



And The Defense Wins

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DRI members [Lisa Mann](#) and [Alex Walker](#) of **Modrall Sperling** in Albuquerque, New Mexico, recently prevailed in an ADA appeal involving the EEOC. In *EEOC v. Tricore Reference Labs.*, 2012 U.S. App. LEXIS 17200 (10th Cir., August 16, 2012), the Tenth Circuit affirmed the dismissal of the EEOC's case, affirmed the trial court's award of \$140,571.62 in attorneys' fees to TriCore, and awarded TriCore additional attorneys' fees for having to respond to the EEOC's appeal.

The EEOC had filed suit against TriCore in 2009, alleging that the company violated the ADA by failing to provide an employee with a reasonable accommodation and by terminating her employment. However, the employee's job duties required her to be able to stand, walk, balance and kneel—functions that the EEOC admitted she simply could not perform. TriCore nevertheless attempted to accommodate the employee's condition by moving her into a temporary data entry position that did not involve standing, walking, etc. However, the employee committed numerous errors in that specially created position, such that patient safety was being threatened. TriCore then placed the employee on leave and encouraged her to apply for other positions. The employee did not do so, and her employment ended.

The Tenth Circuit upheld the trial court's ruling in favor of TriCore and noted that "TriCore should not be punished for going beyond what it was required by the ADA to do." The Tenth Circuit also affirmed the trial court's award of fees, noting that it was obvious that "the EEOC persisted in litigating this case in spite of clear evidence that TriCore went well beyond ADA requirements in trying to oblige an employee."

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