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NEWS REPORT

Country:	Denmark
Title:	Board of Equal Treatment: Change of conditions of employment by employer
Date:	22 July 2015
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<u>Context</u>	
Issue at stake:	Change of employment conditions by the employer constitutes a dismissal. The burden of proof with regard to reasonable accommodation is on the employer.
Ground of discrimination:	Disability
Source:	National equality body: Board of Equal Treatment Decision No. 34/2015 of 11 March 2015.
Field:	Employment
Applicable law:	Section 1, 2, 2a and 7a of the Act on the Prohibition of Discrimination in the Labour Market etc.

Content

Case: A was a fulltime specialist in a government agency. He was involved in a traffic accident causing severe neck and back injuries. After half a year of sick leave A still had chronic pain, concentration difficulty and fatigue. He was not able to work fulltime and for more than a year he was on partial sick leave being able to work only around 10 hours a week. During that period of time his employer had adjusted A's working tasks, had allowed him to work from home and had exempted him from office meetings.

Nearly two years after the accident, the employer recommended the dismissal of A because of his illness. Negotiations between the parties resulted in a settlement and the fulltime position of A was changed to a part time position (10 hours a week). After the settlement, A complained to the Board claiming that he had been discriminated against on account of his disability.

Decision of the Board: The Board stated that a change of conditions of employment from a fulltime to a part-time position should be put on the same footing as a dismissal. The Board referred to CJEU C-335/2011 (Ring) and C-377/2011 (Skouboe Werge) and concluded that A had a disability encompassed by the Act on the Prohibition of Discrimination in the Labour Market etc. The Board argued that A was in reality dismissed because of sickness absence, which was caused by his neck and back injury. The Board thus concluded that A had established facts that he had been indirectly discriminated against because of his disability. Subsequently the Board assessed that the employer had established adequate adjustments to ease the concrete needs of A, so that A could perform his job. Thus, according to the Board the employer had established the necessary reasonable accommodation for A to be able to function in his position, including shorter working hours. On this basis the Board did not decide in favour of A.

Key points of analysis:

The decision illustrates that a substantial (negative) change of conditions of employment must be regarded as a dismissal.

The decision further illustrates that adjustment of working tasks, permission to work from home and exemption from office meetings as well as reduced working hours can be considered constituting reasonable accommodation. The decision finally illustrates that when the complainant has established facts that indirect discrimination has taken place, the burden will be on the employer to prove that the necessary reasonable accommodation has been established. If the employer in such a case manages to lift this burden of proof, the Board will clear the employer of illegal indirect discrimination because of disability.

Internet link source:

<http://ligebehandlingsnævnet.dk/naevnsdatabase/afgoerelse.aspx?aid=1604&type=Afgoerelse>.