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AMERICANS WITH DISABILITIES ACT (ADA)

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INTRODUCTION

Plaintiffs found some relief in 2002 under the Americans with Disabilities Act (ADA). The U.S. Supreme Court handed down four key ADA decisions. The Seventh Circuit decided seven ADA cases, the Northern District of Illinois decided nine, and the Southern District of Illinois addressed one particularly important ADA case. This article surveys all twenty-seven of these cases. It allows practitioners to quickly understand major sources of litigation under the ADA in 2002, as well as the courts' analysis of those claims. As these cases show, one of the most litigated issues under the ADA in 2002 was the definition of "substantially limited in one or more major life activities."

I. SUBSTANTIALLY LIMITED IN PERFORMING MANUAL TASKS: *Toyota Motor Manufacturing Inc. v. Williams*

In *Toyota Motor Manufacturing Inc. v. Williams*,[1] the United States Supreme Court reviewed the proper standard to apply when determining if an individual is substantially limited in performing manual tasks.[2] After working with pneumatic tools on the engine fabrication line at a Toyota Motor's (Toyota) manufacturing plant, Williams developed bilateral carpal tunnel syndrome and bilateral tendonitis.[3] As a result, William's doctor imposed certain lifting and repetitive work restrictions, precluding her from working on the engine assembly.[4] For the next two years, Toyota reassigned Williams to various modified positions to accommodate her restrictions.[5] However, Williams eventually filed an American with Disabilities Act (ADA) claim in the District of Kentucky alleging that Toyota failed to accommodate her disability.[6] The suit then settled, and Toyota assigned Williams to a quality control inspections position, where she was required to inspect and apply paint and oil to the body of the cars on an assembly line.[7]

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1. 534 U.S. 184 (2002).
2. *Toyota*, 534 U.S. at 192.
3. *Id.* at 187.
4. *Id.* at 187-78.
5. *Id.* at 188.
6. *Id.*
7. *Id.* at 188-89.

At her new position, Williams was required to hold out her hands and arms at shoulder height for several hours at a time.[8]

Shortly thereafter, Williams' doctor diagnosed her with several other conditions whose symptoms included inflammation of the muscles and pain in the nerves leading to the upper extremities.[9] After this diagnosis, Williams asked Toyota to reassign her to her previous position where she was solely responsible for inspecting the paint job of the cars.[10] Subsequently, Williams' doctor placed her on a "no-work-of-any-kind" restriction, resulting in Toyota dismissing her for her poor attendance record.[11] Williams filed another ADA suit against Toyota in the Eastern District of Kentucky, this time claiming wrongful termination and failure to accommodate her disability.[12] Williams alleged she was "disabled" for ADA purposes based on a substantial limitation on her ability to perform manual tasks.[13]

Toyota filed for summary judgment, which the district court granted and the Sixth Circuit reversed.[14] In its decision, the Sixth Circuit held that in order to prove a substantial limitation in the major life activity of performing manual tasks, the plaintiff had to show that her manual disability involved a class of manual activities, including the ability to perform tasks at work.[15] The Supreme Court on review, however, disagreed with the Sixth Circuit's standard because the class-based analysis applied only when the major life activity under consideration was work.[16]

The opinion, authored by Justice O'Connor, stated that "to be 'substantially limited in [the major life activity of] performing manual tasks,' an individual must have [a permanent or long-term impairment] that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives[.]"[17] The substantial limitation question does not turn on "whether the claimant is unable to perform the tasks associated with her specific job."[18] The Court concluded that an individual needs more than a diagnosis of an impairment to maintain a claim, and must allege the specific limitations caused by the impairment.[19] The Court found that "an individualized assessment" of an alleged disabling effect must be made when dealing with an "impairment [ ] whose symptoms vary [ ] from person to person."[20]

The Court noted that manual tasks unique to a particular employment,

8. *Id.* at 189.
9. *Toyota*, 534 U.S. at 189.
10. *Id.*
11. *Id.* at 190.
12. *Id.*
13. *Id.*
14. *Id.* at 190-91.
15. *Id.* at 192.
16. *Toyota*, 534 U.S. at 200.
17. *Id.* at 198.
18. *Id.* at 200-201.
19. *Id.* at 198.
20. *Id.* at 199.

such as doing "'repetitive work with hands and arms extended at or above shoulder level for extended periods of time' [are] not an important part of most people's daily lives."[21] In this case, there was evidence in the record that Williams was able to perform a wide range of activities that are of central importance to people's daily lives, such as tending to her personal hygiene and carrying out personal and household chores.[22] The fact that her condition required her to modify the frequency with which she performed some of her job tasks did not amount to a manual-task disability for purposes of an ADA claim according to the Court.[23]

II. REASONABLE ACCOMMODATION: *U.S. Airways, Inc. v. Barnett*

In *U.S. Airways, Inc. v. Barnett*,[24] the United States Supreme Court examined whether a reasonable accommodation for a disabled employee under the ADA can trump a seniority-based employment opportunity.[25]

The plaintiff, Barnett, worked as a cargo-handler for U.S. Airways (USAir) when he injured his back.[26] After which, he requested and was granted a transfer to a less physically rigorous position in the mailroom.[27] Two years later, when Barnett's position became open to seniority-based employee bidding, two employees with superior seniority rights sought the position.[28] Despite Barnett's request that USAir grant an exception to the usual seniority system, which would allow him to retain his position, USAir refused and Barnett lost his job.[29] As a result, Barnett filed suit against USAir alleging an ADA violation for failing to provide a reasonable accommodation to a disabled individual "capable of performing the essential functions of [his] job."[30]

In ruling on a motion for summary judgment, the district court held in favor of USAir because an "alteration of [the] policy would [cause an] undue hardship [on] the company and its non-disabled employees."[31] On appeal, the Court of Appeals for the Ninth Circuit reversed the district court, holding that the existence of a seniority system is only a factor to consider in the undue hardship case-by-case, fact-intensive analysis.[32] After certifying review, the United States Supreme Court vacated the decision of the Ninth Circuit,[33] noting that to allow a violation of the rules of an established and bona fide seniority system would defeat employee expectations of fair and uniform treatment regarding job security and steady and predictable

21. *Id.* at 201 (citations omitted).
22. *Id.* at 202.
23. *Toyota*, 534 U.S. at 202.
24. 535 U.S. 391 (2002).
25. *U.S. Airways*, 535 U.S. at 393-94.
26. *Id.* at 394.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.* at 394-95.
31. *Id.* at 395.
32. *U.S. Airways*, 535 U.S. at 395
33. *Id.* at 406.

advancement.[34] Therefore, if a proposed accommodation would violate the rules of a seniority system, it would normally be considered unreasonable and eliminate the need for a case-by-case analysis.[35]

As a result, the Court redefined both parties' burden of proof in such an action.[36] The Court ruled that in order to defeat a summary judgment motion, "a plaintiff... need only show that an 'accommodation' seems reasonable on its face."[37] Once the plaintiff has met his burden, the defendant then must show that a particular accommodation would cause it to suffer an undue hardship.[38] After which, the plaintiff may make a showing of special circumstances which warrant a finding that an accommodation is reasonable, despite the presence of a conflicting seniority system.[39] In reaching this decision, the Court gave examples of the type of special circumstances that a plaintiff might offer, including when an employer has retained the right to change the seniority system unilaterally which would reduce the employee expectations that the system will be respected.[40] As another example, the plaintiff could show that an existing seniority system already contains numerous exceptions that diffuse the effect of an additional one.[41]

III. THREAT TO THE SAFETY OF THE DISABLED EMPLOYEE AS AN AFFIRMATIVE DEFENSE: *Chevron U.S.A., Inc. v. Echazabal*

The issue in *Chevron U.S.A., Inc. v. Echazabal*[42] was whether an employer could defend an ADA employment discrimination action on the basis that a disabled employee poses a direct threat to his or her own safety.[43]

Echazabal, who suffered from Hepatitis C, applied for a position at a Chevron oil refinery where he had been an independent contractor.[44] Chevron agreed to hire him if he passed the company's physical examination.[45] After his exam revealed liver damage due to a Hepatitis C infection, Chevron withdrew its offer because continued exposure to toxins at the refinery would aggravate Echzabal's condition.[46] Additionally, Chevron asked the contractor who had hired Echazabal to either reassign him to a job without exposure to harmful chemicals or to preclude him from entering the refinery altogether.[47] Subsequently, the contractor dismissed

34. *Id.* at 404.
35. *Id.*
36. *Id.* at 401-02.
37. *Id.* at 401.
38. *Id.* at 402.
39. *U.S. Airways*, 535 U.S. at 405.
40. *Id.*
41. *Id.*
42. 536 U.S. 73 (2002).
43. *Chevron*, 536 U.S. at 76.
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.*

him.[48] Echazabal then filed a lawsuit against Chevron claiming Chevron had violated the ADA by refusing to hire him due to his liver condition.[49]

