John Husband

Partner
303.295.8228
Denver
jhusband@hollandhart.com

Corrective Measures in the Determination of Disability under the ADA

Corrective Measures in the Determination of Disability under the ADA

Insight — 11/1/1999

In a trio of major decisions released June 22, 1999, the U.S. Supreme Court examined whether corrective measures (such as contact lenses or medication) must be taken into account when determining whether an individual has a disability under the Americans with Disabilities Act of 1990 ("ADA"). These decisions also provided needed guidance on the definition of a disability under the ADA. Since 150 million workers wear glasses or contact lenses to correct their vision, five million wear hearing aids, and as many as fifty million use medications for such things as hypertension, the issue of corrective measures is significant. It has divided the federal courts of appeal since the passage of the ADA.

This article provides an in depth look at the three Supreme Court decisions holding that mitigating measures must be taken into account in the determination of whether a claimant has a disability under the ADA. It then discusses several of the appeals court and district court rulings that have followed. These subsequent decisions show that plaintiffs will have a more difficult time clearing the threshold of a covered disability. Although the article primarily focuses on the employers' perspective, its detailed review of recent ADA rulings should be of interest to the plaintiffs' bar as well.

Prohibiting Disability Discrimination

In general terms, Title I of the ADA prohibits employers with at least fifteen employees from discriminating against individuals on the basis of their disabilities, and further requires employers to provide reasonable accommodations to employees with qualifying disabilities, if necessary to perform the essential functions of their positions. To state a claim under the ADA, plaintiffs must establish that: (1) they are disabled within the meaning of the ADA; (2) they are qualified, *i.e.*, that with or without a reasonable accommodation, they can perform the essential functions of the job; and (3) they suffered an adverse employment action because of their disability.[i]

Attorneys facing a potential ADA claim must begin their analysis by determining whether a plaintiff is disabled as defined by the ADA. To come within the definition of disabled under the ADA, a plaintiff may be actually

disabled, regarded as disabled, or have a record of a disability.[ii] There is a three pronged analysis to determine the existence of a disability under the ADA: (1) is there a physical or mental impairment?; (2) does that impairment impact a major life activity?; and (3) does the impact result in a substantial limitation in the ability to perform that major life activity?[iii]

The U.S. Supreme Court's recent rulings substantially narrow the impairments that will come under the ADA's definition of disability, because these decisions found that corrective measures must be taken into account when determining whether an individual is substantially limited in the ability to perform major life activities.

Eeoc And Doj Regulations

Many employers and employee representatives look to the guidance and regulations issued by the U.S. Equal Employment Opportunity Commission ("EEOC") to determine if their behavior is within the bounds of the law. Therefore, it is significant that the recent U.S. Supreme Court's holdings reject the position taken by the U.S. Department of Justice ("DOJ") and the EEOC that disabilities should be evaluated without considering the effects of medication or assistive devices. Specifically, the EEOC Interpretive Guidance provides that "the determination of whether an individual is substantially limited in a major life activity must be made on a case by case basis, without regard to mitigating measures such as medication or assistive or prosthetic devices."[iv]

While finding that the EEOC provided an "impermissible interpretation of the ADA," the Court sidestepped the issue of how much deference is due to interpretive regulations, such as that noted above, by finding that no agency had been delegated the authority by Congress to issue regulations implementing the generally applicable provisions of the ADA, which include the term "disability."[v]

Because courts will continue to look, and often defer, to the EEOC for guidance on how to interpret the various anti—discrimination laws, counsel should not view these decisions as license to ignore the EEOC's guidelines. However, these decisions do serve as a reminder that the EEOC's interpretations of the anti discrimination laws sometimes stretch the statutes beyond what the courts will view as permissible bounds. In light of this, this article now discusses the U.S. Supreme Court cases. The three cases reviewed by the U.S. Supreme Court include two from the Tenth Circuit Court of Appeals, one of which originated out of Colorado in District Court Judge Daniel Sparr's courtroom, and the other out of the District Court of Kansas. The third case comes from the Ninth Circuit Court.

