

Weighty Issues: Obesity and the But-For Test Under the ADA/AA

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Weighty Issues: Obesity and the But-For Test Under the ADAAA

By Katharine C. Weber on February 9, 2017

Obesity is still a hot topic both in our health conscious culture and in our courtrooms where we continue to see ADAAA claims based on the notion that an employer fired an employee because the employee was obese. After the ADA was amended, there was some question about how the courts would treat obesity under the ADAAA, especially claims alleging that the employer regarded the employee as disabled. Fortunately, most federal courts to have considered the issue have concluded that obesity that is not caused by an underlying physiological disorder is not a disability under the ADAAA. On February 3, 2017, an Arizona district court joined the Eighth, Sixth, and Second Circuits in holding that obesity (including even morbid obesity) cannot qualify as a disability under the ADAAA unless it falls outside the normal range *and* occurs as the result of a physiological disorder. In doing so, the Arizona court added its voice to the growing majority view expressly rejecting the EEOC's contrary position on this issue.

In *Valtierra v. Medtronic, Inc.*, the plaintiff Valtierra was responsible for performing maintenance on Medtronic's equipment and facility. In August 2013, Valtierra requested and received FMLA leave relating to his weight, which he alleged was causing him joint and knee pain. Upon his return from medical leave in December 2013, Valtierra was restored to his position without incident. Approximately six months later Valtierra was terminated when he admitted to falsely certifying that he completed certain preventative maintenance work to

Medtronic's equipment. Valtierra sued claiming disability discrimination, retaliation for seeking a reasonable accommodation, and FMLA interference. The district court granted Medtronic's motion for summary judgment on all of Valtierra's claims.

With respect to Valtierra's disability discrimination claim, the court agreed with Medtronic that Valtierra had not established that his morbid obesity was a disability under the ADAAA. Noting that "there is no controlling Ninth Circuit precedent on whether morbid obesity is a recognized disability," the court considered, and ultimately followed, case law from the Eighth, Sixth, and Second Circuits holding that obesity can only be considered a disability under the ADAAA when it is both outside the normal range and occurs as the result of a physiological disorder. Having not alleged, much less established, that his morbid obesity was the result of an underlying physiological disorder, Valtierra's disability discrimination claim failed. The court also rejected Valtierra's alternative argument that Medtronic regarded him as disabled as a result of his morbid obesity. The court relied upon and joined the Sixth Circuit – holding that "this Court declines to extend ADA protection to an abnormal physical characteristic such as morbid obesity because to do so 'would make the central purpose of the statute, to protect the disabled, incidental to the operation of the 'regarded as' prong, which would become a catch-all cause of action for discrimination.'"

The court likewise dismissed Valtierra's disability retaliation and FMLA interference claims. Several circuits have already determined that the "but for" causation standard applies to ADAAA retaliation claims and this court had no problem reaching the same conclusion. Relying on the Supreme Court's *Nassar* but-for causation test, the court

determined that Valtierra's own misconduct was the but for cause of his termination.

Taking a conservative approach when determining whether a current employee suffers from a disability is often still the best preventative medicine. However, when litigation erupts, the Medtronic case serves as a reminder that even though it may seem like every condition arguably rises to the level of a disability, that's not always the case—especially when it comes to disability claims based on obesity. If you are an employer in need of help dealing with these weighty issues under the ADA, please contact the JL attorney with whom you regularly work.

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