



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

**THE EFFECT OF THE SUPREME COURT'S DECISIONS ON  
AMERICANS WITH DISABILITIES**

The following stories illustrate many of the problems that the Supreme Court has created for people with disabilities who seek protection from disability discrimination in employment. Through a series of decisions interpreting the Americans with Disabilities Act of 1990 (“ADA”), the Supreme Court has narrowed the law in ways that Congress never intended. First, in a trio of decisions decided in June 1999, the Supreme Court ruled that mitigating measures—medication, prosthetics, hearing aids, other auxiliary devices, diet and exercise, or any other treatment—must be considered in determining whether an individual has a disability under the ADA.<sup>1</sup> This means people with serious health conditions who are fortunate enough to find a treatment that makes them more capable and independent—and more able to work—often find that they are not protected by the ADA at all. Next, in a 2002 decision, the Supreme Court emphasized that courts should interpret the definition of “disability” strictly in order to create a demanding standard for qualifying as disabled.<sup>2</sup>

In the wake of these restrictive rulings, individuals who Congress intended to protect—people with epilepsy, diabetes, cancer, HIV, mental illness—have been denied protection from disability discrimination. Either, the courts say, the person is impaired but not impaired enough to substantially limit a major life activity (like walking or working), or the impairment substantially limits something—like liver function—that does not qualify as a “major life activity.” Courts even deny ADA protection when the employer freely admits it terminated someone’s employment because of their disability. This has resulted in an absurd Catch-22 where an employer may say a person is “too disabled” to do the job but not “disabled enough” to be protected by the law. This is not what Congress intended.

Congress never intended to exclude people like Charles Irvin Littleton, Jr., Mary Ann Pimental, Carey McClure, Stephen Orr, or James Todd. Their stories are among those collected below, which demonstrate the problem created by the courts’ misinterpretation of the definition of disability. These stories make it clear this problem is not limited to a single judge, employer, or geographic area. This is a nationwide problem that requires an appropriate Congressional fix.

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**State: Alabama**  
**Disability: Intellectual & Developmental Disabilities**  
**Courts: 11<sup>th</sup> Circuit 2007 (AL, FL, GA)**

*Charles Irvin Littleton, Jr.*

Charles Littleton is a 29-year-old man who was diagnosed with intellectual and developmental disabilities\* as a young child.

A high school graduate with a certificate in special education, Charles lives at home with his mother and receives social security benefits.<sup>3</sup> In an effort to work, Charles has been a client of several state agencies and public service organizations, including the Alabama Independent Living Center, that provide vocational assistance to people with disabilities.<sup>4</sup>

In 2003, Charles' job counselor at the Independent Living Center helped Charles get an interview for a position as a cart-pusher at a local Wal-Mart store in Leeds, Alabama.<sup>5</sup> The job counselor asked Wal-Mart if she could accompany Charles in his interview, and Wal-Mart's personnel manager agreed. When they got to the store, however, the job counselor was not allowed into the interview. The interview did not go well for Charles and Wal-Mart refused to hire him. According to Wal-Mart, he was not hired because he displayed "poor interpersonal skills" and a lack of "enthusias[m] about working at Wal-Mart."<sup>6</sup>

Charles felt that he had been discriminated against based on Wal-Mart's refusal to allow his job counselor to accompany him in the interview as previously agreed, and decided to file a claim under the ADA. But no court ever reached the question of whether Charles was qualified for the job, whether Wal-Mart discriminated against Charles because of his disability, or whether Wal-Mart violated the law by not modifying its policies to allow a job counselor to accompany Charles. Instead, the courts simply ruled that Charles Littleton *was not "disabled"* under the ADA:

We do not doubt that Littleton has certain limitations because of his mental retardation. In order to qualify as "disabled" under the ADA, however, Littleton has the burden of proving that he actually is . . . substantially limited as to "major life activities" under the ADA.<sup>7</sup>

Noting the Supreme Court's "demanding standard for qualifying as disabled,"<sup>8</sup> the courts found that "there is no evidence to support Littleton's necessary contention that his retardation substantially limits him in one or more major life activities."<sup>9</sup>

Charles first tried to show that he was substantially limited in the major life activities of thinking, learning, communicating, and social interaction. Charles explained that:

- his cognitive ability is (according to his job counselor) comparable to that of an 8-year-old;<sup>10</sup>

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\* "Intellectual and developmental disabilities" are preferred terms in the disability community. The term "mental retardation" is used in this description only in direct quotes from the court's opinion.

