

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-2465

John J. Hartney,

Appellant,

v.

Marvin T. Runyon, Postmaster
General; Postal Service, (U.S.),

Appellees.

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Appeal from the United States
District Court for the
Southern District of Iowa.

[UNPUBLISHED]

Submitted: February 5, 1998
Filed: February 12, 1998

Before McMILLIAN, LOKEN, and MURPHY, Circuit Judges.

PER CURIAM.

John Hartney appeals from the district court's¹ adverse grant of summary judgment in his discrimination action. Hartney brought this suit, litigated under the Rehabilitation Act, 29 U.S.C. § 794(a), after he was denied a position with the United States Postal Service (USPS) as a part-time flexible city carrier in Pella, Iowa, because a contract physician for the Postal Service concluded Hartney could not safely walk

¹The HONORABLE R. E. LONGSTAFF, United States District Judge for the Southern District of Iowa.

more than three miles a day and the position required walking between five and eleven miles each day.

After de novo review, viewing the facts in the light most favorable to the non-moving party, see Bellecourt v. United States, 994 F.2d 427, 430 (8th Cir. 1993) (standard of review), cert. denied, 510 U.S. 1109 (1994), we conclude the district court properly granted summary judgment in favor of the USPS because Hartney did not present any evidence that he was perceived to be disabled. See Wooten v. Farmland Foods, 58 F.3d 382, 386 (8th Cir. 1995); 29 C.F.R. § 1630.2(j)(3)(i); see also Allison v. Department of Corrections, 94 F.3d 494, 497 (8th Cir. 1996) (cases interpreting the Americans with Disabilities Act and the Rehabilitation Act are interchangeable). We take no action on Hartney's "Request for Independent Counsel."

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.