The Key Decision - Sutton V. United Airlines, Inc.

In this Colorado case, Karen Sutton and Kimberly Hinton, twin sisters, applied for positions with United Airlines as passenger airline pilots.[vi] At the time, both were employed as commercial airline pilots for regional commuter airlines and both had the "life long goal to fly for a major air carrier."[vii] During their interviews, United told Sutton and Hinton that they

were disqualified from the positions because all applicants for pilot positions with United must have uncorrected vision of 20/100 or better in each eye.[viii] Both had uncorrected vision exceeding the limit. However, their corrected vision with the aid of eyeglasses and/or contact lenses was 20/20 in both eyes.[ix]

Sutton and Hinton sued United, claiming the airline violated the ADA. The twins asserted that they were disabled because their uncorrected vision substantially limited the major life activity of seeing. They contended that without corrective measures, they would "effectively be unable to see" well enough to conduct normal everyday activities.[x] In addition, they claimed that United regarded them as disabled because the 20/100 vision requirement excluded them from an entire class of employment—global airline pilots—without any objective evidence of job—relatedness or safety.[xi]

United argued that the twins were not disabled under the ADA. Specifically, United argued that millions of Americans suffer vision impairments and that adopting the applicants' expansive reading of "disabled" would make the term meaningless. United contended the applicants were not disabled under the ADA because their vision did not substantially limit a major life activity. United pointed out that, with corrective measures, the twins were able to function identically to the average person in the population.[xii]

Judge Sparr's Decision

Colorado federal judge Daniel Sparr analyzed the issue and found that the twins did not state a claim under the ADA because they were not disabled, as their vision did not substantially limit a major life activity.[xiii] Sparr noted that the twins had no medical restrictions, had not alleged any activity that they are unable to perform that the average person in the population can perform, or that they faced significant restriction in any activities performed by the average person.[xiv] Judge Sparr noted that the twins' vision impairment also did not substantially limit them in the activity of working, because they were employed as commercial airline pilots, a position that used similar training, knowledge, skills, and abilities as a passenger airline pilot.[xv] Although their vision impairment was an "undesirable inconvenience," it did not render them disabled under the ADA.

Deciding that the twins wanted an interpretation of the ADA that he could not allow, Judge Sparr found that allowing expansion of the term "disabled" to include persons whose vision is correctable would allow protection beyond the logical scope of the ADA, particularly since millions of Americans suffer from visual impairments no less serious than those of the twins.[xvi] Judge Sparr also rejected the twins' claims that United "regarded" them as being disabled.[xvii] Sparr found that United only regarded the sisters as unable to satisfy the requirements of a particular passenger airline pilot position; it did not regard them as unable to work "across the spectrum of same or similar jobs."[xviii]

The Tenth Circuit Court Of Appeals Decision

Reviewing Judge Sparr's decision, the Tenth Circuit Court, in an opinion by Senior Circuit Judge Barrett, joined by Circuit Judges Brorby and McKay, first concluded that the twins' vision was a physical impairment as defined by the ADA.[xix] The Court of Appeals held that, because the twins' "uncorrected vision prevented them from engaging in normal everyday activities, such as, driving, watching television, and shopping," their "special sense organ of sight" was impaired as compared to a normal person.[xx] The court then addressed the question of what must be considered in determining whether their physical impairment substantially limited a major life activity, such as seeing.