- he needed a job counselor during the interview process and on the job with him after hiring, until he became familiar with the routine;<sup>11</sup>
- his own testimony demonstrated “difficulty thinking and communicating” as the courts, themselves, acknowledged;<sup>12</sup>
- the reason Wal-Mart’s personnel manager originally agreed to allow Charles’ job counselor to accompany him to his interview was precisely because of his difficulty communicating and interacting with others;<sup>13</sup> and
- according to the Supreme Court: “[c]linical definitions of mental retardation require not only subaverage intellectual functioning, but also significant limitations in adaptive skills such as communication, self-care, and self-direction . . . [People with mental retardation] *by definition* . . . have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.”<sup>14</sup>

The courts were not persuaded.

“It is unclear whether thinking, communicating and social interaction are ‘major life activities’ under the ADA,” the Court of Appeals for the 11<sup>th</sup> Circuit stated.<sup>15</sup> Even assuming that they are, the court relied on Charles’ ability to drive a car as evidence that Charles was not substantially limited in his ability to think. In addition, the appellate court found that “[a]ny difficulty Littleton has with communicating does not appear to be a substantial limitation” since Charles’ mother and job counselor testified that, among other things, Charles is “very verbal.”<sup>16</sup>

The court acknowledged that Charles “is somewhat limited in his ability to learn because of his mental retardation,” but concluded that this did not *substantially* limit his ability to learn. According to the appellate court, “Littleton is able to read and comprehend and perform various types of jobs.”<sup>17</sup>

Charles also tried to show that he was substantially limited in the major life activity of working. He explained that he receives social security disability benefits, which are granted only to those who are unable to work by reason of a medically determinable physical or mental impairment. He also explained that the only jobs that he ever held involved stocking shelves at supermarkets, custodial work, and a summer job as a recreational aide. He required application assistance and a job coach for all of them.<sup>18</sup> The appellate court concluded that while Charles was not hired for the cart-pusher job, there were other jobs he could do and, therefore, he was not substantially limited in his ability to work.<sup>19</sup>

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**State: Texas**  
**Disability: Epilepsy**  
**Court: Southern District Texas 1999**

## *James Todd*

James Todd has lived with epilepsy since he was five years old. While medication helps to minimize the duration and intensity of his seizures, it does not cure his epilepsy – he still has seizures about once a week. His seizures follow a familiar pattern, beginning with a tingling sensation that signals the onset of a seizure. During a seizure, which can last anywhere from five to fifteen seconds, James is unable to speak, the left side of his body shakes involuntarily, and his thinking becomes clouded. James removes himself from the company of others as soon as he feels a seizure coming on, and lies down until the seizure is over.<sup>20</sup>

In September of 1996, sporting goods giant Academy Corporation hired James as a stocking clerk, whose job it was to inventory and stock merchandise. James made approximately \$5.00/hour on the job. Several weeks into the job, James had his first seizure at work, told his supervisors he had epilepsy, and explained how to respond if he had a seizure at work.<sup>21</sup>

Five months later, after James had been out sick with a stomach flu for five consecutive days, Academy fired him. Although James had notified his supervisor of his illness and absence each day, as required by the company's written work policy, Academy told him that he had violated an "unwritten policy" that prohibits taking more than three consecutive days off without sick leave or vacation leave, when the FMLA does not cover the situation. James decided to challenge Academy's decision to fire him, and filed a complaint under the ADA.<sup>22</sup>

The district court never reached the question of whether James had been fired because of his epilepsy. Instead, the court concluded that since James was able to manage his seizures with medication, *he was not disabled enough to claim protection under the ADA in the first place.*<sup>23</sup>

Had James Todd's case been decided just two months earlier, before the Supreme Court's decision in *Sutton v. United Airlines*, James would have received protection under the ADA. As the district court noted, before *Sutton*,

epilepsy would, without question, be considered a substantial limitation on several major life activities, and a person suffering from epilepsy would receive nearly automatic ADA protection.<sup>24</sup>

