The Causal Nexus Doctrine: A Further Limitation on the Employer's ADA Duty of Reasonable Accommodation in the Seventh Circuit

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THE CAUSAL NEXUS DOCTRINE: A FURTHER LIMITATION ON THE EMPLOYER'S ADA DUTY OF REASONABLE ACCOMMODATION IN THE SEVENTH CIRCUIT

I. INTRODUCTION

The opening section of the Americans with Disabilities Act1 ("ADA" or "the Act") characterizes the legislation's purpose as "address[ing] the major areas of discrimination faced day-to-day by people with disabilities."2 Among those areas of daily life targeted by Congress in passing the ADA is employment, which is discussed in the first section of the Act, Title I.3 Unfortunately, despite the lofty goals stated in the Act, analysis of ADA jurisprudence indicates that the legislation has not lived up to its potential.4 Though the legislature no doubt genuinely intended to create a "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities"5 and "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities,"6 neither purpose has been accomplished by Title I.7 Rather, as one commentator has noted, courts have interpreted the ADA's language "so narrowly . . . that it rarely protects the people for whose benefit it was adopted."8

A recent indication that the ADA has failed to fulfill its promise is the July 26, 2007 introduction of the Americans with Disabilities Act Restoration Act of 2007 ("ADARA") in both the House of

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2. Id. § 12101(b)(4).
3. Id. §§ 12111–12117.
6. Id. § 12101(b)(2).
7. See generally Winegar, supra note 4, at 1267–68 (explaining how courts have interpreted the ADA's language too narrowly, "abus[ed] summary judgment standards in ADA cases," and failed to understand that "the basis of disability rights is civil rights").
8. Id. at 1267.
Representatives and the Senate. Though this bill will be mentioned again below, for the time being it will suffice to note the text of the ADARA's "Findings and Purposes" section, which states that "decisions and opinions of the Supreme Court have unduly narrowed the broad scope of protection afforded by the [ADA]," and to highlight the stated aim of the ADARA:

to reinstate the original congressional intent regarding the definition of disability . . . by clarifying that [ADA] . . . protection . . . is available for all individuals who are—

(A) subjected to adverse treatment based on actual or perceived impairment, or a record of impairment; or
(B) adversely affected—

i. by prejudiced attitudes, such as myths, fears, ignorance, or stereotypes concerning disability or particular disabilities; or
ii. by the failure to remove societal and institutional barriers, including communication, transportation, and architectural barriers, or the failure to provide reasonable modifications to policies, practices, and procedures, reasonable accommodations, and auxiliary aids and services.

Though not specifically mentioned in the ADARA, one of several ways in which courts have tried to restrict employee causes of action under Title I of the ADA is through the development of the "causal nexus" or "causal connection" doctrine. To understand this doctrine, it

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9. H.R. 3195, 110th Cong. (1st Sess. 2007). The House bill is sponsored by Representative Steny H. Hoyer and currently has 241 co-sponsors. Id.
10. S. 1881, 110th Cong. (1st Sess. 2007). The Senate bill is sponsored by Senator Tom Harkin and currently has two co-sponsors, Senators Edward Kennedy and Arlen Specter. Id.
11. See infra Parts IV.C, V.
13. Id. § 2(b)(3).
14. This doctrine will also be referred to as the "Felix rule" or "Felix doctrine." See generally Cheryl L. Anderson, What Is "Because of the Disability" Under the Americans with
is necessary to grasp several key ADA concepts, including “person with a disability,” “major life activity,” and “reasonable accommodation.” In general, the ADA requires two things: first, an individual with a disability must have “[a] physical or mental impairment that substantially limits [that individual in] one or more . . . major life activities,”[15] and second, an employer must take reasonable steps to accommodate such an individual with a disability in the workplace.[16]

The causal nexus doctrine, first articulated in Felix v. New York City Transit Authority[17] and Wood v. Crown Redi-Mix, Inc.,[18] refuses to require an employer to accommodate any aspects of an employee’s disability that do not themselves amount to disabilities within the statutory definition.[19] In other words, “there must be a causal connection between the major life activity that is limited and the accommodation sought.”[20] As the Wood court explained, such a doctrine is rooted in the idea that “the ADA requires employers to . . . accommodate limitations, not disabilities.”[21] Additionally, as noted in Felix, proponents of the causal nexus approach see it as a necessary restraint on ADA causes of action, without which the current (and, in the Felix court’s view, appropriately limited) understanding of disability would be “eviscerate[d].”[22]

In framing its causal nexus approach, the Felix court attempted to distinguish several prior cases cited by the plaintiffs.[23] Included among these cases was Vande Zande v. Wisconsin Department of Administration, a 1995 decision in which the Seventh Circuit asserted that “an intermittent impairment that is a characteristic manifestation of an admitted disability is . . . part of the underlying disability and hence a condition that the employer must reasonably accommodate.”[24] The


15. 29 C.F.R. § 1630.2(g)(1) (2007).
16. Id. § 1630.2(o).
17. 324 F.3d 102 (2d Cir. 2003).
18. 339 F.3d 682 (8th Cir. 2003).
19. Felix, 324 F.3d at 105.
20. Wood, 339 F.3d at 687.
21. Id. (citations omitted).
22. 324 F.3d at 107.
23. Id. at 105–07.
24. 44 F.3d 538, 544 (7th Cir. 1995).
Felix court’s distinction of Vande Zande notwithstanding, this language, when placed in context, seems contrary to the notion that an employer need only accommodate those aspects of an employee’s disability that are causally linked to the limited major life activity. However, after seeming to question this aspect of the Vande Zande holding in Yindee v. CCH Inc., the Seventh Circuit recently appeared to embrace the causal nexus doctrine in dicta in Squibb v. Memorial Medical Center. For reasons further discussed below, this development is contrary to the stated aims and statutory provisions of the ADA.

This Note addresses the origins and applications of the Felix and Wood causal nexus doctrine in the interest of assessing the Seventh Circuit’s decision in Squibb. Part II provides background information necessary to a basic understanding of ADA issues. Part III examines the causal nexus approach as outlined in the Felix and Wood decisions, then specifically analyzes the sequence of Seventh Circuit ADA Title I cases from Vande Zande to Squibb. Part IV argues that the Seventh Circuit was wrong to embrace the causal nexus doctrine in Squibb and suggests an alternative approach. Part V offers a brief conclusion.

II. THE ADA: ORIGINS, INTERPRETIVE FRAMEWORK, AND TERMINOLOGY

A. ADA Title I: Legislative Origins

Legislation can be best understood by examining its antecedents. The Act, which was signed into law in July of 1990, can be traced back to both the Civil Rights Act of 1964 and the Rehabilitation Act of 1973. The Civil Rights Act “had a profound effect on the direction that the [disability rights] movement was to take in the next 25 years,” though it did not specifically address discrimination against persons with disabilities. Most importantly, the Civil Rights Act carried in its wake federal laws that did directly address the needs of persons with

25. 458 F.3d 599, 601–02 (7th Cir. 2006).
26. 497 F.3d 775, 785 (7th Cir. 2007).
27. See infra Part IV.
31. MOOK, supra note 28, § 1.03[2].
disabilities, including the Architectural Barriers Act of 1968,\textsuperscript{32} the 1970 amendments to the Urban Mass Transportation Act,\textsuperscript{33} and the Rehabilitation Act.\textsuperscript{34}

In passing the Rehabilitation Act, Congress moved beyond its prior recognition that persons with disabilities required vocational training to find success in the workplace, acknowledging that even if properly trained, such persons remained subject to discrimination by employers.\textsuperscript{35} The legislation, therefore, not only prohibited discrimination by federal employers, federal contractors, and programs receiving federal financial support, but also required federal employers and contractors to implement affirmative action programs to increase the presence of persons with disabilities in the federal workforce.\textsuperscript{36} Though it did not apply to private employers, and was thus an incomplete victory for Americans with disabilities, the Rehabilitation Act still represented a major milestone in the struggle for a truly equal workplace. Indeed, while it would take almost two more decades for Congress to address discrimination in the private sector by passing the ADA, a consensus quickly emerged among the courts that the ADA "[was] to be an expansion of the protections afforded under the Rehabilitation Act . . . not to diverge from the law that has been developed under the Rehabilitation Act's provisions."\textsuperscript{37}

\textbf{B. ADA Title I: Interpretive Framework/EEOC Regulations}

For guidance in interpreting the dictates of the ADA, courts turn not only to the language of the Act and that of its predecessor, the Rehabilitation Act, but also to the ADA regulations issued by the Equal Employment Opportunity Commission (EEOC) and mandated by the Act itself.\textsuperscript{38} However, while these regulations are certainly valuable tools for employers in determining their obligations under the ADA, their precise role remains unclear. As the EEOC itself has stated, the regulations cannot "supply the 'correct' answer in advance for each

\textsuperscript{34} 29 U.S.C. §§ 701–796; see also MOOK, supra note 28, § 1.03[2]–[3] (providing an overview of the legislative precursors to the ADA).
\textsuperscript{37} MOOK, supra note 28, § 2.01[4]; see, e.g., Vande Zande v. Wis. Dep't of Admin., 44 F.3d 538, 542 (7th Cir. 1995).
\textsuperscript{38} See MOOK, supra note 28, § 1.04[5][b].
employment decision concerning an individual with a disability.\textsuperscript{39} Furthermore, considerable disagreement remains as to the role that the EEOC regulations should play in guiding the courts in Title I matters.\textsuperscript{40} Though the pre-ADA court in <i>Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.</i> stated that EEOC regulations should generally control unless “arbitrary, capricious, or manifestly contrary to the statute,”\textsuperscript{41} the ADA-era court in <i>Sutton v. United Air Lines, Inc.</i> declined to adopt the EEOC definitional section for the Act.\textsuperscript{42} Nevertheless, there is no doubt that the EEOC guidelines and regulations have been and will continue to be a major component of the ADA’s interpretive framework.