The District court entered summary judgment in favor of Chevron. On appeal, the Ninth Circuit heard the case to decide whether the EEOC's regulation recognizing the threat-to-self was a viable defense under the ADA.[50] It found that the defense conflicted with the ADA and could not be raised because, presumably, Congress purposely failed to include a threat-to-self defense when it addressed the threat to others in the workplace.[51] It noted that such a defense would defeat Congress' anti-paternalism policy.[52]

On appeal, the United States Supreme Court disagreed with the Ninth Circuit and held that such a defense was cognizable for ADA purposes.[53] In support of its holding, the Court cited language in the Act, including the right of an employer to reject an individual for failing to comply with a job-related qualification that is business-related.[54] The Court found that such a qualification could include a requirement that an individual not pose a direct threat to the health and safety of others *or himself* in the workplace.[55] The Court added that to assert the direct threat defense, an employer must show that it based its decision upon "'a reasonable medical judgment that relies on the most current medical knowledge and/or the best available objective evidence' and upon an expressly 'individualized assessment of the individual's present ability to safely perform the essential functions of the job'" reached after considering the duration of the risk, the nature and severity of the potential harm, and the likelihood and imminence of such harm.[56] Although the Court ultimately remanded the case to the Ninth Circuit to address Chevron's direct threat defense, it adopted several of Chevron's reasons for denying Echazabal employment, including the Occupational Safety and Health Act of 1970 (OSHA).[57] Under OSHA, an employer must provide its employees with a workplace free from recognized hazards likely to cause serious bodily harm or death.[58] Requiring Chevron to hire an employee whose employment would likely jeopardize his or her health would be at odds with the OSHA policy, which requires that an employer assure the safety of each of its workers.[59] The Court noted that it was not paternalistic to reject an employee whose desire to work would have the employer ignore specific and documented risks to the employee.[60] Naturally, generalized fears about risks or the safety of the employee do not

48. *Id.*
49. *Id.* at 76-77.
50. *Chevron*, 536 U.S. at 77.
51. *Id.*
52. *Id.*
53. *Id.* at 87.
54. *Id.* at 78.
55. *Id.* at 84.
56. *Chevron*, 536 U.S. at 86 (quoting 29 C.F.R. § 1630(2)(r) (2001)).
57. *Id.* at 84.
58. *Id. (citing* 29 U.S.C. §654(a)(1)).
59. *Id. at 84-85.*
60. *Id.* at 86.

amount to a valid defense, rather a valid defense is "based on a reasonable medical judgment."[61]

Upon remand, the Court of Appeals reversed the District Court's granting of summary judgment in favor of Chevron and remanded the case to the District Court for further proceedings.[62]

IV. AVAILABILITY OF PUNITIVE DAMAGES: *Barnes v. Gorman*

In *Barnes v. Gorman*,[63] the Supreme Court decided whether punitive damages can be awarded in a private suit that alleges violations of Section 202 of the ADA and Section 504 of the Rehabilitation Act (RA).[64] Under Section 202 of the ADA, public entities cannot discriminate against individuals with disabilities, and Section 504 of the RA prohibits discriminatory conduct by public and private entities receiving federal funding.[65]

In this case, Gorman, the plaintiff, was paralyzed from the waist down, confined to a wheelchair, and forced to wear a catheter.[66] In May 1992, Kansas City police officers arrested him after he fought with a bouncer at a nightclub.[67]

When a police van arrived to transport him to the station, the officers removed Gorman from his wheelchair and strapped him to a narrow bench in the rear of the van using a seatbelt and Gorman's own belt.[68] The manner in which the officers secured Gorman resulted in the seatbelt placing pressure on his urine bag forcing Gorman to release the seatbelt.[69] As a result, he became loose and fell to the floor of the van, "rupturing his urine bag and injuring his shoulder and back."[70] Unable to lift Gorman off the floor, the officer driving the van allowed Gorman to ride the rest of the way to the station on the floor.[71] Consequently, Gorman suffered serious medical problems, which prevented him from working full time.[72] Gorman sued the police department alleging violations of Section 202 of the ADA and Section 504 of the Rehabilitation Act.[73]

The jury awarded Gorman $1.2 million in punitive damages. The district court, however, held that punitive damages were unavailable under Section 202 and Section 504 and vacated the verdict.[74] On appeal, the Court of Appeals for the Eight Circuit reversed the district court's ruling, holding

61. *Id.*
62. *Echazabal v. Chevron USA, Inc.*, 336 F.3d 1023 (9th Cir. 2003).
63. 536 U.S. 181 (2002).
64. *Barnes*, 536 U.S. 183.
65. *Id.* at 184-85.
66. *Id.* at 183.
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.*
71. *Barnes*, 536 U.S. at 183.
72. *Id.* at 184.
73. *Id.*
74. *Id.*

that federal courts have the power to award appropriate relief in a valid cause of action brought under a federal statute.[75]

In an opinion authored by Justice Scalia, the Supreme Court reversed the Eight Circuit's opinion.[76] In support of its decision, the Court cited statutory authority from both Acts limiting the types of remedies available to claims brought under Title VI of the Civil Rights Act, which "invokes Congress's power under the Spending Clause to place conditions on the grant of federal funds."[77] Since Spending Clause legislation usually entails a contractual relationship, whereby recipients agree to comply with federally imposed conditions in return for federal money, recipients are on notice that they are subject to remedies available in breach of contract suits.[78] The Court noted punitive damages are not available for breach of contract. Since punitive and compensatory damages may exceed a recipient's level of federal funding, allowing an award of punitive damages might deter entities from accepting federal funding.[79] Therefore, punitive damages are unavailable in suits brought under Section 202 of the ADA and Section 504 of the RA.[80]

V. REASONABLE ACCOMMODATION: *Oconomowoc Residential Programs, Inc., v. City of Milwaukee*

In *Oconomowoc Residential Programs, Inc., v. City of Milwaukee*,[81] the Seventh Circuit focused on the reasonableness of an accommodation proposed by Oconomowoc Residential Programs, Inc. (ORP), a state corporation that applied to operate a community living facility for six impaired adults.[82]

In the case, ORP, along with several disabled individuals, filed suit against the City of Milwaukee (City) after the City denied ORP's request to open a community living facility for the mentally impaired.[83] In denying ORP's request, the City relied on a municipal ordinance which prohibited the operation of such homes within a half-mile from each other.[84] ORP based its ADA claim on the City's refusal to grant a variance in the local zoning ordinance, which, it argued, was a failure to reasonably accommodate qualified individuals with disabilities.[85]

On a motion for partial summary judgment, the District Court for the Eastern District of Wisconsin agreed and held that that City failed to reasonably accommodate the plaintiffs by not producing enough evidence to

75. *Id.*
76. *Id.* at 189-90.
77. *Id.* at 185-86 (citation omitted).
78. *Barnes*, 536 U.S. at 186.
79. *Id.* at 187-88.
80. *Id.* at 189.
81. 300 F.3d 775 (7th Cir. 2002).
82. *Oconomowoc*, 300 F.3d at 777.
83. *Id.*
84. *Id.*
85. *Id.* at 781-82.

show that granting the request would impose an undue financial or administrative burden on the City.[86]

On appeal, although the City attempted to show unreasonableness by citing ORP's history of problems in operating other group homes, the Seventh Circuit found that there was not a clear nexus between ORP's previous record of mishaps and any financial or administrative burden that might result from the proposed facility.[87] Affirming the district court's decision, the Seventh Circuit held that the plaintiffs had met their burden of proof in showing reasonableness because they demonstrated that an additional group home facility was necessary to provide the disabled plaintiffs with an equal opportunity to use and enjoy a dwelling in a residential community.[88] The Court noted that given the specific distance enumerated in the spacing ordinance it would be almost impossible to construct a third facility in a residential neighborhood within the City limits.[89] Furthermore, testimony from the City's engineer demonstrated that the proposed home would have had no significant adverse impact on the flow of traffic, which the City had claimed.[90] Conversely, after hearing anecdotal testimony from residents where the facility was to be constructed, the Court concluded that blanket stereotypes about disabled persons, as opposed to particularized concerns about individual residents, were not valid reasons to deny a variance in a local ordinance.[91]

VI. PRE-EMPLOYMENT MEDICAL EXAMINATION UNDER THE ADA: *O'Neal v. City of New Albany*

At issue in *O'Neal v. City of New Albany*[92] was whether the City of New Albany (City) violated the ADA by requiring the plaintiff to undergo a medical examination and by conditioning an offer of employment to him on the examination results.[93]

In this case, the plaintiff, O'Neal tried to become a City police officer for thirteen years. At age thirty-eight, the City finally offered him a position contingent on his passing a mandatory medical examination.[94] When O'Neal took the examination, he failed because of "heart problems." The physician for the local pension board refused to issue O'Neal the required certification, even though O'Neal provided supporting documentation from his cardiologist stating that he did not suffer from any coronary disease.[95] Apparently, O'Neal's physician refused to certify him because at the time he

86. *Id.* at 781.
87. *Id.* at 785.
88. *Id.* at 787.
89. *Oconomowoc*, 300 F.3d at 787.
90. *Id.* at 786.
91. *Id.*
92. 293 F.3d 998 (7th Cir. 2001).
93. *O'Neal*, 293 F.3d at 1007.
94. *Id.* at 1001-02.
95. *Id.* at 1002.

