

PUBLICATION

Does the ADA Amendments Act Absolve a Party Alleging Disability Discrimination From Having to Prove the Disability?

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That was the question recently presented to the United States Court of Appeals for the Fifth Circuit, and the Fifth Circuit resoundingly answered "no." Specifically, in *Neely v. PSEG Texas, LP*, the Fifth Circuit held "though the ADAAA makes it *easier* to prove a disability, it does not *absolve* a party from proving one." *Neely v. PSEG Texas, LP*, No. 12-51074, --- F.3d. ---, 2013 WL 5942233, *2 (5th Cir. Nov. 6, 2013) (emphasis in original).

In *Neely*, the plaintiff, Jeffrey Neely, worked for PSEG as a control room operator. He was suspended and ultimately terminated after multiple verbal spats with his superiors. After the termination, Neely was diagnosed with "major depressive disorder and generalized anxiety disorder severe without psychosis." He sued PSEG, alleging a variety of claims under a variety of employment laws. Eventually, the case went to trial on Neely's claims of discrimination, retaliation and failure to accommodate under the Americans with Disabilities Act (ADA). The jury returned a verdict in favor of PSEG.

Unsatisfied with the jury's verdict, Neely appealed to the Fifth Circuit asserting that the trial court erroneously instructed the jury. Specifically, Neely took issue with the trial court's special verdict questions as to whether he was a "qualified individual with a disability" to which the jury responded "no." Neely argued that the inclusion of "with a disability" in the special verdict questions was contrary to the ADA Amendments Act (ADAAA).

After reviewing the wording of the Act before and after the enactment of the ADAAA, the Fifth Circuit held the following:

Although the text of the ADAAA expresses Congress's intention to broaden the definition and coverage of the term "disability," it in no way eliminated the term from the ADA or the need to prove a disability on a claim of disability discrimination. Even under the ADA as amended by the ADAAA, "[t]o prevail on a claim of disability discrimination under the ADA, [a party] must prove that (1) *he has a disability*; (2) he is qualified for the job; and (3) [the covered entity] made its adverse employment decision [] because of [the party's] disability."

...

After the passage of the ADAAA, a plaintiff in this circuit "must prove the following statutory elements to prevail in a failure-to-accommodate claim: (1) the plaintiff is a '*qualified individual with a disability*;' (2) the disability and its consequential limitations were 'known' by the covered employer; and (3) the employer failed to make 'reasonable accommodations' for such known limitations."

Neely, 2013 WL 5942233 at **2-3 (emphasis in original) (internal citations omitted).

What does this case mean? Well, at least in the Fifth Circuit, employees must offer proof to support their claim that they can meet the expanded definition of "disability" under the ADAAA. Simply stating that he or she has a disability may not be sufficient.

