

PEOPLE COVERED UNDER SECTION 504 OF THE REHABILITATION ACT

When writing the Americans with Disabilities Act (ADA), Congress borrowed the definition of “disability” from the Rehabilitation Act of 1973. (Originally noted as “handicap.”¹) For fifteen years, the courts had generously interpreted this definition to cover a wide range of physical and mental impairments. Below is a sampling of people that courts held were “disabled” under the Rehabilitation Act based on their impairments. The courts tended to decide questions of coverage quickly and easily, without extensive analysis.

Epilepsy – Person with epilepsy “disabled”: *Reynolds v. Brock*, 9th Cir. 1987.

Diabetes – Person with diabetes “disabled”: *Bentivegna v. U.S. Dep’t of Labor*, 9th Cir. 1982.

Intellectual & Developmental Disabilities* – Person with intellectual and developmental disabilities “disabled”: *Flowers v. Webb*, E.D.N.Y. 1983.

Bipolar Disorder – Person with bipolar disorder “disabled”: *Gardner v. Morris*, 8th Cir. 1985.

Multiple Sclerosis – Person with multiple sclerosis “disabled”: *Pushkin v. Regents of Univ. of Colorado*, 10th Cir. 1981.

Hard of Hearing – Person who used hearing aid “disabled”: *Strathie v. Dep’t of Transp.*, 3rd Cir. 1983.

Vision in Only One Eye – Person with vision in only one eye “disabled”: *Kampmeier v. Nyquist*, 2d Cir. 1977.

Post-Traumatic Stress Disorder – Person with PTSD “disabled”: *Schmidt v. Bell*, E.D. Pa. 1983.

Heart Disease – Person with heart disease “disabled”: *Bey v. Bolger*, E.D. Pa. 1982.

Depression – Person with depression “disabled”: *Pridemore v. Rural Legal Aid Soc’y*, S.D. Ohio 1985.

HIV Infection – Person with HIV infection “disabled”: *Local 1812, Am. Fed’n of Gov’t Employees v. U.S.*, D.D.C. 1987.

Asthma – Person with asthma “disabled”: *Carter v. Tisch*, 4th Cir. 1987.

Asbestosis – Person with asbestosis “disabled”: *Fynes v. Weinberger*, E.D. Pa. 1985.

Back Injury – Person with back injury “disabled”: *Schuett Inv. Co. v. Anderson*, Minn. Ct. App. 1986.

But now turn over the page

* What the court terms “mental retardation”

PEOPLE **NOT** COVERED UNDER THE ADA

Congress expected the definition of “disability” would be interpreted the same way under the ADA as it had been interpreted under the Rehabilitation Act. But instead of following Congress’ expectations, the courts have read the definition in a strict and constrained way. Below is a sampling of people that courts have considered to be **not “disabled”** under the ADA. In contrast to cases decided under the Rehabilitation Act, these courts have often devoted pages of contorted analysis to arrive at their conclusions.

Epilepsy – Person with epilepsy not “disabled”: *Todd v. Academy Corp.*, S.D. Tex. 1999.

Diabetes – Person with diabetes not “disabled”: *Orr v. Wal-Mart Stores, Inc.*, 8th Cir. 2002.

Intellectual & Developmental Disabilities* – Person with intellectual and developmental disabilities not “disabled”: *Littleton v. Wal-Mart Stores, Inc.*, 11th Cir. 2007.

Bipolar Disorder – Person with bipolar disorder not “disabled”: *Johnson v. North Carolina Dep’t of Health and Human Servs.*, M.D.N.C. 2006.

Multiple Sclerosis – Person with multiple sclerosis not “disabled”: *Sorensen v. University of Utah Hosp.*, 10th Cir. 1999.

Hard of Hearing – Person who used hearing aid not “disabled”: *Eckhaus v. Consolidated Rail Corp.*, D.N.J. 2003.

Vision in Only One Eye – Person with vision in one eye not “disabled”: *Albertson’s, Inc. v. Kirkingburg*, U.S. 1999.

Post-Traumatic Stress Disorder – Person with PTSD not “disabled”: *Rohan v. Networks Presentations LLC*, 4th Cir. 2004.

Heart Disease – Person with heart disease not “disabled”: *Epstein v. Kalvin-Miller Intern., Inc.*, S.D.N.Y. 2000.

Depression – Person with depression not “disabled”: *McMullin v. Ashcroft*, D. Wyo. 2004.

HIV Infection – Person with HIV infection not “disabled”: *Cruz Carrillo v. AMR Eagle, Inc.*, D.P.R. 2001.

Asthma – Person with asthma not “disabled”: *Tangires v. Johns Hopkins Hosp.*, D. Md. 2000.

Asbestosis – Person with asbestosis not “disabled”: *Robinson v. Global Marine Drilling Co.*, 5th Cir. 1996.

