

Another Judge Finds that Obesity May be a “Disability” Under the ADA

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Yet another federal court judge, the Honorable Stephen N. Limbaugh, Jr. of the Eastern District of Missouri, recently ruled, in *Whittaker v. America's Car-Mart, Inc.*, that an employee's severe obesity could constitute a “disability” under the Americans with Disabilities Act.

The plaintiff, Joseph Whittaker, alleged that America's Car-Mart discharged him from his General Manager position because of his severe obesity and because his employer regarded him as being substantially limited in the major life activity of walking. Whittaker further contended that he was able to perform all of the essential functions of his job, with or without an accommodation. America's Car-Mart moved to dismiss Whittaker's disability discrimination claim on the grounds that severe obesity is not a “disability” under the ADA in the absence of an underlying physiological disorder.

Judge Limbaugh rejected America's Car-Mart's argument, keeping Whittaker's case alive. The Court explained that America's Car-Mart improperly relied on: (a) outdated case law based on the more restrictive approach that was applied before Congress passed the Americans with Disabilities Amendments Act of 2008; and (b) a statement in the EEOC's Interpretive Guidance that “except in rare circumstances, obesity is not considered a disabling impairment,” which has since been omitted following the passage of the ADAAA. Judge Limbaugh pointed out that the EEOC takes the position that severe obesity is a disability under the ADA and does not require proof of an underlying physiological disorder.

The decision in Whittaker is not novel and in fact falls in line with the recent post-ADAAA case law about which we have previously written (see [here](#), [here](#) and [here](#)). What is interesting is that we still do not know where courts will draw the line in terms of the varying degrees of obesity. It is safe to say that “severe” and “morbid” obesity are in fact “disabilities” under the ADA in most jurisdictions. What is less clear is whether courts will find that “moderate” obesity (which describes roughly one in every three Americans) without an underlying physiological condition is a “disability” under the ADA.

Given that the American Medical Association, the nation's largest association of physicians, for the first time last summer recognized obesity (at any level) as a disease, it is not far-fetched that courts will begin recognizing all forms of obesity as “disabilities” under the ADA. Legislatures on the federal, state or local levels may also tackle this issue one day soon as a new study just revealed that nearly 75% of people support adding body weight as a class protected from discrimination under the civil rights laws.

For now, employers should treat morbid or severe obesity as a “disability,” irrespective of the existence of an underlying physiological disorder. A more conservative approach however, one which anticipates that the courts (and possibly legislatures) may eventually extend civil rights law protection to all obese individuals, may be to recognize any level of obesity as a disability to the extent that it impacts an employee's performance and to work with the employee to devise a reasonable accommodation.

Authors