

No. 15-686

IN THE
Supreme Court of the United States

MICHAEL ABRAMS,

Petitioner,

v.

VITA, INC.,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Ames Circuit

JOINT APPENDIX

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SUPREME COURT OF THE UNITED STATES
ORDER LIST

Certiorari Granted

September 7, 2015

15-686 Abrams v. Vita, Inc.

The petition for a writ of certiorari is granted on the following two questions:

1. Whether the Americans with Disabilities Act requires an employer to reassign an individual with a disability who can no longer perform the essential functions of his current job to a vacant equivalent position for which he is qualified, even though the individual would not have obtained that position under the employer's policy of hiring the most qualified candidate.
2. Whether the Americans with Disabilities Act protects an individual with a disability who uses marijuana for medical purposes under the supervision of a physician and in accordance with state law when the individual's employer takes adverse employment action on the basis of such use.

**UNITED STATES COURT OF APPEALS
FOR THE AMES CIRCUIT**

MICHAEL ABRAMS

v.

VITA, INC.

Docket No. 14-1037

Before Smith, Tyler, and Duddleton, Circuit Judges.

PER CURIAM: This case presents two difficult questions of statutory interpretation involving the Americans with Disabilities Act (ADA). Plaintiff-Appellant Michael Abrams suffered serious spinal cord injuries in a car accident that made him unable to continue working as a so-called Picker in a warehouse operated by Defendant-Appellee Vita, Inc. Abrams sought to be reassigned to a vacant Inventory Associate position as an accommodation for his disability, but he was not selected for that position pursuant to Vita’s policy of hiring the most qualified applicant. Abrams then sought to be reassigned to a vacant Packer position, but he was not selected for that position after it came to light that he uses marijuana for medical purposes in his off-duty hours. Abrams thereafter resigned and filed this suit, alleging two violations of the ADA.

The District Court granted Vita’s motion for summary judgment, reasoning that (1) Vita was not required to reassign Abrams to the Inventory Associate position as a reasonable accommodation because he was not entitled to that position under Vita’s policy of hiring the most-qualified applicant; and (2) Abrams could not pursue an ADA claim based on Vita’s failure to reassign him to the Packer position because his medical marijuana use qualified as an “illegal use of drugs” within the meaning of 42 U.S.C. § 12114, and Vita acted on the basis of that use. Abrams appealed.

We recognize that this appeal implicates weighty public policy issues. But our job is to interpret the statute. We conclude that the statute cannot be stretched to impose liability for Vita's failure to reassign Abrams to the Inventory Associate or Packer positions, and we accordingly affirm the District Court's grant of summary judgment.

I.

The essential facts in this case are not in dispute. Vita, Inc. is a niche online retailer of health foods, vitamins, and other consumer health products. Vita operates a warehouse in Ames City, Ames, from which it fills online orders. Approximately 60 individuals are employed in Vita's warehouse. Vita has an established policy of hiring the most qualified applicant for any vacant position.

Beginning in 2010, Vita employed Michael Abrams as a Warehouse Associate in the "Picker" position. Pickers are responsible for gathering items stored throughout the warehouse in response to online orders. Pickers must move quickly around the warehouse, ascend ladders to reach items stored on high shelves, and crouch or bend down to reach items stored on low shelves.

In October 2012, Abrams was involved in a car crash and sustained a spinal cord injury. Although Abrams recovered from the accident, the injury left him with permanent nerve damage that substantially interferes with his ability to walk at a swift pace, bend down, and climb stairs. The parties agree that Abrams was unable to continue working as a Picker after the accident. Abrams accordingly sought to be reassigned to a different position in the warehouse.

Vita has a "Disability Accommodation Policy" that contemplates reassignment as a possible accommodation and waives certain requirements for transferring between warehouse positions. For example, the policy permits an individual with a disability to submit unlimited

transfer applications, waives the minimum length of employment for seeking a transfer, and provides that an individual with a disability will be hired over an equally qualified non-disabled applicant. However, the policy provides that an employee with a disability is not entitled to reassignment if another applicant for the vacant position is more qualified.

At the time Abrams sought reassignment, Vita had only one vacant position for an “Inventory Associate.” Inventory Associates perform clerical duties, such as data entry. The parties agree that Inventory Associates are equivalent to Pickers with respect to pay and benefits, such that reassignment between those positions would not entail a promotion or demotion. The parties further agree that Abrams met the minimum qualifications for the Inventory Associate position and could perform the essential duties of that position. However, Abrams ultimately was not selected for the Inventory Associate position because he was not the most qualified applicant.

After Vita denied Abrams the Inventory Associate job, he sought reassignment to an open “Packer” position. The Packer position is also equivalent to the Picker position with respect to pay and benefits. Packers prepare items for shipment by packing them in boxes and affixing shipping labels. Abrams once again satisfied the minimum qualifications for the position and could perform the essential duties of a Packer. Moreover, Vita received no other applications for the position. However, in an interview with the Packer Manager—a perfunctory final step in the application process—Abrams volunteered that he uses marijuana for medical purposes. The Packer Manager, who is personally opposed to drug use for any purpose, was unwilling to work with Abrams because of his medical marijuana use, and Vita accordingly declined to reassign Abrams to the Packer position. The parties have stipulated that Vita acted on the basis of

Abrams's medical marijuana use, which they agree was authorized by the Ames Medical Marijuana Act.

For the next several months, Vita had no vacant positions in its warehouse. Because Abrams could no longer afford to take unpaid leave from the company, he resigned.

In January 2013, after receiving a right-to-sue letter from the Equal Employment Opportunity Commission, Abrams filed this suit under the ADA, asserting two claims of employment discrimination based on Vita's decisions not to reassign him to the Inventory Associate or Packer positions. The District Court granted Vita's motion for summary judgment on both claims. The court reasoned that Vita was not required to reassign Abrams to the Inventory Associate position because he was not the most qualified candidate, and that Vita could not be liable under the ADA for declining to reassign Abrams as a Packer because that decision was based on Abrams's illegal drug use.

II.

The District Court had jurisdiction over this suit pursuant to 28 U.S.C. §§ 1331 and 1343. We have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review over a district court's grant of summary judgment and will affirm only if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

III.

