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CLAUSTROPHOBIC WORKPLACE ADA CLAIM

James C. Kozlowski, J.D., Ph.D.

Congress enacted the ADA, in part, "to address the major areas of discrimination faced day-to-day by people with disabilities." 42 U.S.C.A. § 12101(b)(4). Within the workplace, the "ADA prohibits discrimination against an otherwise qualified employee on the basis of her disability." Specifically, the ADA states that "[n]o covered entity shall discriminate against a qualified individual on the basis of disability in regard to ... advancement, or discharge of employees, ... and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a).

In the case of *Weiss v. County of Suffolk*, 2018 U.S. Dist. LEXIS 51399 (E.D. N.Y. 3/27/2018), Plaintiff Donna Weiss brought a lawsuit against Defendants County of Suffolk and Suffolk County Department of Parks Recreation & Conservation ("Defendants") alleging a violation of the Americans with Disabilities Act (the "ADA"). In her complaint, Plaintiff alleged that Defendants failed to reasonably accommodate her mental disability and that she was unlawfully terminated. Specifically, she alleged that her ability to concentrate, think, communicate, interact with others, and work was substantially limited by her disability.

With regard to a failure-to-accommodate claim, a plaintiff establishes a prima facie (i.e., legally sufficient on initial impression) ADA case by demonstrating that: (1) plaintiff is a person with a disability under the meaning of the ADA; (2) an employer covered by the statute had notice of his disability; (3) with reasonable accommodation, plaintiff could perform the essential functions of the job at issue; and (4) the employer has refused to make such accommodations.

With regard to a discriminatory termination claim, a plaintiff establishes a prima facie ADA case by demonstrating that: (1) her employer is subject to the ADA; (2) she was disabled within the meaning of the ADA; (3) she was otherwise qualified to perform the essential functions of her job, with or without reasonable accommodation; and (4) she suffered adverse employment action because of her disability.

FACTS OF THE CASE

Plaintiff Donna Weiss ("Plaintiff") was employed by Defendant Parks and Recreation as a clerk typist in its environmental department from March 1996 to June 3, 2011. Initially, Plaintiff worked at Defendants' West Sayville location where she shared an office space with two other individuals. While at the West Sayville location, Plaintiff did not have any medical issues that affected her ability to do her job.

At some point in either 2009 or 2010, the environmental department was relocated from Defendants' West Sayville location to the Timber Point location. Plaintiff's first office space at the Timber Point location was "a large open area with only two desks." Her desk was set against a window and faced a larger window, which provided a view of the golf course. She shared the office space with one other individual.

In a March 22, 2011 memorandum, Tracy Bellone, Defendant Park and Recreation's Deputy Commissioner, advised Plaintiff that her work assignment would be changed and that she would be moved to another office within the Timber Point location. Her new office measured 15.5 feet x 8 feet. The office was windowless and had three doors that opened to interior spaces—two doors opened to other offices; one door opened to the hallway.

On March 24, 2011, two days after receiving notice of the impending relocation, Plaintiff sent a letter to the Department of Public Works Commissioner requesting a transfer to the Department of Public Works. According to Plaintiff, she made the request because of her inability to work in her current space. Then, on March 28, 2011, she met with Ms. Bellone, and informed Ms. Bellone that claustrophobia prevented her from working in the new office because it was a confined space without a window, air conditioning, or ventilation. Plaintiff requested that she either be moved to an office with a window or have a window installed in the office.

During the meeting, Ms. Bellone asked whether Plaintiff had medical documentation of her claustrophobia. Plaintiff indicated that she did not. Ms. Bellone asked that such documentation be provided and told Plaintiff that a window would be put in after Labor Day.

No sooner than March 30, 2011, Plaintiff met with Registered Clinical Social Worker (RCSW), Barbara Weitz. Ms. Weitz provided Plaintiff with a note stating:

> Donna Weiss has been a patient of mine since 3/30/11. She has a diagnosis of Agoraphobia with Panic Disorder (300.21). She will be seen weekly. This disorder is represented by extreme anxiety or panic attacks when these patients are faced with a feeling of confinement, *i.e.*, small spaces, being in a crowd, being on a bridge or [in a] tunnel or on a train, etc. If you need additional information regarding the patient please feel free to call me at the above number.

