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2nd Circuit, in First Impression, Aligns ADA and Rehab Act Claims

The appellate panel was in agreement that changes to federal law meant Rehabilitation Act claims of discrimination required applying the Americans With Disability Act standards, while splitting on how to interpret those standards.

By Colby Hamilton | April 18, 2019



The U.S. Court of Appeals for the Second Circuit and the U.S. District Court for the Southern District of New York. Photo: Ken Lund

A split appellate panel ruled for the first time that discrimination claims under the Rehabilitation Act must face the same causation standard as those brought under the Americans with Disabilities Act, aligning the two in accordance with the law, a majority of the panel ruled Thursday.

Circuit Judge John Walker Jr. and U.S. District Judge John F. Keenan of the U.S. District Court for the Southern District of

New York, sitting by designation, found that Congress' 1992 amendment to the Rehabilitation Act required the adoption of the ADA's "more specific" terms, establishing "a general causation standard that applies to most discrimination claims brought under the Rehabilitation Act."

The clarity provided by the panel's order did little to help revive the trial court's dismissal of a Rehabilitation Act claim by a former employee of the city's Department of Investigation. The panel majority affirmed the decision by U.S. District Judge Naomi Reice Buchwald of the Southern District of New York, finding that the former employee's failure to show the hearing disability he claimed led to his dismissal was a "but-for" cause of the adverse actions by DOI officials, not the sole cause.

In his dissent, Circuit Judge Denny Chin said that while he agreed with the Rehabilitation Act's incorporation of the ADA standard for causation, questions about later amendments to the ADA and subsequent U.S. Supreme Court decisions forced him to dissent from the final decision by the majority that a but-for standard now governs ADA and Rehabilitation Act claims.

Richard Natofsky sued his former employers at DOI in July 2014, claiming then-commissioner Mark Peters, other top managers, and the city itself discriminated against Natofsky because of a hearing disability. A few months before that he had resigned from DOI, allegedly after facing retaliation, including a demotion and loss of substantial pay, for complaining about Peters' and other managers' discriminatory actions against him because of his disability, including by failing to accommodate his hearing impairment.

Buchwald granted the city's motion for summary judgment, in part because Natofsky could not demonstrate that impermissible bias was the sole reason for any of the adverse employment actions he claimed he faced. On appeal, Natofsky relied on the the more lenient causation standard of the ADA than the more rigid sole-cause standard of the Rehabilitation Act.

The parties disputed what that standard should mean for Natofsky's case. Natofsky argued the district court should have applied a mixed-motive standard, and that he presented enough evidence that his disability was a motivating factor for his case to proceed.

The city argued that the standard under the new understanding should be that, but for his disability, Natofsky would not have faced the adverse actions. As Natofsky failed to demonstrate that his disability was a but-for cause of any adverse employment action taken against him, the district court's decision would then be upheld, the city argued.

The panel majority agreed with the city's arguments. Pointing to a series of updates to civil rights laws by Congress and subsequent U.S. Supreme Court decisions, the majority found "no express instruction from Congress in the ADA that the 'motivating factor' test applies" to discrimination claims. This, the majority held, brought the Second Circuit in line with decisions by the Fourth, Sixth, and Seventh circuits, requiring a claim of employment discrimination to prove it was the but-for cause of any adverse employment action.

In his dissent, Chin argued that the majority's application of standards from the Supreme Court precedents—specifically, those drawn from 2009's *Gross v. FBL Financial Services*—were done inappropriately, as the rules and rationales were substantially different when dealing with an ADA context.

Chin also argued that interpreting Congress' amendments to the ADA didn't eliminate the motivating-factor standard, which circuits had applied for years prior.

"Congress knew that courts applied the motivating-factor standard in evaluating ADA claims. It could have changed the ADA's causation standard with the 2008 Amendments, but it did not do so," Chin wrote.

For these and other reasons, Chin argued the motivating-factor standard remained the ADA's causation standard. As such, he agreed with Natofsky's claims and would have remanded the case back to the district court.

A spokesman for the city's Law Department declined to comment on the decision.

Natofsky was represented on appeal by Maduegbuna Cooper name attorney Samuel Maduegbuna and associate William Cowles.

Cowles said in a statement, "Based on the importance of this issue for employees' rights and the split decision, we are considering asking the court for further review. We will continue pursuing the state and city claims pending in state court under the state and city human rights law."

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