

Re-evaluating Medical Restrictions under the Americans with Disabilities Act – Avoiding “regarded as” Disabled Claims under the New Florida Standard

By: David W. Adams

The Americans with Disabilities Act (the “Act”) prohibits discrimination against a qualified individual with a disability in the areas of hiring, advancement, discharge, compensation, and other terms and conditions of employment. The Act identifies three definitions of disabilities that are protected: (1) a physical or mental impairment that substantially limits one or more major life activities; (2) a “record” of such impairment; or (3) being “regarded as” having such an impairment. Importantly, the statute only protects *qualified individuals* with a disability. The term “qualified individual with a disability” means that the employee, with or without reasonable accommodation, can perform the essential functions of the position the employee holds or desires. If the employee is not “qualified,” then the employer has no duty to accommodate. The above principles have been established law for many years. However, the rules have recently changed in the Eleventh Circuit as to how an employer should evaluate “regarded as” disability claims and whether an employee is “qualified” for a particular position. The Eleventh Circuit governs district courts with jurisdiction over Florida employers.

Changes in the standard for evaluating “regarded as” disability claims

The Eleventh Circuit recently held that employers must accommodate workers that are “regarded as” disabled -- even if they are not *actually* disabled. *D’Angelo v. ConAgra Foods, Inc.*, 422 F.3d 1220 (11th Cir. 2005). The adverse decision was driven by the employer’s overly broad interpretation of a doctor’s note describing the employee’s medical restriction. Relying on the doctor’s note, the employer concluded the employee was no longer “qualified” for her position. Accordingly, the employer concluded there was no duty to accommodate the “unqualified” employee, since there were no available positions, considering her restrictions. Therefore, the employer terminated the employee. The employer won in the district court, but not in the Eleventh Circuit. The appellate court found that there was a material fact question as to whether the employee was qualified because there were conflicts in the testimony, job description, and doctor’s restriction. Accordingly, the case was sent back to the lower court for trial on those issues.

Underlying Facts of the *D’Angelo* Decision

The employee was hired as a “spreader” in a seafood processing plant in 1998. Her job required her standing at a moving conveyor belt (the “spreader belt”) and spreading shrimp with her fingers to keep the individual pieces from sticking together. She also worked at times as a “packer,” packing shrimp into boxes. She was promoted to the position of “stacker,” which required her to take the boxes of shrimp on a pallet once they came off the packing machine. She was thereafter promoted to the position of “transporter,” where she filled boxes with shrimp and transported them throughout the

plant. She worked successfully in those positions for three years; however, from time to time she experienced dizziness or vertigo when she was required to work on the spreader belt for long periods without a break. Ultimately, she was transferred to the fish division, but her responsibilities were largely the same.

In 2001, the employee's supervisor assigned her to work on the "box-former belt." This job entailed watching the boxes go down the line to make sure they were properly formed before being filled with fish. This job made her dizzy and she asked for a different assignment. Her supervisor asked for documentation of her vertigo, and she gave the supervisor a copy of her prescription for an anti-vertigo medication. She also provided the plant manager with and a note from her doctor, which stated:

This patient should not work for more than 5 nights a week because of her medical condition. Also she has a vertigo condition. This affects her when her eyes have to **look at** moving objects such as belts. She should avoid this situation since it could cause her to fall and sustain injury.

The plant manager met with the Vice President of Human Resources to review the medical restrictions. They concluded there were no available positions that would not require the employee to **look at and work around moving equipment such as conveyor belts**. The next day the employee was terminated. The termination letter stated in pertinent part:

Unfortunately, your position as a product transporter requires you to **work around** moving conveyors and mechanized equipment. This is an integral portion of the position. . . . Based upon the restrictions that have been placed upon you by your physician, we are unable to allow you to continue to work at Singleton Seafood because you pose a safety hazard to yourself and your co-workers.

The employee filed suit under the ADA. The lower court granted summary judgment in favor of the employer. The Eleventh Circuit reversed the summary judgment and remanded the case for a full trial.

The Employer's Mistake

A careful review of the doctor's note versus the termination letter demonstrates that the employer read the doctor's note too broadly. The medical restriction indicated the employee could not "**look at** moving objects such as belts." Compare that with the employer's conclusion that the employee was required to "**work around** moving conveyors and mechanized equipment." Importantly, the doctor never said she could not "work around" moving equipment.

This seemingly minor distinction is important as it relates to accommodation. The employee asked for the accommodation of not having to perform duties involving working directly *on* a conveyor belt. She never said she could not “work around” conveyor belts or moving equipment. Therefore, when the court examined the doctor’s note in relation to the employer’s reason for termination, there was a material disconnect. For this reason the Court found a material issue of fact that required a full trial on the merits.

The Eleventh Circuit’s Decision

The Eleventh Circuit used this case to make a profound change to ADA law in Florida. The Court broadly ruled that that ADA requires employers to provide reasonable accommodation for employees they regard as disabled. Thus, the plaintiff need not prove that she is *actually* disabled. Rather the plaintiff must only point to a misinterpretation of a medical restriction to buttress the conclusion that the employer “regarded” the plaintiff as disabled. Indeed, that was exactly what happened in *D’Angelo*.

The Court found that the employee’s vertigo did *not* prevent her from holding a narrow category of jobs and did *not* substantially limit her ability to work. Despite the holding that she was not *actually* impaired, the Court nonetheless found the employer had a duty to accommodate her disability. Therefore, the Court created a new obligation for employers to accommodate employees who are not actually disabled but only “regarded as” disabled. *D’Angelo* is at odds with other Courts of Appeal and could likely end up before the United States Supreme Court.

Impact on Florida Employers

The Court’s ruling in *D’Angelo* creates traps for unwary employers. Florida employers should be mindful of the following items.

- It is critical to carefully review and investigate doctor notes on medical restrictions which seek accommodation. Stating a claim for “regarded as” disabled is now much easier for plaintiffs.
- If the restriction is not clear, the Act and the Regulations implementing the Act give the employer a right to inquire into the specifics of the alleged restrictions. In limited cases, the employer may require an independent medical examination by a physician so it can understand the disability and/or duty to accommodate. Get the facts before making any adverse decisions. Be careful to limit any inquiry or medical exam to the specific malady advanced by the employee.
- Job descriptions should clearly state ADA essential job functions. The court in *D’Angelo* glossed over the restriction that plaintiff could not work any overtime, but this essential job function was not mentioned in her job description. Assuming overtime was an essential job function, the Court might have affirmed the original decision for the employer.

- Properly document adverse employment action in writing. Make sure the decision is narrowly tailored to job description and the restrictions imposed on employee, if any.
- If there is an argument that the employee is “regarded as” disabled, instead of actually disabled, consider whether the company can accommodate the employee without undue burden.

An employer’s goal is to avoid claims. If a claim arises, all employers should have their documentation prepared so the case can be defended. In *D’Angelo*, the summary judgment was not upheld because there were conflicts between the job description, the doctor’s note, and the termination letter. That mistake cost the employer a good summary judgment and the added cost of a full trial on the merits.

If you have questions about this area of how to properly interpret requests for ADA accommodation, please contact any of the attorneys in Broad and Cassel’s Labor and Employment Practice Group.