was over thirty-six.[96] The City then denied O'Neal employment for lack of a physician's certification.[97]

Despite O'Neal's concession that he was not disabled, he filed an ADA claim against the City for requiring a pre-employment medical examination.[98] The magistrate judge granted summary judgment for the City. The judge found that O'Neal could not show any injury resulting from the medical examination, since the city denied him employment because of his age.[99]

On appeal, O'Neal argued that the job offer was not a "real" job offer and that the City could not require a medical examination.[100] The Seventh Circuit disagreed and affirmed the magistrate judge's decision. The court agreed with O'Neal that his age at the time of the exam should not have precluded his employment.[101] It found, however, that O'Neal failed to show an ADA violation.[102] Instead, the Seventh Circuit found that the City had complied with every aspect of the ADA for three reasons. First, the test was given to every applicant. Second, the information obtained was released only to individuals involved in the hiring process. Third, the City had not used the results of the exam to discriminate against him on the basis of a disability.[103]

VII. ABILITY TO READ AS AN ALLEGED DISABILITY: *Szmaj v. American Telephone & Telegraph, Co.*

In *Szmaj v. American Telephone & Telegraph, Co.*,[104] the Seventh Circuit addressed the issue of whether an inability to read for a full day qualified as a disability under the ADA.[105]

The plaintiff, Szmaj, suffered from congenital nystagmus, a condition that prevented him from holding any job that required him to read for more than half the day.[106] Nonetheless, Szmaj applied for a position with his long–term employer, the American Telephone & Telegraph Co. (AT&T), that required him to read for eighty percent of the workday.[107] Szmaj received the job, but decided that too much reading was involved, and asked AT&T to accommodate him by finding him a job that required less reading.[108] When AT&T declined his accommodation request, he sued for failure to accommodate his alleged disability.[109]

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96. *Id.*
97. *Id.*
98. *Id.*
99. *Id.* at 1003.
100. *O'Neal*, 293 F.3d at 1008.
101. *Id.* 1008-1010.
102. *Id.* at 1009.
103. *Id.* at 1009-10.
104. 291 F.3d 955 (7th Cir. 2002).
105. *Szmaj*, 291 F.3d at 956.
106. *Id.*
107. *Id.*
108. *Id.*
109. *Id.*

The district court granted summary judgment for AT&T, which the Seventh Circuit affirmed.[110] The Seventh Circuit held that the inability to read for a full workday falls outside the scope of an ADA-recognized disability because it is not a major life activity such as walking, seeing, or reproducing.[111] In reaching its decision, the Seventh Circuit concluded that the fact that a certain activity may cause discomfort does not render it a disability for purposes of the ADA.[112]

VIII. QUALIFIED INDIVIDUAL WITH A DISABILITY AND PRETEXT: *Nawrot v. CPC International, Inc.*

The Seventh Circuit in *Nawrot v. CPC International, Inc.*[113] addressed the issue of whether an insulin dependent plaintiff qualified as disabled under the ADA. The Court also considered whether the plaintiff demonstrated that the defendant's reason for terminating him was a pretext for discrimination.[114]

The plaintiff in this case, Nawrot, worked as a warehouse manager for CPC International (Bestfoods). After twenty-two years of employment, the company terminated him.[115] Nawrot suffered from Type I Diabetes, which required him to inject himself with insulin to stabilize his blood sugar.[116] In a suit against Bestfoods, Nawrot claimed Bestfoods had violated the ADA by failing to accommodate his disability and by retaliating against him for seeking an accommodation.[117] Bestfoods argued that it terminated Nawrot for insubordination, sexual harassment, poor judgment, and disloyalty to the company.[118] Nawrot, however, argued that some of his "inappropriate behavior" at work was due to blood sugar imbalances in his system.[119] In addition, Nawrot alleged that although he had requested numerous breaks to stabilize his blood sugar level Bestfoods always refused to accommodate him.[120] Nawrot's termination came several months after he threatened to contact the Equal Employment Opportunity Commission (EEOC).[121]

The District Court for the Northern District of Illinois granted summary judgment for Bestfoods because "Nawrot could not show that he was a qualified individual with a disability," and he "had failed to show that . . . his termination [was] a pretext for discrimination."[122] On appeal, the Seventh Circuit disagreed with the district court, and held that Nawrot was a qualified

110. *Id.*
111. *Id.*
112. *Szmaj*, 291 F.3d at 956.
113. 277 F.3d 896 (7th Cir. 2002).
114. *Nawrot*, 277 F.3d at 902.
115. *Id.* at 899.
116. *Id.* at 901.
117. *Id.* at 902.
118. *Id.* at 900-01.
119. *Id.* at 901.
120. *Id.* at 901-02.
121. *Nawrot*, 277 F.3d at 902.
122. *Id.*

individual with a disability as defined by the ADA.[123] The Seventh Circuit recognized the need to analyze the effects of an individual's impairment and to consider the measures taken to mitigate the disability. However, the Court found that Nawrot's diabetes was a physical and mental impairment that substantially limited his ability to think and care for himself.[124] It noted that Nawrot suffered from unpredictable low-sugar episodes, which, besides causing mood swings and depression, impaired his ability to think, to speak coherently, and to function.[125]

Although the Court agreed that Nawrot was disabled, it found that Nawrot failed to prove that Bestfood's reason for terminating him was a pretext for discrimination.[126] According to the Court, proving pretext requires more than showing a termination was factually-baseless or foolish; rather, as "long as [an] employer honestly believe[s] [its] reasons, pretext has not been shown."[127] In this case, it was Bestfoods' belief which mattered and Bestfoods demonstrated that it believed Nawrot's termination was justified due to his history of inappropriate behavior, numerous warnings and written reprimands.[128] The Court remanded the case to the district court on the issues of failure to accommodate and discriminatory retaliation.[129]

IX. REASONABLENESS OF REQUESTED ACCOMMODATION: *Watson v. Lithonia Lighting and Nat'l Service Industries, Inc.*

The issue in *Watson v. Lithonia Lighting, Inc.*[130] was whether an employer, was obligated to change its assembly-line rotation system to accommodate an employee's, work restriction.[131] Watson was an assembly line worker for Lithonia Lighting (Lithonia) when she suffered a shoulder injury that restricted her ability to perform the repetitive assembly-line work.[132] At the time, Lithonia followed a system requiring all assembly-line workers to rotate through all positions to avoid repetitive-stress injuries.[133] Although Lithonia temporarily reassigned Watson to a less demanding rotating position, it terminated her when her physician restricted her from ever performing any type of repetitive motion of her upper right arm.[134] Watson filed suit under the ADA alleging that Lithonia had a duty to accommodate her by permanently assigning her to the temporary, less demanding position she once occupied.[135]

The district court granted a summary judgment for Lithonia holding

123. *Id.* at 903.
124. *Id.*
125. *Id.* at 905.
126. *Id.*
127. *Id.* at 906.
128. *Nawrot*, 277 F.3d at 907.
129. *Id.*
130. 304 F.3d 749 (7th Cir. 2002).
131. *Watson*, 304 F.3d at 750.
132. *Id.*
133. *Id.*
134. *Id.*
135. *Id.* at 750-51.

that Lithonia was not required to create a new position suited to accommodate Watson's restrictions.[136] On appeal, the Seventh Circuit agreed, noting that Watson's request to assign her to an otherwise temporary position indefinitely would defeat the benefits of Lithonia's rotation system and "would . . . increase the incidence of workplace injury[,] diminish[ing] the employer's ability to accommodate employees who have transient conditions."[137] The Seventh Circuit affirmed the district court's conclusion that the ADA does not require an employer to convert positions set aside for transient recovering employees into permanent positions for employees whose recovery time has run its course.[138]

X. SUBSTANTIAL LIMITATIONS IN MAJOR LIFE ACTIVITIES OF WORKING AND CARING FOR ONESELF: *Nordwall v. Sears Roebuck & Co.*

In *Nordwall v. Sears Roebuck & Co.*,[139] an unpublished opinion, the Seventh Circuit addressed whether the plaintiff, Nordwall, offered sufficient evidence that she was substantially limited, under the ADA, in the major life activities of working and caring for oneself.[140] Nordwall, an administrative assistant for Sears Roebuck & Co. (Sears), was a diabetic who had been giving herself insulin injections since she was a child.[141] While employed by Sears, Nordwall spoke to her supervisor on several occasions to request that her demanding responsibilities be modified so that she could secure some time to monitor and control her diabetes.[142] At Sears' suggestion, Nordwall applied for various positions within the company, none of which she received.[143] However, Sears did assign Nordwall to a temporary position, at the expiration of which, Sears terminated her with severance pay and outplacement assistance.[144] Nordwall sued Sears under the ADA, claiming discrimination against her because of her diabetes.[145]

The district court granted summary judgment to Sears, and the Seventh Circuit affirmed.[146] Citing an earlier Supreme Court decision, the Seventh Circuit stated that the "test to determine whether a plaintiff . . . is substantially limited in a major life activity [is]: (1) whether the condition alleged constitutes a physical or mental impairment; (2) whether the impairment affects a major life activity; and (3) whether the impairment operates as a substantial limit on the major life activity asserted."[147] Following the Supreme Court's instructions, the Court noted that, when

