

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

UNITED STATES OF AMERICA,
Plaintiff,

v.

C.T. WOODY, JR., SHERIFF, CITY OF
RICHMOND, in his official capacity,
Defendant.

CIVIL NO. 3:16-cv-127

**UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT**

The United States submits this response to Defendant Sheriff C.T. Woody, Jr.'s, motion for summary judgment. The United States submitted its own motion for summary judgment on September 2, 2016.

I. INTRODUCTION

The facts are undisputed: After ten years of decorated service, Emily Hall could no longer serve as a law enforcement officer due to her disability. But she was able and qualified to perform another job in the Sheriff's Office. Instead of hiring Ms. Hall for that job or another civilian job, Defendant Sheriff C.T. Woody, Jr., fired her. Sheriff Woody argues that, as a matter of law, Title I of the Americans with Disabilities Act (ADA) authorized this action. He is wrong.

II. FACTS

The United States does not dispute any of the facts contained in Sheriff Woody's Statement of Undisputed Material facts, except as follows. None of these facts are material, because they do not "affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). They are, however, addressed here in the interests of accuracy and comprehensiveness.

1. The United States disputes that on Ms. Hall's Family and Medical Leave Act (FMLA) form "Dr. Caruso added that Hall's condition . . . required her to work only intermittently or to work on a less than full schedule." Def.'s Mem. at 7. In fact, the complete form reflects that Ms. Hall would have needed to work "intermittently" only in the sense that she may have needed to miss work for occasional doctor's appointments—a total of approximately six per year. Pl.'s Mem. Supp. Summ. J. Mot. Ex. 7, Hall Dep. Ex. 4 at 9 (Woody 722) [hereinafter "Pl.'s Mem."].

2. The United States disputes that "Hall received an interview for the payroll technician position only because Sheriff Woody requested that she be given one," that she "was placed on the interview list only because Sheriff Woody asked the Recruitment Office to give her an interview for the position," and that "[s]he was not on the interview list based on her qualifications or merit." Def.'s Mem. at 10–11. Sheriff Woody has admitted that Ms. Hall was qualified for the Payroll Technician position. He has also admitted that the Sheriff's Office does not interview a candidate for a position unless that individual's application demonstrates that the individual meets the requirements for that position. Pl.'s Mem. Ex. 6, Def.'s First Admis. 12–14.

3. The United States disputes that "Hall did not apply for any other positions at the Sheriff's Office," Def.'s Mem. at 12, to the extent that Ms. Hall advised Sheriff Woody that she wanted to be placed in or considered for any civilian vacancy in the Sheriff's Office. Pl.'s Mem. Ex. 4, Hall Dep. Tr. 86:5–7, 127:4–6 ("I will take anything. I just want to come back and work.") It is undisputed that Ms. Hall did not submit a separate application specific to any position other than Payroll Technician, because Sheriff Woody failed to advise her of other positions and did not advertise most other vacancies that were available during that time. *Id.* Ex.

26, Def.'s Second Admis. 9–13.

4. The United States disputes that “the Sherriff’s Office does not permit an employee to transfer across different job classifications” and that “Hall, as a deputy sheriff, was not eligible to transfer to a civilian position” under the Sheriff’s Office transfer policy, Def.’s Mem. at 13, to the extent that the transfer policy explicitly provides “[t]he Sheriff [] the right to authorize deviations in the transfer process if he/she deems appropriate.” Def.’s Mem. Ex. W at III.F.3.

III. ARGUMENT

Sheriff Woody does not dispute that he could have accommodated Emily Hall by reassigning her to the vacant Payroll Technician position for which she was qualified. Rather, he argues that the ADA did not require him to do so. To reach that conclusion, he avoids the plain text of the statute, mischaracterizes the precedent of the Fourth Circuit and other courts, and argues that reassigning Ms. Hall would have caused an undue hardship by undermining his Office’s policies. These efforts fail.

