Migraine Case Sheds Light On Employers’ ADA Headaches

By Ben James

Law360, New York (February 17, 2012, 4:22 PM ET) -- The Tenth Circuit's recent ruling that a former medical assistant who suffered from migraines wasn’t disabled under the Americans with Disabilities Act offers a glimmer of hope for employers dealing with the sharp rise in ADA claims, attorneys say.

On Dec. 21, the appeals court affirmed the dismissal of Alethia Roselle Allen's ADA case against her former employer, SouthCrest Hospital. Allen, a medical assistant, alleged the hospital had breached the law by denying her reasonable accommodation for her migraines, and SouthCrest successfully moved for summary judgment, arguing the plaintiff was not disabled.

To be disabled under the ADA, a person must suffer from a physical or mental impairment that substantially limits one or more major life activities. The ADA Amendments Act of 2008 retains that language but requires the courts to apply a broad definition of disability.

When it issued its March 2011 final regulations implementing the ADAAA, the U.S. Equal Employment Opportunity Commission specifically said courts should apply a lower standard in determining when an impairment substantially limits a major life activity than they previously had.

The SouthCrest decision is significant, lawyers say, because there is a dearth of guidance from appeals courts on exactly what burden plaintiffs have to meet in order to sustain claims that they have an ailment that constitutes a disability.

The ruling is promising for employers because the Tenth Circuit — as well as the trial court — showed a willingness to question Allen's assertion that her migraines amounted to a disability under the ADA.

"After the act was amended, and particularly with the EEOC's regulations and guidance, there did not appear to be much hope for challenging a disability," noted Reed Smith LLP's Betty Graumlich, who called the SouthCrest ruling “refreshing.”

The Allen case — and ADA litigation generally — is fact-sensitive, and employers shouldn't read the SouthCrest decision as an invitation to disregard migraines as a potential disability, said Sutherland Asbill & Brennan LLP's Thomas Bundy. But there are some positive takeaways, he added.

“The Tenth Circuit outlined some fairly rigorous evidentiary requirements other courts might look to for indicia of what types of evidence that plaintiffs need to provide,” Bundy said.
According to the appeals court’s ruling, Allen alleged that her migraine headaches impeded the activities of working and caring for herself. She said that while she could perform her job, she would “crash and burn” when she got home. On days where she had migraines, she could not handle “routine matters” of caring for herself, or do anything other than go home and go straight to bed, she claimed.

But according to the appeals court, the assertion that she took medication and slept after getting home when dealing with a migraine attack was not adequate to show that she was substantially limited with respect to caring for herself.

Allen didn’t offer up evidence regarding which specific activities she had to forgo because of going to bed early, how long she slept, whether she was able to complete the self-care activities she said she missed out on when she awoke the next day, and how her activities on days when she had a migraine matched up with her usual self-care routine, the ruling pointed out.

She also claimed that her condition affected her ability to work — but only her ability to work for one particular physician. She cited no evidence that she had suffered migraines working for other doctors or at other jobs, the Tenth Circuit noted.

Allen argued that under the definition of disability as clarified by the ADAAA and applied in the EEOC regulations, she could show disability in the major life activity of working even if she was only disabled with respect to performing a single job, but the Tenth Circuit disagreed.

Under the law prior to the EEOC’s final implementing regulations in 2011, a person claiming a disability had to have an impairment that prevented him or her from performing a “class of jobs or a broad range of jobs.”

Allen argued to the Tenth Circuit that this language was nixed in the EEOC’s regulations, but the appeals court found that the EEOC’s interpretive guidance maintained the “broad class of jobs” restriction.

The SouthCrest decision indicates that an ADA plaintiff who claims to have an impairment that substantially limits only his or her ability to work is likely to arouse skepticism from the court, according to EpsteinBeckerGreen’s Frank Morris.

“That is still an area that is looked at with suspicion, if you cannot identify other major life activities that are affected,” Morris said.

While Allen’s case may have crashed and burned, there are some workers who successfully exploit the broadened definition of disability to game the system, Littler Mendelson PC’s Barbara Hoey said.

When employers don’t question whether an alleged disability is legitimate, they open themselves up to being taken advantage of, she added.

Whatever the reason, it’s clear that disability claims have gone up since the ADAAA was enacted in 2008. In fiscal year 2007, the EEOC received 17,734 ADA charges. In fiscal year 2011, that number had risen to 25,742. Lawyers also said they had been seeing more requests for accommodation, including time off, in recent years.

The SouthCrest case lets employers know that they don’t have to assume every employee who claims to be disabled actually is, Hoey said.

“You can push back — you just have to be very careful,” she said.
“It clearly is a helpful decision for employers, and it is a reminder that, even after the ADAAA, employees still have an evidentiary burden in establishing that they have a disability,” Paul Hastings LLP’s Marc Bernstein said of the Tenth Circuit ruling. “That’s really what this case stands for. The employer still can require that the employee submit evidence or proof that he or she is disabled.”

--Editing by Elizabeth Bowen.

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