C. ADA Title I: Terminology

1. Person with a Disability

The ADA and the accompanying EEOC regulations identically define a qualified\textsuperscript{43} person with a disability as one who “[has] a physical or mental impairment that substantially limits one or more of the major life activities of such individual . . . [or has] a record of such an impairment . . . or [is] regarded as having such an impairment.”\textsuperscript{44} Because the drafters of the ADA intended the legislation to adapt to societal changes, they purposely made this key definition broad and flexible.\textsuperscript{45} This intent is suggested by the fact that the definition of “person with a disability” depends entirely on how one defines impairment, substantially limits, and major life activity. Further broadening the scope of the definition is the idea that a person with a

\begin{itemize}
\item \textsuperscript{39} 29 C.F.R. § 1630 App. (2007).
\item \textsuperscript{40} See MOOK, supra note 28, § 1.04[5][b].
\item \textsuperscript{41} 467 U.S. 837, 844 (1984).
\item \textsuperscript{42} 527 U.S. 471, 479–80 (1999).
\item \textsuperscript{43} Though the “qualified” aspect of “person with a disability” is not the focus of this Note, it still must be recognized. To merit accommodation under the ADA, a person must (1) meet the prerequisites for the job at issue, such as experience and education, and (2) be able to perform the “essential functions” of the job with or without reasonable accommodation. 29 C.F.R. § 1630.2(m) (2004); see also MOOK, supra note 28, § 4.02.
\item \textsuperscript{44} 42 U.S.C. § 12102(2) (2000); see also 29 C.F.R. § 1630.2(g) (2007). As with much of the ADA, this definition was drawn from the Rehabilitation Act, which includes a similar definition for “disability.” 29 U.S.C. § 705(9)(B) (2000).
\item \textsuperscript{45} H.R. REP. No. 101-485, pt. 3, at 27 (1990) (House Judiciary Committee). Congress noted that a flexible definition would allow for the incorporation of newly recognized disorders into the ADA’s protected class in the future. S. REP. No. 101-116, at 22 (1989) (Senate Committee on Labor and Human Resources).
\end{itemize}
disability can be so defined given a “record of their disability”\textsuperscript{46} or, most notably, that the perceptions of others can classify an individual as a person with a disability under the ADA, even absent actual physical or mental impairments.\textsuperscript{47}

\textit{a. Physical or Mental Impairment}

Focusing on the first of the ADA’s three sub-definitions of disability, one must begin by asking what does and does not constitute a physical or mental impairment. This term is not further clarified in the language of the Act itself, but the EEOC regulations provide considerable guidance:

\textit{Physical or mental impairment means:}

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.\textsuperscript{48}

Additionally, the EEOC addresses physical or mental states that \textit{do not} meet the ADA definition of impairment, including simple physical characteristics (such as hair or eye color), physiological conditions not caused by a disorder (such as pregnancy), personality traits (such as poor judgment or irritability), personal disadvantages (such as indigence), advanced age, or sexual preference.\textsuperscript{49} The ADA also specifically omits several subsets of impairments or conditions: “sexual behavior disorders,”\textsuperscript{50} “compulsive gambling, kleptomania, or

\textsuperscript{46} See Mook, supra note 28, § 3.03 (summarizing “record of disability” aspect of ADA definition).

\textsuperscript{47} See id. § 3.04 (summarizing “regards as” aspect of ADA definition).

\textsuperscript{48} 29 C.F.R. § 1630.2(h) (2007).

\textsuperscript{49} Mook, \textit{supra} note 28, § 3.02[b][c].

\textsuperscript{50} 42 U.S.C. § 12211(b)(1) (2000). The statute includes transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, and “gender identity disorders not resulting from physical impairments” within this sub-grouping. \textit{Id.}
pyromania," and "psychoactive substance use disorders." However, the definitions found in the ADA and the EEOC Title I guidelines, despite their apparent specificity, are accompanied by a warning: They are not to be used in formulating a laundry list of qualifying impairments under the ADA, but rather should be regarded as flexible and general in nature.

b. "Major Life Activity"

For the ADA to apply to an employee, it is not enough that that person has a physical or mental impairment. The impairment must also substantially limit at least one major life activity. As with the term "impairment," the EEOC regulations provide a helpful, if not complete, list of major life activities, including "[c]aring for oneself; [p]erforming manual tasks; [w]alking; [s]eeing; [h]earing; [s]peaking; [b]reathing; [l]earning; and [w]orking." Again, though, it must be emphasized that "[t]he lists of major life activities identified by... the EEOC... are not 'exhaustive' and the courts have taken varying views as to what activities should be deemed 'major life activities' for purposes of ADA analysis.

Though the lower courts had already begun to explore the meaning of major life activity within the ADA framework, the Supreme Court did not directly address the issue until its 1998 decision in Bragdon v. Abbott. In Bragdon, the HIV-positive plaintiff maintained that her disease was an impairment that limited her in the major life activity of reproduction. In a 5-4 decision, the Court agreed with the plaintiff. Writing for the Court, Justice Kennedy stated that "[r]eproduction falls well within the phrase 'major life activity.' Reproduction and the sexual dynamics surrounding it are central to the life process itself." Justice Kennedy went on to refer to the "breadth" of the term major life

51. Id. § 12211(b)(2).
52. Id. § 12211(b)(3).
53. MOOK, supra note 28, § 3.0211[a] (citing 29 C.F.R. App. § 1630.2(b)).
55. See MOOK, supra note 28, § 3.02[4][a] (citations omitted).
56. Id.
57. 524 U.S. 624 (1998); see also MOOK, supra note 28, § 3.02[4][b].
58. See 524 U.S. at 631.
59. Id.
60. Id. at 638.
61. Id.
activity, in sharp contrast to the narrower construction advanced by Chief Justice Rehnquist in his dissent.  

While Bragdon was not a Title I case (it instead involved public accommodations for persons with disabilities under Title III of the ADA), its holding applied to Title I employment cases because the definition of person with a disability is consistent throughout the ADA. Given that the language in Bragdon was fairly broad, it might seem that subsequent Supreme Court ADA decisions would advance a fairly expansive definition of major life activity. This has hardly been the case. Indeed, two relatively recent Supreme Court decisions have included language questioning whether even working, which is listed as an example in the EEOC regulations, should be considered a major life activity.  

In Sutton v. United Air Lines, Inc., the Court pointed out that including working as a major life activity seemed to be an exercise in circular logic, a point that it repeated in Williams, in which it emphasized the “conceptual difficulties inherent in the argument that working could be a major life activity.” Such cases at the highest level have shown that the Bragdon decision may have been the high-water mark for a more inclusive interpretation of major life activity under Title I of the ADA.

\textit{c. Substantial Limitation}

As the above briefly illustrates, the inherent ambiguity of the adjective \textit{major} has allowed the courts to advance markedly different notions of what constitutes a major life activity. Similarly, the imprecision of the adjective \textit{substantial}, when coupled with the absence of any definition in the ADA itself, leaves courts considerable leeway in deciding whether a physical or mental impairment substantially limits a person in a major life activity. The EEOC regulations do provide some assistance in this regard, though it must again be noted that some courts have declined to adopt the EEOC definitions in ADA Title I cases.  

For courts that \textit{are} willing to consider the EEOC guidelines, the
meaning of substantial limitation must be understood as related to the abilities of the "average person." 67 A person is substantially limited if either: (1) that person cannot "perform a major life activity that the average person in the general population can perform," 68 or (2) that person is "[s]ignificantly restricted as to the condition, manner or duration under which [that] individual can perform a . . . major life activity as compared to . . . the average person in the general population." 69 Additionally, the EEOC guidelines provide specific factors to be considered when deciding whether a substantial limitation on a major life activity exists. These factors include the "nature and severity of the impairment," 70 the "duration or expected duration of the impairment," 71 and the "permanent or long term impact . . . resulting from the impairment." 72

Whether they consult these EEOC guidelines or not, courts deciding whether a limitation on a major life activity is substantial under the ADA are obliged to consider the case law on the subject. This case law is fairly extensive, but for the purposes of this Note, a brief discussion of relevant Supreme Court jurisprudence is sufficient. The Supreme Court has attempted to clarify the meaning of substantial limitation in several ADA cases, including Bragdon, Sutton, and Williams.

