Recent Decisions under the Americans with Disabilities Act
and the Rehabilitation Act

By

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Recent Decisions under the Americans with Disabilities Act

I. Definition of “Disability”

A. Actual Disability

1. Substantially Limited – Major Life Activities Other Than Working

a. Impairments Affecting Manual Tasks/Ability to Care for Self

Garrett v. Univ. of Ala. at Birmingham Bd. Of Trs., 507 F.3d 1306 (11th Cir. 2007). The plaintiff, a nurse, argued that the side effects of her treatment for breast cancer which included an inability to use her right arm, radiation burns to her upper body, hot flashes, discomfort, emotional swings, dyspareunia, and fatigue, disabled her, substantially limiting her in the major life activities of caring for herself, performing manual tasks, lifting, and working. Due to the fact that the most severe periods of limitation that the plaintiff went through during her cancer treatment were short-term, temporary, and contemporaneous with her treatment, the court found that the evidence failed to raise an issue of triable fact that she was disabled. Moreover, her doctor’s failure to reference any objective criteria to support his conclusion that she was very limited in her ability to use her right arm and was unable to perform medium or heavy jobs, and her failure to show that she was substantially limited in working at the time she was demoted, further supported the court’s conclusion.

Carr v. Publix Super Mkts., Inc., 2006 WL 267133 (11th Cir. Feb. 6, 2006) (unpublished). The plaintiff, who had a cancerous tumor in his right arm as a child that required the replacement of his right humerus with a cadaver bone supported by a metal rod and pins, requested reassignment from his cashier’s job when he started experiencing sharp, persistent pain in his upper right arm from attempting to lift heavy bags. Based on the plaintiff’s testimony that he was able to perform many activities of daily living with his right hand and was able to take care of himself by compensating with his fully functional left arm and hand, the court affirmed the district court’s finding that the plaintiff’s impaired right arm did not substantially limit him in the major life activities of caring for himself or performing manual tasks. The court also noted that while the record showed that the plaintiff’s five-pound lifting limitation may have substantially limited his ability to perform the particular job of front-end cashier with the defendant, the “record fail[ed] to disclose how [the plaintiff’s] lifting limit (specific to his right, albeit dominant, arm) interfered substantially with his ability to perform manual tasks generally.” The court stated that even if the plaintiff argued that the basic motor function of lifting is itself a major life activity, it “doubt[ed] that a lifting limitation states a per se ADA disability.”

Didier v. Schwan Food Co., 465 F.3d 838 (8th Cir. 2006). The plaintiff, who was right-handed, injured his right arm during work and required surgery. He eventually returned to work, but his injury was aggravated on two separate occasions thereafter, both of which required additional surgery. After the second surgery, he returned to work on light duty until his employer notified him that it could no longer provide him light duty assignments. He was eventually terminated. The plaintiff filed suit alleging that he was substantially limited in the major life activity of caring for himself, and therefore entitled to an accommodation. He asserted that although he had