



Employment Law Note

August 2019

“Obesity” Is a Disability in Washington State



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Recently, the Washington State Supreme Court expanded the Washington Law Against Discrimination (“WLAD”) to include “obesity” as a disability. Specifically, the Court held that “obesity always qualifies as an impairment under the plain language of [the WLAD] because it is recognized by the medical community as a ‘physiological disorder, or condition’ that affects many of the listed body systems.”

A. The Facts

The decision is *Taylor v. Burlington Northern Railroad Holdings, Inc. et al.*, No. 96335-5 (July 11, 2019). The plaintiff received a conditional offer of employment as an electronic technician from the defendant BNSF Railway Company (BNSF). The offer was contingent on a physical exam and a medical history questionnaire. The medical exam found that the plaintiff’s height was 5 feet 6 inches and his weight was 256 pounds, resulting in a BMI of 41.3. A BMI over 40 is considered “severely” or “morbidly” obese, and BNSF treats a BMI over 40 as a ‘trigger’ for further screening in the employment process. Consequently, BNSF informed the plaintiff that the company was unable to determine whether he was medically qualified for the job. BNSF offered to reconsider if the plaintiff paid for additional medical testing, including a sleep study, blood work, and an exercise tolerance test.

B. The Lawsuit

The plaintiff initiated a lawsuit against BNSF in King County Superior Court, alleging that BNSF violated

the WLAD by refusing to hire him because of a perceived disability—obesity. BNSF removed to federal court and moved for summary judgment. BNSF’s summary judgment motion relied on federal case law interpreting federal law to argue that obesity is not a disability under the WLAD unless it is caused by a separate, underlying physiological disorder. The federal district court agreed and granted summary judgment on this issue, ruling that “under the WLAD, a plaintiff alleging disability discrimination on the basis of obesity must show that his or her obesity is caused by a physiological condition or disorder or that the defendant perceived the plaintiff’s obesity as having such a cause.”

The plaintiff appealed to the Ninth Circuit. The Ninth Circuit determined that whether obesity may constitute an impairment, and thus a disability, under the WLAD was an unresolved issue and asked the Washington Supreme Court the following question: “Under what circumstances, if any, does obesity qualify as an ‘impairment’ under the [WLAD, RCW] 49.60.040?”

In response to the Ninth Circuit’s certified question, the Washington Supreme Court held “that obesity is always an impairment under the plain language of RCW 49.60.040(7)(c)(i) because the medical evidence shows that it is a ‘physiological disorder, or condition’ that affects many of the listed body systems.” Notably, the Court declined to follow recent federal court decisions interpreting the American with Disabilities Act because Washington disability law provides broader protection.

Beginning with the statute, the Court narrowed the issue to whether “obesity” is a “physiological disorder, or condition” under the WLAD’s definition of “impairment.” Relying on “medical evidence,” the Court concluded that obesity is different than being overweight and that obesity is, in and of itself, a primary disease. Specifically, obesity is both “physiological” and is recognized as a “disorder.” Obesity is physiological because it involves the organic process and phenomena of an organism (*i.e.*, the excessive accumulation of fat cells). It is also a disorder because it may be diagnosed initially based on BMI, but doctors may also consider waist circumference and body composition analysis. The Court also listed the many “multifactorial” causes of obesity, including genetic predisposition caused by endocrine disruptors, physiological disorders, such as tumors, Cushing syndrome, hypothyroidism, and eating disorders. The Court also noted that obesity might occur in people who do not have these types of disorders.

BNSF argued that weight is not an abnormality and is not immutable. The National Association of

Manufacturers, in an amicus brief, similarly noted that obesity is not an “abnormality” because, in 2016, 29 percent of Washingtonians were obese. The Court rejected this argument on the basis that “the WLAD tells us that a disability may be ‘temporary or permanent, common or uncommon’ and the term abnormal ‘must refer to something other than statistical frequency and cannot be limited to immutable states of being.’” The Court also rejected BNSF’s argument that “because weight is a physical trait, it is not a disability under the WLAD.”

C. Key Takeaways

Employers should make sure that any weight or BMI standards are based on bona fide job requirements. Employers should also be aware that employees who suffer from obesity may be entitled to a reasonable accommodation to help them perform their jobs and should be prepared to engage in the interactive process. If you have any questions or need assistance, please contact your Sebris Busto James attorney.

For more information about this month’s Employment Law Note
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