

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted February 22, 2023*

Decided February 24, 2023

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2299

LATANYA L. JACKSON,
Plaintiff-Appellant,

v.

HUMANA INSURANCE CO.,
Defendant-Appellee.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 18-cv-02413

Franklin U. Valderrama,
Judge.

ORDER

Humana Insurance Company fired LaTanya Jackson for failing to meet the essential requirement of her call-center job—answering customers’ calls—even with an accommodation for her anxiety. She sued under the Americans with Disabilities Act, alleging that Humana discriminated against her because of her disability. The district judge entered summary judgment for Humana, concluding that no reasonable jury

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

could find that Jackson could perform the essential function of her job, even with reasonable accommodations. Therefore, we affirm.

We view the record evidence in the light most favorable to Jackson. *See Parker v. Brooks Life Sci., Inc.*, 39 F.4th 931, 936 (7th Cir. 2022). In July 2014, Humana hired Jackson as a customer-service representative at a call center to assist customers over the phone. Humana's supervisors routinely recorded and monitored these calls. After her initial training, Jackson told supervisors that she was anxious and overwhelmed by the job. About 18 months later, routine call monitoring revealed that Jackson was improperly avoiding calls by routing them back to a queue, placing callers on hold for 30 minutes, hanging up on calls inappropriately, and using too much time after a call to enter data. A supervisor worked with Jackson to improve her performance, and Jackson responded that she was receiving treatment for anxiety that she blamed on management's style, work rules, and (what she perceived as) harassment.

Humana responded with several accommodations for Jackson. A manager coached her on how to perform better, transferred her to another immediate supervisor, and allowed her to combine her lunch time with another work break to create long daily breaks off the phone lasting over an hour. Jackson also could (and did) use intermittent medical leave time when she had an anxiety attack.

Despite these changes, Jackson's poor work continued. She placed calls on hold for long periods, continued to hang up inappropriately, and had above-average times entering data after completed calls. Humana put her on a performance improvement plan, which warned that one more instance of improper phone use was grounds for dismissal. Jackson asked that, instead of the plan, Humana place her temporarily in a job that did not require calls with customers. She based her request on her asserted inability to concentrate and anxiety attacks that occurred at least twice weekly, disabling her from using the phone and requiring 45-minute breaks. The manager denied Jackson's request, citing Jackson's previous sub-par performance in a non-call role despite the past accommodations and Jackson's admitted inability to concentrate.

One month later, Humana fired Jackson, citing three violations of her performance improvement plan: (1) she ended one call prematurely, requiring the customer to call back; (2) she ended another call in the middle of greeting the customer; and (3) she ended a third call before greeting the customer.

Jackson responded with this suit. She alleged that Humana wrongly fired her based on her age and disability, in violation of the Age Discrimination in Employment

Act, *see* 29 U.S.C. §§ 621–34, and Americans with Disabilities Act. *See* 42 U.S.C. §§ 12111–17. The judge dismissed the age claim without prejudice as inadequately pleaded and recruited counsel for her on the disability claim.

Humana later moved for summary judgment. And based on the uncontested facts, the judge concluded that no reasonable jury could find that Jackson was a qualified individual under the ADA because (1) Jackson could not perform the essential functions of her job with or without an accommodation, and (2) she did not provide evidence of an available accommodation.

Now proceeding *pro se*, Jackson appeals, but she does not engage with the district judge’s decision. She repeats her allegations, attaches emails, and states (without substantiating or explaining her assertion) that the judge relied on false evidence. We are mindful of Jackson’s *pro se* status, *see Atkins v. Gilbert*, 52 F.4th 359, 361 (7th Cir. 2022) (citing *Anderson v. Hardman*, 241 F.3d 544, 545–46 (7th Cir. 2001)), but she is still required to comply with Rule 28(a) of the Federal Rules of Appellate Procedure and include an argument with citations to the record and case law explaining why the judge’s decision was incorrect. *Cole v. Comm’r Internal Revenue*, 637 F.3d 767, 772–73 (7th Cir. 2011). We could dismiss her appeal for failing to comply with this rule. *Id.* at 773. Still, we prefer to decide cases on the merits when we can, *Boutros v. Avis Rent A Car Sys., LLC*, 802 F.3d 918, 924 (7th Cir. 2015), and we can do so here.

The judge correctly entered summary judgment for Humana on the ADA claim. Jackson supplied no evidence that could allow a reasonable jury to find that she was a qualified individual under the ADA, a requirement for relief. *See Brooks v. Avancez*, 39 F.4th 424, 433 (7th Cir. 2022). A qualified individual is one who can perform the essential functions of the job either with or without a reasonable accommodation. 42 U.S.C. § 12111(8). It is uncontested that an essential function of Jackson’s job was to handle customers’ calls. Although her twice weekly anxiety attacks necessitated breaks of up to 45 minutes, Humana modified Jackson’s schedule to give her such breaks daily. Yet even with this accommodation (and others, such as job coaching, a new supervisor, and intermittent medical leave), Jackson admittedly remained unable to concentrate and handle the calls. She also does not contest that, by ending three calls improperly while under a performance improvement plan, she violated its terms. Thus, even with a reasonable accommodation, she could not perform the essential function of her call-center job of reliably handling phone calls.

We have considered whether Jackson presented a triable claim that Humana unlawfully refused to grant her a reasonable accommodation of transferring her to a job

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that did not require answering phones. It is true that the ADA may require an employer to reassign a disabled employee to a different position as a reasonable accommodation. *See id.* § 12111(9)(B). But the plaintiff bears the burden to show that a vacant position existed for which she was qualified. *See Severson v. Heartland Woodcraft, Inc.*, 872 F.3d 476, 482 (7th Cir. 2017). Jackson did not do so.

Jackson also faults the judge for dismissing her claim of age discrimination. But her brief on appeal does not explain why the dismissal of that claim without prejudice (which allowed her to replead it to supply allegations that the judge identified as missing) was incorrect. Likewise, she has not explained why she, through her recruited counsel, declined to amend her complaint to supply those allegations. Her undeveloped attack on this ruling therefore is meritless.

AFFIRMED