136. *Id.* at 751.
137. *Id.* at 752.
138. *Watson,* 304 F.3d at752.
139. No. 01-1691, slip op. at 364 (7th Cir. Sept. 6, 2002).
140. *Nordwall*, No. 01-1691 at 364-65.
141. *Id.* at 365.
142. *Id.* at 366.
143. *Id.*
144. *Id.*
145. *Id.* at 364-65.
146. *Id.* at 365.
147. No. 01-1691, slip op. at 367 (citing Bragdon v. Abbott, 524 U.S. 624, 632-42 (1998)).

determining a plaintiff's limitations, the effects of a condition must be evaluated after mitigating measures had been taken (such as taking insulin injections to control the diabetes).[148]

The Seventh Circuit found that for the purposes of her alleged limitation on her ability to work Nordwall failed to present evidence that she was unable to do more than one type of job.[149] The Court noted her admission that she was capable of performing twenty-four other jobs at Sears.[150] It concluded that, for purposes of the ADA, when a variety of different jobs are available to an individual, he or she cannot allege a substantial limitation on his or her ability to work.[151] Similarly, because there was sufficient evidence that Nordwall could keep up with her own hygiene, care for her family, maintain the household, and drive and exercise she was not substantially limited in ability to care for herself.[152] The Court also mentioned that Nordwall made no allegations that she had curtailed any aspect of her daily activities in anticipation of her fleeting moments of sugar imbalances.[153] Noting that Nordwall's infrequent periods of lightheadedness did not present an impairment which was permanent or long-term, the Court concluded that her condition was not substantially limiting.[154]

XI. REASONABLE ACCOMMODATION: *Mays v. Principi*

In *Mays v. Principi*,[155] the Seventh Circuit examined whether an employer is required to engage in a consultative process with an employee to discuss an accommodation.[156] Mays, a nurse at a VA hospital, injured her back helping to lift a patient.[157] After Mays' injury the hospital placed her in a light-duty position. A year and a half later, she was transferred to a lower paying clerical position.[158] Mays filed suit against the hospital alleging discrimination for lack of reasonable accommodation and failure to discuss accommodation options with her.[159]

The district court granted summary judgment for the defendant, finding that Mays was not disabled, under the ADA, because of her inability to lift heavy objects.[160] Furthermore, the Court stated that an employer need not engage in an "interactive process" with an employee when the employer can demonstrate that a reasonable accommodation is not possible.[161] The Seventh Circuit held that in order for a plaintiff, such as Mays, to show that

148. *Id.* (citing Sutton v. United Air Lines, 527 U.S. 471, 482-83 (1999)).
149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.* at 367-68.
153. *Id.* at 368.
154. No. 01-1691, slip op. at 368.
155. 301 F.3d 866 (7th Cir. 2002).
156. *Mays*, 301 F.3d at 870.
157. *Id.* at 868.
158. *Id.*
159. *Id.*
160. *Id.* at 870.
161. *Id.* (quoting Hansen v. Henderson, 233 F.3d 521, 523 (7th Cir. 2000)).

an employer failed to offer a reasonable accommodation, he or she must establish that a reasonable accommodation existed, that he or she did not receive it and that there was no consultative process attempted by the employer.[162] After which, the burden shifts to the employer to prove that although it did not consult with the disabled employee to find a reasonable accommodation, it did in fact offer him or her a reasonable accommodation clearly explaining the reason why it was the most reasonable accommodation that it can offer.[163] Applying this analysis, the Court concluded that there was no reasonable accommodation that, given Mays' lifting restrictions, would have enabled her to continue working as a nurse.[164] The Court noted that the accommodation offered by an employer need not be a perfect substitute, but it must be reasonable in terms of costs and benefits.[165]

XII. REGARDED AS HAVING A DISABILITY: *Mack v. Great Dane Trailers*

The issue in *Mack v. Great Dane Trailers*[166] was whether Great Dane Trailers' (Trailers) belief that Mack was impaired in performing a work-related task amounted to a belief that Mack was substantially limited in a major life activity.[167] The plaintiff, Mack was an assistant trailer builder for Trailers, a position which required "long periods of kneeling and squatting."[168] Less than a month after starting with Trailers, Mack developed acute right peroneal neuropathy, a condition which precluded him from kneeling or squatting.[169] While Mack was on worker's compensation leave, he asked his employer if he could return to work.[170] Trailers replied that there was no work available within his restrictions. When the length of his absence extended past one year, he was terminated.[171] Consequently, Mack filed a discrimination claim against Trailers on the basis of being regarded as having a disability that impaired his ability to lift.[172]

The Seventh Circuit held that there was insufficient evidence for a jury to conclude that Trailers regarded Mack as substantially limited in any major life activity.[173] Since Mack argued that he qualified as disabled he had to show that Trailers believed he was substantially limited in a major life activity.[174] Adhering closely to the holding in *Toyota,* the Court noted that an impairment which interferes with a work-related task, which is non-central in most people's daily lives, does not constitute a major life activity

162. *Mays*, 301 F.3d at 523.
163. *Id.*
164. *Id.* at 871.
165. *Id.* at 872.
166. 308 F.3d 776 (7th Cir. 2002).
167. *Mack*, 308 F.3d at 780.
168. *Id.* at 779.
169. *Id.*
170. *Id.*
171. *Id.* at 779-80.
172. *Id.*
173. *Id.* at 779.
174. *Mack*, 308 F.3d at 780.

under the ADA.[175] The Court concluded that a jury could not reasonably infer that Trailers believed that an occupation-specific limitation such as the inability to lift or squat, substantially limited Mack from the type of basic lifting that is central to most people's daily lives.[176] Therefore, the Seventh Circuit reversed and held in favor of Trailers.[177]

XIII. SUBSTANTIALLY LIMITED IN A MAJOR LIFE ACTIVITY: *Ogborn v. United Food and Commercial Worker's Union, Local No. 881*

In *Ogborn v. United Food*,[178] the Seventh Circuit addressed whether a plaintiff whose impairment had temporarily limited him in a major life activity was disabled under the ADA.[179]

The plaintiff in the case, Ogborn, was a business agent for Local 881 of the United Food and Commercial Worker's Union (United).[180] While working for United, Ogborn experienced personal and work problems and was diagnosed with clinical depression.[181] Consequently, Ogborn was required to miss over eight weeks of work.[182] United terminated him, citing a long, documented history of poor work performance.[183] In his complaint, Ogborn alleged that United had discriminated against him because of his depression and had failed to accommodate him by refusing to grant him time off.[184] In addition, Ogborn alleged that his depression substantially limited his ability to work.[185]

On appeal, the Seventh Circuit agreed with the district court, holding in favor of United because Ogborn failed to present any evidence that his depression limited his ability to work for more than eight weeks.[186] Although the Court acknowledged that major depression can constitute a disability under the ADA, it stated that "episodic impairments" of depression did not amount to a disability.[187] The Court held against Ogborn because he failed to show that his depression limited his ability to work.[188] In fact, he testified that he felt he could still perform his job.[189] Despite Ogborn's attempt to argue that he qualified as disabled because United regarded him as disabled, the Court concluded that the evidence did not support a finding that United believed that Gorman's depression substantially impaired him from

175. *Id.* at 780 (citing *Toyota*, 543 U.S. 184 (2002)).
176. *Id.* at 782.
177. *Id.* at 785.
178. 305 F.3d 763 (7th Cir. 2002).
179. *Ogborn*, 305 F.3d at 767.
180. *Id.* at 765.
181. *Id.* at 765-66.
182. *Id.* at 766-67.
183. *Id.* at 766.
184. *Id.* at 767.
185. *Id.*
186. *Ogborn*, 305 F.3d at 767.
187. *Id.*
188. *Id.* at 768.
189. *Id.*

doing his job.[190] For the above reasons, the Seventh Cirucuit agreed with the district court's findings.[191]

XIV. REGARDED AS DISABLED AND REASONABLE ACCOMMODATION: *Peters v. City of Mauston*

In *Peters v. City of Mauston,*[192] the Seventh Circuit addressed whether the City of Mauston, believed that its employee, Peters, was substantially limited in his ability to work under Section 705(20)(B)(iii) of the Rehabilitation Act[193] and whether Peters had requested reasonable accommodations.[194] Although Peters sued under the Rehabilitation Act, the ADA is relevant because it sets forth the applicable standards to use in an employment context.[195] Additionally, the Rehabilitation Act and the ADA are "materially identical."[196]

