Scope of ADA disability

On June 22, 1999, the Supreme Court handed down three decisions elaborating on the 1990 Americans with Disabilities Act (ADA). In two of the cases, the Court narrowed the scope of the definition of "disability" under the Act. The ADA defines "disability" as (1) a physical or mental impairment that substantially limits one or more of the major life activities of an individual, (2) a record of such an impairment, or (3) being regarded as having such an impairment.[1] Focusing on the first provision of the definition, the Court stated that only those individuals with a substantial impairment that cannot be reduced with mitigating measures—estimated by Congress at about 43 million people nationwide—are covered by the Act. The Court rejected the inclusion of persons with a major life impairment for whom correction of the impairment was possible (for example, eyeglasses correcting a vision problem). That group numbers near 160 million nationwide.

In *Sutton* v. *United Airlines, Inc.*,[2] the Supreme Court held that any determination as to whether a person is disabled under the ADA must take account of corrective measures that mitigate the impairment. The Court noted that, under the ADA, a disability is not a condition that "might," "could," or "would" substantially limit a major life activity of an individual, but is one that in fact limits such an activity.

The petitioners in *Sutton* were severely myopic twin sisters with uncorrected eyesight of 20/200 or worse. With corrective measures, the sisters can see as well as persons without this impairment. The sisters both applied to United Airlines to become commercial airline pilots, but were not hired, because United has a minimum standard for uncorrected eyesight of 20/100. The sisters then sued United under the ADA.

The district court dismissed the complaint because it failed to state a claim upon which relief could be granted. The court indicated that the sisters were not disabled under the ADA, because their vision problems could be corrected. The tenth circuit affirmed the district court's decision.

The Supreme Court's opinion began by noting that no Federal agency has specifically been delegated the responsibility of interpreting the term "disability" under the ADA. Both the U.S. Department of Justice and the Equal Employment Opportunity Commission (EEOC) have weighed in on the topic by issuing regulations supporting the evaluation of each disability claim on a case-by-case basis.[3] The EEOC also defines the term "substantially limits" as "unable to perform a major life activity that the average person in the general population can perform."[4] Because both sides in this case accepted these regulations, the Court did not rule on what deference the regulations ultimately will be due.

The Court outlined three justifications for its decision that a determination as to whether an individual has a disability should account for mitigating measures. First, the Court stated that the phrase "substantially limits" in part (1) of the definition of "disability" above is in the present indicative tense of the verb, indicating that a person must be substantially limited in the present, not in the future. Second, the Court ruled that determinations of disability must be made on an individualized basis and that judging the matter on the basis of uncorrected or unmitigated conditions runs directly against such an inquiry. Finally, the Court examined findings by Congress in support of the ADA which indicated that 43 million people in the United States have one or more physical or mental disabilities. If Congress had intended to cover all people with some kind of a condition, irrespective of whether it could be corrected, some 160 million people would have been covered, the Court noted.

With regard to part 3 of the definition of "disability," the Court ruled that the sisters did not properly allege that they were "regarded as" having an impairment that substantially limits a major life activity. United's vision standard was merely a method of preferring some physical attributes over others in hiring pilots, a permissible procedure. The Court explained that, under this provision, employers must mistakenly believe that an individual has a substantially limiting impairment.

In *Albertson's, Inc.* v. *Kirkingburg*,[5] the Court held that, under the ADA, an employer may require employees to meet a Federal safety regulation as a job qualification, irrespective of the fact that the regulation's standard may be waived in an individual employee's case. The Court indicated that employers need not justify the enforcement of such a regulation.

In August 1990, Hallie Kirkingburg applied for, and received, a job as a truckdriver with the warehouse of Albertson's grocery in Portland, Oregon. Kirkingburg has an uncorrectable condition called amblyopia that leaves him with 20/200 vision in his left eye. Prior to his first day of work, Kirkingburg was examined by a doctor to determine whether his eyesight met Federal vision standards for commercial truckdrivers. The current vision regulation requires a corrected distant visual acuity of at least 20/40 in each eye and distant binocular acuity (that is, vision using both eyes) of at least 20/40. Despite the fact that Kirkingburg's problem is monocular, or present in only one eye, and does not meet the Federal standard for commercial truckdrivers, the doctor mistakenly certified him to drive. After an injury on the job in December 1991, Kirkingburg was examined by another physician, who determined that his eyesight did not meet the Federal stan-