Abrams first contends that Vita violated the ADA by failing to grant him a reasonable accommodation for his disability when it declined to reassign him to the Inventory Associate position. The ADA prohibits employers from "discriminat[ing] against a qualified individual on the basis of disability," 42 U.S.C. § 12112(a), and provides that discrimination includes "not making reasonable accommodations to the known physical or mental limitations of an otherwise

qualified individual with a disability,” *id.* § 12112(b)(5)(A). The Act further specifies that:

The term ‘reasonable accommodation’ may include . . . job restructuring, part-time or modified work schedules, *reassignment to a vacant position*, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Id. § 12111(9) (emphasis added).

The parties agree that Abrams is a qualified individual with a disability with respect to this claim, that he suffered an adverse employment action, that he could perform the essential duties of an Inventory Associate, and that he satisfied the minimum qualifications for that position but was not the most qualified applicant for the job. The question in this case accordingly turns on the meaning of the ADA’s reassignment language: Specifically, is an employer who ordinarily adheres to a policy of hiring the most qualified applicant obligated under the ADA to reassign a disabled employee to a vacant position so long as he is qualified for that position, even if he is not the most qualified candidate?

Our sister circuits have split on this issue. In *Huber v. Wal-Mart Stores Inc.*, 486 F.3d 480 (8th Cir. 2007), the Eighth Circuit concluded that “the ADA is not an affirmative action statute and does not require an employer to reassign a qualified disabled employee to a vacant position when such a reassignment would violate a legitimate nondiscriminatory policy of the employer to hire the most qualified candidate.” *Id.* at 483 (footnote omitted). The Eighth Circuit highlighted the potential impact on a disabled employee’s coworkers and stated that its holding was:

bolstered by the Supreme Court’s decision in *U.S. Airways Inc. v. Barnett*, 534 U.S. 391, 406 (2002), holding that an employer ordinarily is not required to give a disabled employee a higher seniority status to enable the disabled employee to retain his or her job when another qualified employee invokes an entitlement to that position conferred by the employer’s seniority system.

486 F.3d at 483-84.

The Seventh Circuit originally agreed that the ADA does not require reassignment in contravention of an employer's bona fide best-qualified policy, observing that:

there is a difference, one of principle and not merely of cost, between requiring employers to clear away obstacles to hiring the best applicant for a job, who might be a disabled person or a member of some other statutorily protected group, and requiring employers to hire inferior (albeit minimally qualified) applicants merely because they are members of such a group.

EEOC v. Humiston-Keeling, Inc., 227 F.3d 1024, 1028-1029 (7th Cir. 2000). However, the Seventh Circuit recently overruled *Humiston-Keeling* and concluded that the Supreme Court's decision in *Barnett* supported that result. *EEOC v. United Airlines, Inc.*, 696 F.3d 760, 763 (7th Cir. 2012). In the court's view, *Barnett* "rejected [an] anti-preference interpretation of the ADA, noting that this argument 'fails to recognize what the Act specifies, namely, that preferences will sometimes prove necessary to achieve the Act's basic equal opportunity goal.'" *Id.* (quoting *Barnett*, 553 U.S. at 397). Other courts, too, have indicated that reassignment is ordinarily required under the ADA even if the disabled employee is not the most qualified candidate for the position. *See Smith v. Midland Brake, Inc.*, 180 F.3d 1154, 1164-1165 (10th Cir. 1999) (en banc); *Aka v. Wash. Hosp. Ctr.*, 156 F.3d 1284, 1304-05 (D.C. Cir. 1998) (en banc) (observing that "the reassignment obligation means something more than treating a disabled employee like any other job applicant").

We have closely considered the arguments on both sides of this issue. Although it is a close question, we are persuaded that Congress did not intend to impose liability under the ADA when an employer who follows a best-qualified selection process fails to reassign a disabled employee to a vacant position because that employee is not the most qualified applicant. Accordingly, we affirm the district court's grant of summary judgment to Vita on this claim.

IV.

Abrams next argues that Vita failed to grant him a reasonable accommodation for his disability in violation of the ADA when it declined to reassign him to the Packer position. The parties agree that Abrams was qualified for that position but did not receive the reassignment because he uses medical marijuana, leading the Packer Manager, who is personally opposed to drug use, to reject the reassignment. Abrams's marijuana use did not violate state law because he holds a registry identification card to use marijuana for medical purposes and he took the drug under his physician's supervision. However, Abrams's marijuana use did violate the federal Controlled Substances Act (CSA), 21 U.S.C. §§ 801 *et seq.*, which prohibits possession of marijuana even when state law authorizes its use to treat a medical condition. *See Gonzales v. Raich*, 545 U.S. 1, 29 (2005).

Vita argues that it is not liable for its failure to reassign Abrams to the Packer position under 42 U.S.C. § 12114. That provision, titled "Illegal use of drugs and alcohol," provides that "[f]or purposes of this subchapter, a qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use." 42 U.S.C. § 12114(a). The ADA defines "illegal use of drugs" as follows:

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. §§ 801 *et seq.*]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

42 U.S.C. § 12111(6)(A).

In this case, Abrams used medical marijuana under the supervision of a licensed health care professional, but that use was not authorized by the CSA. The parties accordingly dispute whether this case fits within the exception for "the use of a drug taken under supervision by a

licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.” On the one hand, the ADA appears to exempt *any* drug use supervised by a physician from the definition of “illegal drug use.” On the other hand, the statute’s phrasing indicates that Congress expected supervised drug use to be authorized by the CSA—which is why the statute then additionally exempts “other” CSA-authorized uses.

The Ninth Circuit recently considered a case raising similar issues to this one and concluded that medical marijuana use constitutes “illegal drug use” under the ADA, even when the use is supervised by a physician and is permitted under state law. *See James v. City of Costa Mesa*, 700 F.3d 394, 397 (9th Cir. 2012) (considering an ADA claim under Title II, which uses identical language). The court noted that the relevant statutory language could reasonably be interpreted to “create[] *two* exceptions to the illegal drug exclusion: (1) an exception for professionally supervised drug use carried out under *any* legal authority; and (2) an independent exception for drug use authorized by the CSA or other provisions of federal law.” *Id.* at 399. But the court also believed that it was reasonable to interpret the language to create “a *single* exception covering all uses authorized by the CSA or other provisions of federal law.” *Id.* Although acknowledging that the statute’s “language lacks a plain meaning and its legislative history is not conclusive,” the court believed that the second interpretation was the better reading of the exception. *Id.* Judge Berzon dissented. In her view, the text and history of the statute favored the first interpretation, under which an individual like Abrams would be entitled to protection. *Id.* at 406 (Berzon, J., dissenting).

