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Employment Law - Johnson v. State of Oregon

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EMPLOYMENT LAW

JOHNSON v. STATE OF OREGON

141 F.3d 1361 (9th Cir. 1998)

I. INTRODUCTION

The Americans with Disabilities Act of 1990 (ADA) requires employers to provide reasonable accommodations to its disabled employees to enable them to perform the essential functions of their position.[1] In *Johnson v. State of Oregon*,[2] the United States Court of Appeals for the Ninth Circuit determined the circumstances in which the doctrine of judicial estoppel could bar a claim under the ADA when the litigant has sought or received disability benefits.[3] Because this was an issue of first impression, the court relied upon Federal Guidelines and case law from other circuits to conclude that the pursuit or receipt of disability benefits does not *per se* bar an indi-

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1. *See e.g.*, Johnson v. State of Oregon, 141 F.3d 1361, 1364 (9th Cir. 1998). The ADA provides:

> No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. [T]he term "discriminate" includes—(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity.

42 U.S.C. §12112.

2. 141 F.3d 1361 (9th Cir. 1998). The appeal from the United States District Court for the District of Oregon was argued and submitted on January 8, 1998 in front of Circuit Judge Aldisert, Circuit Judge Pregerson, and Circuit Judge Trott. The decision was filed on April 20, 1998. Circuit Judge Trott authored the opinion.

3. *See Johnson*, 141 F.3d at 1363.

vidual from making a claim against his or her former employer under the ADA.[4]

II. FACTS AND PROCEDURAL HISTORY

Ms. Leslie Johnson was an office specialist for the State of Oregon's Vocational Rehabilitation Division (VRD) from 1991 until her termination in 1994.[5] Johnson suffers from Carpal Tunnel Syndrome.[6] Her condition worsened during the time she was employed by the VRD.[7] Finally, after the last round of surgery, her doctor recommended a number of unspecified accommodations that would facilitate her return to work.[8] The VRD, however, terminated Johnson's employment on September 8, 1994, because it determined that her requested accommodations were unreasonable.[9] In September of 1995, Johnson filed an action against the VRD for disability discrimination in violation of the ADA.[10]

The United States District Court for the District of Oregon concluded that the representations Johnson had made in her application for disability benefits, regarding her incapacity to work, judicially estopped her from pursuing a claim under the ADA as a "qualified person with a disability who could perform the principle functions of her job with reasonable accommodations."[11] The district court ruled that Johnson could not establish that she could perform the essential functions of her position after she had made prior representations in order to obtain

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4. *See id.*

5. *See Johnson*, 141 F.3d 1361, 1364 (9th Cir. 1998).

6. *See id.* Carpal Tunnel Syndrome is "a disorder of the hand characterized by pain, weakness, and numbness in the thumb and other fingers, caused by an inflamed ligament that presses on a nerve in the wrist." Webster's College Dictionary 208 (1996).

7. *See Johnson*, 141 F.3d at 1364.

8. *See id.* Johnson underwent five rounds of surgery between 1986 and 1994 to relieve her symptoms.

9. *See id.* The specific accommodations Johnson was seeking are not specified in the court's opinion.

10. *See id.*

11. *Id.*

benefits based on a total disability.[12] Hence, the district court dismissed Johnson's claim in summary judgment.[13]

The Ninth Circuit disagreed, however, stating that the definition of "disabled," for the purposes of obtaining benefits, is not necessarily the same as that for pursuing a claim under the ADA.[14] Therefore, Johnson could properly pursue both claims depending on the definition being used.[15]

III. THE COURT'S ANALYSIS

The Ninth Circuit first examined the propriety of a per se rule that would bar an individual who applied for or received disability benefits from maintaining a claim under the ADA.[16] Finding a *per se* rule inappropriate, the court analyzed the issue within the particular facts of Johnson's case to hold that a material issue of fact remained, making summary judgment improper.[17]

