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Can an Employee Who Applies for Social Security Disability Benefits Be a "Qualified Individual With a Disability" Under the ADA?

By Jay E. Grenig

PREVIEW of United States Supreme Court Cases, pages 263–266.

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Issues

Does a person's application for or receipt of disability benefits under the Social Security Act create a rebuttable presumption that the person may not assert that he or she is a "qualified individual with a disability" under the Americans with Disabilities Act? If the application for or receipt of disability benefits does not create such a presumption, what weight should be given to the application for or receipt of disability insurance benefits when a person asserts that he or she is a "qualified individual with a disability" under the Americans with Disabilities Act?

Facts

Policy Management Systems Corp. ("PMSC") hired Carolyn Cleveland in August 1993. The following January, Cleveland suffered a stroke while on the job and took a leave of absence. As a result of the stroke, Cleveland suffered a condition known as aphasia. Aphasia is a disorder involving the cognitive input and output of language. Aphasia impairs memory, reading ability, calculation ability, and the understanding and processing of language. Cleveland's memory was impaired, as were her abilities to speak and to concentrate. Additionally, Cleveland was unable to read or dial a telephone and had trouble understanding most of what was said to her.

With her daughter's assistance, Cleveland filed an application for Social Security disability benefits. In support of her sworn application, Cleveland certified that she had become "unable to work because of [her] disabling condition on January 7, 1994" and that she was "still disabled."

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CLEVELAND V. POLICY MANAGEMENT SYSTEMS CORP.
DOCKET NO. 97-1008

ARGUMENT DATE:
FEBRUARY 24, 1999
FROM: THE FIFTH CIRCUIT

Case at a Glance

The Supreme Court is asked to determine whether an individual's application for or receipt of Social Security disability benefits creates a rebuttable presumption that the claimant or recipient of such benefits is judicially estopped from asserting that the individual is a "qualified individual with a disability."

In April 1994, Cleveland's doctor released her to return to work anticipating an eventual and nearly full recovery. Cleveland returned to work for PMSC that April on a part-time basis. Cleveland alleges that when she returned to work she contacted the Social Security Administration ("SSA") and informed it that she had returned to work and that she no longer needed disability benefits. PMSC concedes that Cleveland informed the SSA of her return but denies that she ever withdrew her application for disability benefits or otherwise indicated that she was anything other than totally disabled.

Cleveland worked part-time for about two weeks and then began working full-time. She requested several accommodations, including computer training, permission to take work home in the evenings, a transfer of position, and permission for the Texas Rehabilitation Commission to provide a free counselor to assist her. PMSC denied each of Cleveland's requests. In July 1994, PMSC terminated Cleveland for poor job performance.

In September 1994, Cleveland renewed her application for Social Security disability benefits by filing a "Request for Reconsideration," stating "I continue to be disabled," and a "Work Activity Report" in which she stated that she was terminated "because I could no longer do the job because of my condition." In January 1995, Cleveland filed another "Request for Reconsideration," and in May, she requested a hearing before an Administrative Law Judge ("ALJ"). In both instances, Cleveland represented that she was "unable to work due to my disability."

In September 1995, the ALJ determined that Cleveland had become disabled on January 7, 1994, and was disabled continuously through the date of the ALJ's decision. The ALJ granted Cleveland the Social Security disability benefits she requested, retroactive to January 1, 1994.

One week before the ALJ's decision, Cleveland filed suit against PMSC in U.S. District Court for the Northern District of Texas claiming wrongful termination in violation of the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) ("ADA") and the Texas Labor Code. PMSC moved for partial summary judgment, asserting that Cleveland could not establish a prima facie case under the ADA because Cleveland's application for and receipt of Social Security disability benefits estopped her from claiming that she is a "qualified individual with a disability." The district court granted PMSC's motion on Cleveland's ADA claim.

Cleveland appealed the decision to the U.S. Court of Appeals for the Fifth Circuit, arguing that she is not estopped from establishing as a matter of law that she is a "qualified individual with a disability." The court of appeals affirmed the district court's decision, holding that Cleveland was judicially estopped from claiming that she was a "qualified individual with a disability." 120 F.3d 513 (5th Cir. 1997). The Fifth Circuit relied on Cleveland's sworn statements to the SSA that she was disabled. According to the court, Cleveland "continuously and unequivocally represented to the SSA that she is totally disabled and completely unable to work." The United States Supreme Court granted Cleveland's petition for certiorari.

Case Analysis

The ADA prohibits an employer from discriminating against "a qualified individual with a disability because of the disability." To assert an ADA violation successfully in the absence of direct evidence of discrimination, a plaintiff must first make a "prima facie" showing that the plaintiff is a "qualified individual with a disability." A "disability" is a "physical or mental impairment that substantially limits one or more of the major life activities" of the individual. A "qualified individual with a disability" is a "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions" of the individual's job.

The Social Security Act prescribes an individual's eligibility for Social Security disability benefits. An individual is eligible for disability benefits if he or she is unable "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment." The impairment must be of such severity that the individual is unable to do his or her previous work and cannot engage in any other kind of substantial gainful work in the "national academy."

The Fifth Circuit stopped short of adopting a per se rule that automatically estops an employee who applies for or receives Social Security disability benefits from asserting a claim of discrimination under the ADA. The court acknowledged that it is at least theoretically conceivable that under some limited and highly unusual set of circumstances the two claims would not necessarily be mutually exclusive. Accordingly, the Fifth Circuit held that the application for or the receipt of Social Security disability benefits creates a rebuttable presumption that the claimant or recip-

ient of such benefits is judicially estopped from asserting that the individual is a "qualified individual with a disability."