A. The plain text of the ADA required Sheriff Woody to reassign Emily Hall

Sheriff Woody argues that the ADA did not require him to reassign Ms. Hall, because “reassignment to a vacant position . . . is not mandatory across the board.” Def.’s Mem. at 17. That statement is true but irrelevant. *No* reasonable accommodation is mandatory in *all* circumstances, but *all* reasonable accommodations are mandatory in *some* circumstances. *See* 42 U.S.C. § 12112(b)(5)(A) (prohibiting employers from “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such

covered entity”). Otherwise, the ADA’s reasonable accommodation requirement would have no force. “Reassignment to a vacant position,” *id.* § 12111(9)(B), is mandatory for “an employee who, because of a disability, can no longer perform the essential functions of his/her current position, with or without reasonable accommodation, unless the employer can show that it would be an undue hardship.”¹ Where, as here, the only effective accommodation is reassignment, and it does not pose an undue hardship, the employer must provide it.

Sheriff Woody fails to explain under what circumstances the ADA would *ever* mandate reassignment. He points out that reassignment is not mandated when it requires an employer to violate another employee’s rights under a seniority system, or when it requires an employer to “bump” another employee out of a job. Def.’s Mem. at 17 (citing *EEOC v. Sara Lee Corp.*, 237 F.3d 349, 355 (4th Cir. 2001)). But those factors do not apply here. The Payroll Technician position *was* vacant, and no other employee was entitled to it. In fact, Sheriff Woody hired an external candidate—whom he later fired for insubordination—to fill the position. Pl.’s Mem. Ex. 16.

Sheriff Woody also argues that reassignment is unreasonable when it requires an employer to refrain from recruiting and hiring a more qualified candidate. Def.’s Mem. at 21. In Sheriff Woody’s view, then, the ADA mandates reassignment only when the employee seeking the reassignment *is* the most qualified candidate. But under that view, reassignment is not an “accommodation” at all. If the reassignment provision meant that an employee with a disability could compete for a vacant position and be hired only if she is the most qualified competitor, the term would add nothing to the statute’s protections. *See* 42 U.S.C. § 12112(a) (prohibiting discrimination in “job application procedures [or] hiring”). As several courts have held, “if the

¹ EEOC, No. 915.002, *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act* (2002) [hereinafter “EEOC Guidance”].

reassignment language merely requires employers to consider on an equal basis with all other applicants an otherwise qualified existing employee with a disability for reassignment to a vacant position, that language would add nothing to the obligation not to discriminate, and would thereby be redundant.” *Smith v. Midland Brake, Inc., a Div. of Echlin, Inc.*, 180 F.3d 1154, 1164–65 (10th Cir. 1999) (en banc); *see also Aka v. Washington Hosp. Ctr.*, 156 F.3d 1284, 1304 (D.C. Cir. 1998) (en banc).

To the extent Sheriff Woody suggests that reassignment is ordinarily unreasonable, the Supreme Court has rejected that argument. As the Court assumed in *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002), the fact that Congress explicitly included “reassignment to a vacant position” as an example of a reasonable accommodation means that “*normally* such a request *would* be reasonable within the meaning of the statute.” *Id.* at 403 (citing 42 U.S.C. § 12111(9)) (emphasis added). And once a plaintiff establishes that reassignment is a reasonable accommodation, “the defendant/employer then must show special (typically case-specific) circumstances [such as a seniority system] that demonstrate undue hardship in the particular circumstances.” *Id.* at 401–02. Reassignment is ordinarily a reasonable accommodation, and it was a reasonable accommodation as a matter of law in this case: As Sheriff Woody admits, Ms. Hall was qualified for the Payroll Technician position, the position was vacant, and no other accommodation would have allowed her to remain employed with his organization. The ADA required Sheriff Woody to reassign Ms. Hall.

1. Sheriff Woody mischaracterizes the law of the Fourth Circuit in arguing that reassignment is not required

In arguing that the ADA does not require reassignment, Sheriff Woody relies on a district court case that the Fourth Circuit overruled on this very point. In *Williams v. Avnet, Inc.*, 910 F. Supp. 1124 (E.D.N.C. 1995), the district court accepted the argument urged here by Sheriff

Woody, concluding that “[i]t is never reasonable, under the ADA or any other law, to expect an employer to . . . re-assign employees . . . to accommodate a disabled employee.” *Id.* at 1136.

