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Ouch! Temporary impairments can be disabilities

By James H. Kizziar, Jr. and Amber K. Dodds

When employers consider their obligations under the Americans with Disabilities Act (ADA), they often envision accommodating employees with relatively long-lasting conditions. And rightfully so: Prior to the ADA Amendments Act, which became effective in 2009, impairments lasting a year or less were often not considered disabilities.

But the ADA Amendments and their interpreting regulations have radically changed the status of temporary impairments. The regulations provide that "[i]mpairments that last only for a short period of time are typically not covered" but also provide that "they may be covered if sufficiently severe."[1]

Recently, the federal Fourth Circuit Court of Appeals interpreted these regulations to find an impairment predicted to last approximately seven months was a disability.[2]

Carl Summers sued his employer for terminating him following a fall from a commuter train that resulted in broken bones and torn or ruptured tendons in both legs. Confronted with the prospect of not walking normally again for at least a year without treatment, Summers elected to have major surgeries to repair his legs. Even with surgery and physical therapy, Summers' doctors predicted that he would not walk normally again for seven months and restricted him to putting no weight on his left leg for at least six weeks.

Summers communicated his medical restrictions to his employer and repeatedly requested to develop a plan to return to full-time work. Initially, Summers' requests to work from home and gradually increase his workload and return to full-time status were rejected; the employer advised Summers to focus on his health. Later, Summers' employer stopped responding altogether, until it sent a notice that he was being terminated.

The employer obtained a ruling from the federal district court, which found that Summers was not disabled because the duration of his impairment was shorter than one year. The U.S. Court of Appeals for the Fourth Circuit strongly disagreed, noting the clear intention of Congress in the ADA Amendments to broaden the coverage of the ADA to include more conditions as disabilities.[3]

Finding that Summers' condition was clearly severe enough to qualify as a disability (it unquestionably substantially limited his ability to walk), the court held that Summers was disabled under the ADA, regardless of the duration of his condition.

This holding—that a temporary impairment (regardless of duration) could be a disability if sufficiently severe—is not surprising, given Congress's clear intent to expand the ADA's coverage and the explicit language in the regulations regarding the duration of the impairment. The Fourth Circuit, however, made two additional important holdings.

First, the court found that the ADA does not impose any durational requirement for actual disabilities.[4] As a result, employers should not assume that the ADA does not apply because an employee's condition is short in duration, no matter how short. Accommodation obligations apply even for sufficiently severe conditions lasting only a few weeks or months. Employers should train their supervisors and human resources administrators not to assume that conditions are minor or need not be accommodated simply because they are not long-lasting.

Second, the court found that the "regulations provide no basis for distinguishing between temporary impairments caused by injuries, on one hand, and temporary impairments caused by permanent conditions, on the other."[5] The key is that a condition can be a disability regardless of its cause.[6]

What about an employee who requests permission to temporarily wear a sleeveless shirt, against company dress code, because she has an extremely severe sunburn on her arms?[7] While it may be infuriating that Bob needs accommodation because he tore his ACL playing pick-up basketball or that Jennifer has work restrictions because she broke her arm snowboarding, employers must not let the cause of an injury that is a disability under the ADA affect the interactive process or offers of reasonable accommodation.

The *Summers* case gives employers much to consider. Holding that severe but short-duration injuries constitute disabilities will bring many situations under the ADA that would otherwise be ignored. Being aware of such expanded ADA coverage, and educating human resources and management regarding proper responses, may be the best defense to this type of ADA claim.

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[1] 29 C.F.R. § 1630.2(j)(1)(ix) (appendix) (providing that impairments that are substantially limiting but last less than six months may be qualifying disabilities under the actual disability and record of disability prongs, while maintaining the six-month requirement for "transitory and minor" exceptions under the regarded as disability prong).

[2] *Summers v. Altarum Institute, Corp.*, No. 13-1645 (4th Cir. Jan. 23, 2014).

[3] Although the Amendments significantly expanded the definition of disability to include far more conditions as disabilities, they did not substantially change the requirements for individuals to be qualified for their job or for employers to accommodate their disability.

[4] "[W]hile the ADAAA imposes a six-month requirement with respect to 'regarded-as' disabilities, it imposes no such duration requirement for 'actual' disabilities, thus suggesting that no such requirement was intended." *Summers*, No. 13-1645 at 15 (4th Cir. Jan. 23, 2014).

[5] *Id.* at 17.

[6] One notable exception is for conditions resulting from the current illegal use of drugs, which are excluded from

coverage under the ADA. *See.* 42 U.S.C. § 12114(a).

[7] If sufficiently severe, such a sunburn could arguably substantially limit major life activities such as "performing manual tasks" or "reaching" or the operation of a major bodily function, which includes functions of the skin. *See* 29 C.F.R. § 1630.2(i)(1). Such a burn, even though it would heal in a matter