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## Deaf Worker's ADA Claim Advances

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By Jennifer L. Gokenbach 10/2/2015

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A deaf woman rejected for a plasma center technician job may be able to show that her conditional job offer was withdrawn in violation of federal disability discrimination law, the 10th U.S. Circuit Court of Appeals ruled.

Kelly Osborne, who is deaf, applied to work as a plasma center technician (PCT) at BioLife Plasma Services in Cheyenne, Wyo. After two interviews, BioLife made a conditional offer of employment to Osborne pending a background check, drug test and medical screening. Upon reviewing Osborne's medical information involving her hearing impairment, BioLife determined that Osborne could not safely monitor the donor area of the facility because she could not hear the alarms on the plasmapheresis machines, which audibly sound when something goes wrong or requires attention. BioLife rescinded Osborne's conditional offer of employment when she reported for her first day of work, telling her it was due to safety issues.

Osborne filed a lawsuit alleging that BioLife's revocation of her job offer violated the Americans with Disabilities Act (ADA). The U.S. District Court for the District of Wyoming granted summary judgment to BioLife, finding that Osborne failed to identify accommodations that would allow her to perform the essential functions of the PCT position. Both parties appealed.

On appeal, the 10th Circuit reversed the district court and held that Osborne identified a genuine dispute of material fact regarding her ability to perform essential functions of the PCT position with reasonable accommodation. The court found that Osborne proposed four accommodations to allow her to perform the essential functions of a PCT: 1) job restructuring, 2) enhanced alerts on the plasmapheresis machines, 3) paging or call button systems for donors, and 4) a hearing oral interpreter.

There are limited circumstances where a PCT with a hearing impairment may not be aware of an alarm even with reasonable accommodation—for example, if a patient experiences a rare adverse reaction that prevents him or her from using a call button. However, citing the language of the ADA, the court held that an employer relying on a “direct threat” to deny a reasonable accommodation must prove that “an employee, with or without accommodation, is a *significant* risk to health and safety and therefore unqualified for a position.” Because the evidence presented on summary judgment showed only a de minimis risk (a probability of 0.0004 percent), rather than a significant risk, to the health and safety of patients, the 10th Circuit found the district court’s grant of summary judgment in favor of BioLife in the context of the reasonable accommodation standard to be in error.

*Osborne v. Baxter Healthcare Corp.*, 10th Cir., No. 14-8047 (Aug. 24, 2015).

**Professional Pointer:** Employers should consult with experienced employment counsel to evaluate all possible reasonable accommodations under the ADA before refusing an accommodation based on any possible threat to health or safety.

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