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COMMENTARY

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<https://www.law.com/thelegalintelligencer/2024/09/16/third-circuit-rules-temporary-back-injury-can-be-deemed-disability-under-adaaa/>**NOT FOR REPRINT**COMMENTARY

Third Circuit Rules Temporary Back Injury Can Be Deemed Disability Under ADAAA

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For those who regularly litigate claims on behalf of employees under the Americans with Disabilities Act (ADA), the single biggest challenge has been (and remains) proving the existence of a disability. After all, the ADA is one of the only civil rights laws where your case can be thrown out because the employee is not a member of the protected class. While other laws have traditionally focused on the alleged harm by the employer, the ADA was crafted in such a way that forced employees to jump through a series of hoops just to get a foot in the door.

ADA Amendments Act of 2008 (ADAAA)

The hope was that many of the problems in having to prove an actual disability would go away following the amendments to the ADA in 2008 with the advent of the ADA Amendments Act (ADAAA). In enacting the ADAAA, Congress mandated that the “definition of disability ... shall

be construed in favor of broad coverage of individuals” and “to the maximum extent permitted.” Unlike the prior standard which required an impairment to be “permanent or long term” to qualify as a disability, under the ADAAA, the effects of an impairment that last fewer than six months can still be deemed “substantially limiting” under the ADA.

Notably, in *Matthews v. Pennsylvania Department of Corrections*, 613 F. App’x 163 (3d Cir. 2015), the U.S. Court of Appeals for the Third Circuit reversed a lower court’s decision that dismissed an ADA claim due to the short duration of an impairment lasting only a few months, further supporting the ADAAA’s more expansive definition of disability. Despite broadening of the ADA’s scope, challenges remain. Since the *Matthews* decision was nonprecedential, a more recent review by the court was warranted. This time resulting in a very clear mandate.

‘Morgan v. Allison Crane & Rigging’

In the case of Andrew Morgan, who alleged that his employer, Allison Crane & Rigging, LLC (Allison Crane), discriminated against him due to a back injury, the district court dismissed Morgan’s claims. See *Morgan v. Allison Crane & Rigging*, No. 23-1747 (3d Cir. Sep. 4, 2024). Morgan had argued that his temporary back injury, which required light-duty work for several weeks, constituted a disability under the ADA and the Pennsylvania Human Relations Act (PHRA). However, the lower court determined that Morgan’s injury was not a disability because it was temporary and did not meet the pre-ADAAA standards that the court mistakenly applied.

According to the opinion, Morgan worked for Allison Crane as a millwright laborer until his termination on Nov. 18, 2020. While working in September 2020, Morgan injured his lower back but continued to work despite severe pain. He informed his supervisor, Ryan Hastings, who relayed the injury to other supervisors. Morgan later visited a chiropractor who diagnosed him with a bulged or herniated disc and advised light-duty work. Morgan followed this treatment plan and provided chiropractor’s notes to his supervisors, who assigned him light-duty tasks.

Morgan’s chiropractor placed him on restrictions from Oct. 8 to Nov. 25, 2020, preventing him from bending or lifting heavy objects. Morgan complied with these restrictions until his termination. On Nov. 13, 2020, Morgan was warned about failing to wear protective equipment. A few days later, he declined an assignment to drive a truck due to a conflict with a chiropractor appointment and his inability to sit for extended periods without aggravating his back injury. Despite offering to perform other light-duty work, Morgan was terminated on Nov. 18 for not following the company’s absence request process.

In March 2021, Morgan filed a lawsuit alleging discrimination under the ADA and the PHRA. The district court concluded that Morgan had not provided sufficient medical evidence of an actual disability. His chiropractor’s diagnosis of a bulged disc was considered inadmissible hearsay, and Morgan failed to offer other medical documentation. As a result, the court determined that Morgan did not meet the requirements to claim protection under the ADA or PHRA. The district court reasoned that the pain was transitory because Morgan was placed

on lifting restrictions for less than six months, and it was minor because he missed no work, his bending and lifting restrictions were “only mildly limited,” he suffered no other restrictions, and “no surgical intervention was required.”

