



DELAWARE

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William W. Bowser, Editor; Scott A. Holt and Adria B. Martinelli,
Associate Editor
Young, Conaway, Stargatt & Taylor

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DISABILITY DISCRIMINATION

Disability discrimination and the ADAAA: Some old rules still apply

by Lauren E. Moak

The Americans with Disabilities Act (ADA) prohibits you from discriminating against an employee on the basis of her disability. The ADA Amendments Act (ADAAA) took effect on January 1, 2009. Under it, the definition of "disability" is construed in favor of broad coverage, which has led to significant speculation about whether employers can continue to successfully challenge an employee's assertion that she is disabled within the meaning of the law. A recent decision from the U.S. District Court for the District of Delaware reminds us, however, that courts will still devote significant time to considering whether an employee has a disability that is ADA-protected.

Facts

Stacy Naber sued her former employer, alleging, among other things, a violation of the ADA. Naber worked as a recreation assistant for Dover Healthcare, a rehabilitative and eldercare facility. Her responsibilities included conducting classes and individual appointments with patients to provide mental and physical stimulation. She reported to Erin Mueller, the director of recreation.

Naber's relationship with Mueller began to deteriorate in 2008, after Mueller allegedly made inappropriate comments and started rumors that Naber was promiscuous. Naber complained about the conduct, and Mueller apologized. However, problems persisted between the two, and their relationship deteriorated even further during Mueller's maternity

leave, when Naber alleged that she was exhausted and stressed out by the additional work she had to take on in her absence. Naber voiced continuing concerns and eventually requested intermittent time off under the Family and Medical Leave Act to seek counseling for her anxiety.

In the midst of her conflicts with Mueller, Naber was disciplined for several issues. First, she failed to conduct an afternoon activity session. Approximately two weeks later, she reported on an activity sheet that she had met with a patient who was in the hospital at the time she claims to have met with him. Growing suspicious, Mueller interviewed several residents with whom Naber claimed to have met. Each of the residents denied that they had met with her. Consequently, Naber was terminated for falsifying resident records.

Naber responded by filing a lawsuit against Dover Healthcare alleging that it had discriminated against her on the basis of her disability, in violation of the ADA.

Discussion

In support of her discrimination claim, Naber alleged that she suffered from depression, which affected the major life activities of sleeping, eating, and concentrating. However, she focused almost exclusively on her inability to sleep, which she alleged was affected one to two nights per week. In response, Dover Healthcare alleged that it was her strained relationship with Mueller, not depression, that affected her ability to sleep. In making its case, the employer relied on *Maslanka v. Johnson & Johnson, Inc.* Naber argued that the case should be disregarded because it was decided before the ADAAA took effect.

In the end, the district court found that Naber had alleged facts sufficient to establish a *prima facie* (initial) case of disability discrimination. Specifically, the court noted that her sleeping problems continued after her termination, indicating that they were related to depression and not her strained relationship with Mueller.

More significantly, however, the court emphasized that the requirements for establishing a *prima facie* case were not altered as a result of the ADAAA. Consequently, if Naber's sleeping problems had diminished after her termination, it would have been evidence that her problems were temporary and related to her interactions with Mueller, not depression. Consequently, the court's decision indicates that in some cases, it is still reasonable to challenge an employee's claim that she is disabled under the ADA. *Naber v. Dover Healthcare Associates, Inc.*

Bottom line

While the ADAAA has affected the way courts interpret the ADA — broadly construing the term "disability" to include a greater number of circumstances — there is still room to defend a discrimination claim on the basis that the employee is not "disabled." The ADAAA didn't change

the elements of an employee's *prima facie* case; she is still required to demonstrate that she suffers from a physical or mental impairment that substantially limits a major life activity.

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