Peters was an operator and laborer for the City of Mauston (City).[197] In his capacity as a laborer and operator, Peters performed a variety of tasks which included heavy lifting, carrying and extensive use of his shoulder.[198] While on the job, Peters suffered two shoulder injuries on two different occasions.[199] As a result of his injuries, Peters' physician imposed some permanent restrictions on the type of work he could do and on the amount of weight he could lift.[200] Peters disclosed his work restrictions to representatives from the City to discuss the possibility of securing an accommodation.[201] Although Peters suggested several alternatives to allow him to continue working, the City ultimately decided that "Peters could not 'safely, reasonably, and effectively' perform [his] duties."[202] Peters eventually found a job as a construction worker and a truck driver before his work restrictions were removed.[203] After his termination, Peters filed a successful grievance against the City and was reinstated to his City position, albeit he was denied back pay.[204] Consequently, Peters sued the City under the Rehabilitation Act to try to recover back pay.[205] He alleged that the City violated the Rehabilitation Act by discriminating against him by failing to

190. *Id.*
191. *Id.*
192. 311 F.3d 835 (7th Cir. 2002).
193. *Peters*, 311 F.3d at 843.
194. *Id.* at 839.
195. *Id.* at 842 (stating that the same standards applied under the ADA apply to the Rehabilitation Act).
196. Cotton v. Sheahan, No. 02 C 0824, 2002 U.S. Dist. LEXIS 20539, at *5 (N.D. Ill. Oct. 23, 2002) (citing Crawford v. Indiana Dep't of Corr., 115 F.3d 481, 483 (7th Cir. 1997)).
197. *Peters*, 311 F.3d at 839.
198. *Id.* at 841.
199. *Id.* at 839.
200. *Id.* at 840.
201. *Id.*
202. *Id.* at 841.
203. *Id.*
204. *Peters*, 311 F.3d at 841.
205. *Id.*

reasonably accommodate him since it regarded him as disabled in the major life activity of working.[206]

In affirming the district court's decision, the Seventh Circuit noted that to be regarded as disabled, Peters had to show that the City believed that he had a substantially limiting impairment.[207] Since he was alleging that he was disabled in the major life activity of working, he had to show that he was restricted in the ability to perform a class or broad range of jobs, including some qualitative evidence of the local job market.[208] However, Peters had admitted telling City officials, including his supervisor, that he did not feel limited by his shoulder and that he had done substantial home improvement during his time off from work.[209] The City had no reason to think he was precluded from doing a broad range of jobs, hence "disabled," because it only considered his fitness for his position as operator.[210] Therefore, Peters was not regarded as disabled in the major life activity of working.[211]

In determining whether Peters was a qualified individual with a disability, the Court stated that he initially had to show that he could perform the "essential functions" of an operator's position, namely lifting.[212] Second, he had to demonstrate that he could perform the essential functions with or without a reasonable accommodation.[213]

The Seventh Circuit found that Peters' request that someone else do the heavy lifting for him when he could not was unreasonable.[214] The Court held that an employee is not performing the job if a helper would be the one performing the essential functions for him.[215] To allow Peters to continue with his job, until and unless he could no longer do it would be equally unreasonable and pose risk of liability for the City.[216] Accordingly, Peters was not a qualified individual with a disability.[217]

XV. EEOC CHARGES PRECEDE THE COMPLAINT: *Valtierra v. Burlington Northern & Santa Fe Railroad*

The issue addressed in *Valtierra v. Burlington Northern & Santa Fe Railroad*[218] was whether an employee can proceed against his employer on an employment discrimination claim that was not previously included in the individual's EEOC charges.[219]

Before filing suit, the employee, Valtierra, was a conductor for

206. *Id.* at 841-42.
207. *Id.* at 843.
208. *Id.*
209. *Id.* at 844.
210. *Id.* at 844-45.
211. *Peters*, 311 F.3d at 845.
212. *Id.*
213. *Id.*
214. *Id.*
215. *Id.*
216. *Id. at 846.*
217. *Id.*
218. No. 02 C 4939, 2002 U.S. Dist. LEXIS 24472 (N.D. Ill. Dec. 19, 2002).
219. *Valtierra*, 2002 U.S. Dist. LEXIS 24472, at *2.

Burlington Northern & Santa Fe Railroad (Burlington).[220] While at work, he slipped on some ice in the train yard and injured his left shoulder.[221] Following a medical leave, he obtained a request for a promotion to the position of engineer.[222] However, despite the promotion, Burlington refused to adjust Valtierra's seniority position to reflect his overall time at the company.[223] As a result, Burlington laid Valtierra off several times and forced him to relocate, causing lost income and additional expenses.[224] Consequently, Valtierra filed a *pro se* lawsuit against Burlington claiming that Burlington failed to accommodate his disability in violation of the ADA.[225] The lawsuit, however, was dismissed with prejudice when the parties entered into a settlement agreement waiving any claims that existed between the parties in exchange for $13,000.[226] Two years later, Valtierra filed charges with the EEOC on the same claims.[227] However, after he received his right-to-sue letter, he included ADA violation charges, which had not been included in the EEOC charges, in a new lawsuit.[228]

The district court held that *res judicata* barred most of the claims against Burlington.[229] As to the new claims involving discrimination and retaliation, the Court also dismissed them without prejudice because they had not been included in Valtierra's previously filed EEOC charges.[230] The Court noted that "a claim of discrimination not included in the underlying EEOC charge may not be presented in a complaint before the court."[231]

XVI. SUBSTANTIALLY LIMITED IN THE MAJOR LIFE ACTIVITY OF SLEEPING: *Grevas v. Village of Oak Park*

In *Grevas v. Village of Oak Park*,[232] the District Court for the Northern District of Illinois examined whether Grevas qualified as disabled under the ADA by presenting sufficient evidence to prove that her depression substantially limited her in the major life activity of sleeping.[233]

In 1999, Grevas was a hired by the Village of Oak Park's Human Resources Department (Village) as an executive secretary.[234] Although the parties disagreed as to when the Village became aware of Grevas' disability,

220. *Id.* at *3.
221. *Id.*
222. *Id.*
223. *Id.* at *4-5.
224. *Id.* at *5.
225. *Id.* at *5-6.
226. *Valtierra*, 2002 U.S. Dist. LEXIS 24472, at *6-7.
227. *Id.* at 7.
228. *Id.* at *8-9.
229. *Id.* at *13.
230. *Id.* at 18.
231. *Id.* at 17 (citing Sauzek v. Exxon Coal USA, Inc., 202 F.3d 913, 920 (7th Cir. 2000)).
232. 235 F. Supp. 2d 868 (N.D. Ill. 2002).
233. *Grevas*, 235 F. Supp. 2d at 873.
234. *Id.* at 870.

she allegedly mentioned battling depression on her employment papers.[235] Shortly after her initial mandatory probationary period with the Department, Grevas' work performance began to dwindle and she struggled with maintaining an effective working relationship with her co-workers.[236] Despite various warnings from the Village that continued poor performance could result in termination, Grevas submitted a frivolous memo accusing her co-workers of harassment.[237] Grevas was subsequently fired for her inability to get along with her co-workers, her poor job performance, and her previous misconduct.[238] As a result, Grevas filed a suit under the ADA claiming the Village discriminated against her because of her disability when the Village failed to accommodate her disability and when she was terminated.[239] For purposes of her claim, Grevas alleged that her depression substantially limited her in the major life activity of sleeping.[240] However, Grevas alleged denial of a reasonable accommodation only on one occasion: she requested a work break, but was sent home.[241]

The district court granted summary motion for the Village because Grevas failed to present enough evidence proving her ability to sleep was substantially limited by her depression.[242] In order to meet her burden, Grevas needed to show that she, as compared to the general population, was significantly restricted in the major life activity of sleeping.[243] Since Grevas only presented subjective, bare assertions of her alleged chronic insomnia, the court found that there was "no indication that her sleep problems were severe, long term, or had a permanent impact."[244] In fact, evidence from a psychiatric evaluation revealed that Grevas admitted to sleeping too much, often while medicated.[245] In reaching its decision the Court noted that an individual whose impairment is alleviated by medication cannot be considered to be substantially limited in a major life activity.[246] It held that a reasonable trier of fact could not conclude that Grevas' alleged limitation was substantial under the ADA.[247] The Seventh Circuit added that Grevas was further disqualified from ADA coverage because she was unable to perform an essential function of her job, as defined by her employer, namely to work collectively with others without conflict.[248]

235. *Id.* at 872.
236. *Id.* at 870-71.
237. *Id.* at 872.
238. *Id.*
239. *Grevas*, 235 F. Supp. 2d at 273.
240. *Id.*
241. *Id.* at 872.
242. *Id.* at 874.
243. *Id.* at 873-74.
244. *Id.* at 874.
245. *Id.*
246. *Grevas*, 235 F. Supp. 2d at 874-75 (quoting Sutton v. United Air Lines, Inc., 527 U.S. 471, 482 (1999)).
247. *Id.* at 875.
248. *Id.*

XVII. PROTECTION OF DISABLED INMATES: *Cotton v. Sheahan*

In *Cotton v. Sheahan*,[249] the District Court for the Northern District of Illinois addressed whether the Sheriff of Cook County (Sheriff) violated the ADA by denying an inmate visitation rights and access to the shower facilities through its policies.[250]

