

# ADA Case Law Update



JOYCE WALKER-JONES  
SENIOR ATTORNEY ADVISOR  
OFFICE OF LEGAL COUNSEL

SEPTEMBER 18, 2015

## Definition of Disability: Actual

2



## Interacting with Others

3

- Person doesn't't need to "live as a hermit" (**anxiety disorder**): *Jacobs v. NC Admin. Office of the Courts*
- "Getting along with others" is different than "interacting with others" (**ADHD**): *Weaving v. City of Hillsboro*
- Distracting and touching others, infringing on person's personal space is evidence of impaired ability: *Glaser v. Gap* (**autism**)

## Surgery, Limping, and Pain

4

- Limitation doesn't't have to last forever (**surgery for torn tendons, fractured ankle**): *Summers v. Altarum Inst. Corp.*
- Gait dysfunction sufficient to establish disability (**hip replacement surgery**): *EEOC v. St. Joseph's Hosp.*
- Needing prescription pain medication is not enough (**knee surgery**): *Rocco v. Gordon Food Serv.*)

## Diagnoses & Self-Serving Statements

5

- Diagnosis alone is not enough: *McKnight v. Nationwide Better Health Ins* (**asthma**); *Wade v. NY City Dept. of Ed* (**cancer**); *Quarles v. Md. Dept. of Human Res.* (**diabetes**); *Freelain v. Village of Oak Park*; *Sellers v. Deere & Co.* (**anxiety**); *Powell v. Gentiva Serv., Inc.* (**obesity**)
- Neither are self-serving statements: *Jacobs v. York Union Rescue Mission* (**migraine headaches**)

## Pregnancy-Related Complications

6

- Having surgery insufficient to establish disability related to pregnancy: *Oliver v. Scranton Mat'ls*
- Lifting restrictions alone do not constitute a pregnancy-related impairment: *Lang v. Wal-Mart Stores*
- Increased daycare costs is not a pregnancy-related complication: *McCarty v. City of Egan*

## Definition of Disability: Regarded as

7



## Knowledge

8

- Employer did not know about plaintiff's impairment: *Tramp v. Associated Underwriters* (**scheduled knee surgery**); *McNally v. Aztar Indiana* (**depression**)
- Employer knew plaintiff had an impairment when he took FMLA leave but not when he returned to work: *Brodzik v. Contractors Steel*

## Transitory & Minor

9

- Broken bone in hand: *Budhun v. Reading Hosp.*
- Leave of absence to care for son: *Koci v. Central*
- Worker's compensation for frostbitten fingers: *Wilson v. Iron Tiger*

## Coverage Satisfied

10

- Plaintiff told that he was fired because he was not “mentally” able to perform certain tasks and should do on disability: *Puckett v. Bd. of Trs.*
- Police job offer rescinded after post-offer psychological testing: *Cook v. City of Philadelphia*
- Even if plaintiff's injury was minor, employer must also show that it was transitory: *Sherman v. Cty. Of Suffolk*

## Qualified Individual with a Disability

11



## Employer Judgment/Job Descriptions

12

- No evidence that lifting was an essential function: *Demyanovich v. Cadon*
- Genuine issue of material fact as to whether driving a fire truck with emergency lights was an essential function of firefighter position: *Rorrer v. City of Stow*

## Limited Number of Employees

13

- Employer with anxiety disorder asked to be excused from providing customer service at the front counter
- Job description did not state that all deputy clerks had to work at front counter
- Fewer than 15 percent of clerks performed this duty and some never did: *Jacobs v. N.C. Admin. Office of the Courts*

## Time Spent/Consequences of not Performing

14

- There was a “constant potential” that plaintiff may need to drive again: *Hawkins v. Schwan’s Home Serv.*
- Genuine factual dispute as to whether wheeling residents to and from the hair salon was an essential function of a nursing home hairdresser: *Kaufman v. Petersen Health Care*

## Attendance & Work Schedules

15

- Some courts still analyze attendance requirements as essential functions rather than as qualification standards
- Regular and onsite job attendance was an essential function: *EEOC v. Ford Motor* (**resale buyer**); *Taylor-Novotny v. Health Alliance* (**contract specialist**)

## Driving & Travel

16

- Driving was an essential function of doing quality inspections at customers' homes: *Minnihan v. Mediacom*
- Ability to drive a commercial vehicle and obtain DOT medical certification was essential function of facility supervisor: *Hawkins v. Schwan's Home Serv.*
- Genuine issue as to whether driving was essential function of nurse who was prohibited from driving after grand mal seizure: *EEOC v. LHC Group, Inc.*