On appeal and relying on the EEOC's interpretation of the ADA regulations that address when an impairment is substantially limiting, Sutton and Hinton argued that Judge Sparr erred and that their vision impairment must be evaluated without reliance on measures used by them to mitigate or correct the effects of the impairment.[xxi] United, on the other hand, claimed that Judge Sparr was correct, and that the determination must consider the effect of any mitigating or corrective measures. Otherwise, United argued, evaluating whether such an individual has an impairment without considering such measures essentially disregards the statutory requirement that the impairment be substantially limiting.[xxii]

The Tenth Circuit Court sided with United and found that the determination of whether an individual's impairment substantially limits a major life activity should consider the mitigating or corrective measures used by that person.[xxiii] The court noted that, "[i]n making disability determinations, we are concerned with whether the impairment affects the individual in fact, not whether it would hypothetically affect the individual without the use of corrective measures."[xxiv] The Tenth Circuit Court found that the applicants could not show that their vision in its corrected state "substantially limits" their major activity of seeing.[xxv] It also found that the twins' 20/20 corrected vision had no limit on their normal daily activity, because they could merely put on their glasses and go about their normal activities.[xxvi]

The Tenth Circuit Court made the point that the twins cannot have it both ways: they are either disabled, because their uncorrected vision substantially restricts their major life activity of seeing and, thus, they are not qualified for a passenger pilot position with United; *or* they are qualified because their vision is correctable and does not substantially limit their major life activity of seeing and, therefore, they are not disabled.[xxvii] Disability rights advocates refer to this as the "Catch-22" of the ADA, *i.e.*, a plaintiff must be disabled enough to qualify for protection under the ADA, but cannot be so disabled that he or she is not "qualified" for the job.

The twins also appealed Judge Sparr's holding that United did not "regard" them as substantially limited in the major life activity of working.[xxviii] United argued that the sisters were not precluded from a class of jobs, since they merely had failed United's rational job-related safety requirement.[xxix] The Tenth Circuit Court, echoing Judge Sparr's decision, found that the sisters failed to show that United regarded them as

being unable to perform a class of jobs (pilot), rather than one particular job (passenger airline pilot for United.)[xxx]

The U.S. Supreme Court's Rationale

In affirming the Tenth Circuit Court's decision, and disagreeing with the majority of circuits that had faced the issue,[xxxi] the U.S. Supreme Court focused on three statutory provisions to reach its conclusions in an opinion authored by Justice Sandra Day O'Connor and joined by six other justices.[xxxii] First, the Court pointed to the ADA's use of the present tense "limits," in reference to the limitation on a major life activity, *i.e.*. there must be a current limitation on the person's ability to perform that activity.[xxxiii] The Court noted that the determination of whether a plaintiff is disabled should not take into account the potential or hypothetical possibility of a substantial limitation in the absence of the corrective measures.

Second, the Court noted the ADA's requirement that an employer consider how the impairment affects the particular individual.[xxxiv] If an employer could not consider mitigating or corrective measures taken by the person at issue, then the employer would not be making an individualized assessment as required by the Act, but would be making decisions based on generalizations and assumptions, as forbidden by the Act. The Court found that the EEOC's position that persons be considered in their uncorrected state would contradict the inquiry mandated by the ADA by requiring employers to speculate about an individual's uncorrected condition.[xxxv] However, both positive and negative effects of the mitigating measures must be taken into account.

Finally, the Supreme Court pointed to the Congressional findings contained in the first subsection of the ADA, stating that 43 million Americans have disabilities.[xxxvi] If Congress had intended to include Americans with impairments that may be corrected in some manner, the number of Americans with disabilities would be quadrupled. Therefore, the forty-three million figure "reflects an understanding that those whose impairments largely corrected by medications or other devices are not 'disabled' within the meaning of the ADA."[xxxvii] Because it was undisputed that Sutton and Hinton use corrective lenses that provide them with 20/20 vision, their vision was found not to be a disability under the ADA. In other words, their vision is not substantially limited, in light of the corrective measures taken.

On appeal to the Supreme Court, the twins also pursued their argument that United violated the ADA by "regarding" them as disabled.[xxxviii] The plaintiffs contended that United mistakenly believed that they were substantially limited in the major life activity of working. To be substantially limited in the major life activity of working, an individual must be barred, or regarded as barred, from performing a "class of jobs or a broad range of jobs in various classes." Sutton and Hinton alleged only that United perceived them as being unable to work as global airline pilots. The Supreme Court held that the job of global airline pilot was only a single job and that other jobs, such as regional pilot or flight instructor, were available to the sisters.[xxxix] Therefore, the Court held, United had not "regarded"

them as substantially limited in a class or broad range of jobs.

