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Sixth Circuit Court of Appeals Holds Disabled Retirees Lack Standing to Sue Former Employer Under ADA

By Rasheed A. Simmonds, Esq.

The Sixth Circuit Court of Appeals is the latest circuit court to weigh in on whether former employers may bring actions for post-employment discriminatory conduct under the Americans with Disabilities Act ("ADA"). The Sixth Circuit held that former employees of General Motors who qualified for social security benefits after they accepted early retirement cannot bring a suit against their former employer under Title I of the ADA. In McKnight v. General Motors Corp., 550 F.3d 519 (6th Cir. 2008), the Sixth Circuit joined the Seventh and Ninth Circuits and rejected opposite conclusions reached by the Second and Third Circuits on an issue which may be taken up by the U.S. Supreme Court in the future.

At issue in McKnight were pension plans that General Motors ("GM") offered to early retirees. GM offered employees with 30 years of service to retire early and receive a supplemental benefit in addition to their base retirement pay, until they reached the age of 62 and one month. However, the plans also provided for a

reduction in this supplemental benefit if the employee became eligible for Social Security Disability Insurance Benefits ("SSDIB") prior to that age. The reduction in supplemental benefits almost matched the amount of SSDIB received.

Each of the three plaintiffs in McKnight was an early retiree who applied for and received SSDIB after their employment ended but before they reached the age of 62 and one month. GM reduced their benefits in accordance with the pension plan. The plaintiffs filed suit against GM, complaining that the reduction in benefits violated the ADA, among other statutes.

Title I of the ADA expressly prohibits an employer from discriminating against a "qualified individual with a disability" with "respect to...employee compensation...and other terms, conditions, and privileges of employment." 42 U.S.C. §12112(a). The ADA defines a "qualified individual" as one "with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. §12111(8). Thus, only those who are "qualified individuals" may bring suit under the ADA.

Several circuits, including the Sixth Circuit, had weighed in on the matter prior to the United States Supreme Court decision of Robinson v. Shell Oil Co., 519 U.S. 337 (1997). These circuits had concluded that that disabled former employees lacked standing under Title I because they are not "qualified individual[s] with a disability."

However, in Robinson, the Supreme Court held that a former employee could sue his or her former employer for post-employment acts of retaliation under Title VII. In reaching that decision, the Court noted that the term 'employee,' which was used throughout the statute, clearly was intended in some places to include former employees. Given that there were some sections where the term did apply to former employees, the term was found to be ambiguous. The Supreme Court resolved this ambiguity by examining the broader context, provided by the other sections of Title VII, and it reasoned that a narrow interpretation would vitiate too much of Title VII's protections.

The Second and Third Circuits followed the logic and analysis of Robinson, almost lockstep, holding that the term "qualified individual" was ambiguous, as it contained no temporal qualifiers. Those courts concluded that a broader interpretation, allowing former employees to bring suit, would comport with the purposes of the ADA. Castellano v. City of New York, 142 F.3d 58 (2nd Cir. 1998); Ford v. Schering-Plough Corp.,145 F.3d 601 (3rd Cir. 1998),

The Seventh and Ninth Circuits, also decided post-Robinson, did not agree. They found an inherent temporal qualifier in the present-tense language of the ADA. The Ninth Circuit, in Weyer v. Twentieth Century Fox Film Corp., 198 F.3d 1104 (9th Cir. 2000) held that a "qualified individual" is someone who "*can perform*." The Weyer court further noted that, in order for one to be discriminated against because of a disability, the disability must exist at the time

of the discrimination and thus be a motivation for the discrimination. The Seventh Circuit, in Morgan v. Joint Admin Bd., 268 F.3d 456 (7th Cir. 2001), noted a "stark" difference between the question presented in Robinson, whether a former employee could bring a retaliation action against his or her former employer, and the question as to whether a court should allow a former employee to sustain a complaint for non-retaliatory, post-employment discrimination. Like the Ninth Circuit, the Seventh Circuit found the plain language of Title I did not apply to an employee who becomes disabled post-employment.

The McKnight court noted the divide among the circuits. It found that the Second and Third Circuits' conclusion that ambiguity existed to be "tenuous at best." It found that the ADA's "qualified individual" definition unambiguously excludes former employees because of the legislators' use of present tense, temporal qualifying terms like "can perform," "holds," and "desires."

The Sixth Circuit's interpretation may seem on its face to put disabled retirees in a Catch-22 -- when they become disabled, they can no longer perform the essential functions of the job; and when they could perform the essential functions of the job, they were not being discriminated against. But that interpretation is a sensible one. The Sixth Circuit quoted the Weyer opinion as follows: "Congress could reasonably decide to enable disabled people who can work with reasonable accommodation to get and keep jobs, without also deciding to equalize post-employment fringe benefits for people who cannot work."

Employers are not likely to see this split resolved until Congress or the Supreme Court specifically addresses it. Given the lack of consensus at the appellate level, plaintiffs no doubt will challenge the holding of McKnight, its progeny and the authority it relies upon.

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