

# Mental Illness and Reasonable Accommodations at Work: Definition of a Mental Disability Under the ADA

Ramona L. Paetzold, D.B.A., J.D.

The Americans With Disabilities Act (ADA) specifies that employees and job applicants with mental and physical disabilities who are "otherwise qualified" are entitled to reasonable accommodation at work (1). In practice, however, employers and even courts may hinder this process by refusing to recognize that someone with a mental illness has a genuine disability.

In general, mental illnesses are often not viewed as disabilities under the ADA on the grounds that they do not affect the types of activities that courts consider in determining disability, their manifestations are harder to link to the underlying disorder than is often the case for physical illnesses, they appear not to limit a person's capacity to work, and their symptoms appear to be well controlled in the population of persons who are actively looking to join the workforce. In this column I review the law and present some ADA cases that have involved mental illness to demonstrate the difficulties that can arise for persons who seek to work despite their mental illnesses.

Under the ADA, a mental disability is typically a mental impairment that "substantially limits one or more of the major life activities" of the person. An impairment qualifies as substantially limiting when it renders someone unable to perform a major

life activity or significantly restricts him or her as to the "condition, manner, or duration" under which he or she can perform the activity compared with an "average" person in the population (2). Major factors for the court to consider in determining whether an impairment is substantially limiting include the impairment's nature and severity, expected duration, and expected impact. Typical major life activities include functions such as taking care of oneself, walking, seeing, and breathing. However, there is no exhaustive list. In general, major life activities are those that the average person can perform "with little or no difficulty."

One of the major hurdles people with mental illness have faced is trying to convince courts that cognitive processing and participation in social experiences—which are often impaired by serious mental disorders—are major life activities. For example, in one case the court ruled that concentrating was not a major life activity but merely a "significant and necessary component of a major life activity, such as working, learning, or speaking" (3). In another case the court wrote that "it is doubtful that . . . thinking . . . constitute[s] a major life activit[y] under the ADA" (4). In other courts, getting along with others has sometimes been viewed as less than major, with one court labeling it "remarkably elastic . . . a skill to be prized, [but] . . . different in kind from breathing or walking" (5). How are these kinds of rulings possible?

It seems that there are three important influences that contribute to a court's looking at major life activities in

such a restrictive fashion. First, for mental disabilities, unlike physical disabilities, there may be no apparent definitional linkages between the disorder and its manifestations in life activities. For example, blindness, as a disorder, is defined in terms of eyes that do not see fully—seeing being the major life activity; paraplegia can be defined in terms of legs that cannot walk. Even a disorder that is typically less severe, such as asthma, is defined in terms of difficulties with the major life activity of breathing. Mental illness, on the other hand—to the layperson's eyes—does not have a corresponding physical or even behavioral restriction. Instead, mental illness is a complex cluster of impairments that are not physically apparent.

Second, although the manifestations of mental illness may be more extreme at times, most people—including judges—experience some of the behaviors associated with mental illness at some point in their lives. For example, people understand elation, sadness, moodiness, irritability, and anger. It is difficult for them to accept that these manifestations may truly be linked to mental disorders, particularly when there is no "litmus test" for the disorders. Third, the behavioral manifestations are typically viewed as behaviors that are under the individual's control and thus voluntarily chosen. Courts may ask why employees behave in the manner they do—"Why isn't this person interacting with others?"—but would never ask such questions in conjunction with physical illnesses or disorders.

These problems also affect the determination of what constitutes "sub-

*Dr. Paetzold is associate professor and Mays Research Fellow in the department of management at Texas A&M University, College Station, Texas 77843-4221 (e-mail, r-paetzold@mays.tamu.edu). Paul S. Appelbaum, M.D., is editor of this column.*

stantial limitation.” For example, even if concentrating is deemed to be a major life activity, a person with a mental illness may have a difficult time establishing that his or her concentration abilities are substantially limited. And although a person with bipolar disorder may have episodic bouts of mania and depression, these temporary, acute conditions may not be viewed as substantial impairments.

