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11-4-2008

## Acker v. Coca Cola N Amer

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NOT PRECEDENTIAL

IN THE UNITED STATES COURT  
OF APPEALS  
FOR THE THIRD CIRCUIT

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NO. 07-4257

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DENNIS C. ACKER,  
Appellant

v.

COCA-COLA NORTH AMERICA

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On Appeal From the United States  
District Court  
For the Eastern District of Pennsylvania  
(D.C. Civil Action No. 06-cv-03670)  
District Judge: Hon. Thomas M. Golden

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Submitted Pursuant to Third Circuit LAR 34.1(a)  
October 30, 2008

BEFORE: SLOVITER, STAPLETON and TASHIMA,\*  
Circuit Judges

(Filed: November 4, 2008)

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\*Hon. A. Wallace Tashima, Senior United States Circuit Judge for the Ninth Circuit, sitting by designation.

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OPINION OF THE COURT

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STAPLETON, Circuit Judge:

Appellant Dennis Acker maintains that appellee Coca-Cola North America (1) in violation of state law, terminated his employment in retaliation for his having “filed worker’s compensation petitions to seek a remedy for . . . injuries” he sustained at work (Appellant’s Br. at 7), (2) failed to accommodate his disability in violation of the ADA, and (3) discriminated against him in violation of the ADA by denying him overtime because of his disability.

The District Court granted summary judgment for Coca-Cola. We will affirm for the reasons set forth in the thorough and persuasive opinion of the District Court. Appellant failed to establish a *prima facie* case of failure to accommodate and did not exhaust his administrative remedies with respect to his overtime claim. Finally, as the District Court concluded, “[t]he undisputed facts reveal that rather than discriminate or retaliate against Plaintiff, Defendant went out of its way to assist Plaintiff by taking Plaintiff for immediate medical attention, promptly reporting the incident to its workers’ compensation carrier, helping Plaintiff through the benefits process and, most

significantly, provided Plaintiff with modified work assignments for nearly six years even though its policies limited Plaintiff to a period of 90 days.” App. at 10-11.

The judgment of the District Court will be affirmed.