Seventh Circuit Holds That Obesity Alone Is Not a Protected Disability Under the ADA

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In a matter of first impression before the court, the U.S. Court of Appeals for the Seventh Circuit recently held in *Richardson v. Chicago Transit Authority*, Nos. 17-3508 and 18-2199 (June 12, 2019), that obesity is not a protected disability under the Americans with Disabilities Act (ADA) unless a plaintiff can demonstrate that it is caused by an underlying physiological disorder or condition. With the decision, the Seventh Circuit brought clarity to a novel issue previously unresolved for employers in Illinois, Indiana, and Wisconsin. The holding brings the Seventh Circuit in line with decisions on the issue from the Second Circuit, Sixth Circuit, and Eight Circuit.

**Background**

Mark Richardson was a full-time bus operator for the Chicago Transit Authority (CTA) from August 1999 through February 2012. Richardson's weight climbed from 350 pounds in January 2005 to 566 pounds in May 2009. Whenever Richardson weighed over 315 pounds, he was considered to have extreme obesity based on his body mass index.

In February 2010, Richardson took leave from work because he had the flu. Subsequently, CTA's third-party medical provider determined that Richardson should not return to work unless and until he gained control of his blood pressure. CTA then assigned Richardson to its "Area 605," which was a classification for employees found medically unfit to perform the essential functions of their jobs.

In September 2010, CTA's third-party medical provider deemed Richardson physically fit to return to work as a bus operator. However, CTA's bus seats were not designed to accommodate drivers over 400 pounds. CTA did not automatically disqualify such drivers if the safety department determined that they could safely perform their jobs. CTA required Richardson to complete a special assessment to determine whether he could safely operate a bus. CTA's assessors concluded that Richardson could drive CTA's buses "in a safe and trusted manner," but they noted several safety concerns. Richardson could not make hand-over-hand turns, he simultaneously used both of his feet on the gas and brake pedals, and he rested his leg near the door handle.

CTA's acting manager of bus instruction received the special assessment report and concluded in a memorandum that it would be unsafe for Richardson to operate a bus. Based solely on this memorandum, CTA's vice president of bus operations determined that Richardson could not safely operate a bus. CTA then transferred Richardson back to Area 605. After two years of inactive status, Richardson failed to submit medical documentation to extend his assignment in Area 605. Without this documentation, CTA terminated Richardson's employment in February 2012.
Richardson subsequently filed suit under the ADA against CTA. He alleged that CTA had unlawfully refused to allow him to return to work because it regarded him as too obese to work as a bus operator. The district court first denied CTA’s motion to dismiss, concluding that Richardson would have to prove that a physiological disorder or condition caused his obesity, though he was not required to allege such facts in his complaint. Ultimately, the district court granted CTA’s motion for summary judgment, finding that Richardson had not presented evidence that an underlying physiological disorder or condition caused his obesity.

The Seventh Circuit’s Analysis

The Seventh Circuit affirmed the judgment of the district court, holding that Richardson’s obesity was not a protected disability under the ADA because he had not presented evidence that a physiological disorder or condition caused it. In its opinion, the court relied on the definition of physical or mental impairment found at 29 C.F.R. § 1630.2(h)(1), which requires the presence of a physiological disorder or condition. Absent evidence of an underlying physiological disorder or condition, the court declined to recognize obesity as a disability protected by the ADA.

Richardson argued that his obesity was a protected disability under the ADA following the passage of the ADA Amendments Act (ADAAA). However, the court observed that while the ADAAA broadened the definition of the terms “substantially limits” and “major life activity,” it had not instructed the Equal Employment Opportunity Commission (EEOC) to alter its definition of “impairment.” Thus, the court adhered to the EEOC’s definition of physical impairment, which requires a “physiological disorder or condition” to be protected by the ADA.

The court was also unpersuaded by Richardson’s reading of EEOC interpretive guidance. In sum, Richardson sought to create a standard by which weight would be a protected impairment under the ADA if it was not within a normal range or the result of a physiological disorder. Not only did the court believe that the standard established by its opinion was the more natural reading of the EEOC’s guidance, it also expressed concern that adopting Richardson’s interpretation would be “inconsistent with the ADA’s text and purpose” and extend the statute’s protections to an overbroad array of individuals based on weight.

The court also rejected Richardson’s “perceived disability” claim because he did not introduce evidence that any individual at CTA believed a physiological disorder or condition caused his obesity. The court’s opinion on Richardson’s argument nevertheless leaves open the possibility that a plaintiff may have a cognizable perceived disability claim when he or she presents evidence that an employer acted out of concern for how obesity affected the employee’s health. Specifically, the court distinguished Richardson’s case from a 1999 First Circuit case in which the plaintiff showed that the defendant “treated plaintiff’s obesity as if it actually affected her musculoskeletal and cardiovascular systems” and presented “expert testimony that morbid obesity is a physiological disorder.” Richardson, however, did not present any similar evidence.

Key Takeaways

The Richardson opinion brings clarity to a current issue and an increasingly prevalent claim. The decision highlights that the courts are not warm to the EEOC’s view of obesity as an impairment rising to the level of a disability under the ADA even where a plaintiff’s excessive weight is not caused by an underlying physiological disorder or
condition. Where courts differ with a federal agency like the EEOC and can find a basis to reject the agency's interpretation of the statute it is charged with enforcing, some courts, at least, will do so.

However, employers may still want to proceed cautiously when considering taking adverse action against an obese employee. The decision in Richardson does not entirely eliminate obesity as a protected disability under the ADA. Rather, the ADA may protect an employee if there is an underlying physiological disorder or condition that causes the obesity or an employer believes that an underlying physiological disorder or condition causes the employee's obesity and that disorder, condition, or belief motivates the employer's adverse action.

Additionally, employers may want to keep in mind that state and local laws may define "disability" differently than the ADA. For example, a state law may not require that an impairment result from a physiological disorder. Thus, while obesity may not qualify for legal protection under the ADA, it may be a protected category under a local jurisdiction.