According to Plaintiff, Defendants made some efforts to accommodate her concerns. Within two days of Plaintiff's meeting with Ms. Bellone, the doors were removed from Plaintiff's office. Her supervisors, Nick Gibbons and Tom D'Angelo permitted Plaintiff to work in their respective offices when either was not present. Jim Barr, whose office was adjacent to Plaintiff, left his door open when he was not in the office to "help [Plaintiff] feel better."

According to Plaintiff, these accommodations did not alleviate her panic attacks. Indeed, she testified that she was having panic and anxiety attacks every day. Further, Plaintiff maintained that she had difficulty breathing in her office and that following an attack she was unable to concentrate for the rest of the day. Due to these attacks, Plaintiff used sick days and left work early on occasion.

On May 23, 2011, Plaintiff made a second request for a transfer. This time, she wrote a letter requesting a transfer to the Department of Social Services. According to Plaintiff, she was still suffering from her medical condition at the time of the letter.

By the end of Plaintiff's employment, she was having daily panic attacks and speaking with both Mr. Gibbons and Mr. D'Angelo every day. In one of those conversations, Plaintiff requested to

return to her old office with the golf course view, but she was informed that Ms. Bellone denied the request.

Plaintiff indicated to Mr. Gibbons and Mr. D'Angelo that she was going to resign from her position. When she did so, Mr. Gibbons and Mr. D'Angelo informed Plaintiff that they were still working to either have a window installed in her office or have her moved to another office. According to Defendants, Mr. Gibbons asked her to reconsider resigning and reminded her about the option to transfer.

On June 1, 2011, Plaintiff submitted a letter to Mr. Gibbons and Mr. D'Angelo requesting a three-month leave of absence without pay. In the letter, she indicated that she was making the request "due to health issues." That same day, Defendants denied her request. Defendants provided two reasons for the denial. *First*, it was "Department policy NOT to approve any request for leave of absence." *Second*, "the Department was too short staffed to consider such a request." Plaintiff did not appeal the denial of leave to the Director of Labor Relations, a procedure available under the County's collective bargaining agreement.

On June 2, 2011, Plaintiff sent a letter to Defendants resigning her position. She stated: "This is due to working conditions that exasperated my health condition, and I regret that a reasonable accommodation could not be provided." After Plaintiff's resignation, Dr. Anna Mirski gave Plaintiff a note dated June 13, 2011, stating: "Donna has been under my care. She is able to work, but needs to avoid conditions that trigger her claustrophobia."

Prior to 2011, Plaintiff never had a claustrophobic feeling at work. Furthermore, in 2011, the manifestations of Plaintiff's claustrophobia at work were limited to her new office space. Outside of work, claustrophobia did not affect any life activity during the relevant period. Plaintiff had not been treated for claustrophobia as an adult prior to March 2011.

On December 14, 2011, Plaintiff filed a Charge of Disability under the ADA with the U.S. Equal Employment and Opportunity Commission ("EEOC"). On the intake questionnaire, Plaintiff indicated that she "suffered from the medical disability of claustrophobia, that she requested reasonable accommodations, which were denied by Defendants, and that her employment was constructively terminated." On December 18, 2012, the EEOC issued Plaintiff a Notice of the Right to Sue. On February 11, 2014, Plaintiff filed her lawsuit in federal district court.

CLAUSTROPHOBIA DISABILITY?

In her complaint, Plaintiff alleged Defendants had violated the ADA by failing to "reasonably accommodate her known mental limitations brought on by her disability of claustrophobia." In so doing, Plaintiff claimed the County had "constructively terminated her" based upon "her medical disability, perceived medical disability, record of impairment, and need for leave as well as other reasonable accommodations." (An employee is constructively terminated when an employer makes working conditions so intolerable that the employee is effectively forced to resign.)

To establish both a failure to accommodate and discrimination under the ADA, the federal

district court acknowledged: "a plaintiff must demonstrate that she is a person with a disability as defined by the act." In this particular instance, the court noted Plaintiff had claimed she suffered from "claustrophobia and/or agoraphobia."

In response, the Defendants argued Plaintiff had failed to state an ADA claim because "claustrophobia and agoraphobia are not recognized as impairments under the ADA." The federal district court rejected this "categorical bright-line test approach" advocated by Defendants.

