

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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**AUG 25 1999**

**PATRICK FISHER**  
Clerk

McARTHUR WHITSON,

Plaintiff-Appellant,

v.

LeFLORE COUNTY BOARD OF  
COMMISSIONERS, aka Board of  
Commissioners of LeFlore County,

Defendant-Appellee.

No. 98-7054  
(D.C. No. 97-CV-123-B)  
(E.D. Okla.)

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**ORDER AND JUDGMENT** \*

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Before **TACHA** , **McKAY** , and **MURPHY** , Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

This appeal arises from the district court's grant of summary judgment in favor of defendant on plaintiff's claims under the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213. Plaintiff claims that defendant violated the ADA because it did not hire him on account of his disability. The district court found that plaintiff did not establish a prima facie case under the ADA because he did not show that defendant failed to hire him because of his disability. *See Butler v. City of Prairie Village* , 172 F.3d 736, 748 (10th Cir. 1999) (setting forth elements of prima facie case under ADA). On de novo review, *see Kaul v. Stephan* , 83 F.3d 1208, 1212 (10th Cir. 1996), we agree that plaintiff's evidence does not establish that he applied for the position, nor does it show that the person who made the statement plaintiff cites as evidence that his disability was the reason he was not hired had any authority to hire for the position. We affirm the grant of summary judgment for substantially the reasons stated in the district court's order dated March 26, 1998. AFFIRMED.

Entered for the Court

Michael R. Murphy  
Circuit Judge