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U.S. SUPREME COURT DECIDES FOUR ADA CASES

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The U.S. Supreme Court recently ended its 1998–99 term with four rulings that clarified employers' liability under the Americans with Disabilities Act ("ADA"). In the first case, *Cleveland v. Policy Management Systems Corp.*,¹ the Court made it easier for disabled employees to sue their employer under the ADA while simultaneously seeking or receiving Social Security disability benefits. The other three cases, *Sutton v. United Air Lines, Inc.*,² *Murphy v. United Parcel Service, Inc.*,³ and *Albertsons, Inc. v. Kirkingburg*,⁴ require that impairments be evaluated in their corrected or "mitigated" state to determine whether they are disabilities as defined by the ADA. This bulletin provides a summary of the four Court decisions.

Receipt of Disability Benefits Does Not Bar an Individual From Suing Under the ADA

Carolyn Cleveland worked for Policy Management Systems Corporation ("PMSC") performing telephonic background checks on prospective employees of PMSC's clients. Less than a year after she was hired, Cleveland suffered a stroke which impaired her memory, concentration, and language skills. Weeks after the stroke, she filed an application for Social Security Disability Insurance.⁵ In her application, Cleveland stated that she was "disabled" and "unable to work."

Her condition having improved, Cleveland returned to work approximately three months later. Because she was working, the Social Security Administration denied her request for

1. No. 97-1008 (U.S. Supreme Court, May 24, 1999).

2. No. 97-1943 (U.S. Supreme Court, June 22, 1999).

3. No. 97-1992 (U.S. Supreme Court, June 22, 1999).

4. No. 98-591 (U.S. Supreme Court, June 22, 1999).

5. The Social Security Disability Insurance program provides benefits to a person with a disability so severe that she is "unable to do [her] previous work" and "cannot . . . engage in any other kind of substantial gainful work which exists in the national economy." 42 U.S.C. 423(d)(2)(A).

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disability benefits. Within months of her return to work, PMSC fired Cleveland for poor job performance and then she asked the Social Security Administration to reconsider its decision to deny her disability benefits. In her request for reconsideration, Cleveland stated that she was terminated because she “could no longer do the job” in light of her condition.

Moreover, her treating physician classified her as 100% disabled. The Social Security Administration ultimately awarded Cleveland disability benefits retroactive to the date of her stroke.

While pursuing disability benefits, Cleveland also filed suit against her former employer under the ADA. The ADA prohibits employers from discriminating against a “qualified individual with a disability.” The law defines a “qualified individual with a disability” as one who can perform the essential functions of the job with or without reasonable accommodations.⁶ Cleveland alleged that PMSC had refused to reasonably accommodate her disability by denying her request for training or additional time to complete her work.

The District Court of the Northern District of Texas held that by applying for and receiving disability benefits Cleveland had conceded that she was totally disabled. She was unable to prove that she could perform the essential functions of her job even with reasonable accommodations as required by the ADA, held the court. The Fifth Circuit Court of Appeals affirmed the district court’s ruling, stating: “[T]he application for or receipt of social security disability benefits creates a rebuttable presumption that the claimant or recipient of such benefits is judicially estopped⁷ from asserting that he is a ‘qualified individual with a disability.’”⁸

The Supreme Court agreed to review the *Cleveland* case to settle the issue of whether an application for, or receipt of, disability benefits prevented a claimant from pursuing an ADA claim. In a unanimous decision, the Court held that application for disability benefits does not necessarily foreclose an ADA suit.

Although the same word—“disabled”—is used in the context of both an ADA case and a Social Security Administration claim, coverage under each act requires a separate and distinct analysis. The focus of the ADA is on a person’s ability to perform the essential functions of a particular job, either with or without

6. 42 U.S.C. § 12111(8).

7. Judicial estoppel is an equitable doctrine that applies to prevent a party from asserting a position in a legal proceeding that is contrary to a position taken in the same or some earlier proceeding.

8. *Cleveland v. Policy Management System Corp.*, 120 F.3d 513, 518 (5th Cir. 1997).

reasonable accommodation. On the other hand, the Social Security Administration evaluates a variety of factors when determining whether a person is disabled. These factors include not only the individual’s physical condition, but also age, education, and work experience.

Although there appears to be a conflict between what a claimant must assert to qualify for Social Security disability benefits, namely, “I am too disabled to work,” and what she must assert to establish she is qualified under the ADA, “I am able to perform the essential functions of the job with or without a reasonable accommodation,” the Court held that this tension is not so great that an ADA suit should be barred simply because a claimant has sought disability benefits.

As an example of a situation where a Social Security disability claim and an ADA claim may co-exist, the Court cited a scenario in which an employer provides a reasonable accommodation to enable an employee to perform the job’s essential functions. The Court noted that the Social Security Administration does not consider the possibility of reasonable accommodation when determining whether an individual is disabled. Additionally, the Social Security Administration does not evaluate the subtle nuances of each individual’s impairment and ability to perform a particular job. Therefore, an individual might qualify for Social Security disability under the agency’s administrative rules and yet remain capable of performing the essential functions of a job. Finally, an individual’s condition could change over time so that a statement about the disability made at the time of the application for benefits may not accurately reflect the person’s abilities at the time of the relevant employment decision.