The Fourth Circuit squarely rejected that contention. “[T]he district court [] erred in suggesting that a qualified ADA plaintiff can never rely on reassignment to a vacant position as a reasonable accommodation.” *Williams v. Channel Master Satellite Sys., Inc.*, 101 F.3d 346, 350 (4th Cir. 1996) (emphasis removed), *abrogation on other grounds recognized in Young v. United Parcel Serv., Inc.*, 784 F.3d 192, 200 (4th Cir. 2015). The Fourth Circuit affirmed the district court, but only on the alternative ground that the plaintiff had failed to establish that she had a disability.²

Sheriff Woody also argues that the Circuit “has explicitly held” that “the duty of reasonable accommodation *does not* encompass a responsibility to provide a disabled employee with alternative employment when the employee is unable to meet the demands of his present position.” Def.’s Mem. at 21 (quoting *Myers v. Hose*, 50 F.3d 278, 284 (4th Cir. 1995)) (emphasis added). But the portion of *Myers* cited by Sheriff Woody is *not* a holding, Pl.’s Mem. at 21, and *Williams* explains why this reading of *Myers* is wrong:

The district court relied on [*Myers*] as supporting its conclusion that reassignment to a vacant position can never be a reasonable accommodation in ADA cases. This conclusion is contrary to congressional direction and is in no way required by our *Myers* decision. *Myers* noted only that a particular accommodation does not become federally mandated merely because an employer “elects to establish it as a matter of policy.”

Williams, 101 F.3d at 350 n.4. Ultimately, “though the Circuit has not expressly overruled *Myers*, it has [] recognized the preference for reassignment as a reasonable accommodation” *Petty v. Freightliner Corp.*, 123 F. Supp. 2d 979, 984 (W.D.N.C. 2000); *see, e.g., EEOC v. Stowe-Pharr Mills, Inc.*, 216 F.3d 373 (4th Cir. 2000); *Craddock v. Lincoln Nat’l Life Ins. Co.*,

² The same is true of another district court case relied upon by Sheriff Woody, *Jackson v. FUJIFILM Mfg. USA, Inc.*, No. 8:09-CV-01328-JMC, 2011 WL 494281 (D.S.C. Feb. 7, 2011), *aff’d on other grounds*, 447 F. App’x 515 (4th Cir. 2011).

533 F. App'x 333 (4th Cir. 2013) (unpublished).³

2. *Most circuits that have considered Sheriff Woody's argument have rejected it*

Most circuits that have considered the question have held that the plain language of the ADA requires an employer to reassign a qualified employee with a disability to a vacant position when the employee needs the reassignment to stay employed, unless the employer can show that the reassignment would cause an undue hardship. *See, e.g., EEOC v. United Airlines, Inc.*, 693 F.3d 760, 765 (7th Cir. 2012) (en banc), *cert. denied*, 133 S. Ct. 2734 (2013); *Smith v. Midland Brake, Inc., a Div. of Echlin, Inc.*, 180 F.3d 1154, 1179 (10th Cir. 1999) (en banc); *Aka v. Washington Hosp. Ctr.*, 156 F.3d 1284, 1305 (D.C. Cir. 1998) (en banc). Sheriff Woody argues that the Second, Sixth, and Eleventh Circuits support his position, but those cases are inapposite.

The Sixth and Eleventh Circuit cases cited by Sheriff Woody are inapposite because the employees in those cases asked their employers to *create* vacancies, which the ADA does not require. *See* Pl.'s Mem. at 19. In *Hedrick v. Western Reserve Care System*, 355 F.3d 444 (6th Cir. 2004), the court concluded that the plaintiff was not entitled to reassignment where the positions she sought were not vacant or "would have constituted a promotion." *Id.* at 458. Sheriff Woody does not dispute that the Payroll Technician position was vacant, Def.'s Mem. at 10, and that it would not have constituted a promotion for Ms. Hall, *see* Pl.'s Mem. Ex. 27, Hall Dep. Ex. 17 (Woody 203). In *Terrell v. USAir*, 132 F.3d 621 (11th Cir. 1998), the Eleventh

³ Sheriff Woody also makes the same mistake as the *Myers* court in citing a pre-amendment Rehabilitation Act case, *Carter v. Tisch*, 822 F.2d 465 (4th Cir. 1987), for the proposition that the ADA does not require reassignment. Def.'s Mem. at 21. But the ADA has required "reassignment to a vacant position" as a reasonable accommodation since it was passed, and the Rehabilitation Act was amended in 1992 to include the same provision. *See Bratten v. SSI Servs., Inc.*, 185 F.3d 625, 633–34 (6th Cir. 1999) ("[P]re-1992 Rehabilitation Act decisions . . . holding that re-assignment is not a reasonable accommodation are no longer good law . . . and *Myers* was wrong to suggest otherwise."); *see also Cravens v. Blue Cross & Blue Shield of Kansas City*, 214 F.3d 1011, 1019 n.4 (8th Cir. 2000) ("*Myers* has been sharply criticized for basing its proposition on case law now apparently superseded by statute.").