We agree with Judge Berzon that “[t]he statutory interpretation issue at the core of this case is an unusually tough one.” *Id.* And we recognize that, as a matter of policy, it might make sense to extend the ADA’s anti-discrimination mandate in circumstances like this, where the

employer has not suggested that off-duty medical marijuana would affect the employee's ability to perform the essential functions of his job and the employee is using marijuana under his doctor's supervision in accordance with state law. *See generally* Russell Rendall, Note, *Medical Marijuana and the ADA: Removing Barriers to Employment for Disabled Individuals*, 22 Health Matrix 315 (2012). However, for the reasons stated by the *James* majority, we believe the ADA is best interpreted to require that physician-supervised drug use be authorized by the CSA. Because Abrams's medical marijuana use was not authorized by the CSA and Vita declined to reassign him to the Packer position based on that drug use, his second ADA claim is barred by 42 U.S.C. § 12114.

V.

For the reasons stated above, the judgment of the District Court is

AFFIRMED

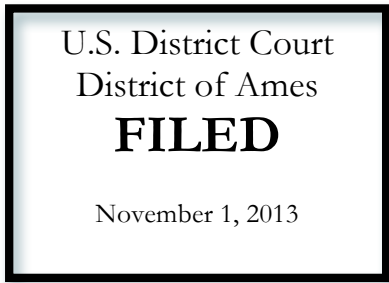
FILED: JANUARY 12, 2015

**IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF AMES**

MICHAEL ABRAMS

v.

VITA, INC.



Civil Action No. _____

COMPLAINT

Plaintiff Michael Abrams hereby sues Vita, Inc., an Ames Corporation, and alleges as follows:

INTRODUCTION

1. This is a suit for relief under the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.* (ADA or Act). Plaintiff, who has been employed in Ames City, Ames by defendant Vita, Inc., brings this action for declaratory, injunctive, and monetary relief based on Defendant's failure to reasonably accommodate his disability by reassigning him to a vacant position for which he was qualified.

JURISIDCTION, VENUE AND TIMELINESS

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1343.
3. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2) because Defendant resides in the District for purposes of venue, and because a substantial part of the events giving rise to Plaintiff's claim occurred in this District.
4. On or about June 10, 2013, Plaintiff filed a timely charge of employment discrimination based on disability against Defendant in the Ames District Office of the U.S.

Equal Employment Opportunity Commission (EEOC). The EEOC issued Plaintiff a Notice of Right to Sue letter on or about October 2, 2013. Plaintiff has timely filed this lawsuit within ninety days of his receipt of the EEOC's Notice of Right to Sue.

PARTIES

5. Plaintiff Michael Abrams is a resident of Ames City, Ames.

6. Defendant Vita, Inc. is an Ames corporation that maintains its principal place of business in Ames City, Ames. Defendant is engaged in an industry affecting commerce and qualifies as an employer within the meaning of Title I of the ADA.

FACTS

7. Defendant is an online retailer of consumer health products, including vitamins, health foods, and over-the-counter medicines. Defendant markets these products on its website, www.VitaEveryDay.com. Defendant owns and operates a warehouse in Ames City, Ames, from which it fulfills orders placed on its website. Defendant employs approximately 60 employees, known as Warehouse Associates, in its Ames City facility.

8. Defendant permits Warehouse Associates to request transfers from one position to another. Defendant has a policy, called the Warehouse Associate Transfer Policy, which sets forth rules governing transfers. The Warehouse Associate Transfer Policy includes a rule stating that Defendant will hire the most qualified applicant for a vacant position.

9. Beginning on or about February 2010, Defendant hired Plaintiff to work as a Warehouse Associate. Plaintiff's job title was "Picker." Pickers are responsible for physically gathering products located throughout the warehouse in order to fulfill online orders. Pickers must work quickly to meet Defendant's volume targets. Pickers must speed walk throughout the

warehouse, climb up and down ladders to reach storage shelves, and bend down to reach items located near the floor.

10. On or about October 13, 2012, Plaintiff was involved in a car accident. Plaintiff sustained a serious spinal cord injury in the accident.

11. On or about October 14, 2012, Defendant placed Plaintiff on a short-term disability medical leave of absence to permit Plaintiff to recover from the car accident.

12. Plaintiff had trouble sleeping after the car accident because lying prone exacerbated the pain from his spinal cord injury. Plaintiff tried a number of medications to relieve the chronic pain. After they proved ineffective, Plaintiff's physician certified that Plaintiff has a debilitating medical condition and that marijuana would mitigate the symptoms of that condition. Based on that statement, Plaintiff obtained a registry identification card permitting him to use marijuana for medical purposes under the Ames Medical Marijuana Act.

13. Since obtaining a registry identification card, Plaintiff has used marijuana for medical purposes in the evening to enable him to sleep. Plaintiff has used medical marijuana only with his physician's approval and supervision. Plaintiff's use of marijuana is authorized under the Ames Medical Marijuana Act and has at all times complied with that Act.

14. On or about February 4, 2013, Plaintiff was cleared by his physician to return to work on a full-time basis. However, Plaintiff's spinal cord injury had caused permanent nerve damage that substantially interfered with his ability to walk quickly, engage in repeated bending movements, or engage in repeated climbing movements.

15. Once Plaintiff was cleared to return to work full time, he was no longer eligible for disability benefits. He accordingly was placed on unpaid leave until he returned to work.

16. Plaintiff's physical limitations prevented Plaintiff from performing the essential job duties of a Picker with or without a reasonable accommodation. Accordingly, on or about February 4, 2013, Plaintiff requested that Defendant reassign him to a vacant position as a reasonable accommodation for his disability.

17. On or about February 5, 2013, Defendant provided Plaintiff with its Disability Accommodation Policy. That policy waives several of the requirements of the Warehouse Associate Transfer Policy. However, the Disability Accommodation Policy does not waive Defendant's rule that it will hire the most qualified applicant for a vacant position.

18. In February 2013, at the time Plaintiff requested reassignment, the only vacant position in the Ames City warehouse was an opening for an Inventory Associate. The Inventory Associate position is equivalent to the Picker position with respect to pay and benefits, so transfer between those two positions would not entail a promotion or a demotion. Inventory Associates are responsible for clerical tasks such as data entry and order management.

19. Plaintiff satisfied the minimum eligibility requirements for the Inventory Associate. Those requirements were: (1) a high school diploma or equivalent; (2) basic math skills; (3) basic computing skills; and (4) no criminal record.

20. Plaintiff would have been able to perform the essential job duties of an Inventory Associate with or without a reasonable accommodation.

