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Mental Disabilities

By Michael Starr and Megumi Sakae[*]

There is no question but that the Americans with Disabilities Act ("ADA") protects individuals with both physical and mental disabilities. The application of the ADA to people with mental disabilities, however, has been particularly difficult for courts to deal with.

In its 1997 Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities ("EEOC Guidance"), the Equal Employment Opportunity Commission ("EEOC") stated, following the statutory scheme, that people with mental impairments could have an ADA-protected disability if, as a consequence of those impairments, they were substantially limited in one or more major life activities. But the EEOC expanded the list of possible "major life activities" from, such things as, walking, seeing, hearing, speaking and breathing (which were enumerated as examples in the ADA legislative history) to a range of new activities especially geared to psychiatric disabilities, such as, "thinking, concentrating, [and] interacting with others." This new array of potential "major life activities" is hard to grapple.

Over a decade after passage of the ADA, no one would seriously doubt that an individual could succeed admirably in virtually any job even if she had a disability-based limitation in physical ability, such as walking, provided suitable accommodations were made. But it is hard to imagine how someone could succeed in today's global, high-performance, team-oriented workplace if he were substantially limited in his ability to think, concentrate or interact with other people.

Equally problematic is the important distinction between disabilities and, what can be termed, "inabilities." From the outset, it was recognized that the ADA protected, for example, the person with dyslexia but not the person who was illiterate. There are, truth be told, people in the workplace who are irritable, quick tempered, cantankerous or prone to poor judgment. The ADA does not, however, protect people with obnoxious personality traits but only those who (in the case of mental impairments) have a mental or psychological disorder.

Courts have struggled with defining the types of major life activities that are impaired by mental disabilities and distinguishing between "substantial" limitations in these activities and those less grievous consequences that do not implicate the ADA. Often, courts faced with this issue have avoided it: declining to decide whether "thinking" or "interacting with others" for example, is a major life activity and resolving the case by saying that however that activity is defined, the plaintiff failed to show that he was "substantially limited" with respect to it. This equivocation has now come to an end with three conflicting appellate court decisions with respect to the major life activity of "interacting with others."

Getting Along with Others

Just prior to publication of the EEOC Guidelines, the First Circuit Court of Appeals in Soileau v. Guilford of Maine, Inc., 105 F.3d 12 (1997), rejected the "ability to get along with others" as a major life activity. There, Randall Soileau suffered from dysthymia, a chronic depressive disorder that interfered with a person's ability to interact with others. Soileau's psychologist advised that his work duties should be restricted "so as to avoid responsibilities which require significant interaction with other employees." Despite this accommodation, Soileau failed to improve his performance and he was terminated from his employment.

Soileau sued, claiming that his dysthymia substantially limited the major life activity of "getting along with others." The First Circuit rejected the ability to "get along with others" as a major life activity, finding that while a "skill to be prized," it was too vague, elastic and unworkable to impose a legal duty on an employer. The First Circuit added that even if it were a major life activity, Soileau failed to show that the limitation was substantial because he was only unable to get along with his supervisor.

Two years later, the Ninth Circuit Court of Appeals expressly rejected Soileau's analysis and became the first federal appellate court to hold unequivocally that interacting with others was a major life activity, describing it as "an essential regular function, like walking and breathing, [which] easily falls within the definition of 'major life activity.'" McAlindin v. County of San Diego, 192 F.3d 1226, 1234 (1999).

There, Richard McAlindin was diagnosed with anxiety, panic and somatoform disorders. During his employment as a systems analyst, McAlindin became agitated during a meeting with his supervisors and started shouting at them in an accusatory manner. Soon thereafter, he went out on leave for "work stress." Years later, he again went out on leave because of stress. During his second leave of absence, McAlindin requested a transfer as an accommodation for his disability because his doctor believed that the "negative association" with his previous position would impede his recovery. His employer agreed to put McAlindin's name on the transfer list, but refused to make special efforts to ensure that the transfer would occur. McAlindin then returned to his former position and sued for, among other things, failure to accommodate his asserted disability.