Justice Breyer dissented and was joined by Justice Stevens.[xl] Arguing that the ADA should be given "a generous, rather than a miserly, construction," Justice Breyer contended that the threshold question of whether an individual is disabled should focus on that person's "present or past physical condition without regard to mitigation that has resulted from rehabilitation, self-improvement, prosthetic devices, or medication."[xli] Justice Breyer expressed concern that the majority's reasoning could lead to a finding that a person who has lost a limb is not "disabled" because, through the aid of prostheses, physical therapy, and determination, that person "can perform all major life activities just as efficiently as an average couch potato."[xlii] Such a finding, Justice Breyer argues, clearly would be contrary to Congress' intent in enacting the ADA.

More Of The Same - *Murphy V. Ups*

In the second decision from the Tenth Circuit Court of Appeals, *Murphy v. United Parcel Service,[xliii]* the Tenth Circuit Court looked at a situation involving a truck mechanic with high blood pressure. The mechanic had blood pressure of approximately 250/160, when unmedicated.[xliv] However, according to his physician, when medicated, his hypertension did not significantly restrict any activities.[xlv] Therefore, the mechanic was found not to be disabled under the ADA because he experienced no substantial limitations in major life activities when treated with medication.

When Murphy was first hired by UPS in August 1994, he passed a Department of Transportation ("DOT") physical and was certified as safe to drive large trucks on road tests, which he was required to do as a UPS mechanic.[xlvi] The DOT regulations required "no current clinical diagnosis of high blood pressure likely to interfere with [the employee's] ability to operate a commercial vehicle safely."[xlvii] However, in October 1994, UPS fired Murphy when it discovered that he had high blood pressure and did not meet the DOT requirement without the medication.[xlviii] As it did in *Sutton*, the Tenth Circuit Court, in an unpublished opinion from a panel consisting of Circuit Judges Seymour, Anderson, and Henry, found that, because the hypertension was treated with medication and Murphy could function normally during everyday activities, he was not disabled under the ADA.[xlix]

The Tenth Circuit Court also rejected Murphy's contention that UPS regarded him as disabled because it fired him "based on the discriminatory and stereotypical view that it is too risky to employ individuals who have high blood pressure because they are likely to have heart attacked and strokes."[l] The court found that UPS did not terminate him because of a fear of stroke, but because he did not meet DOT's requirements.[li]

Relying on the reasoning already set forth in *Sutton*, the U.S. Supreme Court, again in an opinion by Justice O'Connor, affirmed the Tenth Circuit Court's consideration of mitigating measures—in this case, Murphy's medication—in assessing whether he is disabled under the ADA.[lii] Justice O'Connor noted, however, that Murphy did not request review of whether he is disabled even when medicated.[liii] Therefore, because

Murphy did not pose the question, the Court could not consider whether Murphy might still be disabled, either despite the medication or because of the medication's negative side effects.[liv]

The Supreme Court also rejected Murphy's allegation that UPS "regarded" him as substantially limited in the major life activity of working because he could not meet the DOT requirement for drivers of commercial vehicles in interstate commerce. The Court held that, at worst, UPS regarded Murphy as unable to perform the job of UPS mechanic.[lv] Murphy had offered no evidence that "he is regarded as unable to perform any mechanic job that does not call for driving a commercial motor vehicle and thus does not require DOT certification."[lvi] Therefore, there was no evidence that the company perceived him as unable to perform a class of jobs or a broad range of jobs. In fact, Murphy had performed various mechanic jobs for over twenty-two years, and he obtained another job as a mechanic shortly after his termination from UPS.[lvii]