21. Plaintiff applied to be an Inventory Associate in February 2013.

22. On or about February 15, 2013, Defendant informed Plaintiff that he had not been selected for the Inventory Associate position because he was not the most qualified candidate.

23. On or about March 6, 2013, Defendant informed Plaintiff that a Packer position had recently become vacant. The Packer position is equivalent to the Picker position with respect to

pay and benefits, so reassignment would not entail a promotion or a demotion. Packers are responsible for preparing items for shipment, including preparing boxes and affixing labels.

24. Plaintiff satisfied the minimum eligibility requirements for the Packer position. Those requirements were: (1) a high school diploma or equivalent; (2) basic math skills; and (3) no criminal record.

25. Plaintiff would have been able to perform the essential job duties of a Packer with or without a reasonable accommodation.

26. Upon information and belief, Plaintiff was the only applicant for the Packer position.

27. On or about March 14, 2013 Plaintiff interviewed for the Packer job with Ron Wideman. Mr. Wideman holds the position of Packer Manager. In the interview, Mr. Wideman asked Plaintiff how he managed his back pain and Plaintiff disclosed that he uses marijuana in the evenings in order to sleep. Plaintiff further stated that his medical marijuana use was supervised by his doctor and authorized by the Ames Medical Marijuana Act.

28. On or about March 18, 2013, Plaintiff was informed that he had not been selected for the Packer position because Mr. Wideman objected to Plaintiff's medical marijuana use.

29. From March 18, 2013, through June 3, 2013, Defendant had no vacant positions in its Ames City warehouse. Because Plaintiff could no longer afford to remain on unpaid leave, he resigned from his employment with Defendant effective June 3, 2013.

CAUSES OF ACTION

COUNT I - ADA VIOLATION

30. Plaintiff realleges Paragraphs 1-29 as if fully set forth herein.

31. Plaintiff is an individual with a disability within the meaning of the ADA. Defendant is a covered entity under the ADA.

32. Defendant was aware of Plaintiff's disability and of Plaintiff's need for a reasonable accommodation. A reasonable accommodation includes "reassignment to a vacant position." 42 U.S.C. § 12111(9)(B).

33. On or about February 15, 2013, Defendant denied Plaintiff a reasonable accommodation when it declined to reassign Plaintiff to the vacant Inventory Associate position.

34. Defendant's decision not to reassign Plaintiff to the vacant Inventory Associate position deprived Plaintiff of equal employment opportunities and otherwise adversely affected his status as an employee.

35. Defendant's unlawful denial of a reasonable accommodation was intentional and done with malice and reckless indifference to Plaintiff's federally protected rights.

COUNT II - ADA VIOLATION

36. Plaintiff realleges Paragraphs 1-35 as if fully set forth herein.

37. Plaintiff is an individual with a disability within the meaning of the ADA. Defendant is a covered entity under the ADA.

38. Defendant was aware of Plaintiff's disability and of Plaintiff's need for a reasonable accommodation. A reasonable accommodation includes "reassignment to a vacant position." 42 U.S.C. § 12111(9)(B).

39. On or about March 18, 2013, Defendant denied Plaintiff a reasonable accommodation when it declined to reassign Plaintiff to the vacant Packer position.

40. Defendant's decision not to reassign Plaintiff to the vacant Packer position deprived Plaintiff of equal employment opportunities and otherwise adversely affected his status as an employee.

41. Defendant's unlawful denial of a reasonable accommodation was intentional and done with malice and reckless indifference to Plaintiff's federally protected rights.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiff respectfully requests that this Court:

- A. Adjudge and declare that Defendant has violated the ADA;
- B. Enjoin Defendant from future ADA violations;
- C. Award Plaintiff monetary relief to make him whole for past and future pecuniary losses resulting from the unlawful employment practices described herein, according to the proof at trial;
- D. Award Plaintiff the costs of litigation, including reasonable costs, expenses, disbursements, and attorneys' fees, pursuant to 42 U.S.C. § 1988;
- E. Award Plaintiff punitive damages for Defendant's malicious and/or reckless conduct in an amount sufficient to discourage such future unlawful acts; and
- F. Grant such other relief as may be just and proper.

JURY TRIAL DEMAND

Plaintiff requests a jury trial on all questions of fact raised by his Complaint.

Dated: November 1, 2013

Respectfully submitted,

Stella Miller

Stella Miller
Hickson and Brussels, LLP
5100 S. Ames Blvd
Ames City, Ames

Attorney for Plaintiff

REVISED STATUTES OF THE STATE OF AMES
The Ames Medical Marijuana Act (excerpts)

Ames Rev. Stat. § 12-100: Findings

(1) Patients and physicians have found marijuana to be an effective treatment for suffering caused by debilitating medical conditions, and therefore, marijuana should be treated like other medicines;

(2) Ames residents suffering from debilitating medical conditions should be allowed to use small amounts of marijuana without fear of civil or criminal penalties when their physicians advise that such use may provide a medical benefit to them and when other reasonable restrictions are met regarding that use;

(3) The Ames Medical Marijuana Act is intended to allow patients with debilitating medical conditions who may benefit from the medical use of marijuana to be able to discuss freely with their physicians the possible risks and benefits of medical marijuana use and to have the benefit of their physician's professional advice; and

(4) The Ames Medical Marijuana Act is intended to make only those changes to existing Ames laws that are necessary to protect patients and their physicians from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for nonmedical purposes.

Ames Rev. Stat. § 12-101: Definitions

* * *

(3) "Debilitating medical condition" means:

(a) Cancer, glaucoma, agitation incident to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to the treatment of these medical conditions;

(b) A chronic or debilitating disease or medical condition that produces one or more of the following: severe and chronic pain, severe nausea, seizures, or severe and persistent muscle spasms.

* * *

(8) "Marijuana" means all parts of any plant of the genus cannabis whether growing or not, and the seeds of such plant.

(9) "Medical use" means the acquisition, possession, cultivation, use, administration, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

* * *

(12) "Physician" means a doctor of medicine who holds a valid and existing license to practice medicine under Ames law.

(13) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(14) "Registry identification card" means a document issued by the Ames Department of Health that identifies a person authorized to engage in the medical use of marijuana.

* * *

(18) "Written certification" means a document dated and signed by a physician, stating that in the physician's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition. The physician must:

(a) Specify the qualifying patient's debilitating medical condition in the written certification.

(b) Sign and date the written certification only in the course of a physician-patient relationship after the physician has completed a full assessment of the qualifying patient's medical history.

