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Fourth Circuit Holds Employee Was Not Disabled Under ADA Because Able to Work 40 Hours Per Week

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Boitnott v. Corning Incorporated, Case No. No. 10-1769 (4th Cir. February 10, 2012)

On February 10, 2012, the 4th U.S. Court of Appeals joined a majority of the other circuits who have ruled that an individual's inability to work overtime hours is not a "substantial limitation" that would entitle him to the protections of the Americans with Disabilities Act ("ADA").

The case, *Boitnott v. Corning Incorporated*, involved a claim brought by the plaintiff against his employer, Corning Incorporated, under theADA, in which the plaintiff asserted that his inability to work more than eight hours per day and rotate day/night shifts as a result of physical impairments rendered him disabled under the ADA. The employee, Boitnott, was diagnosed with a form of leukemia while on a medical leave in 2003, and thus was unable to return to his regular work schedule as a maintenance engineer, which consisted of 12-hour shifts, alternating between day/night shifts. According to the defendant's doctor, he was capable of working a normal 40-hour week, but was unable to work overtime. After applying — and initially being granted — long term disability, the carrier terminated his benefits in 2004 and the company subsequently hired the defendant for a new maintenance position consisting of 8 hour day-shift work days, which the defendant has held since 2005. The defendant afterward brought this claim and a district court granted summary judgment to the defendant, holding that the defendant was not substantially limited in his ability to work.

Generally, the ADAprohibits any covered employer from discriminating against "a qualified individual with a disability because of the disability . . . in regard to . . . hiring, advancement, or discharge" of the employee or "other terms, conditions and privileges of employment.' 42 U.S.C. § 12112(a)." A "plaintiff seeking to establish that he or she is disabled under the ADA[must show] that any impairment 'substantially limits' one or more major life activities. *See* 42 U.S.C. § 12102(1)(a). In the context of the ability to work, the plaintiff must show that the impairment 'significantly restricted . . . 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.' 29 C.F.R. § 1630.2(j)(3). Further, the 'inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.' *Id*."

In affirming the lower court, the Fourth Circuit joined the numerous other circuits who have held that an employee under theADAis not "substantially limited" in "one or more major life activities" "if he or she can handle a forty hour work week but is incapable of performing overtime due to an impairment." Further, in determining if there was evidence that demonstrated that the defendant's "inability to work overtime 'significantly restricted' his '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,' [pursuant to] 29 C.F.R. § 1630.2(j)(3)," the Fourth Circuit held that although the defendant's "particular impairments and/or the labor market in his area could, under certain circumstances, make his inability to work overtime a substantial restriction" on a class of jobs in his area of maintenance engineering, the record contained "no evidence indicating that the defendant's inability to work overtime 'significantly restricted' his ability to perform a class of jobs or a broad range of jobs in various classes." Therefore, the Fourth Circuit affirmed the trial court's summary judgment motion for the defendant.

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