Circuit held that the employer “was not required to *create* a part-time position for Plaintiff where all part-time positions had [] been eliminated from the company.” *Id.* at 626. Ms. Hall did not ask or need Sheriff Woody to create a vacancy or new type of position for her. Rather, she requested reassignment to a position that was already vacant.⁴ Neither *Hedrick* nor *Terrell* addresses the circumstances of this case. If anything, *Hedrick* supports the United States’ position, because it recognizes that “an employer *need* only reassign a disabled employee to a *vacant* position.” 355 F.3d at 457 (quoting *Burns v. Coca-Cola Enters., Inc.*, 222 F.3d 247, 257 (6th Cir. 2000) (emphasis added)).

The Second Circuit case cited by Sheriff Woody did not involve reassignment. In *Wernick v. Federal Reserve Bank of New York*, 91 F.3d 379 (2d Cir. 1996), the plaintiff sought a new supervisor as an accommodation after rejecting other accommodations that would have allowed her to stay in her position. *Id.* at 384. The employer in that case met its reasonable accommodation obligation by offering modifications that would have allowed the employee to continue working in her current position. *Id.* at 385; *see Smith*, 180 F.3d at 1169 (calling *Wernick* “inapposite” in a reassignment case). As the United States explained in its summary judgment memorandum, Pl.’s Mem. at 19, reassignment is required only when no other accommodation would allow the employee to remain in her current position.⁵ Sheriff Woody admits that no other accommodation would have allowed Ms. Hall to continue working for him.

⁴ To the extent Sheriff Woody hopes to rely on dicta from *Terrell* suggesting that “Congress, in enacting the ADA, [did not] intend[] to grant preferential treatment for disabled workers,” *id.* at 627, the Supreme Court has rejected that suggestion. “[T]he Act specifies . . . that preferences will sometimes prove necessary to achieve the Act’s basic equal opportunity goal . . . By definition any special ‘accommodation’ requires the employer to treat an employee with a disability differently, *i.e.*, preferentially.” *Barnett*, 535 U.S. at 397.

⁵ EEOC Guidance (reassignment is “the reasonable accommodation of last resort [] required only after it has been determined that . . . there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position”).

See id. Ex. 10, 30(b)(6) Dep. Tr. 113:13–16 (“The only way Emily Hall could return to work would be to return to full capacity in a sworn position or apply for a different position.”).

It is true that the Eighth Circuit has reached the opposite conclusion to the Seventh, Tenth, and D.C. Circuits, but the Eighth Circuit relied almost exclusively on a Seventh Circuit case that is no longer good law. In *Huber v. Wal-Mart Stores, Inc.*, 486 F.3d 480 (8th Cir. 2007), the court adopted the position the Sheriff now urges on the basis that the court “agree[d]” with *EEOC v. Humiston-Keeling, Inc.*, 227 F.3d 1024, 1027–28 (7th Cir. 2000), *overruled by EEOC v. United Airlines, Inc.*, 693 F.3d 760, 765 (7th Cir. 2012) (en banc), *cert. denied*, 133 S. Ct. 2734 (2013). *Humiston-Keeling* has been roundly rejected. “[E]very member of the [Seventh Circuit] in active service approved overruling *Humiston–Keeling*” on the ground that decision “did not survive *Barnett*.” *United Airlines*, 693 F.3d at 761. The only other circuit to apparently agree with the minority position of the Eighth Circuit is the Fifth Circuit, but only in a pre-*Barnett* decision that also should not survive that case. *See Daugherty v. City of El Paso*, 56 F.3d 695, 700 (5th Cir. 1995).

B. Sheriff Woody did not fulfill his ADA obligations by providing Ms. Hall other accommodations that were not effective

Sheriff Woody argues that Ms. Hall was not a “qualified individual” with a disability, *see* 42 U.S.C. § 12112(a) (prohibiting discrimination against “a qualified individual on the basis of a disability”), but that even if she was, he satisfied his ADA obligations to her by providing her with other accommodations. Def.’s Mem. at 24, 26.