(c) Agree in the written certification to supervise the qualifying patient's medical use of marijuana through assessments occurring not less frequently than once per month.

* * *

Ames Rev. Stat. § 12-102: Medical Use of Marijuana

A qualifying patient who possesses a registry identification card may engage in the medical use of marijuana only as justified to mitigate the symptoms or effects of the person's debilitating medical condition. A qualifying patient who possesses a registry identification card and is engaged in the medical use of marijuana in accordance with all rules and regulations under this chapter shall not be subject to criminal or civil sanctions.

Ames Rev. Stat. § 12-103: Registration of qualifying patients

A qualifying patient may apply for a registry identification card by submitting:

(1) Written certification issued by a physician within the sixty days immediately preceding the date of application.

(2) An application, including:

(a) Name, mailing address, residence address, and date of birth of the qualifying patient.

(b) Name, address, and telephone number of the qualifying patient's physician.

(3) The application fee.

* * *

Ames Rev. Stat. § 12-112: Required Notifications

(1) A registered qualifying patient shall notify the Ames Department of Health within ten days of any change in the registered qualifying patient's name or address or if the registered qualifying patient ceases to have his debilitating medical condition.

(2) If the registered qualifying patient's certifying physician notifies the Ames Department of Health in writing that either the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the physician no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marijuana, the qualifying patient's registration card is void upon notification to the qualifying patient.

**IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF AMES**

MICHAEL ABRAMS

v.

VITA, INC.

Civil Action No. 13-7138

JOINT STIPULATION

Plaintiff Michael Abrams and Defendant Vita, Inc. hereby stipulate that for the purposes of summary judgment motions only, the following facts may be taken as true.

1. Plaintiff injured his spinal cord in October 2012 and sustained permanent nerve damage. Plaintiff's medical condition substantially limits his ability to walk quickly, climb up and down stairs, or bend down. Plaintiff's medical condition is a disability under the Americans with Disabilities Act (ADA).
2. Defendant is engaged in an industry affecting commerce. Defendant employs 15 or more employees for each working day in every week of the calendar year. Defendant is a covered employer under the ADA.
3. After he injured his spinal cord, Plaintiff was unable to perform the essential duties of a Picker with or without a reasonable accommodation. By February 2013, Defendant was aware of Plaintiff's disability and his need for a reasonable accommodation.
4. On February 4, 2013, Plaintiff requested reassignment to a vacant position as an accommodation for his disability. When Plaintiff requested reassignment, Defendant had one vacant position for an Inventory Associate. The Inventory Associate position is equivalent to the Picker position with respect to pay and benefits, such that transfer between those two positions would not entail a promotion or demotion.
5. Plaintiff met the minimum qualification standards for the Inventory Associate position. Plaintiff could perform the essential duties of an Inventory Associate with or without a reasonable accommodation.
6. Plaintiff was not the most qualified applicant for the Inventory Associate position.
7. Defendant has a bona fide policy of hiring the most qualified applicant for a vacant position.

8. Plaintiff was not reassigned to the Inventory Associate position because he was not the most qualified applicant. The individual hired for the Inventory Associate position was the most qualified applicant.
9. Defendant did not have another vacant position available until March 6, 2013. On that date, a Packer position became vacant. The Packer position is equivalent to the Picker position with respect to pay and benefits, such that transfer between those two positions would not entail a promotion or demotion.
10. Plaintiff was the only applicant for the Packer position. Plaintiff met the minimum qualification standards for the Packer position. Plaintiff could perform the essential duties of a Packer with or without a reasonable accommodation.
11. In an interview with the Packer Manager, Plaintiff disclosed that he engages in marijuana use to treat the pain arising from his spinal cord injury
12. Plaintiff's medical marijuana use is authorized by the Ames Medical Marijuana Act.
13. Plaintiff engages in the use of medical marijuana only in the evening shortly before bed, when he would be off duty.
14. The Packer Manager has the final say over hiring decisions relating to Packers.
15. Plaintiff was not reassigned to the Packer position due to his medical marijuana use.
16. Plaintiff resigned from his employment with Defendant on June 3, 2013. Other than the Inventory Associate position and the Packer position, Defendant had no vacant positions between February 2013 and June 2013.

Agreed this 26th day of May, 2014

Stella Miller

Attorney for Plaintiff Michael Abrams

Penelope Plum

Attorney for Defendant Vita, Inc.

**EXCERPT FROM DEPOSITION TESTIMONY OF
LILA DENNIS**

STELLA MILLER, Counsel for Plaintiff: Please state your occupation.

LILA DENNIS, Witness: I'm the Director of Human Resources for Vita, Inc.

MILLER: Can you please describe your job duties?

DENNIS: My office is responsible for all HR issues at Vita, such as hiring, payroll, benefits, transfers, and so on.

* * *

MILLER: I'm handing you a document that's been marked as Deposition Exhibit 1. Do you recognize this document?

DENNIS: Yes.

MILLER: Can you describe this document?

DENNIS: This is Vita's Warehouse Associate Transfer Policy. This policy sets forth our rules when an employee wants to transfer from one position to another within the warehouse.

* * *

MILLER: I'm handing you a document that's been marked as Deposition Exhibit 2. Do you recognize this document?

DENNIS: Yes, I do.

MILLER: Can you describe this document?

DENNIS: This is an excerpt from our Disability Accommodation Policy. We put this policy together to inform employees that we

will accommodate their disabilities and to explain how the accommodation process works.

* * *

MILLER: Were you personally involved with Mr. Abrams's request for an accommodation due to his spinal cord injury?

DENNIS: Yes. In February 2013, Mike told us that his doctor had cleared him to return to work and that he was ready to come back, but that he had a number of ongoing physical limitations from his injury that required accommodation.

MILLER: And what were those limitations?

DENNIS: As I recall, his doctor had said that he was substantially limited in his ability to walk quickly or run, to climb, to crouch down or bend over, that kind of thing.

MILLER: And what happened once Mr. Abrams requested an accommodation?

DENNIS: Well, it was apparent to everyone involved that he could no longer work as a Picker, which is what he'd been doing for the company since he started with us. There's just no way to modify that job to eliminate the physical requirements. Pickers have to speed walk through the warehouse, bend down to reach items on lower shelves, climb ladders to reach items up high, and so forth. So we started looking into reassigning Mike to a vacant position.

MILLER: And what positions did you consider reassigning him to?

DENNIS: At the time, we had only one vacant position, for an Inventory Associate. So we told Mike to apply for that position.