However, after *Sutton*, the court explained that it needed to consider whether James was substantially limited in a major life activity after taking into account how well James' epilepsy medication worked for him. Under that analysis, James was not disabled: "[e]xcept for a time period of fifteen seconds per week, [James] is able to work, walk, talk, think and learn" and thus "cannot be considered 'disabled' under the ADA."<sup>25</sup> The fact that James lay shaking on the floor and unable to talk for fifteen seconds per week amounts to "only" a "momentary physical limitation[]" which could not be classified as substantial."<sup>26</sup>

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**State: New Hampshire**  
**Disability: Breast Cancer**  
**Court: New Hampshire District Court 2002**

### *Mary Ann Pimental*

Mary Ann Pimental was a registered nurse who lived in Hudson, New Hampshire with her husband and two children and worked in a hospital. Five years into her job as a staff nurse, the hospital promoted Mary Ann to its nurse management team. A little more than a year later, Mary Ann was diagnosed with stage III breast cancer.<sup>27</sup>

Mary Ann initially took time from work to undergo surgery (mastectomy) and follow-up treatment (chemotherapy and radiation therapy). While Mary Ann was hospitalized and receiving treatment for cancer, the hospital reorganized its management team and eliminated Mary Ann's position. When Mary Ann was able to return to work, she applied for several different positions but was not hired. The hospital finally rehired her into a staff nurse position that provided only 20 hours of work each week. As a result, Mary Ann was not eligible for higher benefits offered to employees working 30 or more hours each week.<sup>28</sup>

Given her strong work history, and because she was asked about her ongoing cancer treatments and ability to handle work with the stress of battling cancer, Mary Ann believed that the hospital failed to rehire her into a better position because of her breast cancer. She decided to challenge these decisions, and filed a claim under the ADA.<sup>29</sup>

The hospital argued that she wasn't protected by the ADA because she didn't have a "disability."<sup>30</sup>

So Mary Ann provided highly personal, sometimes embarrassing, evidence to her employer and the courts of how her impairment – breast cancer – impacted her life in a severe and substantial way. That impact included:

- hospitalization for a mastectomy, chemotherapy, and radiation therapy;
- problems concentrating, memory loss, extreme fatigue, and shortness of breath;
- premature menopause brought on by chemotherapy, and burns from radiation therapy;
- problems in her shoulder resulting in an inability to lift her left arm over her head;
- sleep-deprivation caused by nightmares about dying from the cancer;
- difficulty in intimate relations with her husband because of premature menopause and Mary Ann's discomfort and self-consciousness following the mastectomy; and
- the need for assistance from her husband and mother in order to care for herself and for the couple's two children because of extreme fatigue, and difficulties performing basic tasks like climbing stairs or carrying household items.<sup>31</sup>

When Mary Ann returned to work she still was undergoing radiation therapy and experiencing fatigue. She still could not lift her arm above her head, still experienced concentration and memory problems, and still received help at home from her husband and mother.<sup>32</sup>

The district court never reached the question of whether Mary Ann’s breast cancer played a role in her failure to be rehired into a better management position. Instead, the court agreed with the hospital that “the most substantial side effects [of Mary Ann’s breast cancer and treatment] were (relatively speaking) short-lived” and therefore “they did not have a substantial and lasting effect on the major activities of her daily life.”<sup>33</sup> Because MaryAnn failed to show she was limited by the breast cancer on a “permanent or long-term basis,” she was held not to have a “disability” under the ADA.<sup>34</sup>

The district court also relied on Mary Ann’s assertions that her cancer “did not substantially impair her ability to perform various tasks associated with her employment.” This assertion, according to the court, undermined Mary Ann’s claim that the cancer had substantially affected her ability to care for herself on a long-term basis.<sup>35</sup>

Mary Ann Pimental died of breast cancer four months after the court issued this decision.

