

The ADA Project

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LEGISLATION CLINIC

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Case Spotlight: Definition of Disability

Case Name: [Adair v. City of Muskogee](#)
Citation: *Adair v. City of Muskogee*, 823 F.3d 1297 (10th Cir. 2016).
Date of Decision: May 26, 2016
Court: United States Court of Appeals, Tenth Circuit
Judge(s): Hon. Neil Gorsuch, Hon. Nancy Moritz, & Hon. Gregory Phillips
(author)
Alleged Disability: Back injury
Prong(s) at Issue: Regarded As

Background:

Robert Adair (“Adair”) worked as a firefighter for Muskogee, Oklahoma for 32 years. *Adair*, 823 F.3d at 1299. Adair suffered a back injury during a training exercise. As a result, he was placed on lifting restrictions, followed by two years of paid leave. *Id.* In March 2014, Adair received a workers’ compensation award letter that stated that his lifting restrictions were permanent. *Id.* Later that same month, Adair’s disability-retirement pension application was approved, effective April 1, 2014. *Id.* at 1302. On February 2, 2015, Adair sued Muskogee for discrimination, alleging that he was forced to retire due to his back injury in violation of the Americans with Disabilities Act (“ADA”), as amended by the ADA Amendments Act (“ADAAA”). *Id.*

The district court granted summary judgment to Muskogee on the ADA claim, concluding that Adair did not have a disability because his back injury did not limit his major life activities. *Id.* at 1303. On appeal, Adair claimed that the district court erred in granting summary judgment because Muskogee regarded Adair as having a disability. *Id.* at 1304.

Holding:

Reversing the lower court on the definition issue, the Circuit Court recognized that Muskogee regarded him as having a disability under the ADA as amended by the ADAAA. Nonetheless, the Circuit Court found that Adair’s ADA claim failed because he could not perform the essential functions of the job, and no reasonable accommodation was identified that would enable him to perform them.

Analysis Regarding “Regarded As” (Prong 3):

Under the ADA, “the term ‘disability’ means: (A) a physical or mental impairment that substantially limits one or more major life activities an individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.” 42 U.S.C. § 12102(1). After the ADAAA, a plaintiff must demonstrate that the employer regarded him as having a disability by showing that: “(1) he has an actual or perceived impairment; (2) the impairment is neither transitory nor minor; and (3) the employer was aware of and therefore perceived the impairment at the time of the alleged discriminatory action.” *Adair*, 823 F.3d at 1306.

As this standard demonstrates, the ADAAA changed the definition for “regarded as” claims. *Id.* After the ADAAA, it is no longer necessary for a plaintiff “to plead and prove that the actual or perceived impairment ‘substantially limited one or more major life activities.’” *Id.* (citing *Mercado v. Puerto Rico*, 814 F.3d 581, 588 (1st Cir. 2016)). Instead, under the current regarded as prong, the impairment need not limit a major life activity nor be perceived by the employer as limiting a major life activity.

Further, the only qualification in a “regarded as” claim is that the impairment not be “transitory and minor.” 42 U.S.C. § 12102(3)(B). A transitory impairment is an impairment with an actual or expected duration of six months or less. *Id.*

The district court applied the pre-ADAAA definition to conclude that Adair did not have a disability, relying on a determination that his back injury did not substantially limit the major life activity of working in a “class of jobs”; it only limited his ability to work as a firefighter. *Adair*, 823 F.3rd at 1303. Declaring the district court’s application of the ADA to be in error, the Circuit Court correctly applied a broader definition of disability under the ADAAA to find that Adair met the standard articulated under the “regarded as” prong of the definition of disability. *Id.* at 1306. In doing so, the Circuit Court acknowledged that the aim of Congress in passing the ADAAA was to construe the definition of disability in favor of broad coverage. See 42 U.S.C. § 12102(4)(a). As a result, Adair could show that Muskogee regarded him as having an actual or perceived impairment.