

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)

42 U.S.C.A. § 12102

§ 12102. Definition of disability

Effective: January 1, 2009

[Currentness](#)

As used in this chapter:

(1) Disability

The term “disability” means, with respect to an individual--

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of “disability” in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as--

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph--

(I) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term “low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.

CREDIT(S)

(Pub.L. 101-336, § 3, July 26, 1990, 104 Stat. 329; Pub.L. 110-325, § 4(a), Sept. 25, 2008, 122 Stat. 3555.)

Notes of Decisions (1846)

O’CONNOR’S CROSS REFERENCES

EEOC Enforcement Guidances: *Reasonable Accommodation & Undue Hardship Under the ADA*, Oct. 2002, www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada; *Application of the ADA to Contingent Workers Placed by Temporary Agencies & Other Staffing Firms*, Dec. 2000, www.eeoc.gov/laws/guidance/enforcement-guidance-application-ada-contingent-workers-placed-temporary-agencies-and.

See also 29 C.F.R. §§1630.2, 1630.3.

O’CONNOR’S ANNOTATIONS

Disability--Generally

[*Sutton v. United Air Lines, Inc.*](#), 527 U.S. 471, 483 (1999). “The definition of disability ... requires that disabilities be evaluated ‘with respect to an individual’ and be determined based on whether an impairment substantially limits the ‘major life activities of such individual.’ Thus, whether a person has a disability under the ADA is an individualized inquiry.”

Editor’s note: The ADA Amendments Act of 2008 rejected *Sutton*’s requirement that mitigating measures must be considered when determining whether an impairment substantially limits a major life activity. See [*Smothers v. Solvay Chems., Inc.*](#), 740 F.3d 530, 545 n.16 (10th Cir.2014).

[*Bragdon v. Abbott*](#), 524 U.S. 624, 631 (1998). Regarding whether an individual has a physical or mental impairment that substantially limits one or more of the major life activities, a court should make the following inquiries: “First, ... consider whether [the individual’s claimed disability] was a physical impairment. Second, ... identify the life activity upon which [the individual] relies ... and determine whether it constitutes a major life activity under the ADA. Third, ... ask whether the impairment substantially limited the major life activity.” See also [*Carroll v. Xerox Corp.*](#), 294 F.3d 231, 238-39 (1st Cir.2002).

[*Alexander v. Washington Metro. Area Transit Auth.*](#), 826 F.3d 544, 548 (D.C.Cir.2016). “There is no dispute ... that [EE’s] alcoholism is an ‘impairment’ under the ADA and the Rehabilitation Act.” See also [*Nielsen v. Moroni Feed Co.*](#), 42 U.S.C. §12114, Generally.

[*Morriss v. BNSF Ry.*](#), 817 F.3d 1104, 1108 (8th Cir.2016). “The ADA does not define physical impairment, but the EEOC ... has defined the term to mean ‘[a]ny *physiological disorder or condition*, cosmetic disfigurement, or anatomical loss *affecting one or more body systems*, such as neurological, musculoskeletal, special sense organs, respiratory (including speech

organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine.... *At 1112-13*: [W]e conclude that for obesity, even morbid obesity, to be considered a physical impairment, it must result from an underlying physiological disorder or condition. This remains the standard even after enactment of the [ADA Amendments Act], which did not affect the definition of physical impairment.” See also 29 C.F.R. §1630.2(h)(1); *Richardson v. Chicago Transit Auth.*, 926 F.3d 881, 887-88 (7th Cir.2019); *EEOC v. Watkins Motor Lines, Inc.*, 463 F.3d 436, 443 (6th Cir.2006); *Francis v. City of Meriden*, 129 F.3d 281, 286 (2d Cir.1997).

Widomski v. State Univ. of N.Y. (SUNY), 748 F.3d 471, 474 (2d Cir.2014). “[T]he definition of ‘disability’ in §12102 ... applies to all Titles of the ADA.”

Sulima v. Tobyhanna Army Depot, 602 F.3d 177, 187 (3d Cir.2010). “[S]ide effects from medical treatment may themselves constitute an impairment under the ADA. However, ... this category of disability claims is subject to limitation. For a treatment’s side effects to constitute an impairment under the ADA, it is not enough to show just that the potentially disabling medication or course of treatment was prescribed or recommended by a licensed medical professional. Instead, ... the medication or course of treatment must be required in the ‘prudent judgment of the medical profession,’ and there must not be an available alternative that is equally efficacious that lacks similarly disabling side effects. The concept of ‘disability’ connotes an involuntary condition, and if one can alter or remove the ‘impairment’ through an equally efficacious course of treatment, it should not be considered ‘disabling.’” See also *Hill v. Kansas City Area Transp. Auth.*, 181 F.3d 891, 894 (8th Cir.1999); *Christian v. St. Anthony Med. Ctr., Inc.*, 117 F.3d 1051, 1052 (7th Cir.1997); *Gordon v. E.L. Hamm & Assocs.*, 100 F.3d 907, 912 (11th Cir.1996).