Cotton, an inmate at the Cook County Jail, was confined to a wheelchair while incarcerated.[251] Cotton had injured his hip, back and legs when he fell off a stool while conversing with relatives across the visitation window.[252] Later that month, Cotton was burned when he was unable to propel himself out of the hot water stream while using a mobile shower chair provided by the jail.[253] As a result of these injuries, Cotton filed suit against the Sheriff alleging an ADA violation for "fail[ing] to provide adequate seating accommodations for [people] in wheelchairs, failing to remove [ ] architectural barriers in the visiting room, and fail[ing] to reasonabl[y] accommodate[e] [wheelchair-ridden individuals] in the facility's showers."[254]

Cotton based his action on the Rehabilitation Act and Title II of the ADA, which protect inmates with disabilities from discrimination and require their custodians to reasonably accommodate them.[255] The district Court found that previous caselaw supported a finding that the Sheriff had some control over the two instances at issue in Cotton's complaint and could have arranged for accommodations to be made.[256] In denying the Sheriff's motion to dismiss, the Court held that Cotton had properly alleged that the Sheriff's policies violated the ADA and the Rehabilitation Act.[257]

XVIII. SUBSTANTIAL LIMITATION IN THE MAJOR LIFE ACTIVITY OF WALKING: *Bertinetti v. Joy Mining Machinery*

At issue in *Bertinetti v. Joy*[258] was whether Bertinetti was significantly limited in the major life activity of walking as a result of his physical impairment, Charcot-Marie-Tooth disease (CMT).[259]

Bertinetti worked as a boring mill operator for Joy Mining Machinery (Joy).[260] While employed by Joy, Bertinetti was diagnosed with CMT, a disease that affects the peripheral nervous system and allegedly affected Bertinetti's ability to walk.[261] As a result of Bertinetti's condition, his doctor

249. No. 02 C 0824, 2002 U.S. Dist. LEXIS 20539 (N.D. Ill. Oct. 23, 2002).
250. *Cotton*, 2002 U.S. Dist. LEXIS 20539, at *4-5.
251. *Id.* at *2.
252. *Id.* at *2-3.
253. *Id.* at *3.
254. *Id.* at *5.
255. *Id.*
256. *Id.* at *8-9.
257. *Cotton*, 2002 U.S. Dist. LEXIS 20539, at *9.
258. 231 F. Supp. 2d 828 (S.D. Ill. 2002).
259. *Bertineti*, 231 F. Supp. 2d at 833.
260. *Id.* at 829.
261. *Id.* at 830.

imposed work restrictions on him, including the need for frequent rest periods.[262] Joy made some efforts to accommodate Bertinetti, but he was injured while performing a task that a supervisor insisted he perform, despite Bertinetti's reminders of his restrictions.[263] Bertinetti filed suit against Joy, alleging a violation of the ADA based on Joy's failure to accommodate his condition by insisting that he perform a job outside his restrictions.[264]

The district court found that Bertinetti could not claim protection under the ADA based on the argument that Joy regarded him as an individual with a disability simply because Joy had attempted to accommodate him.[265] The Court stressed that when "an employer [accommodates] . . . an employee's restrictions, it is not [ ] conceding that [an] employee is disabled under the ADA or that it regards the employee as disabled."[266] The Court determined that Bertinetti's claim fell on the question of whether he was substantially limited in a major life activity.[267] For a physical impairment to qualify as a disability, it must substantially limit Bertinetti in a major life activity in its mitigated state.[268] However, the court determined that it should not have to speculate about whether the disability might, could, or would be substantially limiting.[269] As a result of evidence establishing that Bertinetti was able to hunt, fish, do yard work and do household chores, the Court refused to believe that a rational jury could conclude that he was substantially limited in his ability to walk.[270] It noted that a condition will not be deemed substantially limiting if it only affects the rate and the pace in which the activity is normally done.[271]

XIX. QUALIFIED INDIVIDUAL WITH A DISABILITY: *Heimann v. Roadway Express*

The issue in *Heimann v. Roadway Express*[272] was whether Heinmann qualified as disabled under ADA standards for being unable to drive trucks without power steering.[273] The plaintiff, Heimann, was working as a truck driver for Roadway Express (Roadway) when he injured his left hand.[274] As a result of the injury, Heimann's physician temporarily restricted him from using his left hand, thus precluding him from driving.[275] Roadway accommodated him by placing him in a non-driving position until he was

262. *Id.*
263. *Id.* at 831.
264. *Id.* at 832.
265. *Id.* at 833.
266. *Bertineti*, 231 F. Supp. 2d at 833 (quoting Thornton v. McClatchy, 261 F.3d 789, 798 (9th Cir. 2001)).
267. *Id.*
268. *Id.*
269. *Id.*
270. *Id.* at 834.
271. *Id.* (citing Talk v. Delta Airlines, Inc., 165 F.3d 1021, 1025 (5th Cir. 1999)).
272. 228 F. Supp. 2d 886 (N.D. Ill. 2002).
273. *Heimann*, 228 F. Supp. 2d at 896.
274. *Id.* at 890.
275. *Id.*

released from his medical restrictions.[276] Shortly after returning to his original driving duties, Heimann began to have more problems with his left hand and was again restricted by his doctor from driving manual steering trucks.[277] The driving restriction was subsequently replaced by a lifting restriction, and then reinstated again, allowing him to drive only power steering trucks.[278] Once again, Roadway accommodated him by placing him in a non-driving position.[279] However, Heimann refused the accommodation and requested to be switched to a more convenient night shift.[280] When Roadway refused, Heimann lost his worker's compensation benefits.[281] Heimann subsequently applied for approximately two hundred jobs in roughly a two year span and he was eventually hired as a supervisor in a grocery store.[282] Heinmann filed an ADA claim alleging that Roadway discriminated against him by failing to provide him with a position during the night-shift and by failing to provide him with a truck with power steering.[283]

Heimann's ADA claim was based on various theories.[284] The Court held that Heimann did not present enough evidence to prove that he was disabled under the ADA.[285] Before making its ruling, the Court noted that in order to qualify as disabled under the ADA, a plaintiff must show that he has a permanent impairment that substantially limits his ability to perform a major life activity.[286] Heimann claimed to be disabled in the major life activities of working, performing manual tasks, lifting and concentrating.[287]

First, based on evidence in the record that demonstrated Heimann was qualified to do numerous jobs, the Court found Heimann's claim that he was disabled in the life activity of working as unfounded.[288] Second, the Court found that Heimann was not disabled in the major life activity of performing manual tasks because the only manual tasks from which he was precluded were work-related, not tasks central to most people's daily lives.[289] Third, the Court found that he was not precluded from the life activity of lifting because his repetitive lifting restrictions were temporary and repetitive lifting is not an activity that members of the general population engage in regularly.[290] Finally, Heimann's allegation that he was disabled in the major life activity of concentrating was baseless because he had applied for jobs

276. *Id.* at 891.
277. *Id.*
278. *Id.* at 892.
279. *Id.*
280. *Heimann*, 228 F. Supp. 2d at 892.
281. *Id.*
282. *Id.* at 894.
283. *Id.* at 893.
284. *Id.* at 896-907.
285. *Id.* at 907-08.
286. *Id.* at 897.
287. *Heimann*, 228 F. Supp. 2d at 901.
288. *Id.* at 901-03.
289. *Id.* at 905.
290. *Id.* at 906.

that required the ability to concentrate.[291] Although Heimann attempted to argue that he was disabled because Roadway regarded him as disabled, the record showed that Roadway always thought that Heimann's hand injury was temporary.[292] Therefore, since "episodic impairments" do not constitute a disability for ADA purposes, his claim that he was regarded as an individual with a disability also failed.[293]

XX. QUALIFIED INDIVIDUAL WITH A DISABILITY: *Mertes v. Westfield*

The district court in *Mertes v. Westfield*[294] explored whether Mertes was a qualified individual with a disability that allowed him to file a claim under the ADA.[295]

Mertes worked as a service technician for Westfield, an automobile dealership.[296] After working there for over ten years, Mertes suffered a work-related injury to his right elbow.[297] Consequently, Mertes sought medical attention and filed a worker's compensation claim.[298] Although Mertes was allowed to perform light duty work without any repetitive movements, he did not return to work until six months after his injury when his physician cleared him of all work restrictions.[299] Unfortunately, by the time his restrictions were lifted, Westfield had terminated his employment due to his prolonged absence, in accordance with his collective bargaining agreement.[300] Mertes subsequently found another job performing the same type of work that he did for Westfield.[301] Subsequently, he filed suit against Westfield claiming that it had violated the ADA when it terminated his employment.[302]

The Court found that Mertes was not disabled as defined under the ADA because he had no long-term impairment.[303] The fact that he found another job performing the same tasks that he did for Westfield before his injury demonstrated to the Court that the impact of his elbow injury had been temporary. Even when the Court assumed that he was disabled, it found that he was not a qualified individual under the ADA because he could not perform the essential functions of his job.[304] The Court noted that because the position of service technician required repetitive movement and heavy lifting, Mertes was unable to perform these at the time that the employment

