Employee is Not "Substantially Limited" Under the ADA When He is Able to Work a 40-Hour Week But No Overtime.

By Martha Zackin & Joel M. Nolan on February 15, 2012

Some people just can't catch a break. In recent years, this was certainly true of Michael Boitnott, an employee of Corning Incorporated. Mr. Boitnott, a maintenance engineer, worked a schedule that was typical for similarly-situated co-workers, which included twelve-hour shifts, alternating bi-weekly between day shifts and night shifts. Throughout 2002 through 2004, Mr. Boitnott experienced health problems for which he was periodically absent from work, including abdominal pain, a heart attack with further cardiac difficulties, and leukemia. In February 2004, following his leukemia-related absence, Mr. Boitnott regained his health and told Corning he was ready to return to work. According to his physician, however, Mr. Boitnott was limited to working a typical 40-hour, day-shift workweek without overtime. Thus, Mr. Boitnott could not return to his former schedule of twelve-hour rotating shifts.

Corning was unable to reinstate Mr. Boitnott to the position he held before his absence because of these restrictions. Thereafter, Mr. Boitnott filed a charge of discrimination with the Equal Employment Opportunity Commission, alleging that Corning's refusal to allow him to work a 40-hour week was a violation of its obligation to reasonably accommodate his disability under the Americans with Disabilities Act. The EEOC agreed, and issued a finding in Mr. Boitnott's favor.

Mr. Boitnott also applied for long-term disability (LTD) benefits. His benefits were initially approved, but later terminated because the carrier determined Mr. Boitnott was able to work a normal 40-hour workweek, and there were maintenance engineer jobs in his area that did not require overtime work.

After his LTD benefits were terminated, Mr. Boitnott again tried to return to work at Corning. He expressed an interest in a limited class of day shift positions, but these jobs required 10- hour days and some overtime. Corning advised Boitnott through his union representatives that the physician's limitation on working no more than eight hours per day remained a problem and requested that Boitnott advise the company if his medical condition changed. A few months later, after one of Mr. Boitnott's physicians released him to work 10 hours per day with a moderate amount of overtime, Corning and Mr. Boitnott's union worked together to create a new position fitting Mr. Boitnott's work restrictions. Finally, Mr. Boitnott was hired by Corning into this newly created position (a position he evidently still holds) and returned to work.

Although Mr. Boitnott was (presumably) happily back at work, the case continued, to determine whether Mr. Boitnott's rights were violated by Corning's refusal to allow him to return to work with a modified (40 hour weeks, no overtime, and no night shifts) schedule. Unfortunately for Mr. Boitnott, the court, in *Boitnott v. Corning Incorporated*, found in Corning's favor and dismissed the case.

For purposes of this blog entry, it is interesting to consider how the court analyzed Mr. Boitnott's claims. Under the ADA, a qualified individual with a disability is entitled to a reasonable accommodation to enable him to perform the essential functions of the job. The ADA defines

"disability" as "a physical or mental impairment that substantially limits one or more major life activities." A worker is "substantially limited" in the "major life activity" of working if the impairment significantly restricts his or her "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."

The trial court granted summary judgment in favor of Corning, holding that Mr. Boitnott was not substantially limited in his ability to work. Specifically, the court found that because he was capable of working a normal, 40-hour workweek and had not demonstrated that his limitations significantly restricted the class of jobs or broad range of jobs available to him, Mr. Boitnott's medical conditions did not substantially limit the major life activity of working. The United States Court of Appeals for the Fourth Circuit affirmed. Alas, Mr. Boitnott's serious medical conditions did not make him a qualified individual with a disability subject to protection under the ADA.

Query whether Mr. Boitnott would have been more successful if his medical conditions rendered him unable to work fewer than eight hours per day or 40 hours per week. Perhaps if Mr. Boitnott had been able to show that maintenance engineer jobs as a class, or that a broad range of jobs of the sort over various classes, were only available on a full-time basis, a part-time restriction may have constituted a substantial restriction under the ADA, entitling him to a reasonable accommodation.

As always, the court's decision rested on a highly individualized, fact-specific analysis. In other words, employers should always fully examine the circumstances surrounding a request for accommodation, then filter its findings through the prism of applicable law.