

## Morbid Obesity Not Necessarily A Disability Under Americans With Disabilities Act

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The Eighth Circuit Court of Appeals held this week that obesity in and of itself is not covered by the Americans with Disabilities Act (ADA). Instead, obesity generally is a physical characteristic and “qualifies as a physical impairment (and thus would be covered under the ADA) only if it falls outside the normal range and it *occurs as the result of a physiological disorder*.” (Emphasis added.) Even morbid obesity has to have physiological underpinnings to qualify as a disability, ruled the Eighth Circuit. Such disorders might include diabetes, hypertension or thyroid issues. Consequently, the defendant railway company did not violate the ADA when it denied employment to a morbidly obese applicant whose body mass index was over 40 and not caused by a physiological disorder (the company had a policy not to hire applicants with a BMI over 40 to “safety sensitive” positions). The court found unpersuasive plaintiff’s argument that morbid obesity was itself a physiological disorder. The plaintiff’s “perceived as” claim (*i.e.*, an allegation that the company treated him as disabled and discriminated against him regardless of any actual disability) failed, the Eighth Circuit ruled, because the ADA applies only to current physical impairments, not impairments that might develop in the future. Although the Equal Employment Opportunity Commission (EEOC) filed a brief in support of the plaintiff, the court pointed to the EEOC’s own regulations requiring an underlying physiological disorder in support its decision. The court also noted that the Sixth and Second Circuits had also reached the same conclusion, albeit prior the 2008 amendments to the ADA that have made it easier to prove a disability under the statute.

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