

A. Governing Legal Standards

1. Disability Coverage

Under all theories of disability discrimination brought under the Rehabilitation Act, the Complainant bears the threshold evidentiary burden of coming forward with credible evidence as part of her prima facie showing that: (1) the Complainant is an individual with a “disability”; and (2) the Complainant is a “qualified individual with a disability.” Simply stated, as part of her threshold burden, the Complainant must demonstrate that she is a member of the class of employees who are protected by the Rehabilitation Act’s prohibition against employment discrimination.

In analyzing a disparate treatment claim under the Rehabilitation Act, where the agency denies that its decisions were motivated by a complainant's disability, and there is no direct

evidence of discrimination, the Commission applies the burden-shifting method of proof set forth in McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973). Heyman v. Queens Village Comm. for Mental Health for Jamaica Cmty. Adolescent Program, 198 F.3d 68 (2d Cir. 1999); Swanks v. WMATA, 179 F.3d 929, 933-34 (D.C.Cir. 1999).

Under this analysis, in order to establish a prima facie case, a complainant must demonstrate that: (1) she is an "individual with a disability;" (2) she is "qualified" for the position held or desired; (3) she was subjected to an adverse employment action; and, (4) the circumstances surrounding the adverse action give rise to an inference of discrimination. Lawson v. CSX Transportation, Inc., 245 F.3d 916 (7th Cir. 2001). The burden of production then shifts to the Agency to articulate a legitimate, non-discriminatory reason for the adverse employment action. In order to satisfy her burden of proof, a complainant must then demonstrate, by a preponderance of the evidence, that the agency's proffered reason is a pretext for disability discrimination. Id.

As an initial matter, in order to establish a prima facie case of disability-based discrimination under the Rehabilitation Act, a complainant must demonstrate that she is an "individual with a disability" within the meaning of the Act. An "individual with a disability" is one who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or, (3) is regarded as having such an impairment. See 29 C.F.R. § 1630.2(g).

This determination "proceeds in three steps:" (1) identifying a physical or mental impairment; (2) deciding whether a life activity affected by the impairment is a "major life activity;" and, (3) determining "whether the impairment substantially limits the major life activity." Bragdon v. Abbott, 524 U.S. 624, 631 (1998); Lawson v. CSX Transportation, Inc.,

245 F.3d 913 (7th Cir. 2001).

Major life activities include, but are not limited to, “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” See 29 C.F.R. § 1630.2(i). The Interpretive Guidance to these Regulations further specifies that “other major life activities include, but are not limited to, sitting, standing, lifting, and reaching.” See 29 C.F.R. Part 1630 Appendix § 1630.2(j).

Generally, “substantially limiting” means: “unable to perform a major life activity that the average person in the general population can perform; or, significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.” See 29 C.F.R. § 1630.2(j)(1).

In determining whether a complainant is substantially limited in a major life activity, the Commission must consider the nature and severity of the impairment, the duration or expected duration of the impairment, and the permanent or long-term impact resulting from the impairment. See 29 C.F.R. § 1630.2(j)(2). An impairment is substantially limiting if it lasts for more than several months and significantly restricts the performance of one or more major life activities during that time. See EEOC Enforcement Guidance on the Americans With Disabilities Act and Psychiatric Disabilities (March 25, 1997) (Guidance). In addition, some conditions may be long-term, or potentially long-term, in that their duration is indefinite and unknowable, or is expected to be at least several months. Such conditions, if severe, may constitute disabilities. See Guidance, at question 7.

Additionally, the effects of any “[mitigating] measures--both positive and negative--must be taken into account when judging whether that person is ‘substantially limited.’” Sutton v.

United Airlines, 527 U.S. 471, 482 (1999); Albertsons, Inc., v. Kirkinburg, 527 U.S. 555, 565-566 (1999); Murphy v. United Parcel Service, 527 U.S. 516, 521-523 (1999). Moreover, an individualized assessment “is particularly necessary when the impairment is one whose symptoms vary widely from person to person.” See Toyota Motor Mfg., Ky, Inc., v. Williams, 534 U.S. 184, 195 (2002).

Even having established that she is an individual with a disability, a complainant must still show that she is a “qualified” individual with a disability within the meaning of 29 C.F.R. § 1630.2(m). A “qualified” individual with a disability is one who satisfies the requisite skill, experience, education and other job related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of the position. See 29 C.F.R. § 1630.2(m); see also 29 C.F.R. § 1630.3 (exceptions to definition).

An individual is "regarded as" having an impairment, if she: (1) has a physical or mental impairment that does not substantially limit major life activities, but is treated by an agency as having such a limitation; (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or, (3) does not have a physical or mental impairment, but is treated by an agency as having a substantially limiting impairment. De La Garza v. U.S .Postal Service, EEOC Appeal No. 01995346 (September 26, 2002) (citing 29 C.F.R. § 1630.2(k)(1)).