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**State: Nebraska**

**Disability: Diabetes**

**Court: 8<sup>th</sup> Circuit 2002 (AR, IA, MN, MO, NE, ND, SD)**

### *Stephen Orr*

Stephen Orr was a pharmacist at Wal-Mart in Chandron, Nebraska, a town of 6,000 nestled in the rural northwestern part of the state. Stephen was hired in early 1998. During his interview, he told his soon-to-be boss that he had diabetes and needed to take regular, uninterrupted lunch breaks. Stephen was authorized to take a 30-minute lunch break during his ten-hour work shift.<sup>36</sup>

Doctors diagnosed Stephen with diabetes in 1986. He requires multiple injections of insulin daily and uses a device called a glucometer to monitor his blood sugar levels. In order to keep his blood sugar stable, Stephen follows a regimented diet, monitoring what and when he eats in coordination with his medication regimen. If he does not, he experiences episodes of either hypoglycemia (low blood sugar) or hyperglycemia (high blood sugar).<sup>37</sup>

When his blood sugar levels are not in his target range, Stephen experiences:

- seizures;
- deteriorated vision;
- trouble talking;
- the need to urinate frequently;
- loss of consciousness;
- lack of physical strength and energy;
- coordination problems;
- difficulty reading or typing; and
- impaired concentration and memory.<sup>38</sup>

Complications caused by fluctuating blood sugar levels can, and have, resulted in hospitalization.<sup>39</sup>

After he started working, Stephen took lunch breaks as agreed, closing the pharmacy to eat without being interrupted.<sup>40</sup> During this time, Stephen did not experience severe hypoglycemia and performed his job well.<sup>41</sup> No one complained about the pharmacy being closed for the half hour that Stephen was taking lunch.

When a new district manager took over, he told Stephen to stop closing the pharmacy, and to eat lunch whenever possible during down times in the pharmacy.<sup>42</sup>

Stephen obeyed this order, but started having problems with low blood sugar because he was no longer able to control the times that he ate. Stephen told his new boss that, because of the no-lunch-break order, he had experienced several hypoglycemic incidents and that he needed to resume his noon lunch breaks to control his blood sugar. Stephen's boss continued to deny the request for a lunch break and ultimately fired him.<sup>43</sup>

Stephen decided to challenge his firing and filed a claim against Wal-Mart under the ADA.

Wal-Mart responded that Stephen did not have a "disability" because Stephen was able to manage his diabetes with insulin and diet.<sup>44</sup>

The courts agreed. Because the Supreme Court directed courts to consider "mitigating measures" in deciding whether an individual has a disability, the Court of Appeals for the 8<sup>th</sup> Circuit found that Stephen did so well managing his condition that he was not disabled enough to be protected by the ADA.<sup>45</sup>

Wal-Mart's refusal to allow Stephen to take a lunch break was never questioned.

Although Wal-Mart vigorously defended its refusal to allow Stephen a lunch break, Wal-Mart voluntarily changed company policy in 2000 to allow one-pharmacist pharmacies to close for 30 minutes at lunch because of "retention" problems.<sup>46</sup>

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**State: Texas**

**Disability: Muscular Dystrophy**

**Court: 5<sup>th</sup> Circuit 2003 (LA, MS, TX)**

### *Carey McClure*

Since age 15, Carey McClure has had a form of muscular dystrophy that affects the muscles in his upper arms and shoulders. Carey has difficulty raising his arms above shoulder level and has constant pain in his shoulders. In his work as a professional electrician, Carey performs most of his job functions without modification, and has adapted how he performs overhead tasks like changing light fixtures or working on ceiling wiring. Carey performs these job functions by (a) throwing his arms over his head to perform the work, (b) repositioning his body so that he can raise his arms, (c) supporting his arms on an adjacent ladder, or (d) using a ladder, step-stool, or hydraulic lift so that it is not necessary for him to raise his arms above shoulder level.<sup>47</sup>

Carey was living in Georgia and had 20 years of experience working as an electrician when he applied for a better opportunity at a General Motors' assembly plant in Arlington, Texas. GM offered Carey the job pending completion of a pre-employment physical examination. During that exam, GM's physician asked Carey to raise his arms above his head. When he saw that Carey could only get his arms to shoulder level, the physician asked how Carey would perform overhead work. Carey, who had performed such work in the past, responded that he would use a ladder. Despite the fact that other electricians in the plant often used ladders or hydraulic lifts to do overhead work, the physician revoked GM's offer of employment.<sup>48</sup>

Carey challenged GM's decision. Even though GM revoked its job offer because of limitations resulting from Carey's muscular dystrophy,<sup>49</sup> GM argued that Carey did not have a "disability" and was not protected by the ADA.<sup>50</sup>