District Court Applied an Outdated Standard

The *Morgan* case centers on the interpretation of a 2012 decision in *Macfarlan v. Ivy Hill SNF*, 675 F.3d 266 (3d Cir. 2012), where the Third Circuit held that temporary, nonchronic impairments of short duration are not covered by the ADA or PHRA. However, the 2012 case applied pre-ADAAA standards. Morgan argued that *Macfarlan* was not applicable to post-ADAAA cases like his because the ADAAA removed the requirement that impairments must be permanent to qualify as disabilities.

The ADAAA’s new standard focuses on whether an impairment “substantially limits” a major life activity, regardless of its duration. Morgan testified that his back pain made it difficult for him to sit, walk, and turn his body, and his chiropractor imposed restrictions on bending and lifting during his recovery period. The ADA defines major life activities to include walking, sitting, bending, and lifting, and Morgan’s back pain limited these activities. Consequently, the Third Circuit, according to Judge Theodore A. McKee writing for the panel, held that the lower court should have evaluated whether Morgan’s impairment substantially limited his ability to perform these activities compared to the general population. The court erred by relying on outdated standards regarding the impairment’s duration.

Allison Crane argued that allowing temporary impairments like Morgan’s to qualify as disabilities under the ADA would open the door for all short-term injuries to be classified as disabilities. However, the ADAAA does not eliminate the need for plaintiffs to demonstrate that their impairments substantially limit major life activities. Courts can still consider the duration of an impairment in this analysis, but duration is no longer a determinative factor.

The lower court also cited Morgan’s inability to provide admissible medical evidence of a herniated or bulged disc diagnosis, even though such medical evidence is not always required to prove an ADA disability claim. The necessity of medical evidence depends on whether the impairment can be understood by a lay jury without specialized knowledge. In Morgan’s case, the district court correctly concluded that a herniated disk is a spinal injury that is “not within the comprehension of a jury that does not possess a command of medical or otherwise scientific knowledge.”

Temporary Back Injury Could Qualify as a Disability Under the ‘Regarded As’ Prong

In Morgan’s case, the court also analyzed whether his back injury could qualify as a disability under the “regarded as” prong of the ADA. This provision protects individuals who are perceived by their employer as having a physical or mental impairment, even if the impairment does not limit a major life activity. The ADAAA excludes impairments that are both transitory (lasting fewer than six months) and minor from the “regarded as” definition. However, the

determination of whether an impairment is “minor” must be made on a case-by-case basis. Morgan’s back pain, which limited his ability to bend, lift, walk, and sit, was not considered minor.

Despite Morgan’s back pain being temporary, it was substantial enough to affect his ability to perform daily tasks. Therefore, the district court erred in concluding that his back pain was not regarded as a disability under the ADA. For a regarded-as disability claim, the exclusion of “minor” impairments “is only intended to exclude impairments ‘at the lowest end of the spectrum of severity,’ such as ‘common ailments like the cold or flu,” the court wrote. Back pain, which causes difficulty bending, lifting, walking, and turning left or right, is undoubtedly more than minor pain even though it was transitory.

Ultimately, the district court’s dismissal of Morgan’s ADA claim based on a misapplication of pre-ADAAA law was reversed, highlighting the need for courts to apply the ADAAA’s broader standard for disabilities and avoid outdated interpretations that exclude temporary impairments. One further note was the court’s opinion that the same legal standard that applies to the ADA applies equally to disability discrimination claims under the PHRA. Absent an act of the Pennsylvania legislature or guidance from Pennsylvania courts that the ADAAA is inconsistent with the PHRA, federal courts should continue to interpret the PHRA in harmony with the ADA, the panel wrote. This directive, while clearly dicta, should (finally) put to rest the argument that the PHRA demands the more exacting, pre-ADAAA interpretation.

Jeffrey Campolongo *is the founder of the Law Office of Jeffrey Campolongo, which, for over a decade, has been devoted to counseling employees, working professionals and small businesses in employment discrimination and human resource matters.*

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