In Bragdon, the Court had to decide whether the plaintiff's HIV-positive status imposed a substantial limitation on the major life activity of reproduction, given that sexual activity on her part created a risk to both her partner and to any child conceived. 73 The Court concluded that even if the chances of either the partner or the child contracting HIV were fairly minimal, the risk (and therefore the limitation on the major life activity of reproduction) was substantial. 74 It went on to note that substantial limitations cannot be equated with "utter inabilities," stating that "[w]hen significant limitations result from the impairment, the

68. Id. § 1630.2(j)(1)(i).
69. Id. § 1630.2(j)(1)(ii).
70. Id. § 1630.2(j)(2)(i).
71. Id. § 1630.2(j)(2)(ii).
72. Id. § 1630.2(j)(2)(iii).
74. Id. Chief Justice Rehnquist disagreed in his dissent, pointing out that "[w]hile individuals infected with HIV may choose not to engage in [sexual and reproductive] activities, there is no support in language, logic, or our case law for the proposition that such voluntary choices constitute a 'limit' on one's own life activities." Id. at 661 (Rehnquist, C.J., concurring in the judgment in part and dissenting in part).
definition is met even if the difficulties are not insurmountable." Thus, while the Bragdon Court explained how substantial limitation could be interpreted "too" narrowly, it did not necessarily provide a more comprehensive definition of the term.

A year after Bragdon, the Court took up the issue of whether a physical or mental impairment substantially limits a major life activity when the effects of that impairment can be mitigated. The primary case addressing this question is Sutton, in which two pilots sued United Airlines for discrimination under Title I of the ADA, claiming that they had been denied employment because of their extremely poor vision.6 In a 7-2 decision, the Court found for the defendant, stating rather succinctly that "[a] 'disability' exists only where an impairment 'substantially limits' a major life activity, not where it 'might,' 'could,' or 'would' be substantially limiting if mitigating measures were not taken."7 In other words, the Court held that because the plaintiffs could correct their vision with eyeglasses or contact lenses, their myopia did not substantially limit a major life activity, and therefore, they did not qualify as persons with disabilities.7 Both this aspect of the holding and the Court's skeptical remarks regarding working as a major life activity show the Court construing the ADA more narrowly in Sutton than it had in Bragdon.

This limited approach continued in Williams. The plaintiff, Ella Williams, was terminated by Toyota after missing significant time from her job in a manufacturing plant.79 Williams maintained that her impairments of carpal tunnel syndrome and tendonitis interfered with her ability to engage in the major life activities of performing manual tasks, lifting, and working, and thus that her dismissal was disability

75. Id. at 641 (opinion of the Court).
77. Id. at 482. Justice Stevens, dissenting, opined that mitigating measures should not be considered in deciding whether an individual has a disability under the ADA. Id. at 495-513. According to Justice Stevens, when the ADA is properly construed according to "customary tools of statutory construction," it "focuses on . . . past or present physical condition without regard to mitigation that has resulted from rehabilitation, self-improvement, prosthetic devices, or medication." Id. at 495. Stevens added that "in order to be faithful to the remedial purpose of the [ADA], we should give it a generous, rather than a miserly, construction." Id.
78. Id. at 486-89. The Court followed a similar rationale in the concurrent ADA "mitigation" case of Murphy v. United Parcel Service, Inc., 527 U.S. 516 (1999). In Murphy, the Court held that a truck mechanic with hypertension was not disabled because he could take medication to control his blood pressure. Id.
discrimination. The Court disagreed. In a unanimous decision, it defined “substantial limitation on a major life activity” as “prevent[ing] or severely restrict[ing] the individual from doing activities that are of central importance to most people’s daily lives.” Further, it stated that “[t]he impairment’s impact must also be permanent or long term” and that the determination of an impairment’s effect on an individual must be subject to an “individualized assessment.” Needless to say, the contrast between such language and that in Bragdon, which merely equated “substantial” with “significant” limitations, is stark.

2. “Reasonable Accommodation”

Once it has been determined that an employee or applicant for employment is a qualified person with a disability under the ADA, that person may not be denied “reasonable accommodations” by an employer or prospective employer. However, as with so many aspects of Title I, this requirement can be as complex in application as it appears clear-cut at first glance. Two questions must be answered in deciding what sort of accommodation is required. First, is the desired accommodation “reasonable”? Second, even if the accommodation is otherwise reasonable, does it impose an “undue hardship” on the employer?

a. What Is Reasonable?

Though the ADA does not specifically define “reasonable accommodation,” the original EEOC regulations provide a tripartite definition of the concept. According to the regulations, a reasonable accommodation can be a modification or adjustment to the job application process, to the work environment itself, or to any aspect of employment that will allow the person “with a disability to “enjoy equal benefits and privileges of employment.” Additionally, the EEOC regulations and the ADA itself provide an identical (though not exclusive) list of possible accommodations. Such accommodations may include:

80. Id. at 190.
81. Id. at 198.
82. Id.
83. Id. at 199.
(i) Making existing facilities . . . readily accessible to and usable by individuals with disabilities; and
(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; [or] the provision of qualified readers or interpreters.86

Employees with disabilities may also be entitled to other reasonable accommodations such as paid or unpaid leave to obtain medical treatment, accessible company transportation, and reserved parking spaces.87

Just as courts addressing ADA claims must decide when a life activity is major or a limitation on that life activity is substantial, courts assessing an employer’s duty to accommodate an employee with a disability must determine whether that accommodation is reasonable. The EEOC regulations suggest that this reasonableness analysis should depend entirely upon the extent to which an accommodation has the desired effect.88 According to the EEOC, an accommodation is reasonable as long as it successfully levels the playing field for the covered party, regardless of any expenditure or inconvenience caused by the accommodation itself.89 This interpretation of reasonable accommodation was strongly criticized at the circuit court level90 before being clearly rejected by the Supreme Court in US Airways, Inc. v.

86. Id. § 1630.2(o)(2); see also 42 U.S.C. § 12111(9) (2000).
88. 29 C.F.R. § 1630.2(o)(1) (2007). In explaining “reasonable accommodation,” all three sub-definitions refer to the effectiveness of the accommodation in relation to the employee, but none of the three mention the “reasonableness” of the accommodations vis-à-vis the employer. Id.
89. Id.; see also MOOK, supra note 28, § 6.02 (providing an overview of the EEOC definition of “reasonable accommodation” under the ADA).
90. Vande Zande v. Wis. Dep’t of Admin., 44 F.3d 538, 542 (7th Cir. 1995) (applying principles of negligence in rejecting the EEOC approach and adopting a rule that for an accommodation to be reasonable, its cost cannot be “disproportionate to the benefit”); Borkowski v. Valley Cent. Sch. Dist., 63 F.3d 131, 138 (2d Cir. 1995) (“‘Reasonable’ is a relational term: it evaluates the desirability of a particular accommodation according to the consequences that the accommodation will produce. This requires an inquiry not only into the benefits of the accommodation but into its costs as well.”).
As an accommodation for his back injury, the plaintiff employee in Barnett requested and was granted a transfer from his physically demanding job as a cargo handler to a less strenuous position in the mailroom. However, when two employees with more seniority under company policy applied for the mailroom job, US Airways awarded the job to one of the senior employees and terminated Barnett. Barnett sued under the ADA, claiming that the company had failed to reasonably accommodate him by denying him the mailroom position. In upholding summary judgment on behalf of the defendant, the Supreme Court rejected Barnett’s contention that the EEOC guidelines were controlling in requiring only that a reasonable accommodation be “effective.” The Court instead turned to lower court decisions in holding that a plaintiff must show that a proposed accommodation is “feasible” or “plausible,” rather than merely effective. In 2002 the EEOC amended its enforcement guidelines to reflect the Barnett analysis of reasonable accommodation.

b. Undue Hardship

According to the ADA, an employer must provide reasonable accommodations to an employee with a disability, “unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business.” Thus, even if an accommodation is reasonable within the Barnett framework (i.e., it is plausible or feasible), an employer can still raise the defense that implementing the accommodation will be too expensive or otherwise problematic. The Act presents four factors to be used in determining whether a particular accommodation presents an employer with an

92. Id. at 394.
93. Id.
94. Id.
95. Id. at 401. The court stated that Barnett had misread the language of the EEOC guidelines: “The EEOC regulations do say that reasonable accommodations ‘enable’ a person with a disability to perform the essential functions of a task. But that phrasing simply emphasizes the statutory provision’s basic objective. The regulations do not say that ‘enable’ and ‘reasonable’ mean the same thing.” Id.
96. Id. at 401–02 (citations omitted).
97. See MOOK, supra note 28, § 6.02 n.18.
99. MOOK, supra note 28, § 7.02 (citations omitted).
undue hardship. These factors can be summarized as focusing on the nature and cost of the accommodation, the nature of the specific facility involved, the nature of the employer, and the nature of that employer's business operations. At a more basic level, these factors can simply be divided between cost-related and non-cost-related considerations, the latter of which can include accommodations that would "fundamentally alter the nature or operation of the business."