## Reasonable Accommodation

17



## Notice

18

- Employer had not notice that plaintiff's disruptive behavior was caused by her bipolar disorder: *Walz v. Ameriprise*
- Plaintiff failed to show that her request to use her badge scan to document her arrival was a request for a reasonable accommodation due to her MS: *Taylor-Novtny v. Health Alliance*

## Interactive Process

19

- Each of plaintiff's three supervisors refused to discuss her request for leave: *Jacobs v. N.C. Admin. Office of the Courts*
- Employer offered plaintiff several possible accommodations when a seizure disorder made it impossible for him to drive: *Minnihan v. Mediacom*
- Refusing to provide specific accommodation requested does not constitute bad faith: *EEOC v. Kohl's Dept. Stores*

## Job Restructuring

20

- Departure from informal practice does not make a requested accommodation unreasonable: *Jacobs v. N.C. Admin. Office of the Courts*
- Employer does not have to eliminate an essential function: *Minnihan v. Mediacom*
- However, employer cannot refuse to reassign a marginal function: *Kauffman v. Petersen Health Care*

## Leave

21

- Employer is not required to force an employee to take leave when employee has not asked for it: *Walz v. Ameriprise*
- A request for leave in addition to six months already taken was unreasonable: *Hwang v. Kansas State*

## Job Coach

22

- Grocery store bagger with Down Syndrome was fired for cursing at another employee in front of a customer and coworkers
- Supervisor said that job coach was not necessary and parents did not protest: *Reeves v. Jewel Food*

## Drug and Alcohol Use

23



## Alcohol

24

- Plaintiff sought reinstatement to his commercial motor vehicle drive position after being being released with no restrictions form an alcohol treatment program
- Plaintiff's diagnosis of chronic alcohol dependence demonstrated that he had a "current clinical diagnosis of alcoholism": *Jarvela v. Crete Carrier*

## Drugs

25

- Plaintiffs were terminated/denied employment after testing positive for cocaine
- Court held that they failed to show that employer was motivated by a belief that they were addicted to drugs rather than the belief that they were currently using illegal drugs: *Jones v. City of Boston*

## Direct Threat

26



## Threats of Violence

27

- Plaintiff with a hearing impairment was sent for a FTE after he threatened to put a bomb in co-worker's car, to throw a blanket over a co-worker's head and beat him, to kick in a co-worker's teeth, and to shoot his supervisor's children in the kneecaps
- Court held that even though FTE found the plaintiff fit to work, employer's reason for terminating him was not a pretext for discrimination: *Curley v. City of N. Las Vegas*

## May v. Will

28

- A night warehouse position offered to a plaintiff with significant visual impairments was withdrawn when the company doctor said accommodations would be necessary to mitigate safety risks
- Court held that the district court erred in requiring employer to prove that plaintiff would pose an actual threat rather than proving it had a reasonable belief that he would pose a direct threat: *EEOC v. Beverage Distributors*

## Undue Hardship

29



## Rarely Proven

30

- Insufficient evidence that excusing firefighter who developed monocular vision from driving would cause an undue hardship: *Rorrer v. City of Stow*
- Asking other employees to wheel nursing home residents to and from the salon would not have been that much of an extra burden: *Kauffman v. Petersen Health Care*

## Inquiries and Exams

31



## Follow-up Questions

32

- Plaintiff disclosed a preexisting degenerative disc condition during post-offer exam and was referred to a doctor at a back center
- Plaintiff alleged that ADA does not allow employer to conduct two pre-employment medical examinations
- Court held that EEOC guidance expressly provides that employer may request “more medical information” if medically related: *McDonald v. Webasto Roof Sys.*



## Withdrawal of Offer Must be Based on Disability

33

- Plaintiff disclosed that he had bipolar disorder during post-offer medical exam
- Employer withdrew offer because it could not provide doctor's recommended accommodation (restricting plaintiff from working on safety-sensitive systems)
- Court held that plaintiff had to show that he was screened on the basis of disability: *Wetherbee v. Southern Co.*

## Contact Information

34

Joyce Walker-Jones  
[Joyce.Walker-Jones@eoc.gov](mailto:Joyce.Walker-Jones@eoc.gov)  
(202) 663-7031