For the foregoing reasons, the Court held that although statements made on an application for disability benefits are relevant in an ADA case, they are not determinative. In order to survive a dispositive motion and proceed to trial, a plaintiff must offer a sufficient explanation as to why the assertion of “total disability” to the Social Security Administration is consistent with the allegation that he or she is a “qualified individual with a disability” under the ADA.

Impairments Must be Evaluated in Their “Mitigated” or Corrected State

The issue in the remaining three ADA cases heard by the Supreme Court was whether measures that mitigate or correct an individual’s impairment should be considered when assessing whether the individual is disabled under the Act. The ADA defines “disability”

as a physical or mental impairment that substantially limits a major life activity.⁹ Additionally, persons who have a record of or are regarded as having such an impairment are also covered by the Act.¹⁰ Disagreeing with the EEOC¹¹ and the majority of appellate courts that have addressed this issue,¹² the Supreme Court held that individuals must be assessed in their mitigated state.

Sutton involves severely myopic twin sisters with uncorrected visual acuity of 20/200 or worse, but 20/20 vision with the use of glasses or contact lenses. Both applied for positions as commercial airline pilots with United Air Lines but were rejected because they did not meet United's minimum vision requirement of uncorrected visual acuity of 20/100 or better. They filed suit in the United States District Court for the District of Colorado, alleging that United had discriminated against them on the basis of their disability, or alternatively, because it regarded them as having a disability.

The District Court dismissed the plaintiffs' complaint, holding that they were not substantially limited in any major life activity and therefore, were not disabled within the meaning of the ADA. The trial court also determined that the plaintiffs had not established that United regarded them as disabled inasmuch as they were only foreclosed from working in the position of commercial airline pilot with United and not from a broad class of jobs. The Tenth Circuit Court of Appeals agreed that the ADA did not apply because the plaintiffs were not substantially limited in a major life activity and therefore, affirmed the District Court's decision.¹³ In affirming the trial court decision, the Tenth Circuit expressly acknowledged that its holding

9. 42 U.S.C. § 12102(2)(A)

10. 42 U.S.C. § 12102(2)(B),(C)

11. The EEOC issued an "Interpretive Guidance" which provides that "the determination of whether an individual is substantially limited in a major life activity is made on a case by case basis, without regard to mitigating measures such as medicines, or assistive or prosthetic devices." 29 C.F.R. pt. 1630, App. § 1630.2(j)(1998)

12. See, e.g., *Bartlett v. New York State Bd. of Law Examiners*, 156 F.3d 321, 329 (2nd Cir. 1998) (holding self-accommodations cannot be considered when determining a disability), *cert. pending*, No. 98-1285; *Baert v. Euclid Beverage, Ltd.*, 149 F.3d 626, 629-30 (7th Cir. 1998) (holding disabilities should be determined without reference to mitigating measures); *Matczak v. Frankford Candy & Chocolate Co.*, 136 F.3d 933, 937-938 (3rd Cir. 1997) (same); *Arnold v. United Parcel Service, Inc.*, 136 F.3d 854, 859-866 (1st Cir. 1998) (same)

13. *Sutton v. United Air Lines*, 130 F.3d 893 (10th Cir. 1997).

was directly contrary to the EEOC's interpretive guidelines and the decisions of other circuits.¹⁴

Similarly, in *Murphy v. United Parcel Service*, the District Court of Kansas held that an employee with high blood pressure was not covered by the ADA because his condition was controlled with medication and therefore, his impairment did not substantially limit a major life activity. The Tenth Circuit affirmed this decision.

Vaughn Murphy was employed by United Parcel Service ("UPS") as a mechanic. He had suffered with hypertension since the age of 10 and used medication to control his condition. With the medication, Murphy was able to function normally.

Murphy's position with UPS required him to drive commercial motor vehicles. In order to drive these vehicles, he had to satisfy certain Department of Transportation ("DOT") health requirements. One requirement is that a driver of a commercial vehicle have no clinical diagnosis of high blood pressure likely to interfere with his or her ability to safely operate the vehicle. When Murphy was unable to obtain a medical certification from the Department of Transportation because of his high blood pressure, UPS terminated his employment. Murphy sued UPS for discriminating against him because of his disability. As in *Sutton*, the issue was whether Murphy's impairment should be evaluated in its medicated state.

In holding that impairments should be evaluated in their medicated or corrected state, the U.S. Supreme Court relied on three separate provisions of the ADA. The Court reasoned that because the phrase "substantially limits" appears in the statute in present indicative verb form, it requires that a person be presently—not potentially or hypothetically—substantially limited in a major life activity in order to establish that a disability exists. Second, relying on statutory language requiring that disabilities be evaluated "with respect to an individual,"¹⁵ determining whether a disability exists requires an individualized, case-by-case analysis. According to the Court, evaluating cases without regard to corrective measures would conflict with this provision because all persons having a similar impairment would be treated as members of a group rather than as unique individuals. Finally, the Court relied heavily on a Congressional finding that 43 million Americans have disabilities¹⁶ to support its position that conditions should be evaluated without regard to

14. *Id.* at 901.