Back Injury – Person with back injury not “disabled”: *Wood v. Crown Redi-Mix, Inc.*, 8th Cir. 2003.

* What the court terms “mental retardation”

BACKGROUND INFO FOR PEOPLE COVERED UNDER REHAB ACT AND ADA

The Rehabilitation Act originally referred to people covered under the Act as “handicapped” individuals. This changed in 1992, when the Act was amended to cover individuals with “disabilities.” Pub. L. No. 102-569.

A statement of Congress’ expectations with regard to the definition of “disability” under the ADA is nicely captured in:

Steny H. Hoyer, *Not Exactly What We Intended Justice O’Connor*, WASH. POST, Jan. 20, 2002, at B01.

CITATIONS

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Epilepsy: *Reynolds v. Brock*, 815 F.2d 571, 574 (9th Cir. 1987).

Diabetes: *Bentivegna v. U.S. Dep’t of Labor*, 694 F.2d 619, 621 (9th Cir. 1982).

Intellectual & developmental disabilities (“mental retardation”): *Flowers v. Webb*, 575 F. Supp. 1450, 1456 (E.D.N.Y. 1983).

Bipolar Disorder: *Gardner v. Morris*, 752 F.2d 1271, 1280 (8th Cir. 1985).

Multiple Sclerosis: *Pushkin v. Regents of Univ. of Colorado*, 658 F.2d 1372, 1377, 1387 (10th Cir. 1981).

Hard of Hearing: *Strathie v. Dep’t of Transp.*, 716 F.2d 227, 230 (3rd Cir. 1983).

Vision in Only One Eye: *Kampmeier v. Nyquist*, 553 F.2d 296, 299 n.7 (2d Cir. 1977).

Post-Traumatic Stress Disorder: *Schmidt v. Bell*, No. 82-1758, 1983 WL 631, at *10 (E.D. Pa. 1983).

Heart Disease: *Bey v. Bolger*, 540 F. Supp. 910, 927 (E.D. Pa. 1982).

Depression: *Pridemore v. Rural Legal Aid Soc’y*, 625 F. Supp. 1180, 1185-86 (S.D. Ohio 1985).

HIV Infection: *Local 1812, Am. Fed’n of Gov’t Employees v. U.S.*, 662 F. Supp. 50, 54 (D.D.C. 1987).

Asthma: *Carter v. Tisch*, 822 F.2d 465, 466 (4th Cir. 1987).

Asbestosis: *Fynes v. Weinberger*, 677 F. Supp. 315, 321 (E.D. Pa. 1985).

Back Injury: *Schuett Inv. Co. v. Anderson*, 386 N.W. 2d 249, 253 (Minn. Ct. App. 1986).

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Epilepsy: *Todd v. Academy Corp.*, 57 F. Supp. 2d 448, 452-54 (S.D. Tex. 1999).

Diabetes: *Orr v. Wal-Mart Stores, Inc.*, 297 F.3d 720, 724-25 (8th Cir. 2002).

Intellectual & developmental disabilities (“mental retardation”): *Littleton v. Wal-Mart Stores, Inc.*, No. 05-12770, 2007 WL 1379986, at *2-4 (11th Cir. 2007).

Bipolar Disorder: *Johnson v. North Carolina Dep’t of Health and Human Servs.*, 454 F. Supp. 2d 467, 473-74 (M.D.N.C. 2006).

Multiple Sclerosis: *Sorensen v. University of Utah Hosp.*, 194 F.3d 1084, 1087-89 (10th Cir. 1999).

Hard of Hearing: *Eckhaus v. Consolidated Rail Corp.*, No. Civ. 00-5748 (WGB), 2003 WL 23205042, at *8-10 (D.N.J. 2003).

Vision in Only One Eye: *Albertson’s, Inc. v. Kirkingburg*, 527 U.S. 555, 562-67 (1999).

Post-Traumatic Stress Disorder: *Rohan v. Networks Presentations LLC*, 375 F.3d 266, 273-78 (4th Cir. 2004).

Heart Disease: *Epstein v. Calvin-Miller Intern., Inc.*, 100 F. Supp. 2d 222, 224-29 (S.D.N.Y. 2000).

Depression: *McMullin v. Ashcroft*, 337 F. Supp. 2d 1281, 1294-99 (D. Wyo. 2004).

HIV Infection: *Cruz Carrillo v. AMR Eagle, Inc.*, 148 F. Supp. 2d 142, 144-46 (D.P.R. 2001).

Asthma: *Tangires v. Johns Hopkins Hosp.*, 79 F. Supp. 2d 587, 594-96 (D. Md. 2000).

Asbestosis: *Robinson v. Global Marine Drilling Co.*, 101 F.3d 35, 36-37 (5th Cir. 1996).

Back Injury: *Wood v. Crown Redi-Mix, Inc.*, 339 F.3d 682, 685-86 (8th Cir. 2003).