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Pain and dizziness did not amount to disability**Lawrence Peikes and Meghan D. Burns**

An employee who suffered from occasional bouts of pain and dizziness due to ovarian cysts could not be considered disabled under the Americans with Disabilities Act (ADA) because her condition did not substantially limit a major life activity, according to the 1st U.S. Circuit Court of Appeals.

UPS employed Abigail Guzman-Rosario in its Carolina, Puerto Rico, facility. Guzman-Rosario was required to scan packages with a laser reader as they moved on an assembly line and, when necessary, to reposition packages on the conveyor belt. This required her to stand and move around the belt.

In November 1997, Guzman-Rosario was diagnosed with ovarian cysts. Following her diagnosis, she intermittently suffered dizzy spells and pain that required her to either sit or lie down. Between November 1997 and July 1998, when she had the cysts surgically removed, Guzman-Rosario was absent from work in excess of her sick leave due, in part, to her condition.

In March 1998 when she informed her supervisors of her condition, one supervisor noted that her absences and sitting down at work were adversely affecting UPS. UPS discharged Guzman-Rosario in July 1998, for reasons unrelated to her medical condition or her absences.

Guzman-Rosario brought suit against UPS in federal court alleging a failure to accommodate her disability. The district court granted summary judgment in favor of UPS, finding that she had not been disabled before her surgery.

On appeal, the court examined two issues: (1) whether the ovarian cysts were sufficiently long-lasting a condition to qualify as a disability; and (2) whether Guzman-Rosario's condition sufficiently impinged on a major life activity to be treated as disabling.

"[T]he ADA is not a medical leave act nor a requirement of accommodation for common conditions that are short-term or can be promptly remedied," the court said. Noting that the U.S. Supreme Court has left unclear how lower courts should handle conditions that last between six and 24 months, the court declined to rule on that issue.

As for the second issue, Guzman-Rosario claimed she was substantially limited in the major life activities of working, caring for her family, socializing, doing housework and driving. The court found, however, that she presented no evidence that the episodes of pain and dizziness were so frequent as to impair her performance of any of the non-work activities.

The court also found that Guzman-Rosario's occasional need to sit down at work or remain home because of dizziness and pain did not show that she was significantly restricted or precluded from a class or broad range of jobs. She showed, at most, that she had difficulty performing her particular job at UPS and, therefore, was not substantially limited in the major life activity of working.

Accordingly, the 1st Circuit affirmed summary judgment in favor of UPS because Guzman-Rosario was not substantially limited in a major life activity and, therefore, was not disabled under the ADA.

Guzman-Rosario v. United Parcel Service Inc., 1st Cir., No. 04-1046, Feb. 3, 2005.

Professional Pointer: Employers are not obligated to accommodate employees with medical conditions that are not sufficiently long-lasting to qualify as a disability or that do not sufficiently impair a major life activity. However, employers should err on the side of caution when dealing with an employee who may suffer from a short-term or temporary condition. If an employee requests an accommodation or complains about a refusal to accommodate and is later punished for the request or complaint, that employee will have a viable retaliation claim against the employer that would not depend on proving a disability under the ADA.

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Editor's Note: This article should not be construed as legal advice.

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