Sheriff Woody argues that Ms. Hall was not qualified because she could no longer perform the essential functions of the Deputy Sheriff position. But an individual is “qualified” under the ADA when he or she “satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds *or desires* and, with or

without reasonable accommodation, can perform the essential functions of such position.” 29 C.F.R. § 1630.2(m) (emphasis added). Ms. Hall was qualified for the Payroll Technician position she desired, *see id.* at 12 (“Hall met the minimum requirements” for the position); she was, therefore, a “qualified individual.”

Sheriff Woody next argues that he met his ADA obligation by providing Ms. Hall with accommodations other than reassignment, including leave without pay and an interview for the Payroll Technician position. Def.’s Mem. at 24. But an employer does not satisfy the ADA by offering an employee only part of the accommodation he or she requires. Sheriff Woody could not, for example, refuse to provide a desk that accommodates an employee’s wheelchair simply because he had already provided that employee access to an elevator to get to her desk. Rather, the statute requires employers to provide *effective* accommodations. As the Supreme Court has explained, “[a]n *ineffective* ‘modification’ or ‘adjustment’ will not *accommodate* a disabled individual’s limitations.” *Barnett*, 535 U.S. at 400. By definition, “the word ‘accommodation’ . . . conveys the need for effectiveness.” *Id.* No one disputes that Ms. Hall could not work without the accommodation of reassignment. Therefore any other accommodations Sheriff Woody provided did not alone satisfy the ADA.

Specifically, granting Ms. Hall an interview for the Payroll Technician position alone did not satisfy the reassignment obligation. The plain and ordinary meaning of the word “reassignment” is “placement” or “appointment” into another position. *See Reassignment, Cambridge Essential Am. English Dictionary* (2016) (defining “reassignment” as “the process of giving an employee a different job, or arranging for an employee to work in a different place”); *Reassignment, Oxford English Dictionary* (2016) (defining “reassignment” as “[a]ppointment to a different post or role”). As the EEOC has explained, reassignment does not mean merely

permitting an employee to compete—whether at the application or interview stage—for a vacant position. Instead, “[r]eassignment means that the employee *gets* the vacant position if s/he is qualified for it. Otherwise, reassignment would be of little value and would not be implemented as Congress intended.” EEOC Guidance (emphasis added); *see also United Airlines*, 693 F.3d at 765 (employer policy that granted employees with disabilities preferential treatment in applying for reassignment positions, including a guaranteed interview, did not satisfy ADA reassignment obligation).

C. Reassigning Ms. Hall would not have caused an undue hardship by undermining Sheriff Woody’s internal policies

Sheriff Woody finally argues that the ADA did not require him to reassign Ms. Hall to a vacant position, because doing so would have caused an undue hardship and would have been unreasonable by forcing him to depart from his own, self-imposed personnel policies. Def.’s Mem. at 20–23, 25–26. Not so.

First, and fundamentally, the ADA by its terms *requires* employers to deviate from their policies where necessary to accommodate an employee with a disability. “Were that not so,” the Supreme Court has explained, “the ‘reasonable accommodation’ provision could not accomplish its intended objective.” *Barnett*, 535 U.S. at 397. The ADA compels employers to depart from neutral office rules where necessary to accommodate an employee’s disability. Otherwise,

[n]eutral office assignment rules would automatically prevent the accommodation of an employee whose disability-imposed limitations require him to work on the ground floor. Neutral “break-from-work” rules would automatically prevent the accommodation of an individual who needs additional breaks from work, perhaps to permit medical visits. Neutral furniture budget rules would automatically prevent the accommodation of an individual who needs a different kind of chair or desk. Many employers will have neutral rules governing the kinds of actions most needed to reasonably accommodate a worker with a disability. Yet Congress, while providing such examples, said nothing suggesting that the presence of such neutral rules would create an automatic exemption.

Id. at 397–98 (internal citation omitted).

Like Sheriff Woody, the employer in *Barnett* argued that the ADA requires “only ‘equal’ treatment for those with disabilities,” such that “[i]nsofar as a requested accommodation violates a disability-neutral workplace rule . . . it grants the employee with a disability treatment that other workers could not receive,” and is not required. *Id.* at 397. The Court rejected this logic on the ground that the ADA in fact “specifies . . . that preferences will sometimes prove necessary” under the Act:

By definition any special “accommodation” requires the employer to treat an employee with a disability differently, *i.e.*, preferentially. And the fact that the difference in treatment violates an employer’s disability-neutral rule cannot by itself place the accommodation beyond the Act’s potential reach.

