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Insights

Seventh Circuit Weighs Whether Obesity Is A Disability Under The ADA

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On June 12, 2019, the Seventh Circuit Court of Appeals determined that obesity qualifies as a disability under the Americans with Disabilities Act (ADA) only if it results from an underlying physiological disorder or condition.

Background. In *Richardson v. Chicago Transit* Authority, 926 F.3d 881 (7th Cir. 2019), a CTA bus operator claimed that his extreme obesity was a disability that required accommodation under the ADA. The bus operator alleged that the CTA violated the ADA when it failed to make an accommodation and terminated him.

There is no question that the CTA took adverse employment action against the driver based on his excessive weight. He was transferred to a "temporary medical disability" assignment because he exceeded the 400-pound weight threshold. His employer requested that he take a special test because his weight exceeded that limit, not because of any violation of the employer's operating procedures.

Obesity as an "Impairment" under the ADA. The ADA defines an individual with a disability as one who has a physical or mental impairment that substantially limits one or more major life activities or who is regarded as having such an impairment. The bus driver first argued that his obesity was an actual impairment. The court found that obesity can be an actual impairment, only if it (1) falls outside the normal range and (2) occurs as the result of an underlying physiological condition or disorder. The court's rationale derived in part from the EEOC's definition of "physical impairment" as a "*physiological* disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems."[1]

The bus driver also argued that he was disabled because the CTA perceived his obesity to be an impairment. Again, just as an actual impairment must derive from a physiological cause, a disability is "perceived as" as a physical impairment *only if* the employer perceived that the disability results from a physiological cause. Because there was no evidence that the CTA believed the obesity resulted from a physiological cause, the bus driver could not show that his employer perceived him as having a disability. In contrast, an employee in First Circuit case presented expert testimony that morbid obesity was a physiological impairment and presented evidence that the employer treated the obesity as if it affected her musculoskeletal and cardiovascular systems. In that case, the employee did show that her obesity was perceived as a disability.

The Court's Holding. Weight is only a disability if it falls outside the normal range *and* results from an underlying physiological cause. Had the plaintiff offered expert testimony to connect his obesity to a physiological cause and or showed that the CTA perceived his obesity to result from an underlying physiological disorder or condition, he would have proven himself entitled to the protections of the ADA. In making its decision, the court joined the Second, Sixth, and Eighth circuits and a majority of district courts which hold that obesity is an ADA impairment only if it falls outside the normal range and is the result of an underlying physiological disorder or condition.

[1] 29 C.F.R. § 1630.2(h)(1).