Cleveland argues that imposing a presumption of judicial estoppel erroneously assumes that individuals who apply for Social Security benefits and who also pursue their rights under the ADA are making inconsistent claims and thereby compromising the integrity of the judicial system. Rather than maintaining the integrity of the courts, Cleveland claims that the Fifth Circuit's judicial estoppel presumption precludes legitimate ADA claims asserted by disabled individuals who were doing nothing more than exercising their rights under two federal acts designed specifically to protect the disabled.

On the other hand, PMSC contends that the Fifth Circuit's rebuttable presumption/estoppel approach allows a court to determine whether an individual's statements to the SSA are inconsistent with, or complementary to, the "qualified individual" requirement of the ADA.

Cleveland asserts that the weight to be given statements made in connection with an application for disability benefits should be no different than the weight given to any other evidence. PMSC suggests that, when properly applied, the Fifth Circuit's holding allows a Social Security applicant or recipient the opportunity to prove that her representations to the SSA are not inconsistent with the ADA's threshold requirement that she must be a "qualified individual with a disability" in order to seek its protection.

SIGNIFICANCE

Judicial estoppel prevents a party from asserting a position in a legal proceeding that is contrary to a position previously taken by the party in the same or some earlier proceeding. The doctrine is intended to protect the integrity of the judicial process.

The vast majority of courts have declined to hold that an ADA plaintiff is judicially estopped from proving his or her ADA claim simply because the employee has sought or received Social Security disability benefits. *See,* e.g., *Griffith v. Wal-Mart Stores, Inc.,* 135 F.3d 376 (6th Cir. 1998); *Weigel v. Target Stores,* 122 F.3d 461 (7th Cir. 1997); *Moore v. Payless Shoe Source, Inc.,* 139 F.3d 1210 (8th Cir. 1998); *Johnson v. Oregon Dept. of Human Resources Rehabilitation,* 141 F.3d 1362 (9th Cir. 1998); *Rascon v. U.S. West Communications, Inc.,* 143 F.3d 1324 (10th Cir. 1998); *Talavera v. School Bd. of Palm Beach County,* 129 F.3d 1214 (11th Cir. 1997); *Swanks v. Washington Metro. Area Transit Authority,* 116 F.3d 582 (D.C. Cir. 1997). These courts generally take the position that statements made in connection with a Social Security disability benefits application are to be considered on a case-by-case basis in the context in which they were made and that they should not be given any more weight than any other evidence.

The Third Circuit, however, has held that an individual who claims to be totally disabled for purposes of receiving Social Security disability benefits cannot then assert that he or she is a "qualified individual with a disability" for purposes of bringing an ADA claim. *See,* e.g., *McNemar v. The Disney Store, Inc.,* 91 F.3d 610 (3d. Cir. 1998).

In *Cleveland,* the Fifth Circuit took the position that the application for or the receipt of Social Security disability benefits creates a rebuttable presumption that the claimant or recipient of such benefits is judicially estopped from asserting that the individual is a "qualified individual with a disability."

Both the Equal Employment Opportunity Commission and the Social Security Administration have determined that, although statements made in applying for Social Security disability benefits may be relevant evidence in a subsequent ADA suit, an application for or receipt of benefits is not by itself inconsistent with being a "qualified individual with a disability" under the ADA.

The purpose of the ADA is to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. The purpose of the Social Security Act in providing disability benefits is to provide financial support to individuals meeting the definition of "disabled" without regard to whether a workplace accommodation would enable the applicant to perform a specific job.

There are other significant differences between the ADA and the Social Security Act. While the ADA requires an individualized inquiry into the ability of a particular person to meet the requirements of a particular position, the Social Security Act relies on general presumptions about an individual's ability to work. It treats some conditions as presumptively disabling, and if a claimant has an impairment that is medically equivalent to one of those listed impairments, the SSA presumes—without considering other factors—that the disorder is so severe that it will prevent the claimant from doing any substantial gainful activity.

Additionally, the Social Security Act does not consider whether the indi-

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vidual can work if he or she is provided with a "reasonable accommodation." The Act recognizes that an individual may be able to qualify as "disabled" under the SSA and still be able to work in a particular position. Thus the SSA has a trial work period that allows beneficiaries to work for nine months while their benefit entitlement and payment levels remain unchanged. Similarly, the SSA provides individuals who return to work with benefits in any month in which earnings fall below a statutory level.

If the Supreme Court upholds the Fifth Circuit's rebuttable presumption test, disabled individuals will essentially be forced to choose between making an ADA claim and seeking Social Security disability benefits. It would likely increase the number of disabled individuals resorting to reliance on Social Security disability benefits and make it more difficult for them to enjoy the protections of the ADA.

On the other hand, if the Court rejects the Fifth Circuit's standard and determines instead that a claim for Social Security disability benefits is not inconsistent with a valid ADA claim, an applicant's sworn representations to the SSA would still be relevant to the determination of whether he or she is a "qualified individual" under the ADA. Specific factual assertions made in support of an application for disability benefits would be relevant to an ADA action if those representations were inconsistent with the specific factual assertions made in support of the ADA claim. Such a standard would nevertheless make it easier for disabled employees or applicants for employment to invoke the protection of the ADA.

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Amicus Briefs

In Support of Carolyn C. Cleveland

The United States and Equal Employment Opportunity Commission (Seth P. Waxman, Solicitor General, U.S. Department of Justice (202) 514-2217)

AIDS Policy Center for Children, Youth and Families; American Association of Retired Persons; American Association on Mental Retardation; American Medical Student Association; American Network of Community Options and Resources; American Public Health Association; The ARC of the United States; Association of Nurses in AIDS Care, et al. (Catherine A. Hanssens (212) 809-8585)

The National Employment Lawyers Association and the Association of Trial Lawyers of America (Alan B. Epstein (215) 790-0300)

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