Carey responded with highly personal information regarding the many ways that his muscular dystrophy limits his daily life activities. Carey explained that:

- he is able to wash his hair, brush his teeth, and comb his hair only by supporting one arm with the other;
- he wears button down shirts because it is too difficult for him to pull a t-shirt over his head;
- he must rest his elbows on the table in order to eat, and lowers his head down over the plate so that he can get the food to his mouth;
- he cannot exercise or play sports, and cannot care for his grandchildren by himself; and
- his ability to engage in sexual activities is limited by his muscular dystrophy.<sup>51</sup>

GM argued that – because Carey had adapted so well – he was not substantially limited in any major life activity.<sup>52</sup>

The courts agreed. According to the Court of Appeals for the 5<sup>th</sup> Circuit,

[Carey] has adapted how he bathes, combs his hair, brushes his teeth, dresses, eats, and performs manual tasks by supporting one arm with the other, repositioning his body, or using a step-stool or ladder. . . . [Carey's] ability to overcome the obstacles that life has placed in his path is admirable. In light of this ability, however, we cannot say that the record supports the conclusion that his impairment substantially limits his ability to engage in one or more major life activities.<sup>53</sup>

Because the courts found that Carey did not have a "disability," GM's decision to revoke his offer because of limits resulting from his muscular dystrophy was never questioned.

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**State: Utah**  
**Disability: Multiple Sclerosis**  
**Court: 10<sup>th</sup> Circuit 1999 (CO, KS, NM, OK, UT, WY)**

### *Laura Sorensen*

Laura Sorensen started working as a clinical nurse for the University of Utah Hospital in 1990. A year later, the Hospital hired her to work as a flight nurse for its helicopter ambulance service.<sup>54</sup>

Two years into her dream job, Laura was diagnosed with multiple sclerosis and hospitalized for five days.

Laura's physician cleared her to return to work within two weeks, but Laura's supervisors initially refused to allow her to return as a flight nurse. Laura agreed to return as a regular nurse for an evaluation period, during which time she worked successfully in the burn unit, the surgical intensive care unit, and emergency room. After a two-month evaluation period, a neurologist examined Laura and cleared her to return to work as a flight nurse.<sup>55</sup>

Laura's AirMed supervisor still refused to allow Laura to return in the flight nurse position because the neurologist could not *guarantee* that Laura would never experience symptoms related to her multiple sclerosis while on duty. Laura's AirMed supervisor felt that this justified his decision to keep Laura grounded indefinitely.<sup>56</sup>

Laura continued working for the Hospital for a few more months, resigning after it became clear that she would never be allowed to work as a flight nurse.<sup>57</sup>

Laura believed, consistent with her evaluating neurologist, that she could perform the flight nurse job safely. Because she felt that she was demoted because of unjustified fears about her disability, Laura decided to challenge the Hospital's decision.<sup>58</sup>

The Hospital responded that Laura's multiple sclerosis did not qualify as a "disability" under the ADA, even though it was the sole reason that Laura was barred from working as a flight nurse.

The courts agreed.<sup>59</sup>

According to the Court of Appeals for the 10<sup>th</sup> Circuit, even though Laura "could not perform any life activities during her hospitalization," her hospital stay had not been permanent or long-term enough to qualify Laura as disabled under the ADA.<sup>60</sup> And even though the Hospital based its decision on Laura's multiple sclerosis, its refusal to hire her in the "single job" of flight nurse was not enough to show that it regarded her as disabled.<sup>61</sup>

In an interview with the *Salt Lake Tribune* following the court's dismissal of her case, Laura explained that "[t]he university took a red paintbrush and put a scarlet 'MS' on my forehead. I was a disease from that point on. I can do that job—that's the bottom line."<sup>62</sup>

Laura proved this point by leaving Utah briefly to work as a flight nurse in Arizona. Upon her return to Utah, Laura won the Utah Emergency Room Nurse of the Year Award,<sup>63</sup> but still has not been allowed to work as a flight nurse in her home state.

