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B-203553, December 14, 1983, 63 Comp.Gen. 115

Number: B-203553

Date: 1983-12-14

B-203553, DECEMBER 14, 1983, 63 COMP.GEN. 115

REHABILITATION ACT OF 1973 - HANDICAPPED EMPLOYEES - SPECIAL EQUIPMENT, ETC. - APPROPRIATION AVAILABILITY IN APPROPRIATE CIRCUMSTANCES, THE REHABILITATION ACT OF 1973, AS AMENDED, 29 U.S.C. 701 ET SEQ., AUTHORIZES THE EXPENDITURE OF APPROPRIATED FUNDS FOR SPECIAL EQUIPMENT THAT WILL ENABLE A QUALIFIED HANDICAPPED EMPLOYEE TO PERFORM HIS OR HER OFFICIAL DUTIES. THESE CIRCUMSTANCES WERE NOT PRESENT IN OUR PREVIOUS DECISION, MATTER OF INTERNAL REVENUE SERVICE, 61 COMP.GEN. 634 (1982), AND THE RESULT THEREIN IS HEREBY AFFIRMED. REHABILITATION ACT OF 1973 - HANDICAPPED EMPLOYEES - WHAT CONSTITUTES A HANDICAP A REFERENCE IN 61 COMP.GEN. 634 TO AN EMPLOYEE'S ALLERGIC REACTION TO TOBACCO SMOKE AS A HANDICAP WAS NOT INTENDED TO REFER TO THE TERM AS DEFINED IN THE REHABILITATION ACT OR ITS IMPLEMENTING REGULATIONS. COMP.GEN. 634 IS CLARIFIED.

MATTER OF: EQUAL EMPLOYMENT OPPORTUNITY COMMISSION - SPECIAL EQUIPMENT FOR HANDICAPPED EMPLOYEES, DECEMBER 14, 1983:

THE CHAIRMAN OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) HAS REQUESTED CLARIFICATION OF OUR DECISION AT 61 COMP.GEN. 634 (B-203553, SEPTEMBER 24, 1982). IN THAT DECISION, WE HELD THAT APPROPRIATED FUNDS COULD NOT BE USED TO PURCHASE AN AIR PURIFIER FOR THE OFFICE OF AN INTERNAL REVENUE SERVICE EMPLOYEE WHO SUFFERED FROM AN ALLERGY TO TOBACCO SMOKE. THE CHAIRMAN INDICATES THAT CERTAIN FEDERAL AGENCIES HAVE INTERPRETED THE DECISION AS PROHIBITING THEM FROM EXPENDING GOVERNMENT FUNDS TO COMPLY WITH THE REHABILITATION ACT OF 1973, AS AMENDED, 29 U.S.C. 701 ET SEQ. HE REQUESTS THAT WE REVISE OUR DECISION TO CLARIFY THAT IN APPROPRIATE CIRCUMSTANCES THE REHABILITATION ACT AUTHORIZES THE EXPENDITURE OF APPROPRIATED FUNDS FOR SPECIAL EQUIPMENT AND FURNISHINGS TO ENABLE A HANDICAPPED EMPLOYEE TO PERFORM HIS OR HER OFFICIAL DUTIES. AFFIRM THE RESULT IN 61 COMP.GEN. 634 (1982) BUT CLARIFY ITS BASIS TO POINT OUT THAT THE EMPLOYEE INVOLVED WAS NOT A "QUALIFIED HANDICAPPED INDIVIDUAL" AS DEFINED IN THE REHABILITATION ACT OR ITS IMPLEMENTING REGULATIONS.

IN 61 COMP.GEN. 634, 635, WE STATED THAT:

(IN THE ABSENCE OF SPECIFIC STATUTORY AUTHORITY, THE COST OF SPECIAL EQUIPMENT AND FURNISHINGS TO ENABLE AN EMPLOYEE TO PERFORM HIS OR HER OFFICIAL DUTIES CONSTITUTES A PERSONAL EXPENSE OF THE EMPLOYEE AND IS NOT PAYABLE FROM APPROPRIATED FUNDS.