Expanding The Concept Of Mitigating Measures

The third case reviewed by the U.S. Supreme Court, *Albertson's, Inc. v. Kirkingburg*,[lviii] comes from the Ninth Circuit Court of Appeals. This case involved an Albertson's employee with monocular vision. The driver's visual acuity in his left eye had been only 20/200 since birth due to amblyopia, and was not correctable, although the vision in his right eye measured 20/20.[lix] Albertson's fired the employee after learning that he did not meet DOT vision standards for drivers of commercial vehicles in interstate commerce.[lx] After he was fired, the employee successfully obtained a waiver of applicable DOT vision standards by providing evidence of stable vision, vision in one eye correctable to 20/4, and a good driving record. Nevertheless, Albertson's refused to accept the waiver and did not reinstate him.[lxi]

The Ninth Circuit Court determined that the employee had an ADA-covered disability and ruled that Albertson's could not selectively adopt and reject federal safety regulations when the effect was to discriminate against truck drivers with disabilities.[lxii] The U.S. Supreme Court reversed.

In *Kirkingburg*, the Supreme Court expanded the concept of mitigating or corrective measures. In the cases of *Sutton* and *Murphy*, the Court had considered the use of external aids such as medication and eyeglasses. Here, the Court held that employers also should consider measures undertaken, consciously or subconsciously, by "the body's own systems."[lxiii] In this case, Kirkingburg had not used any external artificial means to correct his vision. However, he had learned to compensate for his monocularity by "making subconscious adjustments to the manner in which he sensed depth and perceived peripheral objects."[lxiv]

Despite this expansion, the Court did not determine whether Kirkingburg was actually disabled. Instead, the Court found that the ability to meet the federal vision standards was an essential function of the job, and the fact that Kirkingburg could not meet them, with or without a reasonable

accommodation, meant that he was not qualified for the job.[lxv]

The Court noted that "[w]hen Congress enacted the ADA, it recognized that federal safety rules would limit application of the ADA as a matter of law."[lxvi] As a result, the Court dismissed the "waiver" obtained by Kirkingburg because it was part of a government experiment to gather information that did not alter the regular DOT vision standards and in which employers could not be compelled to participate.[lxvii]

Decisions Implementing The Holdings

In what is seen as generally good news for employers, lower court cases since the three recent U.S. Supreme Court's decisions show that ADA plaintiffs face a tougher task to establish the existence of a disability. For example, in *Spades v. City of Walnut Ridge*, a police officer who was discharged after attempting suicide by a self-inflicted gunshot wound claimed discrimination due to depression, but admitted that medication and counseling allowed him to function without limitation. The Eighth Circuit Court therefore held that the plaintiff's depression was not an actual disability under the ADA.[lxviii]

In on of the first cases to consider the positive and negative side effects of mitigating measures, a bus driver was discharged for twice falling asleep while on her assigned bus route (but not while actually driving). The bus driver claimed discrimination under the ADA because her drowsiness was a result of the combination of medications she was taking for hypertension and for pain caused by job-related injuries. The Eighth Circuit Court held that hypertension controlled by medication was not an actual disability.[lxix] On a more interesting note, the court also held that the drowsiness caused by the combination of the medication for hypertension and the pain medication did not lead to an actual disability because other medications could have been used that would not have caused drowsiness.

Another case demonstrating how the Supreme Court's decisions have made it more difficult for plaintiffs to establish a claim is *Taylor v. Blue Cross & Blue Shield of Texas, Inc.[lxx]* In July 1994, Taylor started working as a sales instructor for Blue Cross & Blue Shield. One year later, he began to experience lethargy, inability to maintain concentration, and increasing tiredness, which resulted in some difficulty with the performance of his job. He was counseled about his poor work performance in September 1996. Then, in July 1997, his doctor recommended that he participate in a sleep study in an attempt to identify the cause of his drowsiness, lack of energy, and difficulty in breathing.

Although he was given leave to attend the study, upon his return, Taylor was told that he was being discharged from his current position and had thirty days to find another position within the company. During the thirty-day period, Taylor was diagnosed with sleep apnea. He then requested that the company reconsider the termination and provide him with an accommodation. The company refused, and Taylor filed suit.

