Defining Disability

By Barbara Raimondo, JD

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Three U.S. Supreme Court decisions narrow the definition of who is a qualified individual with a disability for purposes of the Americans with Disabilities Act (ADA). The rulings provide that if an individual is able to mitigate fully the effects of the disability, that individual may not be protected by the ADA. Together these decisions are the most significant ADA rulings since the law was passed in 1990.

Employers may use job qualifications that disqualify persons with disabilities if those qualifications are "job related and consistent with business necessity, and when performance cannot be accomplished by reasonable accommodation." §12113(a)

For the most part, employers supported these outcomes while advocates for the disability community deplored them.

The first case, *Sutton v. United Airlines* involved two sisters who applied for jobs with United as commercial airline pilots. Sutton and Hinton met the requirements of employment except for the vision requirement. The two had severe myopia, with uncorrected vision of 20/200 or worse, but with corrective action, such as using eyeglasses or contact lenses, their vision was 20/20 or better. Because they did not meet United's minimum vision requirement of uncorrected visual acuity of 20/100 or better, they were not offered pilot positions.

They brought suit in United States District Court against United Airlines claiming they were discriminated against in violation of the Americans with Disabilities Act. The District Court dismissed their complaint because they could fully correct their visual impairments, thus, the Court held, they were not disabled under the ADA. The Court of Appeals for the Tenth Circuit affirmed the District Court's decision. In a 7-2 decision, the Supreme Court affirmed the decision of the Court of Appeals.

The ADA prohibits discrimination by covered entities, including private employers, against qualified individuals with a disability. "Disability" is defined as:

1. a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
2. a record of such an impairment; or
3. being regarded as having such an impairment.

42 U.S.C §12102(2).

The first question the Court had to decide was whether disability is to be determined with or without reference to corrective measures. The Court held that disability must be determined *with* reference to corrective measures. Because Sutton and Hinton had corrected vision of 20/20 or better, their impairment was not covered by the first prong of the definition of disability.

The Court provided three reasons to support its conclusion. First, it looked at the definition of the term "disability." The Court emphasized the fact that the phrase "substantially limits," appearing as it does in the "present indicative verb form," is meant to require that a person *presently be* substantially limited in order to be considered as a person with a disability. If the individual's impairment is corrected, the impairment does not "substantially limi[t]" a "major life activity."

Second, the court stressed the fact that the ADA requires that disabilities be evaluated on an individual basis. To judge persons in their uncorrected or unmitigated state conflicts with the concept of individualized inquiry. The court maintained that judging persons in their uncorrected state would require courts and employers to speculate about a person's condition. It would have them determine disability status based on how uncorrected impairments usually affect individuals instead of how a particular person functions with that disability.

Third, the Court looked at the number of disabled persons in the U.S. cited in the ADA — 43 million. The Court stated that if the definition of disability put forth by the Sutton and Hinton was accurate, the number of persons with disabilities would be much higher than 43 million. This higher number would therefore be inconsistent with Congress' intent when it adopted the ADA.

Once the Court determined that Sutton and Hinton's vision impairment did not fall within the first prong of the definition of disability, it considered whether Sutton and Hinton were "regarded as" having an impairment that substantially limits one or more major life activities and therefore were disabled under the third prong of the ADA's definition of disability. The Court determined that they were not.

Sutton and Hinton claimed that United's vision requirement was based on myth and stereotype and that the requirement precluded them from obtaining the job of global airline pilot, a "class of employment."

However, the Court saw the position of global airline pilot as a single job, not a class of jobs. The Court pointed to the Equal Employment Opportunity Commission's Interpretative Guidance, which states that "an individual who cannot be a commercial airline pilot because of a minor vision impairment, but who can be a commercial airline co-pilot or a pilot for a courier service, would not be substantially limited in the major life activity of working."

Therefore, the Court concluded that Sutton and Hinton were not "regarded as" persons with a disability and were not entitled to the protections of the ADA.

Justice Ginsburg filed a concurring opinion, in which she focused on the legislative findings of the ADA. The findings state that "individuals with disabilities are a discrete and insular minority," persons "subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society." Ginsburg concluded that persons with poor eyesight or those who use medication daily are found throughout the fabric of our society and therefore do not constitute a discrete and insular minority.

Justice Stevens wrote a dissenting opinion urging that a "generous, rather than a miserly" construction of the law be used because of its remedial nature. Stevens noted that the real issue in the case was not whether the petitioners can perform the job, but whether they are members of a protected class. He argued that if they are members of that class, they fall under the protection of the ADA just as older individuals do under the Age Discrimination in Employment Act of 1967 and as all individuals do under Title VII of the Civil Rights Act of 1964.

