

The ADA Project

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LEGISLATION CLINIC

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Case Spotlight: Definition of Disability

Case Name: [Russell v. Phillips 66 Company](#)
Citation: *Russell v. Phillips 66 Co.*, No. 16-5063, 687 F. App'x 748 (10th Cir. 2017) (unpublished).
Date of Decision: May 4, 2017
Court: United States Court of Appeals, Tenth Circuit
Judge(s): Hon. Charles Matheson, Hon. Bobby Baldock, & Hon. Nancy Moritz (author)
Alleged Disability: Major Depressive Disorder and Panic Disorder
Prong(s) at issue: Actual Disability

Background:

Phillips 66 Company (“Phillips”) ended the corporate transportation department in which Steven Russell (“Russell”) had been working in 2010. *Russell*, 687 F. App'x at 750. Phillips then transferred Russell to work as a marine freight operator for the finance department. *Id.* After 18 months of stressful work, Russell experienced what he described as a “nervous breakdown” on September 13, 2012, and left work. *Id.* He later was diagnosed with Major Depressive Disorder and Panic Disorder and unsuccessfully attempted to find a modified position at Phillips.¹ *Id.* at 750-51. Phillips fired Russell on September 13, 2013. *Id.*

Russell sued Phillips for terminating him and failing to provide a reasonable accommodation for his disability in violation of Title I of the Americans with Disabilities Act (“ADA”), as amended by the ADA Amendments Act (“ADAAA”). *Id.* at 752. The district court granted summary judgment to Phillips, finding that Russell failed to demonstrate that his depression caused a significant limitation of sleeping, breathing, or concentrating. *Id.* at 753. Russell appealed.

The AARP and AARP Foundation filed an [amicus brief](#) in support of Russell, articulating reasons why major depressive disorder is a disability under the ADA.

¹ Russell began seeing a psychiatrist to improve his mental health a month later. The doctor completed Employee Health Reports for Phillips concerning Russell's status and ability to return to work, opining that Russell was unlikely to return to his old position but could return in a modified role. *Id.* at 752-53.

Holding:

The Circuit Court affirmed, holding that Russell’s only proffered evidence—his own affidavit—was not enough to establish the causal link showing that his depression significantly limited the major life activities of sleeping, breathing, or concentrating.² *Id.* at 756. Because Russell could not produce competent evidence that his depression limited a major life activity, he failed to demonstrate a genuine issue of material fact as to whether he had an actual disability. *Id.*

Analysis Regarding Actual Disability (Prong 1):

The Circuit Court analyzed only whether Russell had an actual disability.³ *Id.* at 753. To meet this definition, Russell “must (1) have a recognized impairment, (2) identify one or more appropriate major life activities, and (3) show the impairment substantially limits one or more of those activities.” *Id.* at 753 (interpreting 42 U.S.C. § 12102(1)(a)).

Russell was diagnosed with depression, which is a recognized physical or mental impairment. *Id.* at 751, 753. There also was no question as to whether sleeping, breathing, or concentrating constituted major life activities (“MLAs”). *Id.* at 753 (relying on 29 C.F.R. § 1630.2(i)(1)(i)). Rather, the issue was whether Russell showed that his depression substantially limited those MLAs. *Id.*

In response to the employer’s summary judgement motion, Russell filed a personal affidavit stating that one of the medications he took for his depression caused him to experience insomnia and thus substantially limited his ability to sleep. *Russell*, 687 F. App’x at 753. He further stated in his affidavit that his depression substantially limited his ability to breathe and concentrate. *Id.* at 755.

The Circuit Court found this evidence inadequate, stating that “lay evidence on an issue requiring medical expertise is inadmissible and can’t be used to oppose summary judgment.” *Id.* at 753. Without additional evidence, the Circuit Court concluded that Russell could not move forward with a disability discrimination claim against Phillips; Russell failed to produce competent evidence of the causal link between his depression and any limitation of a MLA. *Id.* at 755-56.

The Circuit Court could have found for Russell based on the EEOC’s predictive assessment regulation, which states, *inter alia*, that depression “will, as a factual matter, virtually always be found to impose a substantial limitation on a major life activity”—namely, brain function, 29 C.F.R. § 1630.2(j)(3)(ii)-(iii). In an abundance of caution at the summary judgment stage, however, plaintiff’s proceeding under prong 1 (or prong 2) of the definition of disability should submit expert medical evidence of a substantially limiting impairment.

² Russell originally alleged that his impairment impacted the major life activity of working. He declined to appeal the district court’s finding that it did not; consequently, the existence of a limitation on working was not analyzed on appeal. *Id.* at 753.

³ Russell also originally alleged that he was “regarded as” having a disability. He did not appeal the district court’s finding that he did not produce evidence to satisfy this definitional prong. *Id.* at n. 2.