III. The Causal Nexus Doctrine and Reasonable Accommodation

A. Establishing the Causal Nexus Doctrine

At this point, the scope of this Note narrows considerably. Bearing in mind the overarching framework of Title I outlined in the previous section, the inquiry now becomes more specific: What, exactly, must an employer reasonably accommodate? According to the ADA, employers must reasonably accommodate "the known physical or mental limitations of an otherwise qualified individual with a disability." However, this definition begs for further clarification as to precisely which limitations must be accommodated. In particular, when a person has an impairment that limits a major life activity, and is thus considered a person with a disability, must an employer accommodate all limitations that are manifestations of that disability (assuming that such accommodations are reasonable and do not impose an undue

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101. Id. § 12111(10)(B)(i).
102. Id. § 12111(10)(B)(ii). These factors include the financial resources available to the facility, the number of employees at the facility, and the overall impact (financial and otherwise) on the facility and its operations. Id.
103. Id. § 12111(10)(B)(iii). These factors include the overall financial resources of the company, the size of the company, and "the number, type, and location of its facilities." Id.
104. Id. § 12111(10)(B)(iv). These factors include the "composition, structure, and functions of the workforce" of the employer and "the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question" to the employer. Id.
105. 29 C.F.R. § 1630.2(p) (2007). As an example, consider a person with a visual impairment who wants to work at a dimly lit nightclub. The employer would suffer an "undue hardship" in accommodating that person because it would have to use bright lights in the club, thus "fundamentally alter[ing]" the nature of its business. 29 C.F.R. App. § 1630.2(p) (2007).
106. 42 U.S.C. § 12112(b)(5)(A) (2000); see also Timmons, supra note 14, at 314.
or only those limitations that specifically limit the stated major life activity? Though the Supreme Court has yet to answer this question, those federal appellate courts that have addressed the problem have adopted the latter, narrower approach. This approach has been dubbed the causal nexus doctrine.

1. *Felix v. New York City Transit Authority*

The first major opinion to recognize the causal nexus doctrine was issued by the Second Circuit in *Felix*, decided in 2003.108 The plaintiff, Denise Felix, was hired by the New York City Transit Authority ("NYCTA") as a railroad clerk in 1994.109 Her position involved selling tokens and passes and answering passenger questions from a booth located in a subway station.110 On November 26, 1995, Felix was instructed to serve as an “extra” railroad clerk, relieving other clerks during their breaks.111 As she made her way by train to do just that, she was informed that the clerk whom she was to replace had been killed by a firebomb.112 Trapped in the train and observing the smoky aftermath of the bombing, Felix became extremely upset as she contemplated how easily her unfortunate co-worker’s fate could have been her own.113 She was taken to the emergency room following the incident, and soon thereafter doctors determined that she was suffering from Post-Traumatic Stress Disorder ("PTSD").114 Felix’s PTSD resulted in “feelings of apprehension and anxiety, recurrent problems with insomnia, and an inability to work in the subways.”115 Her “restricted work, temporary” status kept her out of work from December 1995 to August 1996, at which point she asked to be reassigned to a position outside of a subway station.116 This request was denied by the NYCTA, and Felix did not return to work, her status

107. See supra Part II.C.2.b.
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.*
113. *Id.* “Felix saw the smoke-filled platform and . . . was traumatized by the realization that she could have been killed . . .” *Id.*
114. *Id.* According to Felix’s doctors, she could not do any work in the subway, but could work in a clerical position. *Id.* at 104.
115. *Id.*
116. *Id.* at 103–04.
having been reclassified as "no work, temporary" in mid-August 1996. 117 On November 26, 1996, the NYCTA fired Felix under a New York Civil Service statute that permitted termination of employees unable to work for a year. 118

In July of 2000, Felix sued the NYCTA for employment discrimination under Title I of the ADA. 119 The NYCTA moved for summary judgment, which was granted by the district court based on the defendant's argument that "there was no nexus between the major life activity impaired and the accommodation requested." 120 Reviewing the district court's grant of summary judgment de novo, the Second Circuit framed the essential question as "[w]hether there must be a causal link between the specific condition which limits a major life activity and the accommodation required." 121 The court answered this question in the affirmative and upheld summary judgment for the defendant. 122 In so doing, it made important assertions as to the nature of Felix's disability.

According to the Felix court, Felix's disability was her insomnia, which substantially limited her in the major life activity of sleeping. 123 However, her requested accommodation of working somewhere other than in the subway was not premised on her inability to sleep, but rather on her fear of returning to the location of a traumatic event. 124 Unlike her insomnia, this subway anxiety aspect of her PTSD did not substantially limit any major life activity, and was therefore characterized by the court as a "non-disability impairment." 125 By the court's reasoning, such "impairments that do not amount to a 'disability' as defined by [the ADA] do not require accommodation." 126 The court noted that the "common traumatic origin" of Felix's insomnia and of her subway anxiety did not require her employer to accommodate her anxiety any more than it would have to accommodate all of an

117. Id. at 104.
118. Id. (citing N.Y. CIV. SERV. LAW § 71).
119. Id.
120. Id.
121. Id.
122. Id. at 108.
123. Id. at 105.
124. Id. at 106-07. "Felix did not argue to the NYCTA that she was unable to work in the subway because such work aggravated her insomnia; she told the NYCTA that she could not work in the subway because she was 'terrified of being alone and closed in.'" Id.
125. Id. at 105.
126. Id.
employee's injuries or conditions resulting from a car accident.\textsuperscript{127}

The court rejected the plaintiff's use of several prior cases in which employers were required to accommodate impairments related to AIDS,\textsuperscript{128} epilepsy,\textsuperscript{129} paralysis,\textsuperscript{130} and mental illness.\textsuperscript{131} In distinguishing such cases, the court noted that the impairments to be accommodated in those cases "flowed directly from the disability itself."\textsuperscript{132} Conversely, Felix's fear of the subway did not "flow directly" from her disability of insomnia.\textsuperscript{133} In making this determination, the court necessarily rebuffed Felix's argument that her disability was not insomnia but rather PTSD, and thus that her fear of the subway did "flow directly" from her disability.\textsuperscript{134} The court dubbed her PTSD and insomnia "two mental conditions that derive from the same traumatic incident," and thereby labeled them two distinct entities.\textsuperscript{135}

The Felix court also extolled the sound public policy behind its causal nexus doctrine. It pointed out that, while "[t]he ADA serves the important function of ensuring that people with disabilities are given the same opportunities and are able to enjoy the same benefits as other Americans[,] ... it does not authorize a preference for disabled people generally."\textsuperscript{136} As the court saw it, allowing plaintiffs like Denise Felix to recover would drastically alter the ADA definition of a disability by "requir[ing] treating people with disabilities better than others who are not disabled but have the same impairment for which accommodation is sought."\textsuperscript{137} The court deemed the interpretation of the ADA advocated

\begin{footnotesize}

\begin{itemize}
  \item \textsuperscript{127} Id. By way of analogy, the court explained that an employee who lost use of his legs in a car accident would be entitled to reasonable accommodations related to his inability to perform the major life activity of walking, but not to accommodations for arm injuries (sustained in the same accident) that lowered his typing speed but did not substantially limit a major life activity. Id.
  \item \textsuperscript{128} Id. at 105–06 (discussing Bragdon v. Abbott, 524 U.S. 624 (1998)).
  \item \textsuperscript{129} Id. at 106 (discussing Lovejoy-Wilson v. NOCO Motor Fuel, Inc., 263 F.3d 208 (2d Cir. 2001)).
  \item \textsuperscript{130} Id. at 106 (discussing Vande Zande v. Wis. Dep't of Admin., 44 F.3d 538 (7th Cir. 1995)); see infra Part III.B.1.
  \item \textsuperscript{131} Id. at 106 (discussing McAlindin v. County of San Diego, 192 F.3d 1226 (9th Cir. 1999)).
  \item \textsuperscript{132} Id. at 105.
  \item \textsuperscript{133} Id. at 106.
  \item \textsuperscript{134} Id. at 107.
  \item \textsuperscript{135} Id.
  \item \textsuperscript{136} Id.
  \item \textsuperscript{137} Id. Applying the fact pattern from Felix, this would mean requiring an accommodation for Felix's fear of the subway as part of her disability but not for another,
\end{itemize}

\end{footnotesize}
by the plaintiff an "expansive reading . . . that frustrates its plain statutory meaning."\textsuperscript{138}


