Recent Case Law Suggests That ADAAA Has Significantly Lowered the Bar For Plaintiffs Alleging Disability

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This past summer, a number of courts decided cases under the ADA Amendments Act ("ADAAA" or the "Amendments Act"), a new law which became effective in 2009.

The Americans with Disabilities Act ("ADA") requires employers to make accommodations for disabled employees. Congress's goal in passing the ADAAA was, in part, to make it easier for an individual seeking protection under the ADA to establish that he or she has a "disability", as defined by that Act. The recent Amendments Act retained the ADA's basic definition of a disability as: (1) a physical or mental impairment that substantially limits one or more major life activities; (2) a record of such an impairment; or (3) being regarded as having such an impairment. However, the Amendments Act greatly expanded the interpretation of "major life activities" to include, for example, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking . . ." as well as the "the operation of a major bodily function, including . . . functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions." The Amendments Act also explicitly states that "an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active."

Before the passage of the ADAAA, many courts held that individuals with illnesses such as epilepsy, multiple sclerosis, cancer, diabetes and hypertension were not substantially limited because their conditions occurred episodically or were in remission. The ADAAA has altered that analysis, and a review of recent case law indicates that courts have substantially lowered the bar for plaintiffs alleging that they are "disabled" under federal law.

In Gibbs v. ADS Alliance Data Sys., No. 10-2421, 2011 U.S. Dist. LEXIS 82540 (D. Kan. July 28, 2011), the court denied defendant's motion for summary judgment and held that carpal tunnel syndrome that is debilitating in one hand may constitute a disability under the ADAAA. The court stated that under the new law, "Congress intended to convey that the question of whether an individual's impairment is a disability under the ADA should *not demand extensive analysis* and that the primary object of attention in cases brought under the ADA should be *whether entities covered under the ADA have complied with their obligations.*"

In Kinney v. Century Services Corporation, No. 10-787, 2011 U.S. Dist. LEXIS 87996 (S.D. Ind. Aug. 9, 2011), plaintiff had isolated bouts of depression, which was debilitating when active, but did not impact her work performance when it was inactive. The district court denied defendant's motion for summary judgment and held that although intermittent depressive episodes was clearly not a disability prior to the ADAAA's enactment, plaintiff's depression raised a genuine issue of fact as to whether she is a qualified individual under the Amendments Act.

In Feldman v. Law Enforcement Assoc., 10 CV 08, 2011 U.S. Dist. LEXIS 24994 (E.D.N.C. Mar. 10, 2011), one plaintiff had episodic multiple sclerosis and the other plaintiff had TIA, or "mini-stroke." The court found that the multiple sclerosis was clearly a disability under the ADAAA, as the statute specifically states that "an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." In addition, the recent EEOC regulations for the Amendments Act specifically list MS as a disability. As to the plaintiff suffering from TIA, the court held that "while the duration of [plaintiff's] impairment may have been relatively short, the effects of the impairment were significant", and therefore, he also alleged sufficient facts at the initial stage of the case.

In Chamberlain v. Valley Health Sys., 10 CV 28, 2011 U.S. Dist. LEXIS 12296 (W.D. Va. Feb. 8, 2011), plaintiff adequately alleged that she was "regarded as" disabled as a result of her visual field defect which made fine visual tasks more difficult. The court denied summary judgment and held that the issue of whether the employer believed that plaintiff's impairment "was both transitory and minor must be decided by a jury" given that plaintiff submitted an affidavit stating that one of her supervisors insisted that plaintiff was completely unable to work as a result of her vision problem.

In Cohen v. CHLN, Inc., 10 CV 514, 2011 U.S. Dist. LEXIS 75404 (E.D. Pa. July 13, 2011), plaintiff alleged that he suffered from debilitating back and leg pain for nearly four months before his termination. The court denied summary judgment and held that under the less restrictive standards of the ADAAA, plaintiff has offered sufficient evidence to raise an issue of fact as to whether he was disabled at the time of his termination. While defendant claimed that his condition was of too short a duration, the court disagreed and found that the ADAAA mandates no strict durational requirements for plaintiffs alleging an actual disability.

In Norton v. Assisted Living Concepts, Inc., 10 CV 91, 2011 U.S. Dist. LEXIS 51510 (E.D. Tex. May 13, 2011), the court denied summary judgment and held that renal cancer qualified as a disability under the ADAAA. The fact that plaintiff's cancer was in remission when he returned to work is of no consequence since there is no dispute that renal cancer, "when active", constitutes a physical impairment under the statute. Moreover, cancer, when active, substantially limits the major life activity of normal cell growth, as defined by the statute and the EEOC regulations regarding the Amendments Act. See also Meinelt v. P.F. Chang's China Bistro, Inc., 10-H-311, 2011 U.S. Dist. LEXIS 57303 (S.D. Tex. May 27, 2011) (denying summary judgment where plaintiff had an operable brain tumor).

Additionally, in a case decided last winter, Lowe v. American Eurocopter, LLC, No. 10 CV 24, 2010 U.S. Dist. LEXIS 133343 (N.D. Miss. Dec. 16, 2010), a court held that obesity may qualify as a disability under the ADAAA. Plaintiff alleged that she was disabled as a result of her weight and that her disability made her "unable to park and walk from the regular parking lot." The court found that because "walking" is specifically listed as a major life activity in the Amendments Act, plaintiff had adequately stated a claim for purposes of Rule 12(b)(6) by asserting that her obesity affected her major life activity of walking.

Since the ADA was first passed in 1990, much of the case law focused on whether a plaintiff was "disabled" for purposes of the statute. These recent cases indicate that those days are over, and courts are going to focus more on the employer's conduct as opposed to plaintiff's condition.

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