The district court noted that, in determining whether Taylor suffered from a disability, it was required to consider his condition with reference to the use

of an air pressure machine prescribed by his doctor. Taylor admitted that he no longer suffered any of the symptoms of sleep apnea as a result of his use of the machine. Because his "impairment" had been corrected and did not substantially limit any major life activity, the district court determined that he did not have a disability under the ADA.[lxxi]

A defendant's motion to dismiss was rejected, however, in a case where the corrective measure did not fully alleviate the symptoms of the impairment. In *Menkowitz v. Pottstown Memorial Medical Center*,[lxxii] a physician with Attention Deficit Disorder ("ADD") claimed that the hospital discriminated against him by terminating his staff privileges. The district court noted that "the mere use corrective measures is not enough to make an individual not disabled."[lxxiii] Because Menkowitz had alleged that his ADD caused disruptive behavior, despite his use of medication, his claim was allowed to proceed.

Finally, in *Haiman v. Village of Fox Lake,[lxxiv]* although the plaintiff's medication led to a finding of no "actual" disability, her claim of "perceived" disability was allowed to proceed. Haiman, a bookkeeper, suffered from a severe heart condition starting in August 1992. Although she worked during September 1992, she went on medical leave in October and underwent surgery and other treatment over the following months. On February 1, 1993, Haiman was fired. On February 3, 1993, her doctor released her to return to work.

The district court found that Haiman's severe heart condition was not an actual disability because, with the cardiac medications, she was not substantially limited in any major life activity. However, the court allowed Haiman's claim of "perceived" disability to proceed. Specifically, she offered evidence that her supervisor's attitude changed toward her when she returned to work after her heart attack, out of a concern that she would have a heart attack in the office. In addition, her supervisor kept a log documenting facts relating to Haiman's medical condition and refused to allow her to return to work part-time. The supervisor also commented to her assistant that it was unfair that everyone else's insurance rates would rise due to Haiman's heart condition and that Haiman was not reliable because she was "sick all of the time."[lxxv]

Conclusion

The U.S. Supreme Court's decisions provide much-needed guidance as to the definition of a disability under the ADA. The decisions allow employers to take into consideration mitigating or corrective measures in making their threshold determination as to disability status and reasonable accommodation. However, employers must remember that corrective measures may not necessarily exclude an applicant or employee from coverage under the ADA, and that both the positive and negative effects of the corrective measures must be taken into account. Therefore, when put on notice of a potential disability, employers must continue to engage in a dialogue with the applicant or employee to make an individualized assessment as to disability status and reasonable accommodation.

Furthermore, because plaintiffs may find it more difficult to establish that

they have an actual disability, in light of their use of corrective measures, employers should anticipate a rise in claims of "perceived" disability. Employers must make employment-related decisions affecting individuals with disabilities based on an individualized assessment and the ability to perform the essential functions of the position, with or without reasonable accommodation. Such decisions cannot be made based on myth, stereotype, or assumption.

---

[i] *See, e.g., Milton v. Scrivner, Inc.,* 53 F.3d 1118, 1123 (10th Cir. 1995).

[ii] *See* 42 U.S.C. § 12102(2).

[iii] *See generally Bragdon v. Abbott*, 524 U.S. 624 (1998).

[iv] 29 CFR pt. 1630, App. § 1630.2(j) (1998), describing § 1630.2(j). *See also* 28 CFR pt. 35, App. A, § 35.104(DOJ guideline providing that question of disability should be assessed without regard to availability of mitigating measures).

[v] *Sutton v. United Air Lines, Inc.*, 119 S.Ct. 2139, 2144 45 (1999).

[vi] *Sutton*, Civ. Act. No. 96 S 121 (D.Colo., Aug. 28, 1996).

[vii] *Sutton*, 130 F.2d 893, 895 (10th Cir. 1997).

[viii] *Id*.

[ix] *Id*.

[x] *Id*.

[xi] *Id*.

[xii] *Id*. At 896.

[xiii] *Sutton, supra*, note 6.