Citing the EEOC Guidance, the Ninth Circuit defined substantial limitation with respect to "interacting with others" as having relations with others "characterized on a regular basis by severe problems, for example, consistently high levels of hostility, social withdrawal, or failure to communicate when necessary." Though sounding a cautionary note that it would not regard "any cantankerous person" as being substantially limited in "interacting with others," the court had no difficulty concluding that because McAlindin suffered from "fear reaction," "communicative paralysis," and "a total inability to communicate at times, in addition to a more subtle impairment in engaging in meaningful discussion," there was a genuine issue of material fact as to whether the plaintiff's ability to interact with others was substantially limited.

The Merely Cantankerous

Just recently, in Jacques v. DiMarzio, Inc., 286 F.3d 192 (2004), the Second Circuit took the Ninth Circuit (and by implication the EEOC) to task for its definition of "substantial" limitation with respect to "interacting with others." In that case, Audrey Jacques, a factory worker who packaged and assembled guitar components, suffered from "severe and major depression" for most of her adult life and was diagnosed with a chronic form of Bi-polar II Disorder. The symptoms of her condition were unpredictable mood swings, fluctuating unreliable interpersonal and/or occupational functioning, irritability, apathy, poor judgment, and denial, none of which could be regularly controlled.

Throughout her employment, Jacques had had repeated confrontations with her co-workers and supervisors, to the point where her supervisors described their relationship with her as "poisonous" and her co-workers complained that she was harassing them. Her supervisors further complained that they had to treat her with "kid gloves" and "tiptoe" around and "cater" to her. Eventually one of her supervisors decided the plaintiff's presence at the factory was counterproductive and offered her the option of becoming an outside contractor who worked from home. This option, however, was overruled by the company's owner who instead instructed that her employment be terminated. After a jury verdict in Jacques' favor, the issue before the Second Circuit was whether her bipolar disorder, which was concededly a "mental impairment," resulted in a "substantial" limitation in the major life activity of "interacting with others."

Like the First Circuit, the Second Circuit concluded that "getting along with others" was too "unworkably subjective" to be regarded as a major life activity for ADA purposes. It nonetheless ruled that "interacting with others," though "overarching," was sufficiently objective for ADA purposes to serve as a major life activity. It disagreed, however, from the Ninth Circuit's formulation of "substantial limitation," which it characterized as "unworkable, unbounded and useless as a guidance for employers, employees, judges and juries." The Second Circuit found that the presumed demarcation in the EEOC Guidance between the merely cantankerous and the individual who had "consistently high levels" of hostility, social withdrawal and communicative failure simply did not exist.

The court was also troubled by a standard that gave greater legal protection and created greater litigation risk as employees became “more troublesome and nasty.” It therefore held that someone was “substantially limited” in “interacting with others” only if his impairment “severely limited the fundamental ability to communicate with others” (emphasis added), which could only be satisfied if the worker was severely limited in her “ability to connect with others, i.e., to initiate contact with other people and respond to them, or to go among other people—at the most basic level of these activities.” Examples of conditions that would satisfy the standard are “acute or profound cases . . . of autism, agoraphobia and depression.”

Work As A Cooperative Enterprise

In reality, the verbal formulae adopted by the Second and Ninth Circuits is not that easy to differentiate. What is more pronounced is a difference in approach. Lurking behind the Second Circuit’s decision – and noticeably lacking from the Ninth Circuit and EEOC analysis – is the realization that once a court finds an individual to have an ADA-protected disability, the statutory requirement of reasonable accommodation can be quite onerous. It, consequently, seems to be a strange expansion of legislative intent to bring the full range of ADA protections to people whose limitations make them ill-suited for the essentially cooperative enterprise that work has become in modern America. Employers who would not tolerate hostile and anti-social behavior when the product of a “mere” personality trait should not be forced to do so when, according to some purported expert, it is the product of a mental or psychiatric disorder. Restricting the concept of “substantial” limitation in the activity of “interacting with others” to a profound and near total inability to communicate (such as can occur in cases of autism) avoids putting employers in this untenable bind.

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