Doebele v. Sprint/United Mgmt., 342 F.3d 1117, 1129 (10th Cir.2003). “Whether the plaintiff has an impairment within the meaning of the ADA is a question of law for the court to decide. Whether the conduct affected is a major life activity for purposes of the Act is also a legal question for the court. However, ascertaining whether the impairment substantially limits the major life activity is a factual question for the jury.” But see *Bartlett v. New York State Bd. of Law Exam’rs*, 226 F.3d 69, 80 (2d Cir.2000) (substantial limitation is mixed question of law and fact).

Hedberg v. Indiana Bell Tel. Co., 47 F.3d 928, 932 (7th Cir.1995). “[A]n employer cannot be liable under the ADA for firing an employee when it indisputably had no knowledge of the disability. [¶] [A]n employer cannot fire an employee ‘because of’ a disability unless it knows of the disability. If it does not know of the disability, the employer is firing the employee ‘because of’ some other reason.” See also *Tramp v. Associated Underwriters, Inc.*, 768 F.3d 793, 805 (8th Cir.2014); *Rinehimer v. Cemcolift, Inc.*, 292 F.3d 375, 382 (3d Cir.2002).

Disability--Major Life Activity

Bragdon v. Abbott, 524 U.S. 624, 638 (1998). “[T]he plain meaning of the word ‘major’ denotes comparative importance and suggests that the touchstone for determining an activity’s inclusion under the statutory rubric is its significance. [¶] Nothing in the definition suggests that activities without a public, economic, or daily dimension may somehow be regarded as so unimportant or insignificant as to fall outside the meaning of the word ‘major.’ The breadth of the term confounds the attempt to limit its construction in this manner.” (Internal quotes omitted.) See also *Adams v. Rice*, 531 F.3d 936, 947 (D.C.Cir.2008) (engaging in sexual relations qualifies as a major life activity under ADA); *Bartlett v. New York State Bd. of Law Exam’rs*, 226 F.3d 69, 79 (2d Cir.2000) (“major” not determined by whether life activity is particularly important to P).

Darby v. Childvine, Inc., 964 F.3d 440, 446 (6th Cir.2020). “[A] genetic mutation that merely predisposes an individual to other conditions, such as cancer, is not itself a disability under the ADA. The terms of the Act do not reach that far. ... To qualify as a disability, ... a condition must substantially limit a major life activity, not merely have the potential to cause conditions that do.”

Disability--Record of Such Impairment

Bilodeau v. Mega Indus., 50 F.Supp.2d 27, 37 (D.Me.1999). “This Court agrees with the decisions of the Courts of Appeal for the Sixth, Seventh and Eighth Circuits that a hospitalization for an impairment does not in and of itself establish a record of such

disability. This conclusion is underscored by the [definition of] ‘record of such impairment’ as existing when a plaintiff has ‘a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.’ Thus, to have a ‘record of such impairment’ under the ADA, ... a plaintiff must have been misclassified as not just having an impairment, as a hospital stay may connote, but as having an impairment that substantially limits one or more major life activities.” See also 29 C.F.R. §1630.2(k) (defining “has a record of such impairment”); *Byrne v. Board of Educ.*, 979 F.2d 560, 566 (7th Cir.1992) (hospitalization alone is not sufficient to establish record of impairment under Rehabilitation Act).

Disability--Regarded as Having

Eshleman v. Patrick Indus., 961 F.3d 242, 247 (3d Cir.2020). “In carving out ‘transitory and minor’ impairments from ‘regarded as’ claims, the ADA specifically defines ‘transitory’ as ‘an impairment with an actual or expected duration of six months or less.’ The ADA does not, however, apply this definition to minor. While the statute is silent on the meaning of ‘minor,’ the ADA regulations clearly state that an employer must establish that the perceived impairment is objectively *both* transitory and minor. At 248: [T]he ‘transitory and minor’ exception was intended to weed out only ‘claims at the lowest end of the spectrum of severity,’ such as ‘common ailments like the cold or flu,’ and that the exception ‘should be construed narrowly.’ Treating transitory and minor as separate and distinct elements is therefore consistent with the intent to afford broad coverage under the ‘regarded as’ provision.”