In one case a plaintiff with bipolar disorder had two brief hospitalizations for her condition. The court held that “the fact that [her] impairment varies in intensity and is sporadic in nature weighs against a finding of a substantial limitation” (6). The court noted that the plaintiff’s difficulties with thinking and concentrating occurred only occasionally and could therefore not be substantial in nature. In another case the plaintiff had required two hospitalizations and admission to a psychiatric center as a result of her bipolar disorder. Because of the “brief” nature of her bipolar episodes and the fact that none had occurred in the past three years, the court did not see the plaintiff as being protected by the ADA. The court did not evaluate the likelihood that the plaintiff’s symptoms might recur (given her medical history) or even intensify but instead dismissed them as relatively insignificant and therefore not enough to constitute a mental disability (7).

Because the test for a substantial limitation includes factors such as the ways in which an activity can be performed or the duration for which it can be performed, and because courts are accustomed to thinking in terms of physical disabilities, the test for “substantial limitation” tends to favor persons whose impairment is continuously at a serious level. In addition, the test permits courts to ignore the effect of social context on persons with mental illness. For example, in *Doebele v. Sprint* (8), the plaintiff had argued that she was substantially impaired in the life activity of communicating with others as well as interacting with others, but the court held that she was able to have meaningful conversations with her psychiatrist, family members, and friends, including going out on

dates. The court reasoned that these major life activities would be substantially limited only if they could be characterized “on a regular basis by severe problems [such as] consistently high levels of hostility, social withdrawal, or failure to communicate when necessary.”

Use of the words “regular” and “consistently” indicate that the courts are looking for more stable impairment than may be reflected by a mental illness. This attitude is particularly ironic for social interaction, because, although courts may deny that social interaction is a major life activity or, if it is, that it is substantially limited, they find it to be critical to job functioning and hence capable of preventing someone with a mental illness from holding a job. Although the court noted that Doebele’s work environment was “not pleasant” and that her coworkers were spreading rumors about her mental state and attempting to get rid of her, it did not find that her inability to interact with others—including her coworkers—was substantially impaired (8).

“Working” is one example of a major life activity, but it is the most difficult major life activity for which to prove substantial limitation, regardless of the nature of the claimed disability. Courts do not take sufficient note of the fact that the work environment itself can contribute significantly to the impairments suffered by employees with mental illnesses. Because working is the quintessential life activity that enables people to be independent and self-supporting in American society, this lack of recognition by the courts has dire consequences for persons with mental illnesses.

The Supreme Court has indicated that, to demonstrate a substantial limitation in the major life activity of working, the individual must be restricted from performing an entire class of jobs or a broad range of jobs in various classes (9). This approach once again fails to take into account social context and tends to favor those whose disorder manifests itself in a stable manner. Unlike persons with physical impairments, who may be incapable of working in a variety of contexts, persons with mental impairments are more likely to be impeded

by a particular work context or environment itself.

For example, a person with kidney failure will have that impairment in any workplace and may therefore be excluded from a broad class of jobs, because severe kidney disease reduces energy levels and requires long and recurrent absences from the workplace for dialysis. This outcome is not workplace specific but affects the person in all jobs. Thus the person will have a substantial limitation in working and can be found to have a disability under the ADA. Persons with mental illnesses, however, not only vary considerably in the manifestations of their illnesses but also are more likely to experience differential limitations across workplaces, even when performing the same job.

For example, harassment by coworkers stemming from prejudice or stigma may be workplace specific and not related to a particular job. Ability to interact or communicate with others, control impulsive behavior or irritability, and generally get along in the workplace also may not be job specific but, rather, may depend on one’s colleagues and the way in which work is organized—all of which is workplace specific. Thus, what can be disabling in large part arises from the people, practices, and work arrangements within given workplaces. This situation does not lead to a finding of disability under the ADA.

Many are surprised that the question of whether one’s illness affects one’s ability to work is not the primary consideration under the ADA. This reality is indeed ironic, because, if the purpose of the ADA is to promote employment for persons with disabilities, the workplace should be of primary concern. After all, it is the employer who is in a position to address the workplace-related aspects of disability, and the ADA recognizes this position by requiring reasonable accommodation for such employees and job applicants who have been deemed to have disabilities. By treating working as a “last resort” major life activity, courts have produced an interpretation that further favors physical disabilities over mental disabilities.