IN THAT CASE, NEITHER THE VOUCHER THAT WAS QUESTIONED NOR ANY AGENCY SUBMISSION JUSTIFIED THE PURCHASE OF THE AIR PURIFIER AS BEING AUTHORIZED UNDER THE REHABILITATION ACT OF 1973. IT WAS NOT ARGUED THAT THE EMPLOYEE WAS HANDICAPPED, AS THAT TERM IS DEFINED IN 29 U.S.C. 706(7)(B) OR 29 C.F.R. 1613.702. ALTHOUGH

THE EMPLOYEE APPARENTLY SUFFERED FROM ALLERGIC REACTIONS TO TOBACCO SMOKE IN HIS WORK AREA, THE AGENCY MADE NO DETERMINATION THAT HE:

(1) HAS A PHYSICAL OR MENTAL IMPAIRMENT WHICH SUBSTANTIALLY LIMITS ONE OR MORE OF SUCH PERSON'S MAJOR LIFE ACTIVITIES, (2) HAS RECORD OF SUCH AN IMPAIRMENT, OR (3) IS REGARDED AS HAVING SUCH AN IMPAIRMENT. 29 C.F.R. 1613.702(A). WE THUS HAD NO REASON TO CONSIDER WHETHER THE REHABILITATION ACT PROVIDED SPECIFIC STATUTORY AUTHORITY FOR THE PURCHASE OF EQUIPMENT NECESSARY FOR A QUALIFIED HANDICAPPED EMPLOYEE TO PERFORM HIS OR HER OFFICIAL DUTIES. (WE HAVE ALREADY RELIEVED THE ACCOUNTABLE OFFICER OF LIABILITY ON OTHER GROUNDS. B-203553, FEBRUARY 22, 1983.)

WE RECOGNIZE THAT WE CHARACTERIZED THE EMPLOYEE'S ALLERGY AS A HANDICAP AT ONE POINT IN OUR DECISION. 61 COMP.GEN.AT 636. WE WERE, HOWEVER, USING THE TERM IN ITS BROAD SENSE (I.E. A PHYSICAL DISADVANTAGE), RATHER THAN IN ITS NARROWER STATUTORILY DEFINED SENSE (I.E. "A PHYSICAL OR MENTAL IMPAIRMENT WHICH SUBSTANTIALLY LIMITS ONE OR MORE OF (A) PERSON'S MAJOR LIFE ACTIVITIES").

THE EEOC SAYS THAT IN ORDER TO COMPLY WITH SECTIONS 501 AND 505 OF THE REHABILITATION ACT OF 1973, AS AMENDED, (29 U.S.C. 791 (1976); 29 U.S.C. 794A (SUPP. IV, 1980)) AND THE REGULATIONS PROMULGATED PURSUANT THERETO, 29 C.F.R. 1613.704, A FEDERAL AGENCY MAY BE REQUIRED, IN APPROPRIATE CIRCUMSTANCES, TO EXPEND PUBLIC FUNDS TO ACQUIRE OR MODIFY EQUIPMENT, TO PROVIDE READERS OR INTERPRETERS, OR TO MAKE FACILITIES READILY ACCESSIBLE. WE AGREE COMPLETELY. AN AGENCY MAY, WHEN ACTING UNDER THE AUTHORITY OF THE REHABILITATION ACT OF 1973, EXPEND APPROPRIATED FUNDS TO ACCOMMODATE THE PHYSICAL OR MENTAL LIMITATIONS OF A QUALIFIED HANDICAPPED EMPLOYEE OR APPLICANT, AS DEFINED IN THE ACT OR IMPLEMENTING REGULATIONS, UNLESS SUCH ACCOMMODATION WOULD IMPOSE AN UNDUE HARDSHIP ON THE OPERATION OF ITS PROGRAM. OUR DECISION AT 61 COMP.GEN. 634 (1982) WAS NEVER INTENDED TO SUGGEST OTHERWISE IN APPROPRIATE CIRCUMSTANCES.