MILLER: Did you consider reassigning Mr. Abrams to the Inventory Associate position without requiring him to submit an application?

DENNIS: No. That would have violated our policies. We have a competitive selection process and a strict policy of hiring the most qualified applicant, so no one is automatically reassigned to a position.

MILLER: What happened when Mr. Abrams applied for the Inventory Associate position?

DENNIS: Well, we got six applications for that position. All of the applicants met the minimum qualifications for the job.

MILLER: What were those minimum qualifications?

DENNIS: You have to have a high school diploma or GED, be able to do basic math, be able to work on a computer, and have no criminal record.

MILLER: What happens when all the applicants meet the minimum qualifications?

DENNIS: Then we score them all according to the criteria that have been established for the particular position. For the Inventory Associate, applicants are scored based on their performance reviews, their educational history, and their

performance on a typing test. We hire the candidate with the highest combined score.

MILLER: Do you consider seniority as part of the selection process?

DENNIS: No, seniority is not a factor. We're trying to do this based solely on merit.

MILLER: And to confirm, you did not reassign Mr. Abrams to the Inventory Associate position, correct?

DENNIS: No. He wasn't the most qualified candidate.

MILLER: Do you recall his rank among the six applicants?

DENNIS: He was ranked third. Under our policy, we could only have given him the job if the two people ranked above him declined the position. But the person who was ranked first accepted the position.

MILLER: Did Vita have any concern that Mr. Abrams would not be able to perform the essential duties of an Inventory Associate?

DENNIS: No, we didn't have any concerns like that. I mean, he met the minimum qualifications and he's always had satisfactory performance reviews. But he wasn't the most qualified candidate and so we couldn't give him that job under our policies.

MILLER: Has Vita ever considered making an exception to the policy of hiring the most qualified candidate when an individual with a disability meets the minimum qualification standards and requires reassignment as an accommodation?

DENNIS: No, we don't make exceptions to that policy. Our policy is critical to making sure that we hire the very best person for a position and ensuring that all employees feel that they have been treated fairly in the process. We operate a fairly small warehouse and, in our experience, employee relations are really improved by this merit-based system.

* * *

MILLER: What happened after Vita declined to reassign Mr. Abrams to the Inventory Associate position?

DENNIS: Well, we were hoping we could put him in another vacant position. A few weeks later another position opened up for a Packer, and so we asked him to apply for that.

MILLER: Did Vita consider reassigning Mr. Abrams to the Packer position without requiring him to submit an application?

DENNIS: No. As I've said, we always go through the competitive selection process.

MILLER: And what happened after Mr. Abrams applied for the Packer job?

DENNIS: He was the only applicant and he met the minimum qualifications, so he was interviewed for the position by the Packer Manager.

MILLER: Is it standard to conduct interviews of candidates?

DENNIS: We interview for some positions but not others. It's up to the manager of the relevant division. Ron Wideman, the Packer Manager, always does an interview with the top candidate.

MILLER: And what happened after Mr. Abrams interviewed with Mr. Wideman?

DENNIS: Well, Mike told Ron in the interview that he uses marijuana for his back pain. And Ron has objections to drug use of any kind, even marijuana for medical purposes. So Ron said Mike couldn't be hired as a Packer because of the marijuana use.

MILLER: When you say that Mr. Wideman "said" that, who did he say it to?

DENNIS: He told me after the interview was over that he didn't want Mike working in his department because Mike uses marijuana.

MILLER: Was that the first time you learned of Mr. Abrams's marijuana use?

DENNIS: Yes, it was.

MILLER: Did you follow up with Mr. Abrams about it?

DENNIS: Yes, I did, and he explained that he was using marijuana under a physician's direction and showed me the registration card.

MILLER: And did you convey that to Mr. Wideman?

DENNIS: I did, but Mr. Wideman already knew. Mike had told him during the interview. It didn't matter to him. He still said that he couldn't work with Mike.

MILLER: Did Vita have any concern that Mr. Abrams could not perform the essential duties of the Packer position with or without a reasonable accommodation?

DENNIS: No, I didn't hear any concerns about that. This was a personal objection Ron had to marijuana use. He didn't want to work with someone who uses marijuana.

MILLER: Does Vita have a policy regarding marijuana use by employees?

DENNIS: We prohibit any use of drugs on the premises.

MILLER: Do you have a policy regarding marijuana use when an employee is off duty?

DENNIS: No. We don't have any policy about off-duty use.

MILLER: Was it Vita's position that Mr. Abrams's marijuana use made him ineligible for any job at the warehouse?

DENNIS: No, that wasn't our position. He wasn't in violation of any of our policies. We really wanted to find a job for Mike.

MILLER: So you declined to reassign Mr. Abrams as a Packer even though he met the qualifications for the job, was not in violation of any company policy, and required reassignment as a reasonable accommodation?

DENNIS: We declined to reassign him because he uses marijuana and our Packer Manager said he couldn't work with a drug user.

MILLER: Did you or anybody else at the company have the power to overrule Mr. Wideman and force him to hire Mr. Abrams as a Packer notwithstanding his objection?

DENNIS: To be honest, I don't know because that has never come up. As a matter of practice, we give our managers discretion over who should be on their teams. If a manager says he just can't work with somebody, then we don't force the manager to do so.

MILLER: Has that ever happened before?

DENNIS: Yes, there have been incidents in the past where interpersonal issues or communication issues, for example, led to a manager saying that he or she didn't want to work with a certain employee, and so we either transferred or terminated the employee.

MILLER: But in each of those cases, is it fair to say that the issues negatively influenced the employee's ability to perform the required job duties?

DENNIS: That was certainly the manager's judgment in those cases, and we respected it.

MILLER: Did you consider Mr. Wideman's objection in this case to be reasonable?

DENNIS: Mostly yes. Drug and alcohol use can be touchy subjects, and if a manager isn't comfortable working with

somebody because of substance abuse, then I think that's something we have to respect.

MILLER: Did you hire a different individual for the Packer position?

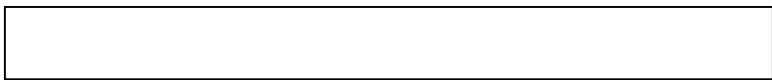
DENNIS: Yes. If we don't fill a position with an internal applicant, we advertise and accept applications from external candidates. We filled the spot with an external applicant.

* * *

MILLER: What happened to Mr. Abrams's request for an accommodation after you declined to reassign him to the Packer position?