Only six months after the Second Circuit’s decision in \textit{Felix}, the Eighth Circuit adopted the causal nexus doctrine in \textit{Wood}.\textsuperscript{139} Charles Wood drove a concrete mixer for Crown Redi-Mix and was injured when he fell into a hole at a concrete plant.\textsuperscript{140} The fall caused permanent nerve damage and aggravated a prior back injury, factors that caused Wood’s physician to place permanent restrictions on his work tasks.\textsuperscript{141} These restrictions “prohibited [Wood] from driving a ready-mix truck, from lifting in excess of fifty pounds, and from performing extensive bending, twisting, and lifting.”\textsuperscript{142} Approximately six months after the accident, Crown terminated Wood because it could not accommodate his restrictions by offering him a less physically demanding position.\textsuperscript{143} After his union failed to pursue the matter to his satisfaction, Wood sued Crown (and the union) for disability discrimination under Title I of the ADA.\textsuperscript{144}

The district court granted all of the defendants’ motions for summary judgment because Wood failed to present a prima facie case of discrimination.\textsuperscript{145} On appeal, Wood maintained that his physical impairment (the existence of which was not disputed by the defense) substantially limited him in the “major life activities of walking, standing, turning, bending, lifting, working, and procreation.”\textsuperscript{146} While conceding that each of these activities is a major life activity, the court dismissed each activity (other than procreation) as insufficiently limited by his injuries to allow Wood a cause of action.\textsuperscript{147} Turning its attention

\begin{footnotes}
\textsuperscript{138} \textit{Id.}
\textsuperscript{139} \textit{Wood v. Crown Redi-Mix, Inc.}, 339 F.3d 682 (8th Cir. 2003).
\textsuperscript{140} \textit{Id.} at 684.
\textsuperscript{141} \textit{Id.}
\textsuperscript{142} \textit{Id.}
\textsuperscript{143} \textit{Id.}
\textsuperscript{144} \textit{Id.}
\textsuperscript{145} \textit{Id.}
\textsuperscript{146} \textit{Id.}
\textsuperscript{147} \textit{Id.} at 685–86. The court emphasized that while Wood’s ability to walk, stand, turn, bend, and lift had all been reduced by his accident, none of these abilities were entirely prevented or severely restricted as required by \textit{Toyota Motor Manufacturing, Kentucky, Inc. v. Williams}. \textit{Id.}
to the major life activity of procreation, the court then noted that Wood had probably failed to raise a genuine issue of material fact because he had provided no substantiation of his claim that he was "completely unable to procreate." However, rather than relying on this rationale, the court explained why, even if Wood were substantially limited in his ability to procreate, he was not entitled to an accommodation.

The court's explanation for denying Wood's right to an accommodation was a reiteration of the causal nexus approach outlined in *Felix*. The court first explained that employers are not required to accommodate disabilities, but rather the limitations of persons with disabilities. Noting the similarities between the fact patterns in *Felix* and the present case, the court then discussed why "there must be a causal connection between the major life activity that is limited and the accommodation sought." Appealing to common sense and interpreting congressional intent, the court elucidated why "[i]t would be a strange result, and one we do not believe Congress intended, to have the viability of Wood's claim that he should have been accommodated as an employee of a truck-driving company turn solely on whether or not he was impotent."

3. The Causal Nexus Doctrine Post-*Wood*

The causal nexus approach remains good law in both the Second and Eighth Circuits. Indeed, in a relatively recent case, *Nuzum v. Ozark Automotive Distributors, Inc.*, the Eighth Circuit reaffirmed the doctrine. The court considered the claim of Steven Nuzum, a warehouse employee who injured his elbow lifting a heavy auto starter and was placed on permanent medical restrictions due to the resulting tendonitis. In an opinion structured remarkably similarly to that in *Wood*, the court first rejected Nuzum's asserted substantially limited

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148. *Id.* at 686.
149. *Id.* at 686–87.
150. *Id.* at 687.
151. *Id.* The court seemed to characterize Felix's disability as insomnia (rather than PTSD) and Wood's disability as impotence (rather than a back injury). *Id.*
152. *Id.*
153. *Id.*
154. 432 F.3d 839 (8th Cir. 2005); see also *Didier v. Schwan Food Co.*, 465 F.3d 838, 842–43 (8th Cir. 2006).
155. *Nuzum*, 432 F.3d at 841.
major life activities claim, then added that the causal nexus doctrine defeated his claim anyway.

In addition to the Second and Eighth Circuits, the D.C. Circuit has also adopted the causal nexus doctrine. In *Long v. Howard University*, the plaintiff, a Ph.D. candidate, sued Howard University for failing to accommodate the pulmonary fibrosis that had forced him to take a prolonged leave of absence from his doctoral program. Long alleged under Title III of the ADA that the university had discriminated by refusing to re-admit him to the program with the same academic standing that he had merited prior to his medical leave. Though *Long* was not a Title I case, the court applied the causal nexus principles of the *Felix* and *Wood* Title I decisions in holding that a genuine issue of material fact existed, and thus that summary judgment was inappropriate. As framed by the court, that genuine issue of material fact was whether Long’s asserted limitations on walking and breathing were causally connected to his desired accommodation, the modification of university policies to allow him to complete his Ph.D. Thus, were Long unable to establish this connection, his claim would fail.

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156. *Id.* at 846-48. The court did not agree with Nuzum’s claims that he was substantially limited in the major life activities of performing manual tasks, working, sleeping, and “hugging.” *Id.*

157. *Id.* at 848. “[E]ven if Nuzum were held to be disabled by virtue of the hugging limitation, it would not save his claim since he seeks an accommodation from his employer, which must be related to the limitation in question.” *Id.; see also* Didier v. Schwan Food Co., 465 F.3d 838, 842-43 (8th Cir. 2006).


160. *Id.* at 73. The university alleged that to accommodate Long as he desired, it would have had to waive several specifically stated academic policies, including various time limitations on doctoral candidacies. *Id.* at 76–77. It should be noted that Howard University personnel did make some attempt to accommodate Long, at least initially, by waiving the requirement that he do further research before defending his dissertation. *Id.* at 72.

161. *Id.* at 77–78.

162. *Id.* at 78. In the words of the court, the defendant maintained that Long was not requesting the accommodation because of any “respiratory limitation,” but rather because he was “shiftless.” *Id.*

163. *Id.*
B. Reasonable Accommodation in the Seventh Circuit Before Squibb: from Vande Zande to Yindee

Having outlined the development of the causal nexus doctrine as a limitation on the ADA duty of reasonable accommodation, this Note now reaches its focal point: the Seventh Circuit. In its 2006 opinion in Yindee, the court asked and then declined to answer the central causal nexus question of “whether a medical condition or symptom associated with a disability must be accommodated independently, when the associated condition is not serious enough to be a disability on its own.” In Squibb v. Memorial Medical Center, decided almost a year to the date after Yindee, the court joined the Second, Eighth, and D.C. Circuits in responding to this query with a resounding “no.” Before addressing the court’s decision in Squibb, however, both the Yindee decision and several important preceding cases must be discussed.

1. Vande Zande v. Wisconsin Department of Administration

Vande Zande was a pivotal case in Seventh Circuit ADA Title I jurisprudence. Judge Posner, writing for the court in Vande Zande, stated that “[t]he concept of reasonable accommodation is at the heart of this case.” Indeed, a good portion of the opinion was dedicated to a rather exhaustive general analysis of this critical ADA concept. Only when this analysis was complete did the court turn its attention to the specific facts of the case.

The plaintiff, Lori Vande Zande, was paralyzed from the waist down by a spinal cord tumor. As a result of her paralysis, Vande Zande suffered from periodic pressure ulcers. Her employer, the Wisconsin Department of Administration, took several steps to accommodate her disability, including physically modifying facilities at her workplace, purchasing special furniture for her, and allowing her to make various adjustments to her schedule. Vande Zande acknowledged these accommodations but alleged that they were insufficient and brought suit

164. Yindee v. CCH Inc., 458 F.3d 599, 601–02 (7th Cir. 2006).
165. 497 F.3d 775, 785 (7th Cir. 2007); see also supra Part III.A.
166. Vande Zande v. Wis. Dep’t of Admin., 44 F.3d 538, 543 (7th Cir. 1995).
167. See id. at 541–43.
168. Id. at 543.
169. Id.
170. Id. at 544.
under Title I of the ADA.\textsuperscript{171}

Vande Zande’s allegations of failure to accommodate were twofold. One complaint, though not directly relevant here, was that certain facilities in her workplace were not sufficiently accessible to her.\textsuperscript{172} The other complaint, of greater interest for present purposes, was that the defendant had not allowed her to work exclusively from home during an eight-week flare-up of her pressure ulcers.\textsuperscript{173} In this regard, Vande Zande’s supervisor had (1) refused to provide her with a home desktop computer and (2) informed her that he could not provide forty hours of at-home work for her, thus requiring her to “make up the difference” from her sick leave.\textsuperscript{174}