Sociocognitive functions are a large

and highly salient component of work for persons with mental illnesses, whether or not such functions are specifically required for the job. Unlike persons with physical impairments, individuals with mental illnesses have impairments that may be affected by the manner in which work is performed and the attitudes, beliefs, and behaviors of coworkers and supervisors. If parity is to be achieved under the ADA, it should be easier for persons with mental illnesses, as opposed to physical illnesses, to demonstrate that they are substantially limited in the major life activity of working.

In addition to the considerations discussed so far, the Supreme Court has ruled that major life activities must be evaluated in the mitigated—that is, treated—state (9). In other words, the person who has an impairment that is mitigated—for example, through psychotropic medication—must be evaluated in the treated state to determine whether a substantial limitation exists. Thus a person with a mental disorder who is taking medication may be found to be without disability for the purposes of the ADA, because the limitation resulting from the illness is no longer sufficiently substantial. In essence, the mitigating intervention is viewed as “controlling” the disorder or impairment. This interpretation once again creates a lack of parity between physical and mental disorders.

This point is illustrated by the example of a person in a wheelchair—who is always considered disabled under the ADA, presumably because the mobility of the physical body is never completely restored. The wheelchair is a form of mitigation. The permanent nature of the impairment is not questioned, even though

the wheelchair may mitigate the person's inability to move. A person with a mental impairment who is taking psychotropic medication also will have some degree of control over his or her condition, but that person will not automatically be considered to be disabled for the purposes of the ADA.

Courts fail to understand the limited nature of the mitigation that results from medication. For example, they underemphasize the fact that environmental or situational triggers may induce manic or psychotic episodes. Furthermore, a demonstration of significant side effects of the medication would be required to demonstrate that the mitigating intervention itself produced a disability. (A person in a wheelchair is considered to be disabled under the ADA even if there is no particular evidence of “side effects” of the wheelchair—it simply is not an inquiry.) In general, side effects due to psychotropic medication tend not to rise to the level of substantial limitation, because they may be intermittent or may affect only “nonmajor” aspects of the person's life.

For example, in one case the court did not consider a plaintiff's diagnosed bipolar disorder to be a disability under the ADA, even though the plaintiff's medication impaired his ability to urinate on a regular schedule. He was unable to produce a urine specimen when required to do so at work. The court noted that the plaintiff had urinated once in the morning and once in the afternoon on the day he refused the drug test (10). The court did not discuss “normal” urination patterns for the “average” person, even though that is what the test requires. It simply used its own judgment to determine what seemed normal. Had the plaintiff had a physical impairment that re-

quired him to be in a wheelchair, it is much more likely that any resulting difficulty in urination would have been found to be a substantial limitation of a major life activity. Thus he not only could have been found to have a disability with regard to walking but could also have been found to be disabled because of disruptions in his ability to urinate and hence to require additional accommodation.

Proving that one has a disability under the ADA is a particularly difficult task for persons with mental disorders. The structure of the ADA, along with its judicial interpretation, provides a set of requirements that are more aligned with the demonstration of physical disabilities than mental disabilities. Thus, for persons with mental illnesses, inability to prove a mental disability often precludes being able to present persuasive arguments about an employer's discriminatory treatment or failure to provide reasonable accommodations. ♦

## References

1. 42 US Code sec 12111(8)
2. 42 US Code sec 12102(2)(A)
3. *Pack v Kmart Corp*, 166 F 3d 1300 (10th Cir 1999)
4. *Hill v Metropolitan Government of Nashville*, 54 F Appx 199 (2002)
5. *Soileau v Guilford of Maine*, 928 F supp 37 (D Maine 1996)
6. *Glowacki v Buffalo General Hospital*, 2 F supp 346 (WD New York 1998)
7. *Horowitz v Stickley, Inc*, 20 Fed Appx 76 (2d Cir 2001)
8. *Doebele v Sprint*, 342 F 3d 1117 (10th Cir 2003)
9. *Sutton v United Air Lines*, 527 US 471 (1999)
10. *Williams v Hallmark Cards*, 10 Fed Appx (10th Cir 2001)