Appellate Court Revives Disability Claims Alleging Alcoholism by Pro Se Plaintiff

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By **Jeffrey Campolongo** | June 20, 2019

A recent decision from the U.S. Court of Appeals for the Seventh Circuit is sending ripples throughout the employment law community, but for reasons that may not seem obvious to the casual fan. The case involves Shaka Freeman, an African American man with alcoholism, who sued his former employer for firing him because of his

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race and disability, see *Freeman v. Metropolitan Water Reclamation District of Greater Chicago*, No. 18-3737 (7th Cir. June 3, 2019)

Freeman's case had a bit of a checkered path en route to the court of appeals. After four attempts (and four different court-appointed lawyers), Freeman eventually filed his 70-page pro se complaint in the district court alleging his former employer, Metropolitan Water Reclamation District of Greater Chicago (the District), fired him due to his race (African American) and disability (alcoholism); failed to reasonably accommodate his alcoholism by refusing to let him travel around the plant without using a car; and retaliated against him by firing him after he sought reasonable accommodations. Despite multiple attempts to pin down his claims, the district court dismissed Freeman's lawsuit for failure to state a claim. Those claims, however, were revived on appeal.

According to the appellate opinion, Freeman worked for the District in the capacity of a treatment plant operator. His job entailed collecting and transporting temperature-sensitive water samples across the mile-long plant. The opinion details the fact that most operators typically transport these samples in District-owned vehicles, though the job description did not require a driver's license.

Just a few months after Freeman started the job, he was arrested for driving under the influence of alcohol and his license was suspended for six months. Freeman began seeing a substance-abuse counselor for his alcohol problem. He also told the District about the suspension (as required by his job contract) and his counseling. To ensure that concerns about his alcoholism or license suspension did not interfere with his job, he did three things: he bought a bike and a cooler to transport samples around the plant, he asked if he could use a John Deere go-cart, which does not require a driver's license on private property, and he applied for an occupational

driving permit from the state that would permit him to drive a company vehicle while working, the opinion states. Freeman's employer eventually terminated him alleging "unsatisfactory performance."

In the district court, the employer argued for dismissal because Freeman failed to plead that his alcoholism caused "substantial limitations" to major life activities and that it caused his firing. The employer also argued that Freeman's retaliation and reasonable-accommodations claims failed because he had requested accommodations only for his license suspension, not his alcoholism. With respect to Freeman's race discrimination claims, the employer argued that Freeman "failed to plead the final element"—that he was treated less favorably than at least one colleague who was not African American. The district court agreed with all of the foregoing arguments and dismissed the case.

On appeal, the Seventh Circuit outlined the standard for pleading a race discrimination claim. "A plaintiff alleging race discrimination need not allege each evidentiary element of a legal theory to survive a motion to dismiss," as in *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 510-514 (2002). In order to proceed under Title VII, Freeman needed only to allege that the District fired him because of his race. Citing a decades-old appellate decision, the court declared that failure to plead the evidentiary element about comparable coworkers is not fatal. See *Bennett v. Schmidt*, 153 F.3d 516, 518 (7th Cir. 1998) ("'I was turned down for a job because of my race' is all a complaint has to say."). While the relaxed pleading standard is quite familiar to employment lawyers, it was noteworthy that the appellate court refused to bounce the case merely because Freeman did not use any magic words or phrases in his complaint.

The more interesting aspect of the court's decision involved the interpretation of Freeman's ADA claims. While the district court viewed Freeman's complaint as failing to allege that he had an actual disability, the court of appeals read Freeman's

complaint as alleging that the District regarded him as having a disability (i.e., an alcoholic because of his suspended license for driving under the influence of alcohol). The court then likened this to having a substantial limitation on a major life activity because Freeman's alcoholism impaired his ability to work at any job that involves safely moving items across a facility. Thus, Freeman would be covered under the ADA's definition of a disability.

Freeman also alleged that he could fulfill his duties with a reasonable accommodation (bike, John Deere cart or occupational permit), but that the District fired him anyway "due to" his alcoholism and his request to accommodate his condition. According to the court, these allegations sufficiently stated claims for disability discrimination and retaliation, see 42 U.S.C. Section 12102(1)(C).

The court's decision, while a favorable one to Freeman and other potential plaintiffs, is somewhat at odds with the regulations and final rule implementing the ADA Amendments Act of 2008 (ADAAA). Under the ADAAA and the final regulations, a covered entity "regards" an individual as having a disability if it takes an action prohibited by the ADA (e.g., failure to hire, termination or demotion) based on an individual's impairment or on an impairment the covered entity believes the individual has, unless the impairment is transitory (lasting or expected to last for six months or less) and minor. This new formulation of "regarded as" having a disability is different from the original ADA formulation, which required an individual seeking coverage under this part of the definition to show that a covered entity believed the individual's impairment (or perceived impairment) substantially limited performance of a major life activity.

Amid the changes made by the ADAAA, in particular the revisions to the "regarded as" prong of the definition of "disability," it should generally be unnecessary to determine whether someone is substantially limited in working. Thus, one might argue that it was unnecessary, if not improper, for the circuit court in Freeman's case

to arrive at the conclusion that he was pursuing a regarded as claim based upon a substantial limitation of a major life activity (i.e, work). Nevertheless, that is precisely what the court did.

Furthermore, the regulations and the case law under the ADAAA makes clear that someone must meet either the "actual" or "record of" definitions of disability to be eligible for a reasonable accommodation. Individuals who only meet the "regarded as" definition are not entitled to receive reasonable accommodation. In Freeman's case, the court appears to be suggesting that even a person making a "regarded as" claim can request an accommodation. This is the part of the decision that is hard to reconcile with everything we learned about the ADAAA. Nevertheless, Freeman's path to victory is far from over. As the court stated "these allegations only initiate Freeman's litigation. Later proceedings will determine if he can prove them."

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