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dards. The physician told Kirkingburg that he would have to apply to the Department of Transportation for a waiver of the requirement. Under an experimental Transportation Department program initiated in the summer of 1992, applicants who had deficient vision, but a "clean" driving record with a commercial vehicle for 3 years could obtain certification. Kirkingburg applied for a waiver, but was fired by Albertson's prior to receiving it in early 1993. Albertson's refused to rehire him after he received the waiver. Kirkingburg sued Albertson's under the ADA, claiming that his having been fired violated the Act.

The District Court granted summary judgment to Albertson's, holding that Kirkingburg was not "otherwise qualified" to be a commercial truckdriver, because he did not meet the basic Transportation Department standards, either with or without a "reasonable accommodation," and that the waiver program for certification was not required as a reasonable accommodation because it was "a flawed experiment" that did not alter the basic vision requirements of the Department of Transportation. The ninth circuit court of appeals reversed the district court's decision, ruling that Kirkingburg was disabled because the manner in which he sees (that is, by monocular vision) differs significantly from that of most people (that is, with binocular vision). The ninth circuit also held that the waiver program was a legitimate part of the Department of Transportation's normal regulatory scheme and that permitting Kirkingburg to drive after obtaining such a waiver was a reasonable accommodation that Albertson's could make to enable Kirkingburg to retain his job.

The Supreme Court reversed the ninth circuit's ruling. The Court found three errors in the appeals court's reasoning regarding why Kirkingburg's condition met the ADA's first definition of disability. First, the ninth circuit appeared to hold that merely a "significant difference" (in Kirkingburg's case, in manner of vision) in the performance of a major life activity was sufficient to qualify an individual as disabled. The EEOC regulation defining "substantially limits" requires a "significant restriction" in a person's manner of performing a major life activity. The High Court was concerned that transforming "significant restriction" into "difference" would broaden the scope of the ADA's coverage and undermine the requirement that an impairment substantially limit a major life activity. Second, as in *Sutton*, the Supreme Court rejected the ninth circuit's suggestion that an individual's ability to compensate for an impairment need not be considered in judging whether the individual has a disability. The Court ruled that mitigating measures must be taken into account in making such a determination. Finally, the High Court held that whether someone was disabled was a question, the answer to which was to be determined on a case-by-case basis and not by a general classification of the illness or condition.

The Court also found that the Department of Transportation's waiver program was an experiment being used to obtain data to make an ultimate determination on whether the Department's vision standards should be less stringent. In light of its experimental nature, the waiver program did not require Albertson's to justify why it enforced the Transportation Department's vision regulations without regard to the program. Until the waiver program becomes a standard part of the Department's basic vision regulations, employers are not required to permit job applicants with impaired vision to work if they can obtain a waiver, the Court said.

In its final decision pertaining to the ADA, the Court ruled, in *Olmstead, Commissioner, Georgia Department of Human Resources, et al.* v. *L.C.*,[6] that States are required to place persons with mental disabilities in community settings rather than in mental institutions when three conditions are met: the State's physicians treating the person must have determined that the community setting is appropriate; the transfer to the community setting must not be opposed by the individual; and the State can effect the transfer with reasonable accommodation, taking into account the total resources available to the State in administering mental health care and the needs of other mentally disabled individuals. The case was decided under Title II of the ADA, which prohibits discrimination against those with disabilities in the provision of public services.

Updates on other cases

The Supreme Court issued decisions in three employment cases on its 1999 docket.[7]

In *Humana, Inc.* v. *Forsyth*,[8] the Court held that Humana Health Insurance of Nevada could be sued under the Racketeer Influenced and Corrupt Organizations Act (RICO) for allegedly overcharging millions of dollars in copayments to beneficiaries. Under certain Humana group policies, beneficiaries were to receive medical care at a hospital owned by the corporation and were responsible for paying 20 percent of the overall cost of treatment. The insurer was required to cover the other 80 percent. Humana negotiated discounts with the hospital, but did not pass them on to beneficiaries, who thus ended up paying well in excess of 20 percent of the overall cost of treatment received at the hospital. A group of beneficiaries sued Humana under RICO, alleging that the company engaged in racketeering activities consisting of fraud by mail, wire, radio, and television. The district court granted summary judgment to Humana, holding that the McCarran-Ferguson Act preempted the use of a claim under RICO in an area of State-regulated insurance. That Act asserts that "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for