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12. *See Johnson*, 141 F.3d at 1365-66. A court's decision that once an individual makes representations of total disability in seeking disability benefits that individual cannot later come back and assert that she could work if she were accommodated, amounts to a per se rule barring ADA claims once an individual has filed for disability benefits. *See id.*

13. *See Johnson*, 141 F.3d at 1364. Prior to trial, the VRD had filed a motion for summary judgment, based on judicial estoppel. That motion failed because it was unsupported by documentation. The district court, however, allowed VRD to renew the motion during trial and granted it. *See id.*

14. *See Johnson*, 141 F.3d at 1367. The Ninth Circuit stated:

> Because of the different definitions of disability under the ADA and under the various policies of disability benefits-providers, an individual may be disabled—and therefore entitled to disability benefits so long as she is not working—and still be a qualified individual under the ADA because she can work with reasonable accommodations, if her employer will provide them. Thus, neither application for nor receipt of disability benefits automatically bars a claimant from establishing that she is a qualified person with a disability under the ADA.

Id.

15. *See id.* Hence, application of a per se rule is inappropriate.

16. *See Johnson*, 141 F.3d 1361, 1366 (9th Cir. 1998). In determining if a per se rule existed barring ADA claims in this circumstance, the Ninth Circuit applied a de novo standard of review. *See id.* at 1364.

17. *See id.* at 1368. In determining if the district court's application of judicial estoppel to the particular facts of the case was proper, the Ninth Circuit applied an abuse of discretion standard of review. *See id.* at 1364.

A. JUDICIAL ESTOPPEL AS A PER SE RULE

The Ninth Circuit relied on the distinguishable purposes of the Social Security Administration (SSA) and the ADA, Equal Employment Opportunity Commission (EEOC) guidelines, and case law to conclude that a *per se* rule barring an individual from asserting an ADA claim once they have applied for or received disability benefits was not consistent with current law.[18]

The purpose of the ADA is to "prevent discrimination and [to] further work opportunities for those with disabilities."[19] The SSA, on the other hand, provides disability benefits for those who are so severely impaired that they are unable to do their job or any other job considering their age and experience.[20] SSA's determination of eligibility for disability benefits is made *without* consideration of whether the employee could perform the duties of the job with reasonable accommodations.[21] In contrast, the key to an ADA claim is the efficacy of reasonable accommodations necessary to allow someone to perform the essential functions of their job.[22]

In addition, the EEOC guidelines provide further support for rejecting a *per se* rule.[23] The EEOC guidelines state that an

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18. *See Johnson*, 141 F.3d at 1366-67. In conducting its analysis, the Ninth Circuit court first compared the purposes of the ADA and SSA. One of the central issues in this case was how to reconcile an individual's statements to one administration (i.e, the SSA) that they are unable to work due to total disability, while telling the court that they were able to work with reasonable accommodations as mandated by the ADA. *See id.* Next, the court analyzed prior cases. *See id.* And, finally, the court considered the Equal Employment Opportunity Commission's (EEOC) guidelines in dealing with this type of situation. *See id.*

19. *See Johnson*, 141 F.3d at 1366.

20. *See id.*

21. *See id.* The Social Security Act does not take into account an individual's ability to work with accommodations. Thus, where "a claimant had no accommodation in his or her past work, a Social Security Administration determination that the claimant cannot do past work says nothing about the claimant's ability to perform his or her former job with reasonable accommodation." *Id.* This has led the SSA to conclude: "The ADA and the disability provision of the Social Security Act have different purposes and have no direct application to one another." *Id.* (quoting, *Swanks v. Washington Metro. Area Transit Auth.*, 116 F.3d 582, 585 (D.C. Cir. 1997).

22. *See Johnson*, 141 F.3d at 1366.