The court found for the defendant regarding both of Vande Zande’s claimed failures to accommodate. It agreed with the State of Wisconsin that “[a]n employer is not required to allow disabled workers to work at home, where their productivity inevitably would be greatly reduced.”\textsuperscript{175} However, the court also went out of its way to dismiss one of the defendant’s alternative arguments: that Vande Zande’s pressure ulcers were “[i]ntermittent, episodic impairments” and thus not a disability.\textsuperscript{176} The court distinguished a truly episodic impairment, such as a broken leg,\textsuperscript{177} from “an intermittent impairment that is a characteristic manifestation of an admitted disability [and that] is . . . a part of the underlying disability and hence a condition that the employer must reasonably accommodate.”\textsuperscript{178} The court did not clearly identify whether it considered Vande Zande’s pressure ulcers to substantially limit one of her major life activities, and thus to be a disability in and of themselves.

\begin{flushleft}
\textsuperscript{171} Id.
\textsuperscript{172} Id. at 545–46. Vande Zande’s complaint centered on the height of the sink and counter in the office kitchenette. Id. The court found that the employer had reasonably accommodated her because she had “access to an equivalent sink, conveniently located.” Id. at 546.
\textsuperscript{173} See id. at 544.
\textsuperscript{174} See id.
\textsuperscript{175} Id. at 545.
\textsuperscript{176} Id. at 543–44.
\textsuperscript{177} Vande Zande has frequently been cited for its straightforward holding that such “episodic” impairments as a broken leg do not fall under the ADA duty to reasonably accommodate. See, e.g., Hopkins v. Godfather’s Pizza, Inc., 141 F. App’x 473, 476 (7th Cir. 2005) (burned hand that healed within a month); Harrington v. Rice Lake Weighing Sys., Inc., 122 F.3d 456, 460 (7th Cir. 1997) (neck injury accompanied by only temporary work restrictions); Hamm v. Runyon, 51 F.3d 721, 725 (7th Cir. 1995) (arthritic condition in legs).
\textsuperscript{178} Vande Zande, 44 F.3d at 544.
\end{flushleft}
2. From Vande Zande to Yindee

Two Seventh Circuit cases decided between Vande Zande and Yindee warrant brief mention. Those two cases remained ambiguous as to whether intermittent impairments need to qualify as disabilities themselves to warrant reasonable accommodation. In upholding a verdict for the plaintiff in Haschmann v. Time Warner Entertainment Co., the court held that the “episodic flares” that characterized her lupus were “part of her disability and part of what Time Warner had a duty to accommodate within reason.”9 Two years later, in Schneiker v. Fortis Insurance Co., the plaintiff asserted two disabilities: alcoholism and depression.8 The court cited Vande Zande in stating that “[it would] consider [the plaintiff's] alleged alcoholism to the extent that it could be an intermittent impairment manifesting her depression.”181 Again, though the court determined that the plaintiff’s depression was not a disability and thus found for the defendant,182 it did not describe the circumstances under which her intermittent impairment of alcoholism would have required accommodation.

3. Yindee v. CCH Inc.

Yindee was the most recent Seventh Circuit Title I case preceding Squibb in which a plaintiff claimed that an employer was required to accommodate an aspect or manifestation of a disability that may not have qualified as a disability in and of itself. In this instance, the plaintiff, Malinee Yindee, was hired by CCH in 2000 as a programmer analyst.183 Due to cancer (endometrial carcinoma) and other health issues, Yindee spent a significant portion of her three years as a CCH employee on medical leave.184 She was forced to undergo a hysterectomy and experienced other problems, including bouts of vertigo and frequent headaches.185 After she was fired in January 2003, Yindee brought suit under the ADA, alleging both failure to accommodate and retaliation.186

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179. 151 F.3d 591, 600 (7th Cir. 1998).
180. 200 F.3d 1055, 1060 (7th Cir. 2000).
181. Id.
182. Id. at 1062.
183. Yindee v. CCH Inc., 458 F.3d 599, 600 (7th Cir. 2006).
184. Id.
185. Id.
186. Id. at 600-01. In response, CCH contended “that it tried to accommodate Yindee and that the discharge stemmed from a decline in her performance.” Id.
The district court granted CCH summary judgment. It dismissed Yindee’s failure to accommodate claim by asserting that she was not disabled and concluded that there was insufficient evidence of retaliation to proceed. The Seventh Circuit disagreed with the district court’s rationale, but nevertheless affirmed. Rather than concluding that Yindee did not have a disability, it instead noted that “[t]he price of curing Yindee’s cancer and saving her life was sterility, which assuredly is a ‘disability’ under the ADA.” However, while the court acknowledged Yindee’s sterility as a genuine disability, it pointed out that her requested accommodation was for vertigo, which not even her own doctor could say was “an aspect of her genuine disability (infertility).” Thus, as the court phrased it, “we need not decide whether a medical condition or symptom associated with a disability must be accommodated independently, when the associated condition is not serious enough to be a disability on its own.” However, had evidence existed linking Yindee’s vertigo to her infertility, the court would have had no choice but to decide whether to adopt or reject the “causal nexus” approach. A year later, though it did not need to do so to resolve the case, the court felt compelled to address this question in Squibb v. Memorial Medical Center.

C. The Seventh Circuit Adopts the Causal Nexus Approach: Squibb v. Memorial Medical Center

Mary Rios Squibb was employed by Memorial Medical Center (Memorial) as a certified nurse assistant and a registered nurse between 1990 and 2005. While performing her job duties, Ms. Squibb suffered three back injuries between 1993 and 2000, the first and third of which required surgery. Following the December 2000 surgery for her third back injury, Ms. Squibb embarked on what the Seventh Circuit

187. Id. at 601.
188. Id.
189. See id. at 601, 603.
190. Id. at 601.
191. Id.
192. Id. at 602. The court also found that Yindee had failed to establish a prima facie case of retaliation. Id. at 602–03.
193. 497 F.3d 775 (7th Cir. 2007).
194. Id. at 778–79.
195. Id. at 778.
described as an "employment odyssey," during which she was subject to several different sets of physician-imposed restrictions and was placed in a number of temporary positions. Her odyssey ended with her termination in January of 2005, by which point she had already brought an action against Memorial for various violations of the ADA and for wrongful discharge under the Illinois Workers Compensation Act ("IWCA").

The United States District Court for the Central District of Illinois granted Memorial's motion for summary judgment on all of Squibb's ADA claims. The district court found that (1) Squibb was not a person with a disability, (2) that her restrictions would not allow her to perform the essential functions of the positions that she desired even with a reasonable accommodation, and (3) that there was insufficient evidence to support her retaliation claim. In affirming the district court, the Seventh Circuit agreed with the first and third points and declined to address the second. Interestingly, however, while purporting to avoid the reasonable accommodation question, the court actually made an extremely significant statement about precisely that issue.

Squibb claimed that she was disabled as a result of substantial limitations on several of her major life activities, including working, 196-197. See id. at 778-79. Id. at 779. Ms. Squibb was terminated for failure to return from leave after she declined a position as a clinical case manager because she thought that her duties would not comply with her restrictions. Id. at 780. Id. at 779. Squibb's specific ADA claims included failure to reasonably accommodate her disability, refusal to hire her for various positions, wrongful termination, and retaliation. Id.

200. Id. at 780. The court declined to exercise supplemental jurisdiction over Squibb's workers compensation claims. Id.

201. Id.

202. Id. at 789. "Ms. Squibb has not presented sufficient evidence to create a genuine issue of fact as to whether she is disabled within the meaning of the Act; neither has she presented evidence that the adverse employment actions she suffered were taken by Memorial in retaliation for her statutorily protected activities." Id.

203. Id. at 786. "Because we have concluded that Ms. Squibb is not disabled within the meaning of the Act, . . . [w]e need not examine her reasonable accommodation . . . claims further." Id.

204. Id. at 781-83. The court concluded that Squibb was not substantially limited in the major life activity of working because she could not show that she was "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities."
sleeping,\textsuperscript{205} caring for herself,\textsuperscript{206} sitting, and walking.\textsuperscript{207} After rejecting each of these claims, the court turned to Squibb’s final contention: that she was substantially limited in the major life activity of sexual relations.\textsuperscript{208} The court noted that, while sexual reproduction is a recognized major life activity for ADA purposes, sexual relations may not be.\textsuperscript{209} Regardless of that distinction, the court concluded that Squibb’s testimony regarding the effect that her back injuries had on her sex life was insufficient evidence of a substantial limitation.\textsuperscript{210}

The court did not stop there. Though it had already rebuffed Squibb’s claim of a substantial limitation on the major life activity of sexual relations, it imitated the Eighth Circuit in \textit{Wood}\textsuperscript{211} and advanced the analysis a step further. After questioning how an employer “would accommodate a disability that restricted the plaintiff's ability to engage in sexual relations,”\textsuperscript{212} the court explained that it “agree[d] with [its] colleagues in the Eighth Circuit that, to the extent an ADA discrimination claim centers on a request for a workplace accommodation, there must be some causal connection between the major life activity that is limited and the accommodation sought.”\textsuperscript{213} In other words, though it did so in dicta, the court took up the causal nexus approach to ADA reasonable accommodation jurisprudence.