EEOC v. STME, LLC, 938 F.3d 1305, 1310 (11th Cir.2019). “This case involves issues of first impression as to the meaning of ‘regarded as having such an impairment,’ which is a statutory phrase contained in ... §12102(1)(C). At 1311: [W]e conclude that, even construing the statute broadly, the terms of the ADA protect persons who experience discrimination because of a current, past, or perceived disability--not because of a potential future disability that a healthy person may experience later.” See also *Morriss v. BNSF Ry.*, 817 F.3d 1104, 1113 (8th Cir.2016).

Burton v. Freescale Semiconductor, Inc., 798 F.3d 222, 230 (5th Cir.2015). “[T]he only issue is whether [EE] was ‘regarded as’ disabled by [ER]. [EE] can prevail by establishing she has been subjected to an action prohibited under the ADA because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. This ‘whether or not’ language was enacted as part of the ADA Amendments Act of 2008 (ADAAA). The ADAAA overrules prior authority requiring a plaintiff to show that the employer regarded him or her as being substantially limited in a major life activity. [¶] We have not yet determined what it means to be ‘regarded as’ impaired under the ADAAA, but §12102(3) (A) is clear.... [EE] need only show that her employer perceived her as having an impairment and that it discriminated against her on that basis.” (Internal quotes omitted.) See also *Cigan v. Chippewa Falls Sch. Dist.*, 388 F.3d 331, 335 (7th Cir.2004) (ER’s voluntary accommodation does not imply that it regarded EE as disabled).

Nese v. Julian Nordic Constr. Co., 405 F.3d 638, 641 (7th Cir.2005). “[EE’s] argument is that if the company’s reason for the employment action was somehow less than straightforward, we can draw the conclusion that the company must necessarily have been acting out of its perception that [EE] was disabled. [EE] asks too much. At 642: An employer is not guilty of discrimination every time it takes an employment action for one reason, but provides a different explanation to the employee. [T]o say the employer was less than perfectly frank does not prove that the employer acted as it did for discriminatory reasons.” But see *Ross v. Campbell Soup Co.*, 237 F.3d 701, 708 (6th Cir.2001) (evidence that company created pretextual reason for firing may tend to prove that it regarded EE as disabled).

Kaplan v. City of N. Las Vegas, 323 F.3d 1226, 1233 (9th Cir.2003). “[W]e hold that there is no duty to accommodate an employee in an ‘as regarded’ case.” See also *Duello v. Buchanan Cty. Bd. of Supervisors*, 628 F.3d 968, 972 (8th Cir.2010); *Newberry v. East Tex. State Univ.*, 161 F.3d 276, 280 (5th Cir.1998).

Disability--Substantially Limits

Toyota Motor Mfg. v. Williams, 534 U.S. 184, 198 (2002). “It is insufficient for individuals attempting to prove disability status ... to merely submit evidence of a medical diagnosis of an impairment. Instead, the ADA requires those ‘claiming the Act’s

protection ... to prove a disability by offering evidence that the extent of the limitation [caused by their impairment] in terms of their own experience ... is substantial.”

Editor’s note: The ADA Amendments Act of 2008 rejected *Toyota*’s strict interpretation of “substantially” and “major” in setting the standard for whether an individual qualifies as “disabled” under the ADA. See *Summers v. Altarum*, 740 F.3d 325, 329 (4th Cir.2014).

Sutton v. United Air Lines, Inc., 527 U.S. 471, 482 (1999). “[I]t is apparent that if a person is taking measures to correct for, or mitigate, a physical or mental impairment, the effects of those measures--both positive and negative--must be taken into account when judging whether that person is ‘substantially limited’ in a major life activity and thus ‘disabled’ under the [ADA].”

Editor’s note: The ADA Amendments Act of 2008 rejected *Sutton*’s requirement that mitigating measures must be considered when determining whether an impairment substantially limits a major life activity. See *Smother v. Solvay Chems., Inc.*, 740 F.3d 530, 545 n.16 (10th Cir.2014).

