

Fourth Circuit Court Of Appeals Analyzes The History Of The ADAAA And Remands Case Involving “Temporary Disability” To District Court

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In an opinion issued yesterday by the U.S. Court of Appeals for the Fourth Circuit (*Summers v. Altarum Institute*, Cause No. 12-1645, [found here](#)), employers received yet another reminder that the landscape of disability claims under the Americans with Disabilities Act (“ADA”) significantly changed with the enactment of the ADA Amendments Act of 2008 (“ADAAA”), and care must be taken to ensure compliance with the ADAAA’s adjusted requirements.

In this case, the plaintiff Carl Summers (“Summers”) worked for defendant Altarum Institute (“Altarum”) as a senior analyst assigned to work for a particular client, the Defense Centers of Excellence for Psychological Health and Traumatic Brain Injury (“DCoE”). As a general rule, Altarum allowed its employees to work remotely if the client approved. The DCoE, while preferring its contractors to work on-site during business hours, did allow such individuals to work remotely when “putting in extra time on [a] project.”

In October 2011, Summers suffered a fall outside of the workplace that caused multiple fractures and tendon damage in his legs and gave rise to numerous physical limitations. Such limitations included his inability to put weight on one leg for a matter of weeks and inability to walk normally for a minimum of seven months. Summers sought to receive short-term disability benefits, while also working from home during his recovery, and proposed a return-to-work plan through which he would receive short-term disability for a number of weeks, followed by a period of working remotely part-time with his hours to gradually increase until he was back to a full-time schedule. Though Summers did receive short-term disability benefits, Altarum failed to explore how to return Summers to work and did not engage in the interactive process or offer any response or alternative reasonable accommodations to Summers. Rather, on Nov. 30, 2011, Altarum advised Summers his employment would terminate Dec. 1, so it could place another analyst in his role at DCoE.

As a result of these events, Summers filed suit in September 2012 under the ADA, ultimately alleging his termination to be disability discrimination and that Altarum had failed to accommodate his disability. Altarum subsequently prevailed on a Rule 12(b)(6) motion to dismiss the claims, with the claims being dismissed without prejudice. In lieu of amending his complaint after this ruling, Summers filed a new lawsuit in December 2012 premised on

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essentially the same two claims.

The district court again dismissed these claims, but did so with prejudice this time around. In dismissing the wrongful-discharge claim, the court found Summers had failed to allege he was disabled, advising that a temporary condition, even it lasts up to a year, did not fall under the ADA, and further finding that Summers could have worked with the assistance of a wheelchair. As to the failure-to-accommodate claim, the district court held that Summers had not alleged he had requested a reasonable accommodation and his proposal to work temporarily from home was not reasonable as it would have eliminated a significant job function. Summers appealed the dismissal of his wrongful-discharge claim to the Fourth Circuit.

On appeal, Summers argued he suffered from an actual disability, alleging that his condition “substantially limited” his ability to walk, which is a “major life activity” under the ADA. In considering whether Summers was “disabled” under the law, the Fourth Circuit discussed Congress’ broadening of what constitutes a “disability” through the ADAAA, and Congress’ direction for the Equal Employment Opportunity Commission (“EEOC”) to revise its regulations defining the term “substantially limits.” The Fourth Circuit acknowledged that the regulations provide that “effects of an impairment lasting or expected to last fewer than six months can be substantially limiting” for purposes of showing an actual disability under the law, and that the appendix to such regulations suggest that impairments lasting a short time may be covered “if sufficiently severe.” 29 C.F.R. § 1630.2(j)(1)(i)-(ix) (2013). It further clarified that such “transitory or minor” impairments (with a duration of 6 months or less) did not render a plaintiff disabled under the “regarded-as” prong of establishing a disability. *Id.* at § 12102(3)(B).

Applying this guidance to the facts presented, the Fourth Circuit noted that the district court had found Summers to have “suffered a very serious injury,” yet had held such injury did not constitute a disability because it was temporary and anticipated to heal within the year. The Fourth Circuit expressly disagreed, finding that Summers had “unquestionably alleged a ‘disability’ under the ADAAA sufficiently plausible to survive” a Rule 12 (b)(6) motion to dismiss. The Fourth Circuit reasoned that if a person who cannot lift more than twenty pounds for several months is sufficiently impaired per the EEOC’s exemplary guidance, then Summers’ allegation of complete immobility for seven plus months due to broken legs and injured tendons clearly would likewise render him sufficiently impaired under the ADAAA. The Fourth Circuit further rejected the district court’s flawed assessment that because Summers *could have* worked with a wheelchair, he was not disabled. To the contrary, the Fourth Circuit found that the district court should have considered whether Summers was “substantially limited” before asking whether he was able to work with or without an accommodation. Based on such findings, the Fourth Circuit reversed and remanded Summers’ wrongful-discharge claim.

This case serves as a valuable reminder to employers that the ADAAA and the case law interpreting same call for critical assessment of potential disability implications associated with employee injuries/impairments, and that employers should be leery of mere reliance on any pre-conceived notions as to what may or may not be a disability under the law.