DENNIS: We told Mike that we would consider him for any position that he was qualified for that came open. But we didn't have any employee turnover for the next several months. It was a tough economic time and our employees were just staying put. After three months or so, Mike told us that he was resigning his employment.

END OF EXCERPT



**WAREHOUSE ASSOCIATE TRANSFER POLICY
VITA, INC.**

Vita, Inc. is aware that efficiency, productivity, and retention hinge on its employees' satisfaction with their work. Vita accordingly offers and encourages transfer opportunities for Warehouse Associates. Vita will inform Warehouse Associates of transfer opportunities by advertising that a position is open and soliciting applications from current employees. If Vita is unable to fill an open position with a current employee for any reason, Vita reserves the right to fill the position with an external applicant. The following rules govern the Warehouse Associate transfer process.

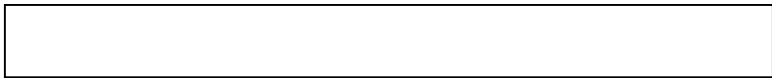
(A) A Warehouse Associate is not eligible to seek a transfer to a vacant position unless the employee has worked in his or her current position for a minimum of six months.

(B) A Warehouse Associate may only submit one application for a vacant position every three months.

(C) A Warehouse Associate is not eligible to apply for a vacant position if the employee is currently subject to disciplinary charges.

(D) A Warehouse Associate must meet the minimum qualifications for a vacant position in order to apply for that position.

(E) A Warehouse Associate is not automatically entitled to transfer to a vacant position. Vita adheres to a policy of hiring the most qualified applicant for any open position based on objective criteria. Selection shall be based on job-related factors, which shall include, but are not limited to, performance history, applicable education and/or training, and required skills, knowledge, and abilities.



DISABILITY ACCOMMODATION POLICY (EXCERPT)
VITA, INC.

Vita, Inc. is committed to ensuring that every employee has equal employment opportunities. Vita will provide employees with a disability with reasonable accommodations to enable them to perform the essential functions of their jobs.

* * *

Section 3: Reassignment

If an employee with a disability is unable to perform the essential functions of the employee's current position with or without a reasonable accommodation, Vita will consider reassigning that employee to a different position. The following rules govern the reassignment process:

(A) Notwithstanding the provisions of the Warehouse Associate Transfer Policy, an employee with a disability who seeks reassignment to a vacant position may submit unlimited applications for such positions.

(B) Notwithstanding the provisions of the Warehouse Associate Transfer Policy, an employee with a disability who seeks reassignment to a vacant position does not need to have worked in his or her current position for any minimum length of time in order to be eligible to submit an application for a vacant position.

(C) In accordance with the Warehouse Associate Transfer Policy, an employee with a disability who seeks reassignment to a vacant position will not be transferred to that position if another applicant is the most qualified candidate. However, if the employee with a disability and another candidate are tied as most qualified, preference will be given to the employee with a disability.

(D) An employee with a disability who seeks reassignment may not request transfer to a position that is not vacant.

(E) An employee with a disability who seeks reassignment may not request that Vita create a new job or eliminate essential functions of an existing vacant job.

**EXCERPT FROM DEPOSITION TESTIMONY OF
RON WIDEMAN**

STELLA MILLER, Counsel for Plaintiff: Please state your occupation.

RON WIDEMAN, Witness: I'm the Packer Manager at Vita, Inc.

MILLER: What are your job duties?

WIDEMAN: I'm the direct supervisor of all the Packers at the warehouse. I oversee all of our day-to-day packing operations and make sure our packing and shipping process is going smoothly.

* * *

MILLER: What is your role in the hiring process for Packers?

WIDEMAN: Well, there's an application process first. HR then comes to me and tells me who has been tentatively selected for the position. And then I interview that person, you know, to get to know the person and welcome them to the team.

MILLER: So is the interview part of the selection process?

WIDEMAN: By the time of the interview, the applicant has already been tentatively selected for the job, but the interview plays a role in the selection process insofar as the person can ultimately not be hired if the interview exposes problems with the applicant. That's rare, though. Usually the interview doesn't play a role in choosing who gets selected, no.

MILLER: In your experience, how many times has an applicant ultimately not been hired based on the interview?

WIDEMAN: That's only happened once, with Mike Abrams.

MILLER: Can you describe what happened during your interview with Mr. Abrams?

WIDEMAN: Mike was tentatively selected to be a Packer and so he interviewed with me. Near the end of the interview, we were talking about an uncle of mine who had severe back pain and I asked Mike whether he had that kind of intense pain and how he managed it. And he said he used marijuana at night sometimes to help him sleep. I hardly knew what to say in response. I couldn't believe that he would use an illegal drug like that.

MILLER: Were you aware that Mr. Abrams's marijuana use was legal under Ames law and that he used marijuana only for medical purposes and under the supervision of his doctor?

WIDEMAN: Yeah, he mentioned all that. But it's still illegal under federal law, as far as I know. And rightly so. I don't approve of drug use of any kind. My father used drugs, and so I have first-hand experience with how substance abuse can tear up a family. Drug use strikes close to home for me.

MILLER: Did you have any reason to believe that Mr. Abrams's medical marijuana use was in violation of company policy or would render Mr. Abrams unable to perform the essential job duties of a Packer?

WIDEMAN: No. I wasn't thinking about it in those terms. But I knew I couldn't have a drug user on my assembly line. I just can't work with a person like that.

END OF EXCERPT

**EXCERPT FROM DEPOSITION TESTIMONY OF
MICHAEL ABRAMS**

PENELOPE PLUM, Counsel for Defendant: Mr. Abrams, can you explain how you obtained a registration card to use medical marijuana?

MICHAEL ABRAMS, Witness: After I recovered from the car accident, I was still in immense pain from my spinal cord injury. I could manage the pain during the day by stretching frequently, alternating between sitting and standing, and so forth. But at night, when I was lying down in bed, the pain was unbearable. It felt like I was being stuck with a million needles at once. I couldn't sleep. I would lie there in anguish, feeling like I wanted to die. My doctor, Dr. Livingston, prescribed a number of different pain medications, but none of them relieved the pain fully and they also caused me to be drowsy and unable to focus during the daytime hours. So Dr. Livingston told me that medical marijuana might help. He assessed me, determined that I met the qualifications and could benefit from medical marijuana, and issued a certification for medical marijuana that enabled me to get the registration card.

PLUM: Please describe your use of medical marijuana.