[xiv] *Id*.

[xv] *Id*.

[xvi] *Id*.

[xvii] *Id.*

[xviii] *Id.*

[xix] *Supra,* note 7 at 900.

[xx] *Id.*

[xxi] *Id.* at 901.

[xxii] *Id.*

[xxiii] *Id.* at 902.

[xxiv] *Id.*

[xxv] *Id.* at 902-03.

[xxvi] *Id.* at 903.

[xxvii] *Id.*

[xxviii] *Id.* at 903-06.

[xxix] *Id.* at 903-04.

[xxx] *Id.* at 904-06.

[xxxi] *See e.g., Doane v. City of Omaha,* 115 F.3d 624 (8th Cir. 1997); *Harris v. H & W Contracting Co.,* 102 F.3d. 516 (11th Cir. 1996); *Holihan v. Lucky Stores, Inc.*, 87 F.3d 362 (9th Cir. 1996), *cert. denied*, 117 S.Ct. 1349 (1997); *Fallacaro v. Richardson*, 965 F.Supp. 87 (D.D.C. 1997.)

[xxxii] *Supra.*, note 5. Justices Rehnquist, Scalia, Kenney, Souter, Thomas and Ginsberg also filed a concurring opinion. Justice Stevens filed a dissenting opinion in which Justice Breyer joined.

[xxxiii] *Id.* at 2146.

[xxxiv] *Id*. at 2147.

[xxxv] *Id.*

[xxxvi] *Id.*

[xxxvii] *Id.* at 2148.

[xxxviii] *Id*. at 2149-52.

[xxxix] *Id*. at 2151.

[xl] *Id.* at 2152.

[xli] *Id.*

[xlii] *Id.* at 2153-54.

[xliii] 119 S.Ct. 2133 (1999).

[xliv] *Id*. at 2136.

[xlv] *Id.*

[xlvi] *Murphy*, No. 96-3380 (10th Cir. March 11, 1998)(unpublished).

[xlvii] *Id.*

[xlviii] *Id.*

[xlix] *Id.*

[l] *Id.*

[li] *Id.*

[lii] *Murphy*, *supra*, note 43.

[liii] *Id.* at 2137.

[liv] *Id.*

[lv] *Id.* at 2138.

[lvi] *Id.* at 2139.

[lvii] *Id.*

[lviii] 119 S.Ct. 2162 (1999).

[lix] *Id.* at 2165-66.

[lx] *Id.* at 2166.

[lxi] *Id.*

[lxii] 143 F.3d 1228 (9th Cir. 1998).

[lxiii] *Supra*, note 58 at 2169.

[lxiv] *Id.* at 2168.

[lxv] *Id.* at 2169-74.

[lxvi] *Id.* at 2172.

[lxvii] *Id*. at 2173-74.

[lxviii] *Spades v. City of Walnut Ridge*, 186 F.3d 897 (8th Cir. 1999)(allegation of perceived disability found unsupported as well). *See also Matuska v. Hinckley Township*, No. 1:97CV2150 (N.D.Ohio, July 28, 1999)(partial amputation of finger and mental impairment controlled by medication not actual disabilities).

[lxix] *Hill v. Kansas City Area Transportation Authority*, 181 F.3d 891 (8th Cir. 1999).

[lxx] *Taylor v. Blue Cross & Blue Shield of Texas, Inc.*, No. CA3:97-CV-2826-R (N.D.Tex., June 28, 1999).

[lxxi] The district court also noted that Taylor did not inform his employer that he had a disability prior to receiving notice of his discharge and, therefore, even if he was found to have a disability, he could not establish a *prima facie* case.

[lxxii] *Menkowitz v. Pottstown Memorial Medical Center*, No. 97-2669 (E.D.Pa., July 14, 1999).

[lxxiii] *Id.*

[lxxiv] *Haiman v. Village of Fox Lake*, No. 98-C-0158 (N.D.Ill, July 7, 1999).

[lxxv] *Id.*

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.