23. *See Johnson*, 141 F.3d at 1367. A recent EEOC Enforcement Guidance explains:

individual's representations of total disability for the purpose of obtaining benefits is not necessarily inconsistent with the pursuit of an ADA claim.[24] This is because of the differences in the definitional requirements for obtaining benefits and pursuing a claim.[25] "Accordingly, [the representations made in obtaining disability benefits] should never be an automatic bar to an ADA claim."[26]

B. JUDICIAL ESTOPPEL BASED ON THE PARTICULAR FACTS OF THE CASE

Although the Ninth Circuit did not adopt a *per se* rule, the court concluded that the representations made on benefits applications are relevant.[27] In fact, the representations are binding in an ADA proceeding as truthful assertions of the claimant's condition.[28] Moreover, the court found a litigant's prior representations are important because they could defeat the litigant's prima facie case[29] and could indicate that no material issue of fact remains.[30]

> Because of the inherent differences in the definitions of the term "qualified individual with a disability" under the ADA and the terms used in ... disability benefits programs ... an individual can meet both the eligibility requirements for receipt of disability benefits and the definition of a "qualified individual with a disability" for ADA purposes. Thus, a person's representations that s/he is "disabled" or "totally disabled" for purposes of disability benefits are not necessarily inconsistent with his/her representations that s/he is a "qualified individual with a disability." Accordingly, they should never be an automatic bar to an ADA claim.

Johnson, 141 F.3d at 1367 (Citing EEOC Enforcement Guidance, Notice No. 915.002, February 12, 1997, II.A.).

24. *See Johnson*, 141 F.3d at 1367.

25. *See id.* For example, although a person could work if provided with reasonable accommodations as required by the ADA, that person would be totally disabled without such accommodations. *See id.*

26. *See id.* (citing, EEOC Enforcement Guidance, Notice No. 915.002, February 12, 1997, II.A.)

27. *See Johnson*, 141 F.3d at 1368.

28. *See id.*

29. *See Johnson*, 141 F.3d at 1369. The court noted that "[f]or example, a plaintiff's prior representations may be so strong and definitive that they will defeat the plaintiff's prima facie case on traditional summary judgment grounds." *Id.; see also, Kennedy v. Applause, Inc.*, 90 F.3d 1477 (9th Cir. 1996).

30. *See, Johnson*, 141 F.3d at 1369. For example, if the litigant stated on the disability benefits applications that they were permanently disabled from all work, irrele-

Applying the facts of the case, the Ninth Circuit concluded that the plaintiff's assertions to the various disability benefit providers did not contradict her disability discrimination claim under the ADA.[31] Therefore, the court found that the district court had abused its discretion in granting summary judgment because a material question of fact regarding the ADA claim remained.[32]

IV. IMPLICATIONS OF DECISION

The Ninth Circuit's decision in *Johnson v. State of Oregon* is in accord with a growing number of United States Circuit Courts that are disagreeing with the application of a *per se* rule barring ADA claims by individuals who previously applied for or obtained disability benefits.[33] Although seemingly illogical, the Ninth Circuit's decision in *Johnson* is just. While one should not be able to contradict statements made under penalty of perjury, an assertion of a claim under the ADA is not necessarily a contradiction to a claim for disability benefits.[34]

The Ninth Circuit noted that judicial estoppel "is an equitable doctrine, invoked by the court at its own discretion, and driven by the specific facts of the case. Accordingly, a *per se* rule barring claimants from pursuing ADA claims after seeking

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vant of accommodations, no material issue would remain—summary judgment would be granted. *See id.*

31. *See id.*

32. *See Johnson*, 141 F.3d 1363.

33. *See Johnson*, 141 F.3d 1361, 1367 (9th Cir. 1998). *See also*, Talavera v. School Bd. Of Palm Beach County, 129 F.3d 1214 (11th Cir. 1997) (holding that it was improper to apply a per se rule of estoppel); Griffith v. Wal-Mart Stores, Inc., 135 F.3d 376, 382 (6th Cir. 1998) (holding that applying a per se rule of estoppel is contrary to the truth-seeking function of the court); Cleveland v. Policy Management Systems, Corp., 120 F.3d 513, 517 (5th Cir. 1997), *cert. granted*, 119 S.Ct. 39 (1998) (declining to adopt a per se rule of estoppel); Swanks v. Washington Metropolitan Area transit Authority, 116 F.3d 582, 586 (D.C. Cir. 1997) (holding that application for disability benefits cannot be an automatic bar to an ADA claim).