291. *Id.*
292. *Id.* at 907.
293. *Id.* at 900-01 (citing Vande Zande v. State of Wisc. Dep't of Admin., 44 F.3d 538, 544 (7th Cir. 1995)).
294. 220 F. Supp. 2d 904 (N.D. Ill. 2002).
295. *Mertes*, 220 F. Supp. 2d at 909.
296. *Id.* at 907.
297. *Id.*
298. *Id.*
299. *Id.* at 908.
300. *Id.*
301. *Id.*
302. *Mertes*, 220 F. Supp. 2d at 908-09.
303. *Id.* at 909.
304. *Id.*

decision was made.[305] In addition, the Court refused to accept that it would have been reasonable for Westfield to have directed Mertes' co-workers to perform the strenuous aspects of his job for him.[306] Furthermore, the Court mentioned that since Mertes allegedly lacked the requisite personable skills for the one vacant position available at the time of his work restrictions, Westfield was not required to accommodate him.[307] As a result, the Court granted Westfield's summary judgment motion.[308]

XXI. QUALIFIED INDIVIDUAL WITH A DISABILITY: *Ratliff v. City of Chicago*

The issue in *Ratliff v. City of Chicago*[309] was whether Ratliff qualified as an individual with a disability under the ADA and if so, whether the City of Chicago (City) failed to accommodate her.[310] Ratliff worked for the City in the Department of Streets and Sanitation as a laborer.[311] In her position with the City, Ratliff was on garbage truck duty, requiring her to lift over fifty pounds and to jump on and off the garbage truck repeatedly.[312] In her suit Ratliff claimed that she was entitled to an accommodation in her position with the City because she suffered from asthma.[313] As a result of her asthma, she filed a request for an accommodation, which was improperly filled out and did not specify the nature of her disability.[314] Due to her asthma, Ratliff was restricted from lifting anything over fifteen pounds.[315] Since the laborer position she occupied required heavy lifting and there was no light duty work available for her, the City advised her to either take a leave of absence or to seek a new job through the City's Personnel Department.[316] When Ratliff failed to do either, the City terminated her.[317] Consequently, Ratliff filed an ADA claim against the City, alleging that it had failed to accommodate her disability.[318]

Ruling on cross motions for summary judgment, the Court noted that because Ratliff did not have direct evidence of the discriminatory intent, it had to adopt the *McDonell Douglas* burden shifting test.[319] As a result, the Court held that Ratliff could not satisfy the first element in the prima facie case of discrimination, which required a showing that, as a disabled person,

305. *Id.* at 909-10.
306. *Id.* at 910.
307. *Id.* at 911.
308. *Id.*
309. 99 C 6986, 2002 U.S. Dist. LEXIS 16218 (N.D. Ill. Aug. 28, 2002).
310. *Ratliff*, 2002 U.S. Dist. LEXIS 16218, at *1.
311. *Id.* at *2.
312. *Id.* at *2-3.
313. *Id.* at *3-4.
314. *Id.* at *4.
315. *Id.* at *5-6.
316. *Id.* at *6.
317. *Ratliff*, 2002 U.S. Dist. LEXIS 16218, at *6.
318. *Id.* at *8.
319. *Id.* (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)).

she belongs to a protected group under the ADA.[320] To satisfy this element, Ratliff would have to prove that she suffered from a physical impairment and that the impairment substantially limited her in one or more major life activities.[321] Although the Court inferred that Ratliff's alleged asthma was a physical impairment,[322] it did not agree that she was substantially limited in the major life activities of walking and breathing as alleged.[323] In doing so, the Court found that Ratliff's breathing difficulties could be connected to her problem of obesity.[324] Additionally, since her doctors stated that her symptoms disappeared after treatment, she could not claim to be substantially limited in the activity of breathing.[325] Similarly, because the record showed that Ratliff was still able to walk, stand, play sports, and go to church, she was not substantially limited in the major life activity of walking either.[326] Therefore, the Court held that she could not claim to be disabled under the ADA.[327]

Ratliff also argued that she was perceived as disabled because the City knew of her lifting restriction. However, the Court noted that the record did not substantiate that the City believed her lifting restriction substantially limited the activities of either walking or breathing.[328] The Court added that even if she had shown a disability under the ADA, she would not have been qualified for the position because her lifting restriction was below the minimum requirement for a laborer position.[329] Additionally, pursuant to Ratliff's incomplete accommodation request, the City could not have accommodated her because it did not know the nature of her disability.[330] As a result, the Court held that the City had fulfilled its duty to participate in the interactive process when it asked Ratliff to speak with the Personnel Department.[331] Consequently, the Court held for the City on its summary judgment motions.[332]

XXII. QUALIFIED INDIVIDUAL WITH A DISABILITY: *May v. Pace Heritage*

The issue in *May v. Pace Heritage*[333] was whether May was a qualified individual with a disability when she continuously showed up late for work as a bus driver.[334] May, a bus operator for Pace Heritage (Pace), injured her

320. *Id.* at *28-29.
321. *Id.* at *10.
322. *Id.* at *12.
323. *Id.* at *15-16.
324. *Ratliff*, 2002 U.S. Dist. LEXIS 16218, at *13-15.
325. *Id.*
326. *Id.* at *16.
327. *Id.* at *17.
328. *Id.* at *19.
329. *Id.*
330. *Id.* at *23-24.
331. *Id.* at *28.
332. *Ratliff*, 2002 U.S. Dist. LEXIS 16218, at *34.
333. No. 00 C 3848, 2002 U.S.Dist. LEXIS 8830 (N.D. Ill. May 16, 2002).
334. *May*, 2002 U.S. Dist. LEXIS 8830, at *11.

foot and shoulder while working.[335] After some time to recover, May returned to work.[336] Although back on the job, May began to develop a pattern of arriving late to her scheduled bus run.[337] Despite May's claim that her drowsiness problem was caused by medication she was taking for her injured foot, Pace terminated her after she arrived late for the fourth time.[338] Subsequently, May sued Pace for failure to accommodate her disability and discriminatory termination, both in violation of the ADA.[339]

Although the Court agreed that May suffered from a physical impairment that substantially impaired her general ability to work,[340] it did not agree that she was qualified for a position of bus operator.[341] In order to be a qualified individual with a disability, May would have to prove that she was able to perform the essential functions of her job.[342] Citing the Seventh Circuit, the Court held that attendance was an essential requirement of May's employment.[343] Since Pace bus operators who [are not present on time for their shift] cannot transport passengers in a timely manner,[344] May could not perform the essential functions of her job.[345] Hence, her ADA claim failed.[346]

XXIII. PLEADING REQUIREMENTS: *Pierce v. United Parcel Service*

The issue in *Pierce v. United Parcel Service*[347] was whether Pierce's complaint could survive United Parcel Service's (UPS) motion to dismiss despite the fact that the complaint did not identify Pierce's impairing disability or the major life activities it affected.[348]

Pierce was a part-time employee of UPS when he was terminated for illicit drug use.[349] Upon termination, Pierce filed a charge with the EEOC arguing that the termination grounds were false and that UPS violated the ADA when it terminated him upon his eligibility for full time employment.[350] When he filed his *pro se* complaint against UPS, Pierce failed to attach a right-to-sue letter as required and to plead various elements of his claim.[351] As a result, UPS filed a motion to dismiss pursuant to the allegedly defective complaint.[352]

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335. *Id.* at *1-2.
336. *Id.* at *2-3.
337. *Id.*
338. *Id.* at *3-5.
339. *Id.* at *6.
340. *Id.* at *11.
341. *May*, 2002 U.S. Dist. LEXIS 8830, at *13-15.
342. *Id.* at *11.
343. *Id.* at *11-12 (citing various Seventh Circuit decisions).
344. *Id.* at *12.
345. *Id.* at *15.
346. *Id.*
347. No. 01 C 5690, 2002 U.S. Dist. LEXIS 8650 (N.D. Ill. May 9, 2002).
348. *Pierce*, 2002 U.S. Dist. LEXIS 8650, at *14.
349. *Id.* at *2-3.
350. *Id.* at *3.
351. *Id.*
352. *Id.* at *14.

