syndrome did not leave him disabled under the ADA and that he was not qualified to perform the job function of attendance. Roye also argues that the district court erred in granting summary judgment

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

to SK because SK improperly assessed the number of points that were attributable to his absences.

Roye has failed to show that his DS substantially limited one or more major life activities. See Toyota Motor Mfg., Inc., v. Williams, 534 U.S. 184, 197 (2002). Roye has likewise failed to show that the district court erred in concluding that he could not perform one of the major functions of his job. See Hypes v. First Commerce Corp., 134 F.3d 721, 726 (5th Cir. 1998). Roye's contentions concerning the propriety vel non of SK's assessment of points for his absences do not effect the district court's analysis.

Roye has not shown that the district court erred in granting SK's motion for summary judgment. Accordingly, the judgment of the district court is AFFIRMED.