

# The ADAAA: Case Law Developments

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When it enacted the ADAAA, Congress made 4 changes to “substantially limited in a major life activity”:

--**Need not prevent, or significantly or severely restrict**, a major life activity

--Major life activities include “**major bodily functions**”

--Ameliorative effects of **mitigating measures not considered**

--Impairments that are “**episodic**” or “**in remission**” are substantially limiting if they would be when active

# What Results?

- For the most part, courts applying the ADAAA are holding that individuals with a wide range of conditions previously unprotected now meet the “substantially limited” standard.
- The turn-around in the case law is especially notable with respect to cancer, as well as multiple sclerosis, HIV, diabetes, and many psychiatric conditions.

## Examples: ADAAA Applied

- **Diabetes:** Willoughby v. Connecticut Container Corp., 2013 WL 6198210 (D. Conn. Nov. 27, 2013). Citing 29 C.F.R. § 1630.2(j)(3)(iii): “diabetes substantially limits endocrine function,” an example of impairments that “should easily be concluded” to meet disability definition.
- **Cancer:** Haley v. Community Mercy Health Partners, 2013 WL 322493 (S.D. Ohio Jan. 28, 2013). Six-week absence for cancer surgery and recuperation; “when active,” the cancer substantially limited major life activity of “normal cell growth.”

Gogos v. AMS Mechanical Systems, Inc.,  
737 F.3d 1170 (7th Cir. 2013)

- District court: dismissed complaint, ruling alleged medical conditions were “transitory”
- Seventh Circuit reversed: Chronic high blood pressure, which caused vision loss for several minutes when it spiked, could substantially limit circulatory function or eyesight “when active”
- Moreover, plaintiff’s chronic high blood pressure could be substantially limiting even if, due to the benefits of medication, he had never experienced any substantial limitation.

Summers v. Altarum Institute, Corp.,  
740 F.3d 325 (4th Cir. 2014)

- Plaintiff fractured his left leg, tore a tendon in his left knee, fractured his right ankle, and ruptured a tendon in his right leg.
- Following two surgeries, he was restricted from putting any weight on his left leg for six weeks, and told that he would not be able to walk normally for seven months.

## Summers (cont'd)

- District court: too temporary to be substantially limiting
- Fourth Circuit reversed: under the ADA as amended, even “temporary” impairments may be substantially limiting
- “effects of an impairment *lasting or expected to last fewer than six months* can be substantially limiting” 29 C.F.R. § 1630.2j)(1)(ix)
- duration of an impairment is relevant but not dispositive

## Examples of Impairments Found By Courts Not to be Substantially Limiting

- Clay v. Campbell Cnty. Sheriff's Office, 2013 WL 3245153 (W.D. Va. June 26, 2013) (one-time bout of kidney stones).
- Bush v. Donahoe, 2013 WL 4045785 (W.D. Pa. Aug. 8, 2013) (ankle/foot sprain).
- Lewis v. Florida Default Law Group, P.L., 2011 WL 4527456 (M.D. Fla. Sept. 16, 2011) (H1N1 virus).

# More Examples – Not Substantially Limiting

- Brtalik v. South Huntington Union Free School Dist., 2012 WL 748748 (E.D.N.Y. Mar. 8, 2012) (two-week light-duty restriction after colonoscopy/polypectomy; “Brtalik's attempt to characterize a routine, diagnostic, out-patient procedure, or any related minor discomfort, as a disability within the meaning of the ADA is simply absurd”).
- Koller v. Riley Riper Hollin & Colagreco, 2012 WL 628009 (E.D. Pa. Feb. 28, 2012) (torn ACL).

# Evidence of Disability – How much? What type?

- Neely v. PSEG Texas, Limited Partnership, 735 F.3d 242 (5th Cir. 2013) (“...though the ADAAA makes it *easier* to prove a disability, it does not *absolve* a party from proving one”).

EEOC v. Ford Motor Co., 2014 WL 1584674  
(6th Cir. April 22, 2014).

- “Harris is indisputably disabled under the ADA: Her [irritable bowel syndrome] is a physical impairment that substantially limits the operation of her bowel, a major bodily function.”
- Citing 42 U.S.C. § 12102(1)(A), 12102(2)(B).

Dactelides v. Bd. of School Trustees of South Bend Community School Corp., 2014 WL 1623739 at n.1  
(7th Cir. April 24, 2014) (unpublished).

- “The district court also questioned whether Dactelides could prove he was disabled because he had not submitted evidence suggesting that his MS substantially limits a major life activity ... Yet the court did not discuss the 2008 amendments to the ADA or their implementing regulations, which lessened the degree of functional limitation necessary for a plaintiff to be ‘substantially limited’ in a major life activity and, thus disabled .... **The school corporation did not dispute that Dactelides had been diagnosed with MS, and according to the implementing regulations, ‘it should easily be concluded that .... multiple sclerosis substantially limits neurological function.’ 29 C.F.R. § 1630.2(j)(3)(iii). Thus, Dactelides likely was disabled for purposes of the ADA.”**

Mazzeo v. Color Resolutions Int'l, LLC,  
746 F.3d 1264 (11th Cir. 2014).

- Treating physician stated in his affidavit that employee's herniated disc included “nerve root involvement caus[ing] radicular symptoms, that is pain radiating from the lumbar spine down [his] right leg,” and that the disc problems and resulting pain — which had existed for years and were serious enough to require surgery — substantially and permanently limited his ability to walk, bend, sleep, and lift more than ten pounds.

## Mazzeo (11<sup>th</sup> Cir. 2014)

- Reversing summary judgment for the employer, the appellate court ruled that the treating physician's affidavit was sufficient evidence of disability to proceed to trial "given the new standards and definitions put in place by the ADAAA" and EEOC's amended regulations.
- The affidavit explained the type of pain caused by the impairment, and the resulting limitations on major life activities.

Scavetta v. Dillon Companies, Inc.

2014 WL 2898491 (10<sup>th</sup> Cir. June 27, 2014)  
(unpublished).

- Treating physician's trial testimony focused on the effects of rheumatoid arthritis on immune function and joints generally, and plaintiff testified about the effects of the impairment on performing manual tasks, walking, and lifting.
- Absent specific evidence that rheumatoid arthritis substantially limited plaintiff's own major bodily functions, it was not reversible error to fail to instruct the jury that major life activities include "major bodily functions."

# “Regarded as”

No longer requires that employer perceived individual to be substantially limited in a major life activity

Covers anyone subjected to an adverse action because of an actual or perceived physical or mental impairment

- Affirmative defense: impairment is “transitory” *and* “minor”

Silk v. Bd. of Trustees of Moraine Valley Community College, Dist. No. 524, \_\_\_ F. Supp. 2d \_\_\_, 2014 WL 2443904 (N.D. Ill. May 30, 2014).

- Employer argued plaintiff's heart condition, which required triple bypass surgery, was "transitory and minor" because he was released for duty approximately one week after his hospitalization.
- Held: while impairment lasted fewer than six months and was thus "transitory," employer did not meet its additional burden to prove the condition was "minor."
- "Several cases treat these two statutory requirements in the disjunctive, but that interpretation is at odds with the statutory text and none of the cases offers a rationale for interpreting a conjunctive element as disjunctive." The court ruled that it would not infer as a matter of law that the impairment was minor based just on the timeframe required to treat it.