On reviewing the motion, the Court noted that a complaint need only notify a defendant of a claimed impairment, even if it fails to specify the major life activity affected by the impairment.[353] In light of the fact that Pierce was a *pro se* plaintiff, the court refused to dismiss his complaint on the basis that he had not alleged that he was able to perform the essential functions of his job.[354] However, the Court did decide that Pierce's failure to identify his disability was fatal because it did not provide UPS with sufficient notice of the claim.[355] Nonetheless, the Court did not find that failure to include a claim in an EEOC charge meant it must be dismissed if raised in a subsequent lawsuit.[356] Consequently, the Court dismissed the lawsuit without prejudice.[357]

XXIV. REGARDED AS DISABLED AND RETALIATION: *Jackson v. Lake County*

The issues in *Jackson v. Lake County*[358] were whether Lake County (County) regarded Jackson as having a mental impairment substantially limiting him in a major life activity and whether Jackson adequately alleged that he had engaged in statutorily protected expression for purposes of his retaliation claim.[359]

Jackson was a senior utility worker for the County for approximately five years when the County asked him to submit to a psychological examination.[360] In his tenure as a County employee, Jackson had never sought medical treatment or been diagnosed with any mental condition.[361] Following a meeting requested by Jackson to complain about his co-worker's behavior, one of his supervisors told him that he was not "mentally fit" and made an appointment for him to receive a psychological evaluation.[362] Following Jackson's request to consult with an attorney before submitting himself to such an examination, the County suspended him without pay until he underwent the scheduled exam.[363] Subsequently Jackson filed an EEOC charge and a lawsuit against the County alleging disability discrimination based on the County's failure to offer a business necessity for the examination and for retaliating against him because he sought legal advice.[364]

Considering the County's motion to dismiss, the Court held that the County had perceived Jackson as being mentally impaired in the major life activities of learning and/or cognitive thinking because it asked him to

353. *Id.* at *15.
354. *Id.* at *16.
355. *Pierce*, 2002 U.S. Dist. LEXIS 8650, at *16-17.
356. *Id.* at *18-19.
357. *Id.* at *19.
358. No. 01 C 6528, 2002 U.S. Dist. LEXIS 7726 (N.D. Ill. April 30, 2002).
359. *Jackson*, 2002 U.S. Dist. LEXIS 7726, at *11, 18-19.
360. *Id.* at *3.
361. *Id.*
362. *Id.* at *4.
363. *Id.* at *5.
364. *Id.* at *6-7.

submit to a psychological examination and made comments about his mental fitness."[365] Relying on Section 12203(a) of the ADA, the Court stated that Jackson had engaged in statutorily protected expression when he opposed the act of requiring a psychological evaluation that did not correspond with a business necessity.[366] Additionally, the Court noted that Jackson satisfied his burden of proof by showing that he opposed the purported unlawful discrimination in good faith and with a sincere belief when he requested to speak with an attorney before submitting himself to the "blanket examination."[367] Ultimately, the Court denied the County's motion to dismiss.[368]

XXV. REGARDED AS DISABLED: *Franklin v. Ingalls Memorial Hospital*

The issue in *Franklin v. Ingalls Memorial Hospital*[369] was whether Ingalls Memorial Hospital (Ingalls) regarded Franklin as disabled when it denied her a nursing position due to her sensitivity to latex.[370] Franklin, a temporary nurse at Ingalls, interviewed for a part-time position and received an offer of employment with Ingalls.[371] During the interview, Franklin disclosed that she had eczema which made her sensitive to latex gloves.[372] Due to the unreasonable expense of purchasing non-latex gloves in addition to the latex ones, Ingalls had a policy that disqualified anyone with a latex sensitivity from employment.[373] In light of the policy and Franklin's disclosure, Ingalls withdrew its offer to employ her.[374] Franklin subsequently filed a lawsuit against Ingalls alleging that Ingalls violated the ADA when it perceived her as having a latex allergy.[375]

The Court stressed that in order to prevail on her "perceived as disabled" claim, Franklin had to show that Ingalls believed that she had an impairment substantially limiting her in a major life activity.[376] Despite Franklin's allegations that Ingalls perceived her as disabled in the major life activity of working, the Court found that there was ample evidence in the record showing that Ingalls knew Franklin was capable of working as a nurse, and that Franklin worked in such a capacity at other locations at the time Ingalls withdrew its employment offer.[377] Finally, the Court held that there is no ADA violation in denying an applicant employment when he or she suffers from a medical condition that prevents him or her from

365. *Jackson*, 2002 U.S. Dist. LEXIS 7726, at *14.
366. *Id.* at *21.
367. *Id.* at *22.
368. *Id.* at *24.
369. No. 01 C 5576, 2002 U.S. Dist. LEXIS 6997 (N.D. Ill. April 18, 2002).
370. *Franklin*, 2002 U.S. Dist. LEXIS 6997, at *3.
371. *Id.* at *2.
372. *Id.*
373. *Id.* at *3.
374. *Id.*
375. *Id.*
376. *Id.* at *5.
377. *Franklin*, 2002 U.S. Dist. LEXIS 6997, at *7.

performing a specific duty of the job in question.[378] Therefore, the court granted Ingalls' summary judgment motion.[379]

XXVI. QUALIFIED INDIVIDUAL WITH A DISABILITY: *Young v. Chicago Transit Authority*

Young v. Chicago Transit Authority[380] addressed whether Young was disabled under the ADA even though he never informed his employer, the Chicago Transit Authority (CTA), about any impairments resulting from his Type II Diabetes.[381]

Young, a bus operator for the CTA, suffered an injury while attempting to board his bus.[382] Pursuant to a CTA policy, after Young filed his injury claim, he took a drug and alcohol test.[383] The results of the exam indicated that Young had cocaine in his system.[384] Young alleged that the testing procedure was inadequate; however, a second testing confirmed the presence of cocaine in Young's system, for which the CTA suspended him indefinitely.[385] After Young failed to appear at a discharge hearing, the CTA terminated his employment believing the positive drug test posed a direct threat to the health and safety of CTA's passengers.[386] Young then filed an ADA violation claim arguing that CTA discriminated against him because he suffered from diabetes.[387]

The Court granted the CTA's motion for summary judgment and found that Young did not have an ADA claim.[388] The record contained no evidence that during the two years Young worked for the CTA he was unable to do his job or had any medical restrictions resulting from his diabetes.[389] Rather to the contrary, Young's physician provided the CTA with a note explaining that Young was fit to do his job without any medical restrictions.[390] As a result, the Court held that because he was unable to show that he was substantially limited in any major life activity, he was, therefore, not disabled for purposes of the ADA.[391] Moreover, even if he had been able to prove that he had a disability, his claim would nonetheless fail because the CTA offered a nondiscriminatory reason for his discharge that had nothing to do with his diabetic condition: his positive drug test results.[392]

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378. *Id.* at *7-8.
379. *Id.* at *9.
380. 189 F. Supp. 2d 780 (N.D. Ill. 2002).
381. *Young*, 189 F. Supp. 2d at 794.
382. *Id.* at 783.
383. *Id.*
384. *Id.* at 784.
385. *Id.*
386. *Id.* at 785-86.
387. *Id.* at 793-94.
388. *Young*, 189 F. Supp. 2d at 794.
389. *Id.*
390. *Id.*
391. *Id.*
392. *Id.* at 794-95.

XXVII. SUBSTANTIALLY LIMITED IN A MAJOR LIFE ACTIVITY AND REGARDED AS DISABLED: *Klaus v. Builders Concrete*

At issue in *Klaus v. Builders Concrete*[393] was whether Klaus was substantially limited in the major life activities of walking and working, and whether he was regarded by his employer as an individual with a substantial limitation on his ability to work or walk.[394]

Klaus worked as a truck driver for a construction company at the time he suffered an injury to his legs.[395] His leg injury developed into aortoiliac stenosis, a condition which prevented proper blood flow to his legs and buttocks.[396] Klaus sought medical help and informed his supervisor at Builders Concrete (Builders) that he was going to undergo surgery to correct the problem.[397] Although Klaus had informed his supervisor about his uncertainty as to his date of return, he was ready to return to work without restriction when the next work season began.[398] Nonetheless, Builders refused to rehire him upon his return because of an alleged problem with his previous attendance record.[399] Klaus filed suit against Builders claiming discrimination under the ADA.[400]

The Court found that Klaus was not disabled because sufficient evidence existed in the record to show that, although Klaus suffered from a physical impairment, he was not substantially limited in the major life activity of walking at the time Builders decided not to rehire him.[401] Nonetheless, the court found that Klaus' claim survived summary judgment because he had been regarded by Builders as having a disability.[402] Klaus satisfied his burden of showing Builders perceived him to be disabled by quoting deposition testimony which revealed that the reason Builders had not brought Klaus back was because he was "physically all screwed up."[403] The Court held that such a statement satisfied the "regarded as" claim because it showed Builders believed that Klaus was substantially limited in his ability to walk and/or work when compared with the general population.[404] Additionally, the Court reasoned that the question of whether the refusal to hire him was due to his perceived disability was sufficiently satisfied by pointing to the discriminatory comments and temporal proximity between the surgery and the adverse job action.[405]

393. No. 00 C 7757, 2002 U.S. Dist. LEXIS 1919 (N.D. Ill. Feb. 6, 2002).
394. *Klaus*, 2002 U.S. Dist. LEXIS 1919, at *18.
395. *Id.* at *2.
396. *Id.* at *2-3.
397. *Id.* at *3-4.
398. *Id.* at *4.
399. *Id.* at *4-5.
400. *Id.* at *5-6.
401. *Klaus*, 2002 U.S. Dist. LEXIS 1919, at *19-21.
402. *Id.* at *27.
403. *Id.* at *26.
404. *Id.* at *28.
405. *Id.* at *30-31.

XXVIII. CONCLUSION

The Supreme Court and the Seventh Circuit has resolved a number of ADA cases concerning the definition of "disabled" and the reasonableness of the accommodations expected from employers. They addressed the viability of alleged disabilities including, sleeping, concentrating, and reading all day. Additionally, they have clarified some of the pleading requirements and the burdens of proof that plaintiffs and employers must follow in various ADA contexts. The upcoming year should see more cases that refine our understanding of these issues and the impact of the ADA on employment matters.