15. 42 U.S.C. § 12102(2).

16. In enacting the ADA, Congress found that "some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older." 42 U.S.C. § 12101(a)(1).

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corrective measures. The Court reasoned that Congress could not have intended to include within the ADA's purview all persons with correctable impairments because if so, the number of persons with disabilities would have exceeded 160 million.

The Court stressed that regardless of the use of corrective devices, the inquiry must be whether an individual is substantially limited in a major life activity because of a physical or mental impairment. If this can be answered affirmatively, the person is disabled as defined by the ADA.

The plaintiffs in *Sutton* and *Murphy* alleged alternatively that they were "regarded as" persons with disabilities and thus, protected by the ADA. According to the Court, there are two ways individuals may be regarded as having a disability: (1) an employer mistakenly believes that a person has a physical impairment that substantially limits one or more major life activities; and (2) an employer believes that an actual, nonlimiting impairment substantially limits one or more major life activities. The plaintiffs alleged that United and UPS mistakenly believed that their physical impairments substantially limited them in the major life activity of working. The Court rejected this argument, holding that the statutory phrase "substantially limits" requires, at a minimum, that plaintiffs be unable to work in a broad class of jobs and that the inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working. Consequently, the Court held that the plaintiffs' inability to work as a global airline pilot and as a mechanic requiring DOT certification was insufficient to establish a case under the ADA's "regarded as" theory.

Albertsons, Inc. v. Kirkingburg involved Hallie Kirkingburg, a commercial truck driver with an uncorrectable condition which left him with 20/200 vision in one eye and thus effectively, monocular vision. DOT regulations require that commercial truck drivers have corrected distant visual acuity of at least 20/40 in each eye and distant binocular vision of at least 20/40. Kirkingburg was hired as Albertsons' transportation manager after his doctor erroneously certified that he met the DOT vision standard. When his vision was later assessed correctly, Kirkingburg was unable to get the necessary certification and was fired. Although he applied for and received a waiver of the vision requirements from DOT, Albertsons refused to rehire him.

Kirkingburg sued Albertsons, claiming that his termination violated the ADA. Albertsons argued that Kirkingburg was not qualified to perform his job with or without reasonable accommodation and the District Court agreed. Concluding that because he could not meet the basic DOT vision standards, Kirkingburg was not qualified without an accommodation, the court

ruled in favor of Albertsons. The trial court discounted the waiver program and said that it was not required as a reasonable accommodation because of its novelty. The Ninth Circuit Court of Appeals reversed, holding that Albertsons could not use compliance with a government regulation as the justification for its vision requirement because the waiver program, which Albertsons disregarded, was a "lawful and legitimate part of the DOT regulatory scheme."¹⁷ Moreover, the appeals court found that Kirkingburg's monocular vision constituted a disability because "the manner in which he sees differs significantly from the manner in which most people see."¹⁸

In deciding this case, the Supreme Court first addressed whether Kirkingburg was an individual with a disability. The Court disagreed with the Court of Appeals finding that he was disabled for three reasons. First, a mere difference in the way the plaintiff sees does not necessarily amount to a condition that substantially limits him in a major life activity. Second, the appeals court failed to take account of Kirkingburg's ability to compensate for his visual impairment by subconscious adjustments to the manner in which he saw. Just as eyeglasses, medication and other artificial aids for correcting an impairment must be taken into account, so must subconscious modifications. Finally, the appeals court erred in failing to evaluate Kirkingburg's unique situation but instead, considered monocular individuals as a group and surmised that monocular vision was a disability.

The Supreme Court went on to address the issue of whether an employer who requires that an employee meet an applicable federal safety regulation must justify enforcing the regulation because its standard may be waived in an individual case. To this question, the Court answered no. Despite the establishment of the waiver program, an employer has the right to insist that its employees meet the basic standards. The Court said further that the ADA should not be read to require an employer to defend its decision not to participate in such an experimental waiver program.

What These Cases Mean to North Carolina Public Employers

These four Supreme Court cases create mixed results for employees and employers. In *Cleveland v. Policy Management Systems Corp.*, the Supreme Court provided employees with a favorable ruling. Put simply, people who have applied for or are receiving

17. *Albertsons v. Kirkingburg*, 143 F. 3d 1228, 1236 (9th Cir. 1998).

18. *Id.* at 1232.

disability benefits are not prohibited from pursuing a case under the ADA.

The other three cases, *Sutton v. United Air Lines, Inc.*, *Murphy v. United Parcel Service, Inc.*, and *Albertsons, Inc. v. Kirkingburg*, significantly narrow the scope of those covered under the statute. The existence of an impairment does not equate to a disability; in its mitigated state, the impairment must be substantially limiting. The use of mitigating measures, however, does not necessarily mean a

condition will not be a disability as defined by the ADA. Persons who use mitigating measures may still be substantially limited in major life activities and thus, may be protected under the law. Moreover, a person may be entitled to the ADA's protections under the "regarded as" theory.

Perhaps most importantly, these cases now clarify some of the ADA's definitions and end the confusion caused by the split among the appellate courts.

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