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**State: Florida**

**Disability: Epilepsy**

**Courts: 11<sup>th</sup> Circuit 2001 (AL, FL, GA)**

### *Charlotte Chenoweth*

Charlotte Chenoweth is a registered nurse from rural Florida with over 15 years of nursing experience. In 1995, Charlotte started working for the county health department, where she reviews the files of hospital patients for whom the County is financially responsible.<sup>64</sup>

Two years into her job with the county, Charlotte had a seizure and was diagnosed with epilepsy. Her doctor put Charlotte on an antiseizure medication and advised her not to use a stove or bathe alone, and not to drive until she had gone six months without another seizure.<sup>65</sup> Charlotte's antiseizure medication also increases the risks of having a child with birth defects, and Charlotte decided not to have children as a result.<sup>66</sup>

During the six-month period after starting antiseizure medication, Charlotte asked the health department if she could do document review work from home for two days per week as she and others had done in the past or, alternatively, if her hours could be varied slightly to allow friends and family to drive her to work.<sup>67</sup> The health department refused. Believing that her requests were reasonable, Charlotte decided to challenge the county's decisions.<sup>68</sup>

The county initially agreed that epilepsy is a disability under the ADA. But, while Charlotte's case was still pending, the Supreme Court issued its 1999 "mitigating measures" decisions, and the county retracted this admission. Following those decisions, the county started arguing that Charlotte's epilepsy did not qualify as a "disability" and that she was not protected by the ADA at all.<sup>69</sup>

The courts agreed. Even though Charlotte had been unable to cook, bathe by herself, or drive until she had gone six months without a seizure, the Court of Appeals for the 11th Circuit found that Charlotte was not "disabled" because none of these activities are "major life activities" under the ADA. Though it recognized that having children is a major life activity, the court refused to consider whether Charlotte had a "disability" because of limitations on her ability to have children due to the increased risk of birth defects from her antiseizure medication. The court dismissed this evidence that Charlotte meets the ADA's definition of "disability" as irrelevant to her work for the county.<sup>70</sup>

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**State: Wyoming**  
**Disability: Depression**  
**Court: D. Wyoming 2004**

### *Michael McMullin*

Michael McMullin has lived and worked as a law enforcement officer in Wyoming his entire adult life. In 1973, he started his career as an officer with the Casper, Wyoming Police Department. Thirteen years into that job, Michael started experiencing symptoms of depression, including insomnia and severe sleep deprivation. After struggling with these symptoms for a few years – during which he periodically got only 2-3 hours of sleep a night – Michael became suicidal and sought medical leave and assistance. His physician referred him to a psychiatrist, who diagnosed Michael with clinical depression and prescribed medication to treat his depression, insomnia, and sleep deprivation. This treatment controlled Michael’s symptoms and he was able to return to work after five months of medical leave.<sup>71</sup>

Michael stayed with the Casper Police Department for another 8 years, receiving numerous awards and commendations. In 1996, Michael left Casper and moved to Cheyenne, Wyoming where he was hired by the Capitol Police Department to provide security and protection to the Wyoming Governor and First Family. At the time of his hiring, Michael told the Capitol Police Department about his clinical depression, and asked that he not be assigned regularly to the graveyard shift. Michael successfully served as a security officer for the Governor for five years, until 2001, when he decided to apply for a job as a court security officer at the federal building in Cheyenne.<sup>72</sup>

Michael again disclosed his clinical depression when he applied for employment and was assured that – as long as his depression was under control and treated with medication – it would not pose an obstacle to employment as a court security officer. Michael took the required pre-employment medical examination and answered questions about his medical history and use of medication. The examining physician found that Michael could perform the job without limitation, and Michael started working as a court security officer.<sup>73</sup>

Michael performed the job without any complaints from supervisors until another doctor reviewed his medical files and decided that he was “not medically qualified” because of his depression and use of medication.<sup>74</sup> Michael was suspended without pay, and was then medically disqualified from working as a court security officer. Michael filed an internal appeal, providing his previous employment evaluations – including those from the State of Wyoming – and letters from doctors stating that he was fully capable of performing law enforcement duties. After his internal appeal was denied, Michael decided to challenge his medical disqualification and filed claims of disability discrimination under the ADA and the Rehabilitation Act of 1973.<sup>75</sup>

After firing him because of his clinical depression, his employers argued that Michael’s depression did not qualify as a “disability” under federal law, even though it was the admitted basis for its termination decision.<sup>76</sup>

The court agreed.