the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance." The district court found that, although RICO does not prohibit conduct that Nevada's law permits with respect to insurance regulation, the remedies provided under each law differ. RICO allows treble damages, while Nevada law authorizes only compensatory and punitive damages. The ninth circuit court of appeals reversed the district court's decision, adopting a "direct conflict" test for determining when a Federal law "invalidate[s], impair[s], or supersede[s]" a State insurance law and thus would be preempted. The Supreme Court affirmed the ninth circuit's decision, finding that the RICO statute advances Nevada's interest in preventing insurance fraud and that it does not impair any policy or administrative regime of that State. The Court noted that to "impair" a law is to hinder its operation or to "frustrate [a] goal of the law." However, using RICO in this manner is permissible because that Federal law does not directly conflict with any Nevada law. Thus, the beneficiaries can bring a claim against Humana under RICO.

In *American Manufacturers Mutual Insurance Co.* v. *Sullivan*,[9] the Court held that, in Pennsylvania, no notice or hearing is required prior to suspending an individual's medical payments in accordance with the State's worker's compensation program. Under the Pennsylvania Workers' Compensation Act, employers must pay all "reasonable" and "necessary" medical treatment costs after the employer becomes liable for a work-related injury. The Pennsylvania statute provides that a self-insured employer or private insurer of employers may withhold payments for treatment that the employer or insurer feels is not "reasonable" or "necessary" while a "utilization review organization" of private health care providers makes an independent determination. Although the State Workers' Compensation Bureau oversees all disputes, the Bureau does not have any authority over the utilization review organization and its final determination. Pennsylvania included this provision in its workers' compensation law to ensure that only appropriate medical expenses were being paid by the State and to control the overall costs of the program. The Supreme Court ruled that a private employer or insurer's decision to withhold medical payments and seek a utilization review was not a "State action" and thus was not subject to the due-process requirements of the 14th Amendment to the U.S. Constitution. The Court noted that State action requires both that the deprivation of a Constitutional right be caused by acts taken pursuant to State law and that the unconstitutional conduct be fairly attributable to the State. The Court also ruled that the Pennsylvania suspension procedure did not deprive employees of "property" under the 14th Amendment, because no such interest is conferred on workers' receiving medical payments until after the utilization board conducts its review and determines that such payments are reasonable and necessary. Because no property interest exists at the time payment is suspended, the Pennsylvania law is not subject to the 14th Amendment's due-process requirements.

In *UNUM Life Insurance Co. of America* v. *Ward*,[10] the High Court ruled that California's "notice-prejudice" rule is permitted under the Employee Retirement Income Security Act (ERISA) when a person submits a claim for long-term disability benefits. Under the rule, the insurer of an ERISA benefit plan may not deny benefits because of untimely notice or submission of a proof of claim, unless the insurer proves that it has suffered actual prejudice because of the delay. John Ward did not notify UNUM of his long-term disability claim within 30 days of the onset of his disability, nor did he submit written proof of the claim within 180 days of the onset. The company denied his claim on the ground that it was untimely. The Court ruled that the "notice-prejudice" rule is a law that regulates insurance rather than employee benefits and thus is not preempted by ERISA. That determination included findings that, from a "com-monsense view of the matter," the contested prescription regulates insurance. The Court also rejected UNUM's contention that the notice-prejudice rule conflicted with certain substantive ERISA provisions. On remand, UNUM must demonstrate that it was prejudiced by the delay before it can deny Ward's disability payment. □

Notes

[1] 42 U.S.C. § 12102(2).

[2] Case number 97–1943.

[3] 29 CFR pt. 1630, App. §1630.2(j); 28 CFR pt. 35, App. A, §35.104.

[4] 29 CFR pt. 1630, App. §1630.2(j).

[5] Case number 98–591.

[6] Case number 98–536.

[7] See "The Law at Work," *Monthly Labor Review*, January 1999, for summaries of these cases.

[8] Case number 97–303.

[9] Case number 97–2000.

[10] Case number 97–1868.