Id. Sheriff Woody argues that requiring him to “abandon [] legitimate and non-discriminatory” employment policies would be unreasonable, or that it would amount to an undue hardship. Def.’s Mem. at 20. But the Supreme Court has squarely rejected this suggestion. *Barnett*, 535 U.S. at 397; *see also Woods v. Boeing Co.*, No. 2:11-CV-02855-RMG, 2013 WL 5308721, at *3–4 (D.S.C. Sept. 19, 2013), *aff’d*, 584 F. App’x 67 (4th Cir. 2014) (“Defendant further asserts that [the requested accommodation] would require it to ‘abandon a legitimate and non-discriminatory company policy,’ which it is not required to do. The United States Supreme Court considered and rejected this argument in [*Barnett*].”).

Second, the record shows that Sheriff Woody repeatedly deviated from his “most qualified” policy and that his transfer policy allowed exceptions.⁶ Sheriff Woody concedes that he merely “attempts” to follow his “most qualified” policy, Def.’s Mem. at 4, and that on

⁶ Sheriff Woody also argues that he was not required to deviate from his policy regarding light duty to accommodate Ms. Hall, but the United States does not argue that Sheriff Woody should have granted Ms. Hall permanent light duty.

multiple occasions, he has deviated from his “policy” by rejecting the candidate ranked highest under his Office’s internal metrics and instead hiring another, less qualified candidate. Pl.’s Mem. Ex. 10, 30(b)(6) Dep. Tr. 69:4–72:13. Sheriff Woody has put forward no evidence or explanation as to why he could not have deviated similarly to accommodate Ms. Hall.

As to the transfer policy, Sheriff Woody argues that his policy did not allow Ms. Hall’s reassignment because an employee can transfer only within his or her existing classification, *i.e.*, from a sworn position to another sworn position, or from a civilian position to a civilian position. But the policy *by its terms* authorizes exceptions to the general practice: The Sheriff has “the *right* to authorize deviations in the transfer process if he[] deems appropriate.” Def.’s Mem. Ex. W at III.F.3 (emphasis added). Thus, “transferring” Ms. Hall to a civilian position would not have violated the policy. Again, Sheriff Woody has put forward no evidence or explanation as to why he could not exercise the right contained in his own policy in order to accommodate Ms. Hall.

Sheriff Woody also points out that Ms. Hall did not submit a formal transfer request, Def.’s Mem. at 23, but this is unremarkable and immaterial: Ms. Hall did not formally seek a “transfer” pursuant to the Sheriff’s policy (which, according to the Sheriff, she would not have received under that policy anyway); she sought reassignment as a reasonable accommodation for her disability. *See Parkinson v. Anne Arundel Med. Cen.*, 79 F. App’x 602, 604–05 (4th Cir. 2003) (unpublished) (“[A] request for accommodation need not . . . formally invoke the magic words ‘reasonable accommodation.’” (quoting *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 313 (3d Cir. 1999))). Sheriff Woody has not pointed to any evidence in the record suggesting that the form of Ms. Hall’s request was unreasonable, or that it caused any hardship to the Sheriff’s Office. *See Taylor*, 184 F.3d at 313 (“What matters under the ADA are not formalisms

about the manner of the request, but whether the employee . . . provides the employer [] enough information . . .”).

Ultimately, Sheriff Woody points to no evidence supporting even the inference that reassigning Ms. Hall would have imposed a hardship on his office, let alone an undue one. His conclusory assertion that requiring him to depart from his own, self-imposed policies would “disrupt” the Sheriff’s Office is fatally undercut by, first, his admission that he can and frequently does depart from his own policies, and, second, a lack of evidence suggesting any actual disruption. *See Anderson*, 477 U.S. at 252 (On a motion for summary judgment, “there must be evidence on which the jury could reasonably find for the [movant]” in order for the movant to prevail.).

IV. CONCLUSION

The parties agree that Ms. Hall requested and required reassignment to a vacant position for which she was qualified as a necessary accommodation for her disability. Sheriff Woody’s argument that this reassignment was unreasonable or would have imposed an undue hardship on his office ignores the plain language of the statute, is unsupported by in- and out-of-circuit precedent, and should be rejected.

Respectfully submitted this 16th day of September, 2016,

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 16th day of September, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to:

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