

Shields v. Credit One Bank, N.A., et al.

32 F. 4th 1218 (2022)

Impairments while recovering from surgery could qualify as a “disability” despite being short-term because there are no categorical temporal limitations for disabilities under the Americans with Disabilities Act.

Circuit Judge, Daniel Collins

FACTS/PROCEDURE

Appellant alleged that her former employer violated Title I of the Americans with Disabilities Act ("ADA") by failing to accommodate her disability and instead terminating her. In November 2017, Shields began working in the HR Department of Defendant Credit One Bank ("Credit One") in Las Vegas, Nevada. Her formal job title was "HR Generalist I," and the official job description for that position listed a variety of basic "physical requirements." The job description also stated, however, that "reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions" of the job.

In January 2018 Shields' doctor was concerned she had bone cancer. She was scheduled for a bone biopsy surgery, which took place months later. The biopsy surgery was a significant procedure that required a three-day hospitalization. Subsequent testing of the samples revealed that Shields did not have cancer. Given the substantial physical impact of the biopsy surgery itself, Shields was unable to return to work for several months. Specifically, her postsurgical injuries prevented her from fully using her right arm/shoulder/hand. Her doctor stated on Credit One's standard ADA form that Shields would be unable to perform her essential job functions, with or without accommodation, for two months. After submission of the form, Shields was approved for an unpaid, eight-week "medical leave of absence as an accommodation under the ADA." (The leave was unpaid rather than paid because Shields did not qualify for paid leave under the Family and Medical Leave Act.) Her doctor initially estimated that Plaintiff would be able to return to work on June 20, 2018. However, as that date approached, Shields still lacked full use of her right shoulder, arm, and hand. On June 18, 2018, Dr. Hillock prepared a note indicating that Shields was still unable to return to work and he will re-evaluate at their next appointment in early June. After receiving the note, the assistant VP of Credit One's HR Department called Shields and asked her to come into the office the next day. Shields asked "if she was being fired," and the assistant vice president said that she was not and that they needed her to come in to discuss "her healthcare premium." When Shields reported to the office, she was told that her position was being eliminated and that she was therefore being terminated. After obtaining a "Right to Sue" letter from the EEOC, Shields filed her lawsuit alleging disability discrimination in violation of the ADA.

The district court granted Credit One's motion to dismiss the complaint under Rule 12(b)(6). The court concluded that Shields had failed adequately to plead a disability within the meaning of the ADA. First, citing the 2010 version of the EEOC regulations defining disability, the court held that Shields had failed to plead facts showing "any permanent or long-term effects for her impairment." (The term "disability means, with respect to an individual— A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3)). Second, the court concluded that Shields failed to allege sufficient factual detail to "state a plausible impairment" during the requested extension of her medical leave of absence. The court entered judgment, and Shields filed a timely notice of appeal.

HOLDING/DISCUSSION

The Ninth Circuit reversed and remanded. The *Shields* Court explained that Section 106 of the ADA has long granted the EEOC authority to "issue regulations" to "carry out" Title I of the ADA. In 2008, however, Congress enacted the ADA Amendments Act of 2008 ("ADAAA") for the express purpose of rejecting the narrow understanding of "substantially limits" that had been adopted in several Supreme Court decisions. The ADAAA's findings also expressly state that the "current EEOC ADA regulations defining the term 'substantially

limits' as 'significantly restricted' are inconsistent with congressional intent, by expressing too high a standard." The referenced 2008 version of the EEOC regulations that the ADAAA expressly rejects as too restrictive are identical to the 2010 version of the regulations applied by the district court in this case. The EEOC issued new regulations in 2011 that significantly amended the regulatory definition of "substantially limits." As amended in 2011, the EEOC regulation that defines the phrase "substantially limits" now contains a subsection stating that "the effects of an impairment lasting or expected to last fewer than six months *can* be substantially limiting." Because the ADA and its implementing EEOC regulations make clear that the actual-impairment prong of the definition of "disability" in the ADA is not subject to any categorical temporal limitation, the district court committed legal error in holding, based on the pre-ADAAA regulations, that a claim of such an actual "impairment" requires a showing of long-term effects.

Lastly, the Ninth Circuit held that Appellant adequately presented that she has a disability under the correct legal standards. The ADA expressly states that "major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." The Ninth Circuit explained that the complaint specifically alleged that Shields's post-surgery injuries impeded her ability to lift, to perform basic grooming tasks necessary to care for herself, and to perform manual tasks such as pushing or pulling.

The formal guidance accompanying the amended EEOC regulations specifically states that a temporary impairment that impedes the performance of a major life activity and that "lasts for several months" is "sufficiently severe" to qualify as "substantially limiting" within the meaning of the ADA and the EEOC regulations. The Ninth Circuit concluded that Plaintiff adequately alleged, during the period of her requested extension, that she suffered a "disability."