Because Michael's medication successfully managed his symptoms, his depression was not disabling enough. With regard to his history of sleep deprivation and insomnia, the court decided that

sleep deprivation which results in a plaintiff getting only two to three hours of sleep per night is not "severe" enough to constitute a substantial limitation on the major life activity of sleeping.<sup>77</sup>

As for limitations on his ability to work, the court found that – while he had been excluded from working as a court security officer – Michael was still able to perform other jobs and, therefore, was not substantially limited in his ability to work.<sup>78</sup> Even though his depression had prevented him from working in the past, the "five month period in which [Michael] actually missed work in 1988 was of limited duration; this weighs against a finding of substantial limitation."<sup>79</sup> Finally, his employers had not "regarded" Michael as disabled because they had only barred him from "a single job rather than a class of jobs."<sup>80</sup>

Because "[t]he definition of disability is the same for claims under either the ADA or Rehabilitation Act," the court dismissed Michael's disability discrimination claims under both laws.<sup>81</sup> As a result, his employers' decision to rescind their initial medical clearance and to ignore Michael's 30 years of law enforcement experience went unchallenged.

The court recognized the unfairness of this result, but said that its hands were tied by current interpretations of the law, noting that,

[t]his is one of the rare, but not unheard of, cases in which many of the plaintiff's claims are favored by equity, but foreclosed by the law.<sup>82</sup>

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- <sup>1</sup> *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999); *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999); *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555 (1999).
- <sup>2</sup> *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184, 197 (2002)
- <sup>3</sup> *Littleton v. Wal-Mart Stores, Inc.*, No. 05-12770, 2007 WL 1379986, at \*1 (11<sup>th</sup> Cir. May 11, 2007).
- <sup>4</sup> Brief for Appellant, 2005 WL 4720205, at \*3 (No. 05-12770FF).
- <sup>5</sup> *Littleton*, 2007 WL 1379986, at \*1; Brief for Appellant at \*4.
- <sup>6</sup> Brief for Appellant at \*29.
- <sup>7</sup> *Littleton*, 2007 WL 1379986, at \*4.
- <sup>8</sup> *Id.* at \*2 (quoting *Toyota Motor Mfg. v. Williams*, 534 U.S. 184, 197 (2002)).
- <sup>9</sup> *Id.*
- <sup>10</sup> Brief for Appellant at \*8, \*34.
- <sup>11</sup> *Id.* at \*21.
- <sup>12</sup> *Littleton*, 2007 WL 1379986, at \*3.
- <sup>13</sup> Brief for Appellant at \*29.
- <sup>14</sup> *Id.* at \*27 (quoting *Atkins v. Virginia*, 536 U.S. 304, 318 (2002)) (emphasis added).
- <sup>15</sup> *Littleton*, 2007 WL 1379986, at \*3.
- <sup>16</sup> *Id.* at \*4.
- <sup>17</sup> *Id.*
- <sup>18</sup> Brief for Appellant at \*34-35.
- <sup>19</sup> *Littleton*, 2007 WL 1379986, at \*3.
- <sup>20</sup> *Todd v. Academy Corp.*, 57 F. Supp. 2d 448, 449-50 (S.D. Tex. 1999).
- <sup>21</sup> *Id.* at 450.
- <sup>22</sup> *Id.* at 450-51.
- <sup>23</sup> *Id.* at 454.
- <sup>24</sup> *Id.* at 452.
- <sup>25</sup> *Id.* at 454.
- <sup>26</sup> *Id.* at 453-54.
- <sup>27</sup> *Pimental v. Dartmouth-Hitchcock Clinic*, 236 F. Supp. 2d 177, 179-80 (D.N.H. 2002).
- <sup>28</sup> *Id.* at 180.
- <sup>29</sup> *Id.* at 179-80, 186-87.
- <sup>30</sup> Brief for Defendant, 2002 WL 33016261 (No. CV-01-292-M).
- <sup>31</sup> *Pimental*, 236 F. Supp. 2d at 183-85; Brief for Defendant at ¶¶ 14-16.
- <sup>32</sup> Brief for Defendant at ¶¶ 14-16.
- <sup>33</sup> *Pimental*, 236 F. Supp. 2d at 183.
- <sup>34</sup> *Id.* at 184.
- <sup>35</sup> *Id.* at 183.
- <sup>36</sup> *Orr v. Wal-Mart Stores, Inc.*, 297 F.3d 720, 722 (8<sup>th</sup> Cir. 2002).
- <sup>37</sup> *Id.*
- <sup>38</sup> *Id.*; *Orr*, 297 F.3d at 726 (Lay, J. dissenting); Brief for Appellee, 2001 WL 34156010, at \*15-16 (No. 01-2959).
- <sup>39</sup> *Orr*, 297 F.3d at 727 (Lay, J., dissenting).
- <sup>40</sup> *Id.* at 722.
- <sup>41</sup> Brief for Appellee at \*11-12.
- <sup>42</sup> *Orr*, 297 F.3d at 722.
- <sup>43</sup> *Id.* at 723.
- <sup>44</sup> Brief for Appellee at \*17.
- <sup>45</sup> *Orr*, 297 F.3d at 724.
- <sup>46</sup> *Id.* at 727 n.9 (Lay, J., dissenting); Brief for Appellee at \*16, 44-45.
- <sup>47</sup> *McClure v. General Motors Corp.*, 75 Fed. Appx. 983, 2003 WL 21766539, at \*1-2 (5<sup>th</sup> Cir. 2003); Brief for Appellant, 2003 WL 22452651, at \*4-5 (No. 03-10126).
- <sup>48</sup> *McClure*, 2003 WL 21766539, at \*3; Brief for Appellant at \*5-8.
- <sup>49</sup> Brief for Appellant at \*7.
- <sup>50</sup> Brief for Appellee, 2003 WL 22452652, at \*5 (No. 03-10126).
- <sup>51</sup> *McClure*, 2003 WL 21766539, at \*1-2; Brief for Appellant at \*2-5, 18-23.
- <sup>52</sup> Brief for Appellee at \*6.

