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ADA Doesn't Cover Bias Based on Future Disabilities From Obesity

By David McAfee Oct 29, 2019

- • Seventh Circuit earlier held ADA doesn't cover severe obesity
- • Possible future conditions include diabetes and sleep apnea

The Americans with Disabilities Act doesn't protect applicants who employers expect might develop a qualifying impairment in the future, the Seventh Circuit held Oct. 29. It then ruled in favor of a railroad company that refused to hire a man because of his risk of later suffering obesity-related medical problems.

Railyard worker Ronald Shell previously argued that his obesity qualified as a physical disability within the meaning of the ADA, but the appeals court, in June, dispensed with that theory when it held the statute doesn't cover severe obesity unaccompanied by an underlying physiological condition. Instead, Shell, this time around, staked his disability claim on the conditions Burlington Northern Santa Fe Railway Company feared he would develop going forward, such as sleep apnea, diabetes, and heart disease.

But Shell's view that treating someone who doesn't have disabilities as though they do constitutes a disability in itself is "mistaken," according to the Seventh Circuit [ruling](#). "The evidence is clear that BNSF did not believe that Shell had any of the feared impairments when it refused his application" and so no claim exists under the ADA, Judge Michael Y. Scudder wrote Oct. 29.

Shell worked for 33 years in various roles at Chicago's Corwith Rail Yard, which would ultimately come to be owned and controlled by BNSF. When BNSF assumed operations in 2010, employees like Shell were let go and invited to apply for different positions.

Shell applied to work at BNSF as an intermodal equipment operator, which would require him to climb on railcars, drive trucks, and operate a crane, and received a conditional offer based on a successful medical screening. BNSF's chief medical officer decided Shell was not medically qualified for the job because his body mass index was 47.5 and he was applying for a "safety-sensitive" position, according to the court record.

The district court refused to grant BNSF's motion for summary judgment, in which it argued that Shell didn't have a disability under the ADA, and certified the future-impairment question to the Seventh Circuit.

Circuit Judges William J. Bauer and Daniel A. Manion joined in the opinion.

The case is [Ronald Shell v. Burlington Northern Santa Fe Railway Company](#), 7th Cir., No. 19-1030, 10/29/19.

To contact the reporter on this story: David McAfee in Los Angeles at dmcAfee@bloomberglaw.com

To contact the editors responsible for this story: Jo-el J. Meyer at jmeyer@bloomberglaw.com; Steven Patrick at spatrick@bloomberglaw.com

General Information

Court

Court of Appeals, Seventh Circuit