Woolf v. Strada, 949 F.3d 89, 94 (2d Cir.2020). “[N]othing in the [2008 amendments to the ADA], or its legislative history for that matter, suggests that Congress intended to modify, let alone abandon altogether, the well-established understanding that an employee’s ‘inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.’ This longstanding, common-sense principle of law recognizes that employees who are precluded only from doing their specific job, or from working under a specific supervisor, do not have a ‘disability.’ Rather, an employee alleging a substantial limitation in the major life activity of working must show that the limitation affects the ability to ‘perform a class ... or broad range of jobs.’” See also *Booth v. Nissan N. Am., Inc.*, 927 F.3d 387, 394 (6th Cir.2019).

Weaving v. City of Hillsboro, 763 F.3d 1106, 1112 (9th Cir.2014). “[EE] argues that he is disabled because his ADHD substantially limits his ability to interact with others. [W]e have specifically recognized interacting with others as a major life activity. At 1113: [EE’s] interpersonal problems do not amount to a substantial impairment of his ability to interact with others within the meaning of the ADA. [EE’s] ADHD may well have limited his ability to *get along* with others. But that is not the same as a substantial limitation on the ability to *interact* with others. At 1114: [A] ‘cantankerous person’ who has ‘[m]ere trouble getting along with coworkers’ is not disabled under the ADA. One who is able to communicate with others, though his communications may at times be offensive, ‘inappropriate, ineffective, or unsuccessful,’ is not substantially limited in his ability to interact with others within the meaning of the ADA. To hold otherwise would be to expose to potential ADA liability employers who take adverse employment actions against ill-tempered employees who create a hostile workplace environment for their colleagues.” See also *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562, 573 (4th Cir.2015); *Jacques v. DiMarzio, Inc.*, 386 F.3d 192, 202-03 (2d Cir.2004).

Mazzeo v. Color Resolutions Int’l, 746 F.3d 1264, 1269 (11th Cir.2014). Under the EEOC regulations promulgated after the 2008 amendments to the ADA (ADAAA), “an impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting; the phrase ‘substantially limits’ shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for ‘substantially limits’ applied prior to the ADAAA; (with the exception of glasses or contact lenses) the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures; and an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity.” (Internal quotes omitted.) See also *Fiscus v. Wal-Mart Stores*, 385 F.3d 378, 384 (3d Cir.2004) (pre-2008 case; “substantial limitation” does not mean impossibility or great physical difficulty and may include nonphysical factors).

Summers v. Altarum Inst., 740 F.3d 325, 329 (4th Cir.2014). “In September 2008, Congress broadened the definition of ‘disability’ by enacting the ADA Amendments Act of 2008 ... (‘ADAAA’ or ‘amended Act’). ... Particularly relevant to this case, Congress sought to override *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 ... (2002), in which the Supreme Court had adopted a strict construction of the term ‘disability’ and suggested that a temporary impairment could

not qualify as a disability under the Act. [¶] Abrogating *Toyota*, the amended Act provides that the definition of disability shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by its terms. Further, Congress instructed that the term ‘substantially limits’ be interpreted consistently with the liberalized purposes of the ADAAA. And Congress directed the [EEOC] to revise its regulations defining the term ‘substantially limits’ to render them consistent with the broadened scope of the statute. [¶] The EEOC regulations [now] expressly provide that effects of an impairment *lasting or expected to last fewer than six months* can be substantially limiting for purposes of proving an actual disability. [¶] According to the appendix to the EEOC regulations, the duration of an impairment is one factor that is relevant in determining whether the impairment substantially limits a major life activity. Although impairments that last only for a short period of time are typically not covered, they *may be* covered if sufficiently severe. *At 333*: [A]n impairment is not categorically excluded from being a disability simply because it is temporary.” (Internal quotes omitted.) *See also* 29 C.F.R. §1630.2(j) (construction of “substantially limits”); *Mueck v. La Grange Acquisitions, L.P.*, 75 F.4th 469, 481 (5th Cir.2023) (following ADAAA’s passage, impairment does not need to be “permanent or long-term” to qualify as disability); *Shields v. Credit One Bank*, 32 F.4th 1218, 1225 (9th Cir.2022) (because actual-impairment prong of definition of “disability” in §12102(1)(A) is not subject to any categorical temporal limitation, claim of actual “impairment” does not require showing of long-term effects); *Gogos v. AMS Mech. Sys.*, 737 F.3d 1170, 1172-73 (7th Cir.2013) (under ADAAA, relevant question is whether EE’s impairment substantially limited major life activity when it occurred, even if impairment is infrequent or of short duration).

42 U.S.C.A. § 12102, 42 USCA § 12102

Current through P.L. 119-102. Some statute sections may be more current, see credits for details.

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