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<sup>53</sup> *McClure*, 2003 WL 21766539, at \*2.  
<sup>54</sup> *Sorensen v. University of Utah Hosp.*, 194 F.3d 1084, 1085 (10th Cir. 1999).  
<sup>55</sup> *Id.*  
<sup>56</sup> *Id.* at 1085-86.  
<sup>57</sup> *Id.* at 1086.  
<sup>58</sup> *Id.*  
<sup>59</sup> *Id.* at 1088-89.  
<sup>60</sup> *Id.* at 1087-88.  
<sup>61</sup> *Id.* at 1089.  
<sup>62</sup> Sheila R. McCann, *Former Flight Nurse With MS Frustrated by Disability Ruling*, SALT LAKE TRIB., Apr. 6, 1998, at D1.  
<sup>63</sup> *Id.*  
<sup>64</sup> *Chenoweth v. Hillsborough County*, 250 F.3d 1328, 1329 (11th Cir. 2001).  
<sup>65</sup> *Id.*  
<sup>66</sup> *Id.*; Brief for Appellant, 2000 WL 33988759, at \*4 (No. 00-10691-EE).  
<sup>67</sup> *Chenoweth*, 250 F.3d at 1329; Brief for Appellant at \*5.  
<sup>68</sup> *Chenoweth*, 250 F.3d at 1329.  
<sup>69</sup> Brief for Appellant at \*9 n.1.  
<sup>70</sup> *Chenoweth*, 250 F.3d at 1329-30.  
<sup>71</sup> *McMullin v. Ashcroft*, 337 F. Supp. 2d 1281, 1287, 1297 (D. Wyo. 2004).  
<sup>72</sup> *Id.* at 1287-88.  
<sup>73</sup> *Id.* at 1288.  
<sup>74</sup> *Id.* at 1289.  
<sup>75</sup> *Id.* at 1289-90.  
<sup>76</sup> *Id.* at 1294.  
<sup>77</sup> *Id.* at 1297.  
<sup>78</sup> *Id.* at 1296.  
<sup>79</sup> *Id.* at 1297.  
<sup>80</sup> *Id.* at 1298.  
<sup>81</sup> *Id.* at 1294.  
<sup>82</sup> *Id.* at 1286.