Only the Third Circuit, in *McNemar v. The Disney Store*, was in conflict with these circuits when it upheld a district court's use of judicial estoppel to preclude a litigant's claim under the ADA. Subsequently, in *Krouse v. American Sterilizer Co.*, however, the Third Circuit clarified its ruling in *McNemar*, stating that the case was being misapplied and in fact does not support a *per se* rule.

34. *See Johnson*, 141 F.3d 1366. Because the standards for evaluating an application for disability benefits and a claim under the ADA are different, a contradiction is not inevitable between the two. *See id.*

or obtaining benefits runs counter to the doctrine of judicial estoppel itself."[35] Forcing an individual to choose between obtaining disability benefits and pursuing a claim under the ADA runs counter to the purpose of the ADA.[36] The ADA was created to protect disabled persons from discrimination.[37] If, however, an individual is unable to assert his/her rights under the ADA because that individual is forced by financial necessity to seek disability benefits, the ADA may as well not exist.[38]

The Ninth Circuit had an opportunity to revisit this issue in *Lujan v. Pacific Maritime Association*.[39] The plaintiff, Lujan, suffered from a disability, which resulted in the loss of use of his right arm and hand and difficulty in moving his neck.[40] Lujan applied for a longshoreman's job.[41] Although some longshoreman's jobs involve strenuous physical demands, others are less demanding, such as signal work and various clerk positions.[42] Lujan filed an ADA claim seeking accommodations, which included being excused from the portion of the employment examination which tests physical strength and agility.[43] The district court dismissed Lujan's claim because Lujan had received disability benefits.[44] The Ninth Circuit reversed the district court's determination on the authority of *Johnson*.[45]

Similar opinions have been expressed by numerous other circuits[46] and in various administrative proceedings.[47] Moreo-

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35. *Johnson*, 141 F.3d 1368.
36. *See id.* The court noted that:

> Faced with the financial pressures accompanying the loss of a job and the uncertainty and length of litigation, individuals might well elect immediate benefits over the pursuit of even the most meritorious ADA claim. Such a situation would not only harm the individuals the ADA seeks to protect, it also would protect the very activity the ADA seeks to eliminate: discrimination against disabled individuals.

Id.
37. *See id.* at 1366.
38. *See id.* at 1368.
39. 165 F.3d 738 (9th Cir. 1999).
40. *Lujan*, 165 F.3d at 739.
41. *See id.*
42. *See id.* at 739-40.
43. *See id.* at 740.
44. *See id.*
45. *Lujan*, 165 F.3d at 739.
46. *See e.g.*, *supra* note 33. *See also*, Pena v. Houston Lighting & Power Co., 154 F.3d 267 (5th Cir. 1998) (declining to adopt a per se rule specifically because SSA defini-

ver, this issue will ultimately be addressed by the United States Supreme Court as *certiorari* has been granted in *Cleveland v. Policy Management Systems, Corp.*[48]

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tions of disability differ significantly with definitions under the ADA); Rascon v. U.S. West Communications, Inc., 143 F.3d 1324 (10th Cir. 1998) (holding that application or receipt of disability benefits is not a bar to a claim under the ADA).

47. *See e.g.*, Lamberson v. Dept. of Veterans Affairs, 1999 WL 41623 (M.S.P.B., 1999). After conducting a thorough analysis of the rulings on this issue by the various circuits, the board in Lamberson determined that a per se rule barring an ADA claim when the plaintiff has filed for or obtained disability benefits would be improper. *id.* The court also noted the upcoming review by the Supreme Court of *Cleveland v. Policy Management Systems, Corp.* on this issue. *See id.* at ¶ 29.

48. *See Cleveland v. Policy Management Sytems Corp.*, 120 F.3d 513, 517 (5th Cir. 1997) (cert. granted 119 S.Ct. 39 (1998)).

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