ABRAMS: I use medical marijuana only at night to help me sleep. I brew it in a tea and take it shortly before bed. It has really changed my life because it enables me to sleep without so

much pain, but the effects wear off by morning so that I'm able to function during the day.

PLUM: Do you take it every night?

ABRAMS: Yes, I do. Otherwise I know the pain will flare up.

PLUM: Do you ever use marijuana during the day?

ABRAMS: No, never. So long as I stay within my physical limitations during the day, I'm able to manage my pain. I only need to use marijuana in the evening when I need to lie down for long periods of time to sleep.

PLUM: Before the car accident, had you ever used marijuana recreationally?

STELLA MILLER, Counsel for Plaintiff: Objection. Relevance.

PLUM: Please go ahead and answer.

ABRAMS: Well, like most kids, I experimented a bit in high school.

PLUM: Is that a yes?

ABRAMS: Yes, I had tried marijuana recreationally before the car accident. But it was a long time ago, and well before I started working for Vita.

PLUM: Do you continue to consult with Dr. Livingston about your marijuana use?

ABRAMS: Yes. He has to reassess me every month to make sure that I still qualify for medical marijuana and am using marijuana in accordance with the medical marijuana program.

* * *

PLUM: Can you please describe the process you went through to seek reassignment to the vacant Packer position?

ABRAMS: Well, once the position became open the HR Department told me to submit an application. I got my application in that same day. When the application period closed, I was told that I was the only applicant and that I would likely be reassigned. They said I just had to go to this interview with the Packer Manager, Ron Wideman, and then the transfer paperwork would be processed.

PLUM: Can you please describe what happened during your interview with Mr. Wideman?

ABRAMS: The interview took place in his office and he was real friendly when I arrived. We talked a bit about the Packer job and his expectations for his employees. Then we were talking about our families and he mentioned that he had an uncle who had back problems like mine. He said he couldn't even imagine living with pain like that. And I told him that living with the pain had become a lot easier once I got the medical marijuana card and was able to sleep better.

PLUM: What happened when you told Mr. Wideman that you use medical marijuana?

ABRAMS: Well, the conversation just stopped. He looked like he was in shock that I'd mentioned marijuana, and I realized maybe

he didn't understand. So I told him that I only use marijuana at night, that it is all worn off by morning, that my doctor oversees the use, and that it is all in accordance with Ames law. He wrapped up the interview a minute or two later. He wasn't acting friendly anymore.

PLUM: Did he say anything to you about your marijuana usage during the interview?

ABRAMS: No, he didn't.

PLUM: What was the next thing that happened with your reassignment request?

ABRAMS: HR contacted me the next day and said that Mr. Wideman had rejected me on his Packer line because I use marijuana. I explained that I have a registry card and use marijuana only at night to manage my pain while I'm sleeping. But HR said that Mr. Wideman had the final say as the Packer Manager. I asked whether this meant I was fired, and they said no because I wasn't in violation of any company policy or anything. They said I just couldn't be a Packer because of the marijuana use and Mr. Wideman's objections to it. They said that I could apply for another position if one became vacant.

PLUM: Is it your understanding that you were denied reassignment to the Packer position solely on the basis of your marijuana use?

ABRAMS: Yes.

PLUM: Did you seek reassignment to any other position after you were denied the Packer job?

ABRAMS: No, I didn't. They didn't have any openings. I waited for several months, but there weren't any vacant positions during that time for me to apply for. I couldn't afford to be without a paycheck any longer, so I told Vita that I was resigning.

END OF EXCERPT

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF AMES**

MICHAEL ABRAMS

v.

VITA, INC.

Civil Action No. 13-7138

**ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Before the Court is Plaintiff’s motion for summary judgment, Defendant’s opposition to that motion, Defendant’s motion for summary judgment, and Plaintiff’s opposition to that motion. Having considered the motions, the case law, and the record evidence, the Court has concluded that Defendant is entitled to summary judgment on both of Plaintiff’s claims.

The Court presumes familiarity with the underlying facts. The parties have stipulated that Plaintiff has a disability within the meaning of the Americans with Disabilities Act (ADA or Act); that Defendant is a covered employer under the Act; that Plaintiff requested reassignment to a vacant Inventory Associate position and then a vacant Packer position as a reasonable accommodation for his disability; that Plaintiff was not reassigned to the Inventory Associate position because he was not the most qualified applicant; and that Plaintiff was not reassigned to the Packer position because it came to light during the selection process that he engages in medical marijuana use.

Defendant is entitled to summary judgment on Plaintiff’s claim that it failed to reasonably accommodate his disability by reassigning him to the vacant Inventory Associate position because Defendant has a policy to hire the most qualified applicant and it is undisputed that Plaintiff was not the most qualified applicant. Although this issue is a matter of first impression in the Ames Circuit, this Court agrees with the Eighth Circuit that “the ADA is not an

affirmative action statute” and “does not require [an employer] to turn away a superior applicant for [a vacant position] in order to give the position to” an individual with a disability. *Huber v. Wal-Mart Stores Inc.*, 486 F.3d 480, 483-84 (8th Cir. 2007).

Defendant is also entitled to summary judgment on Plaintiff’s claim that it failed to reasonably accommodate his disability by reassigning him to the vacant Packer position. It is undisputed that Plaintiff was not reassigned to that position because he engages in medical marijuana use. Although his marijuana use is authorized by the Ames Medical Marijuana Act, it is unlawful under the federal Controlled Substances Act. Plaintiff’s medical marijuana use qualifies as an illegal use of drugs under the ADA. *See* 42 U.S.C. § 12111(6). Plaintiff’s claim is accordingly barred by 42 U.S.C. § 12114(a), which provides that a “qualified individual with a disability shall not include any employee . . . who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.”

Accordingly, Defendant’s motion for summary judgment will be **GRANTED**, and Plaintiff’s motion for summary judgment is **DENIED**. The clerk is directed to issue an appropriate judgment and to close the docket of this case.

Dated: July 29, 2014

E. Gideon Ellison
United States District Court
For the District of Ames

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF AMES**

MICHAEL ABRAMS

v.

VITA, INC.,

Civil Action No. 13-7138

NOTICE OF APPEAL

Plaintiff hereby gives notice that it is appealing the judgment entered on July 29, 2014 in the above-captioned matter to the United States Court of Appeals for the Ames Circuit.

Respectfully submitted,

Michael Abrams

By: *Stella Miller*

Stella Miller
Hickson and Brussels, LLP
5100 S. Ames Blvd
Ames City, Ames

Attorney for Plaintiff

Dated: August 1, 2014