\section*{IV. The Seventh Circuit and the Causal Nexus Doctrine: A Missed Opportunity}

The \textit{Squibb} decision stands out as a missed opportunity for the

\textit{Id.} at 782 (quoting 29 C.F.R. § 1630.2(j)(3)(i) (2007)).

\textit{Id.} at 784. The court found that Squibb’s unsubstantiated claims of interrupted sleep were insufficient to create a genuine issue of material fact absent additional evidence. \textit{Id.}

\textit{Id.}. The limitations on personal care activities asserted by Squibb were deemed insufficiently substantial by the court. \textit{Id.}

\textit{Id.} at 784–85. “Even taking Ms. Squibb’s contentions regarding her ability to walk or sit at face value, her assertion that she needs breaks every thirty minutes does not compare to the claims this court has held should survive summary judgment.” \textit{Id.} at 785 (citing EEOC v. Sears, Roebuck & Co., 417 F.3d 789, 802 (7th Cir. 2005)).

\textit{Id.} at 785.

\textit{Id.}

\textit{Id.} at 785.

\textit{Id.}

\textit{Id.} “Although her own deposition testimony states that she has been unable to engage in sexual relations for two years due to her back pain, she has provided no other evidence of her claimed sexual limitation . . . .” \textit{Id.}


\textit{Squibb}, 497 F.3d at 785.

\textit{Id.}
Seventh Circuit. In embracing the *Felix* causal nexus rule, the court chose to continue the constricted approach to ADA interpretation widely endorsed by the federal courts since the Act took effect in 1990. In so doing, it squandered a chance to uphold the intent of the Act’s drafters. Given the existence of appropriate precedents, the language of the ADA, and the vital public policy considerations essential to the Act, the Seventh Circuit would have properly interpreted the ADA if it had refused to require a causal connection between substantially limited major life activities and the reasonable accommodations requested by employees with disabilities.

A. Cases Both Within and Outside of the Seventh Circuit Have Rejected the Causal Nexus Doctrine

_Felix* notwithstanding, there are several decisions that, when properly read, do not require a causal connection between the accommodations requested by an employee and his or her “substantially limited major life activity.”[^214] Foremost among these cases outside of the Seventh Circuit are *Lovejoy-Wilson v. NOCO Motor Fuel, Inc.*[^215] and *McAlindin v. County of San Diego.*[^216] In the Seventh Circuit, they include *Vande Zande,*[^217] *Haschmann,*[^218] and *Arnold v. County of Cook.*[^219]

1. *McAlindin* and *Lovejoy-Wilson*

As the *Felix* appellants pointed out in their brief, aspects of both *Lovejoy-Wilson* and *McAlindin* contradict the causal nexus approach.[^220] In *McAlindin,* the plaintiff claimed that his anxiety and panic disorders substantially limited him in three major life activities: sexual relations, sleeping, and interacting with others.[^221] The court held that McAlindin was disabled by these disorders and reversed the district court’s grant of summary judgment for his disability discrimination claim.[^222] In an

[^214]: See generally Timmons, supra note 14, at 331–34.
[^215]: 263 F.3d 208 (2d Cir. 2001).
[^216]: 192 F.3d 1226 (9th Cir. 1999).
[^217]: Vande Zande v. Wis. Dep’t of Admin., 44 F.3d 538 (7th Cir. 1995).
[^218]: Haschmann v. Time Warner Entm’t Co., 151 F.3d 591 (7th Cir. 1998).
[^221]: 192 F.3d at 1232–35.
[^222]: *Id.* at 1238, 1240. The court affirmed summary judgment regarding McAlindin’s retaliation claim. *Id.* at 1238–40.
amended opinion, it stated that “[t]he two inquiries—namely, whether McAlindin is disabled and what constitutes reasonable accommodation for that disability—only intersect to the extent that McAlindin’s disability manifests itself in the workplace.” Such language implies that as long as an accommodation relates to the ability of the person with a disability to work, it can be considered reasonable. The court’s limit on the extent to which the definitions of disabled and reasonable accommodation “intersect” is essentially the same as a limit on the extent to which a causal nexus is required. In other words, an accommodation is reasonable if it helps a genuinely disabled person to perform his or her job without imposing an undue hardship on the employer.

Though the court’s language in Lovejoy-Wilson is not as instructive as in McAlindin, the implications of its decision are equally contrary to the causal nexus doctrine. The plaintiff, a person whose epilepsy was concededly a disability, requested a workplace accommodation for her inability to drive. Despite the fact that driving is not a major life activity, the court reversed summary judgment against the plaintiff. In so doing, it clearly expressed the principle that an accommodation can be required even when it is not directly related to a substantially limited major life activity.

2. Vande Zande, Haschmann, and Arnold

Neither the Vande Zande nor the Haschmann cases require a causal nexus between a limited major life activity and a requested accommodation. As is discussed above, the Vande Zande court held that intermittent impairments can require reasonable accommodation if they are “part of the underlying disability.” The court notably did not require that to necessitate accommodation, such impairments limit a major life activity. Furthermore, the Vande Zande court’s definition of accommodation is enlightening: “[t]he employer must be willing to consider making changes in its ordinary work rules, facilities, terms, and

223. McAlindin v. County of San Diego, 201 F.3d 1211, 1211 (9th Cir. 2000).
225. Id. at 213.
226. Id. at 217–18.
227. See also Otting v. J.C. Penney Co., 223 F.3d 704 (8th Cir. 2000) (holding that employer had to accommodate activity of climbing ladders for plaintiff with acknowledged disability of epilepsy, even though climbing ladders is not itself a major life activity).
228. Vande Zande v. Wis. Dep’t of Admin., 44 F.3d 538, 544 (7th Cir. 1995).
conditions in order to enable a disabled individual to work."\(^{229}\) The court explained that the reasonableness of an accommodation is really determined by a cost-benefit analysis,\(^ {230}\) and made no mention of an accommodation being unreasonable due to the lack of a causal nexus. Citing \textit{Vande Zande} three years later, the \textit{Haschmann} court similarly made no mention of a causal nexus requirement in holding that a jury could reasonably find that Time Warner was required to accommodate the plaintiff's lupus flares.\(^ {231}\)

While \textit{Vande Zande} and \textit{Haschmann} implicitly contradicted the causal nexus approach, a 2002 decision in the Northern District of Illinois directly challenged the \textit{Felix} rule. Though the claim in \textit{Arnold} was brought under the Rehabilitation Act of 1973\(^ {232}\) and not the ADA, the principles at issue are identical. The plaintiff, Jon Arnold, asserted that several of his major life activities (including driving, pushing, pulling, standing, sitting, bending, lifting, carrying, and walking) were limited by his back and neck injuries, and thus that he had a disability.\(^ {233}\) However, the only accommodation that he requested was related to his driving duties.\(^ {234}\) In response to his claim, the defendant employed the causal nexus doctrine, arguing that since driving is not considered a major life activity, Arnold was not entitled to the requested accommodation.\(^ {235}\) The court, relying on the language of the ADA, disagreed with the defendant and with the \textit{Felix} court, commenting that "[t]he only nexus required between the limitation that qualifies an individual as disabled and the limitation for which accommodation is requested is that both be caused by a common physical or mental condition."\(^ {236}\) The court stated that "[t]he fundamental purpose of the ADA is ... served directly by requiring employers to accommodate the limitations of employees where those limitations derive from a disability."\(^ {237}\) Put differently, the major life activity requirement is merely a threshold for disability status; it is not determinative of what

\(^{229}\) \textit{Id.} at 542.

\(^{230}\) \textit{Id.} at 542–43.

\(^{231}\) \textit{Haschmann v. Time Warner Entm't Co.}, 151 F.3d 591, 600 (7th Cir. 1998).


\(^{233}\) \textit{Arnold}, 220 F. Supp. 2d at 895.

\(^{234}\) \textit{Id.}

\(^{235}\) \textit{Id.}

\(^{236}\) \textit{Id.} at 896.

\(^{237}\) \textit{Id.} at 897.
accommodations are reasonable.

B. Courts Adopting the Causal Nexus Doctrine Have Misread the Language of the ADA Regarding the Duty of Reasonable Accommodation

At the heart of any discussion of the causal nexus doctrine is an apparently simple question: What does the ADA require employers to accommodate? More to the point, is the ADA about accommodating people, disabilities, impairments, limitations, or some combination thereof? For most of the courts that have adopted the doctrine, the answer is that employers must accommodate limitations—specifically, only those limitations that substantially limit a major life activity. This interpretation of the ADA, while seemingly rooted in the statutory language, is in fact a mischaracterization.

