

HR Weekly Podcast  
04-09-2014

Today is April 9, 2014, and welcome to the HR weekly podcast from the State Human Resources Division. Today's topic concerns a Fourth Circuit United States Court of Appeals decision upholding the Americans with Disabilities Act Amendments Act of 2008, or the ADAAA.

In 2011, Carl Summers was hired as an analyst by Altarum Institute, a government contractor. Although Summers had been assigned to work at a government agency's location, he was allowed by Altarum to work from home if permitted by the client. The particular agency to which Summers was assigned did allow him to work from home under certain situations.

While exiting a commuter train, Summers seriously injured his legs several months after he began working with Altarum. Summers had extensive surgery as a result of his injury and his doctors indicated he would not be able to walk normally for at least seven months. While receiving benefits from Altarum's short term disability insurance policy, he asked if he could continue to work from home while receiving the disability benefits. At first, Altarum's human resources office told Summers to collect his benefits and concentrate on his recovery. Later, Summers inquired about gradually returning to work to include a period of time he would work from home and then a stepped increase in hours. Summers contends that Altarum did not respond to his inquiry and subsequently terminated him only to replace him with another analyst.

Summers filed a lawsuit claiming he had been terminated because of his alleged disability. The federal district court found that Summers did not have a disability under the Americans with Disabilities Act, or the ADA. The district court concluded that Summers's injuries were temporary and, therefore, not within the purview of the ADA. The district court further concluded that Summers was not disabled since he could have worked with the assistance of a wheelchair. Summers's lawsuit was dismissed by the federal district court.

Summers appealed the district court's dismissal of his lawsuit and the Fourth Circuit Court of Appeals reversed the dismissal. The Fourth Circuit concluded that the district court, when making its decision, relied upon cases pertaining to claims that arose before the ADAAA took effect. The Fourth Circuit indicated that the standard used in determining if someone is disabled is more lenient since the passage of the ADAAA. The appellate court determined that, when applying the ADAAA and the Equal Employment Opportunity Commission's implementing regulations, an impairment lasting less than six months could be a disability for the purposes of the ADA. Although the district court suggested that a temporary disability may not constitute a disability under the ADA, the Fourth Circuit concluded that a broader interpretation of the term is mandated by the ADAAA, which led the appellate court to reverse the district court's dismissal.

In addition, the Fourth Circuit determined that, when evaluating if an individual is disabled, the use of a wheelchair cannot be considered. With some limited exceptions under the ADAAA, an employer can no longer consider the effects of mitigating factors, such as the use of prosthetics, medication, or hearing aids, in its determination of whether an employee's impairment has substantially limited a major life activity.

The "regarded as" provision of the ADAAA talks about a six-month duration; however, an employee with a temporary condition lasting less than six months may not be covered under the ADA based solely on the fact that the employer regarded the individual as disabled. The same does not apply to an employee who has an actual disability. Some employers are using the "six month" rule in determining whether an employee's temporary condition is a disability; however, since there is no definitive rule, each situation should be reviewed on a case by case basis. A sufficiently severe injury that lasts less than six months can still be considered a disability even though "transitory and minor" conditions are not an actual disability under the ADAAA and not subject to its protection. Since courts may apply the ADA broadly as it was amended in 2008 by the ADAAA, employers should review each situation individually and consult with legal counsel prior to making a determination.

If you have a question about this topic, please contact your HR Consultant at 803-896-5300. Thank you.