

# Padding your reasons for firing can build case against you

Daniel McInnis was a full-time instructor until the new college president opted not to renew his contract. The president gave two reasons. But in his zeal to justify those reasons, he may have dug his own grave. A federal appeals court said the reasons could have been a pretext for bias and allowed McInnis to proceed with his case under the Americans with Disabilities Act.

Reason No. 1: A student complained that the instructor was drunk in class. But the college knew that McInnis had slurred speech and an unsteady gait because of an old head injury. McInnis had never requested an accommodation, but that didn't matter.

Even if McInnis didn't meet the ADA definition of disabled, there was evidence that the college considered him disabled. McInnis charged that he was terminated because of his "perceived" disability.

Reason No. 2: The college had received two letters from a banking group complaining about McInnis' performance as director of its joint program with the college. Although McInnis had been removed from that position more than a year before his termination as an instructor, the college president asked the group to write a third letter just before he took action.

The college also sank its own defense through contradictory testimony, false statements to the EEOC and an ADA coordinator's allegation that she was asked to destroy documents. (McInnis v. Alamo Community College District, No. 99-50612, 5th Cir., 2000)

**Advice:** Don't try to get around the true reason for a termination by "papering" an employee's file. Requesting negative feedback on an employee will likely be viewed by a jury as pretextual, retaliatory or both. The only way to avoid this result is to keep accurate feedback on employees and to take quick, appropriate action on that feedback.

In this case, the school might have avoided liability if it had terminated the teacher earlier based on the first two letters. By waiting a year and a half and with no intervening criticism, the decision looked contrived.