

similarly situated individuals who were treated differently than he. And, even if Roller somehow could establish a *prima facie* case of disability discrimination, summary judgment would still be warranted because GEMS IT terminated Roller's employment for a legitimate, non-discriminatory reason – his performance was steadily declining and he was involved in several incidents of workplace misconduct, culminating in a heated argument with a co-worker and a perceived attempt to run that same co-worker off the road. Roller cannot show that either of these reasons is pretextual. In fact, Roller admitted that his performance was declining and that he engaged in the described instances of inappropriate behavior.

CONCLUSION

For the above-stated reasons, GEMS IT requests that the Court dismiss Roller's Complaint in its entirety with prejudice, award costs and grant any other relief that the Court finds appropriate.

Respectfully submitted this 26th day of October, 2006.



LYNN, JACKSON, SHULTZ & LEBRUN, P.C.
David L. Nadolski
141 N. Main Avenue, Suite 800
P.O. Box 1920
Sioux Falls, SD 57101-3020
Phone: (605) 332-5999
Fax: (605) 332-4249

QUARLES & BRADY LLP
Judith A. Williams-Killackey
Alexis L. Pfeiffer
Admitted pro hac vice
One South Pinckney Street, Suite 600
P.O. Box 2113
Madison, WI 53701-2113
Phone: (608) 283-2446
Fax: (608) 294-4996

Attorneys for Defendant GEMS IT