As the Northern District of Illinois pointed out in Arnold, this mischaracterization centers on the word “limitation.” It is true that the ADA requires employers to accommodate “the known physical or mental limitations of an otherwise qualified individual with a disability.” In Felix, Wood, and their progeny, however, the courts have equated that meaning of “limitation” with the meaning of “substantial limitation” that is part of the definition of disability. This approach, by which the causal nexus courts have defined disability solely in terms of the limited major life activity, is an unreasonably narrow one. Though a plaintiff must have a substantial limitation on a major

238. See supra Part III.A.
239. See, e.g., Wood v. Crown Redi-Mix, Inc., 339 F.3d 682, 687 (8th Cir. 2003). Not all of the causal nexus courts have been clear as to what employers are supposed to be accommodating under the causal nexus approach. For example, while the Seventh Circuit in Squibb offered a causal nexus analysis closely akin to that of the Eighth Circuit in Wood and Nuzum, the court’s language nevertheless included a reference to accommodating a “disability” and not a limitation. Squibb v. Mem’l Med. Ctr., 497 F.3d 775, 785 (7th Cir. 2007). The use of this terminology thus directly contradicted a central premise of the causal nexus doctrine as outlined in Wood and Nuzum: employers must accommodate limitations rather than disabilities. See Wood, 339 F.3d at 687; Nuzum v. Ozark Auto. Distrib., 432 F.3d 839, 848 (8th Cir. 2005).
242. See also 29 C.F.R. § 1630.2(g) (2007). Compare 42 U.S.C. § 12102(2), with 42 U.S.C. § 12112(b)(5)(A). As the Arnold court put it, “the only thing the two phrases have in common is the word limit.” 220 F. Supp. 2d at 896.
243. An example of this phenomenon occurred in Felix, in which the court classified the plaintiff’s disability as insomnia, rather than PTSD, because she was substantially limited in
life activity to qualify as a person with a disability under the ADA, it does not automatically follow that an employer need accommodate only those limitations that substantially affect a major life activity.

A more reasonable reading of the ADA’s language would also require employers to accommodate a disabled employee’s limitations. However, rather than only mandating accommodation of substantial limitations on major life activities, such an interpretation would entail accommodation of all limitations resulting from the underlying disability. In this sort of a scheme, the substantial limitation on a major life activity language of the ADA would be placed in its proper context as a threshold requirement for ADA coverage rather than as a definition of the term disability itself. Once a person passed this disability threshold, he or she would be entitled to accommodation of any disability-related limitations, regardless of whether they substantially limited the person with the disability in a major life activity. Thus the only causal nexus required would be between the accommodation sought and the employee’s disabling impairment or condition.

This alternative to the Felix doctrine will hardly result in that court’s imagined doomsday scenario of ADA plaintiffs run amok. First, the

the major life activity of sleeping. Felix v. New York City Transit Auth., 324 F.3d 102, 107 (2d Cir. 2003). In so doing, the court relied only upon its unsupported assertion that “we do not view her insomnia and fear of the subway as a singular mental condition.” Id. Similarly, the Yindee court recognized Yindee’s disability as infertility rather than cancer because she was limited in the major life activity of procreation. Yindee v. CCH Inc., 458 F.3d 599, 601–02 (7th Cir. 2006). It is true that Yindee’s cancer had gone into remission. Id. However, her contention that it remained her disability for purposes of the ADA was a reasonable one given the language in Williams requiring that an “impairment’s impact must . . . be permanent or long term.” Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184, 198 (2002). In both cases, the courts refused to treat the limitation on a major life activity as a threshold for determining disability status, instead defining the disability in terms of the life activity affected.

244. See Arnold, 220 F. Supp. 2d at 896 (“The only nexus required between the limitation that qualifies an individual as disabled and the limitation for which [the] accommodation is requested is that both be caused by a common physical or mental condition.”).

245. Note that the Felix court itself refers to the existence of a substantial limitation on a major life activity as a “threshold for seeking redress under the ADA,” though it clearly is advancing a very narrow definition of disability defined solely by the major life activity in which a plaintiff is limited. Felix, 324 F.3d at 107.

246. See Arnold, 220 F. Supp. 2d at 896.

247. See Felix, 324 F.3d at 107 (lamenting the possibility that, absent the causal nexus doctrine, an employee “not otherwise impaired in a major life activity but suffer[ing] debilitating anxiety or stress from a particular job could get to a jury merely by alleging that
Supreme Court in *Sutton* and *Williams* advanced very limited characterizations of substantial limitation and major life activity. Consequently, many prospective Title I plaintiffs will never reach the point in their claims where the causal nexus doctrine could come into play. Second, there are safeguards built into the statutory scheme that protect employers from having to accommodate employees in a manner that is unreasonable or that imposes an undue hardship.

C. The Causal Nexus Doctrine Is Contrary to Critical Public Policy Aims Embodied by the ADA

As the preceding section demonstrates, courts that have adopted the *Felix* causal nexus doctrine have interpreted the text of the ADA in an unreasonably limited fashion. In one sense, the *Felix* rule can be seen as merely part of a larger whole because multiple aspects of the Act have been construed narrowly. More precisely, though, there is a critical concern at the root of the causal nexus doctrine—a concern that, in the words of the *Felix* court, unchecked application of the ADA will result in “a preference for disabled people generally” and “treat[ment of] people with disabilities better than others who are not disabled but have the same impairment for which accommodation is sought.”

To this concern, the *Arnold* court provided a simple retort when it observed that “[e]very accommodation is in some sense of a preference.” Indeed, it is an essential underlying premise of the ADA that people with disabilities are entitled to accommodation because they are different from their non-disabled fellow citizens. In the words of the Act’s opening section, the difference lies in the fact that

individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political
powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.\textsuperscript{255}

Such a "history of purposeful unequal treatment" justifies the minimal extent to which disabled persons might be said to receive preferential treatment under the ADA. As the ADARA's drafters point out, people with physical or mental impairments are often subjected to "prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers."\textsuperscript{256} The ADA's purpose is to level the playing field for such people—a purpose that the Felix doctrine disregards.

The causal connection doctrine is especially unforgiving in its application to plaintiffs with multi-symptom medical conditions or diseases. When courts narrowly define disabilities in terms of a limited major life activity, as opposed to treating the substantial limitation on a major life activity language as a threshold to ADA coverage, the results can be harsh.\textsuperscript{257} This is particularly true of mental health impairments like PTSD and physical ailments such as fibromyalgia, chronic fatigue syndrome, and multiple chemical sensitivity. While there is significant scientific evidence that these conditions are genuine medical problems, many people remain skeptical as to the authenticity of these diseases.\textsuperscript{258} Consequently, those ADA plaintiffs (like Denise Felix) who suffer from such impairments must endure not only their physical and mental symptoms but also the disbelief of co-workers or supervisors, who may perceive them as lazy, irresponsible, or mentally unstable. Courts that use the causal nexus doctrine to apply the ADA in an unreasonably narrow fashion thus contravene the public policy aims of the Act by buttressing, rather than undermining, the prejudice and stigma facing people with disabilities.

\textsuperscript{256} S. 1881, 110th Cong. § 2(a)(3), (1st Sess. 2007).
\textsuperscript{257} See supra note 243.
\textsuperscript{258} See Sarah Boseley, A Very Modern Epidemic, GUARDIAN (London), Sept. 27, 2001, at 16, available at http://www.guardian.co.uk/health/story/0,3605,558711,00.html (noting that those who suffer from such conditions "are prisoners to some extent of disbelief but to a greater extent of helplessness on the part of the medical profession"). See also generally Ruby Afram, Note, New Diagnoses and the ADA: A Case Study of Fibromyalgia and Multiple Chemical Sensitivity, 4 YALE J. HEALTH POL'Y L. & ETHICS 85 (2004).
V. Conclusion

Justice Harlan, dissenting in the pivotal 1971 Fourth Amendment case of *United States v. White*, described the “task of the law” as “to form and project, as well as mirror and reflect.” Though these words might be construed in a number of ways, they certainly seem to highlight the important role of the courts in society as a whole. While the courts interpret the laws that reflect society’s values at a given time, they also give form to those laws. A judicial decision does more than tell people what the law “is”—it influences their beliefs and attitudes. Nowhere is this truer than in the realm of ADA jurisprudence.

Before embracing the causal connection doctrine in its *Squibb* decision, the Seventh Circuit would have done well to recall Justice Harlan’s words regarding the power of the law. By applying such an unduly narrow interpretation of the ADA duty of reasonable accommodation, the court has missed its chance to curtail the personal prejudice still experienced today by many Americans with disabilities. In failing to recognize what the drafters of the ADARA know—that judicial construction of the ADA has rendered it largely impotent—the Seventh Circuit has misread the Act’s language and betrayed its goals. Hopefully, those circuits that have yet to address the *Felix* doctrine will choose a different path.

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