According to the federal district court, "no blanket rule regarding claustrophobia and agoraphobia" had been established in earlier ADA federal court opinions. On the contrary, the federal courts had made "a fact-specific inquiry to assess the purported impairment" on a case-by- case basis.

As cited by the federal district court, within the context of the ADA, a plaintiff can establish that she is a person with a disability by showing either that she:

> (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) has been regarded as having such an impairment. 42 U.S.C. § 12102(1)(A)-(C).

In this particular instance, the federal district court found Plaintiff had not claimed that "there was a record of her purported impairment or that she has been regarded as having such an impairment." Instead, Plaintiff had argued "her diagnosed disorders substantially limit one or more major life activities bringing her within the ambit of the ADA." In the opinion of the federal district court, the pretrial record did not support this contention.

PROOF OF SUBSTANTIAL LIMITATION?

As characterized by the court, Plaintiff had relied "almost exclusively" on her own pretrial testimony and deposition "as evidence that her alleged impairment substantially limits major life activities":

> Plaintiff's panic attacks and feelings of suffocation hindered her at the office. In order to keep up with her work, she had to work in the offices of Mr. Gibbons and Mr. D'Angelo when they were not present. Other days, Plaintiff took sick leave or left work early.

The court, however, found the pretrial record did not contain "any admissible medical evidence that might serve to substantiate Plaintiff's claimed limitations." On the contrary, the court found Plaintiff had only offered "two notes relevant to the Court's inquiry, one from Dr. Mirski and the other from RCSW Weitz diagnosing Plaintiff with claustrophobia and agoraphobia, respectively":

> Plaintiff does not offer a single affidavit or deposition testimony from a physician or other medical professional setting out the limitations attendant to her diagnosis.

> There are no medical notes or records delineating the severity or extent of Plaintiff's limitations. Likewise, Plaintiff offers no expert medical opinion.

Similarly, the federal district court rejected Plaintiff's "purported evidence of her disorder" based upon information provided from the website WebMD. The court also rejected a note from Dr. Guillermo A. San Roman, which simply stated: "Pt under our care, any questions please call."

MERE DIAGNOSIS NOT ADA DISABILITY

Accordingly, the federal district court held Plaintiff's doctor notes and related information failed to provide "the medical evidence necessary to support Plaintiff's claims" under the ADA:

> It is insufficient for a plaintiff to prove a disability on the basis of a diagnosis alone—that is, not every impairment is a disability. Not every impairment is a "disability" within the meaning of the ADA. To rise to the level of a cognizable disability a plaintiff must demonstrate that the diagnosed conditions substantially limit plaintiff in a major life activity.
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> There are two requirements: the impairment must limit a major life activity and the limitation must be substantial. An impairment is within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population.

In the opinion of the federal district court: "Neither of the notes proffered by Plaintiff address what limitations, if any, are marked by Plaintiff's disorders." In particular, the court cited Dr. Mirski's note, authored after Plaintiff left the employ of Parks and Recreation, as failing to provide any information concerning any substantial limitations on major life activities associated the diagnosed condition. As cited by the court, Dr. Mirski's note simply read in total: "Donna has been under my care. She is able to work, but needs to avoid conditions that trigger her claustrophobia."

Similarly, the court found the note from RCSW Weitz, stated only generically that agoraphobia "is represented by extreme anxiety or panic attacks when these patients are faced with a feeling of confinement, *i.e.*, small spaces, being in a crowd, being on a bridge or in a tunnel or on a train, etc."

In the opinion of the federal district court: "Neither note provides information concerning the frequency of any alleged panic attack by Plaintiff." Moreover, the court found "no reference to the duration of any panic attacks" in these notes. Most importantly, as cited by the court, "neither note provides any information concerning how the diagnosed condition impacts Plaintiff's ability to think, concentrate, communicate, or work." Accordingly, the federal district concluded: "This lack of evidence is fatal to Plaintiff's claims" under the ADA.

As a result, the federal district court granted the Defendants' motion for summary judgment and directed the clerk of the court to "enter judgment and close this case."

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James C. Kozlowski, J.D., Ph.D. is an attorney and associate professor in the School of Recreation, Health, and Tourism at George Mason University in Fairfax, Virginia. E Mail: jkozlows@gmu.edu Webpage with link to law review articles archive (1982 to present): http://mason.gmu.edu/~jkozlows