The Court handed down two other ADA decisions on the same day as its ruling on the *Sutton* case. *Murphy v. United Parcel Service* involved a mechanic whose job required him to drive commercial motor vehicles. Murphy's blood pressure exceeded the limits established by the federal Department of Transportation for health certification of such drivers. He was erroneously granted certification, and when the error was discovered, he

was fired.

The Court considered whether, in determining if Murphy's impairment "substantially limit[s]" one or more of his major life activities Murphy should be considered in his medicated state. Relying on *Sutton,* the Court quickly answered yes.

The Court next looked at Murphy's claim that he was "regarded as" disabled by UPS as it incorrectly believed Murphy's condition substantially limited him in the major life activity of working. UPS argued that it did not consider Murphy substantially limited in the major life activity of working, but believed him to be unqualified for the UPS mechanic job because he was unable to obtain DOT certification. The Court considered whether the inability to obtain DOT certification resulted in Murphy being "regarded as" disabled. In order to show that he was regarded as disabled, Murphy had to show that he was unable to perform a class of jobs utilizing his skills. The Court found he did not make that showing, and that in fact, he was "generally employable as a mechanic." Therefore, he was not considered a qualified person with a disability under the ADA.

In the third case, *Albertsons v. Kirkingburg,* the Court looked at the question of whether, under the ADA, an employer was required to justify enforcing an applicable federal safety regulation solely because it may be waived in an individual case. The Court decided that the employer was not.

Albertsons mistakenly employed Kirkingburg as a truck driver, overlooking the fact that Kirkingburg's eyesight did not meet DOT regulations, which Albertsons was required to follow. He had amblyopia, which caused monocular vision. Later, Kirkingburg took a leave of absence due to an injury. When he returned and underwent a required physical, the mistake was discovered.

DOT provided waivers of its vision standards under certain conditions. Kirkingburg applied for a waiver, but because he did not meet DOT's basic vision standards, Albertsons fired him from his job as a truck driver. Later, Kirkingburg received a DOT waiver, but Albertsons would not re-hire him.

The Court first looked at whether Kirkingburg was an individual with a disability under the ADA. It asked whether he was substantially limited in the major life activity of seeing. The Court answered no. First, while Kirkingburg's vision was different from that of the general population, a mere difference does not rise to the level of a disability. Second, as the Court decided in *Sutton*, mitigating measures must be taken into account when determining if a person has a disability. Kirkingburg had developed mechanisms through which to compensate for his monocular vision. Third, the existence of disability must be determined on a case-by-case basis. The Court stated that evidence had not been put forward that would specify the extent of Kirkingburg's visual restrictions.

Next, the Court considered whether, even if Kirkingburg was disabled, Albertsons was entitled to enforce the DOT vision standard as "an essential job function of the employment position." If so, Albertsons would prevail, because even Kirkingburg conceded he could not meet it.

"…determination of whether an individual is disabled should be made with reference to measures that mitigate the individual's impairment."

— Justice Sandra Day O'Connor, writing for the Supreme Court majority opinion in *Sutton v. United Airlines*

Employers may use job qualifications that disqualify persons with disabilities if those qualifications are "job related and consistent with business necessity, and when performance cannot be accomplished by reasonable accommodation." §12113(a) Employers may have as a qualification standard "a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace." §12113(b) "Direct threat" is "a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation." §12111(3)

The Court found that Albertsons was entitled to enforce the DOT standard as an essential job function. Albertsons was bound by DOT regulations; it did not have a choice whether or not to use the regulations. The regulations were not determined by Albertsons and therefore not subject to questions about appropriateness and application. Their validity was not in question, and they did not allow for individualized considerations.

Next the Court examined whether the waiver program modified the DOT visual standards. The Court found it did not. The waiver program was an experiment to obtain information about the effect of modified visual standards. Albertsons was still entitled to rely on the DOT visual standards.

The Court then looked at whether Albertsons should be required to defend its decision not to employ Kirkingburg based on the DOT waiver. It found that it should not. If an employer was required to defend its decision in such a case, the employer would have to justify anew regulations issued by the government itself. Congress could not have intended an outcome whereby an employer relying on a government regulation, even with a waiver program, would have to justify their relying on that regulation.

Barbara Raimondo, JD is an advocate for deaf and hard of hearing children who consults with nonprofits throughout the U.S. For more information about the cases discussed in this article or for questions about the rights of deaf and hard of hearing individuals, contact Barbara at (301) 990-2847, or BarbR500@aol.com