

# Recent Ruling on ADA and the Value of Early Intervention

by Presley Reed

*Early intervention in a disability case can make all the difference. Two cases of carpal tunnel syndrome in the workplace are compared. Frequent communication, good documentation and an inclusive approach that blends medical expertise with objectivity and employer policy are essential.*

Even when a company is exonerated by the Supreme Court in a disability dispute, costs in time and reputation have already been incurred, and these costs argue for taking preemptive measures in disability management. Much more extreme are the losses when the final court decision is against the covering entity (employer or insurance company). In all disability claims, strategic intervention should be implemented for many reasons—the welfare of the employee, the productivity of the company and the desire to avoid litigation. One of the wisest approaches a company can make is to offer early, personal and medically sound intervention.

A comparison of similar cases of carpal tunnel syndrome in the workplace demonstrates how this intervention can help bring about improved outcomes. No single factor or approach guarantees a changed outcome, but the pattern that emerges from carefully managed disabili-

ty cases justifies the up-front investments that such management requires.

One notable case that went to court and was ultimately decided in favor of the employer is the Supreme Court ruling, *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*.<sup>1</sup> While this ruling has established a narrower definition of *disability* in terms of the Americans with Disabilities Act (ADA), it came only after a series of previous settlements and appeals. From this case, we can speculate on a few aspects of disability case management that are useful for employers to consider, even if in the particulars of the Toyota case nothing could have been done to prevent the litigation.

## Supreme Court Ruling: *Toyota v. Williams*

To the relief of U.S. employers, this Supreme Court decision on January 8, 2002 limited the breadth of the term *dis-*

*ability* when applied to ADA. The Supreme Court opinion assured employers that ADA is applicable only to cases where one's daily life and work life are severely impaired by a disability, not to cases in which specific job functions extend beyond a worker's physical or psychological capacity. In the words of Justice O'Connor, "We therefore hold that to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives" (Section III). The ruling determined that an individual may be limited in certain abilities but that such a limitation does not constitute being disabled in the individual's daily life.

In the case of Emma Williams, it was unanimously acknowledged that she experienced physical conditions that prevented her from performing certain types of work. The in-house medical staff diag-

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nosed her with bilateral carpal tunnel syndrome and bilateral tendinitis, and prescribed modified work conditions. Between 1990 and 1993, she was given modified duties, found them insufficient, filed two legal actions and obtained a settlement for both. She was then given a job that primarily consisted of paint inspection and, for approximately two years, apparently found the job amenable to her physical condition.

It was when, in 1996, this inspection job was broadened to include a procedure that involved rubbing some oil onto each car's paint surface (in order to highlight possible flaws) that Ms. Williams found her tasks unbearable. At this point the Supreme Court judgment suggests that the employer-employee relationship broke down. Along with the breakdown in the relationship came confusion about which party was primarily responsible for a loss of communication: “The parties disagree about what happened next” (Section I). The company perceived that the employee was ignoring them (by missing work); the employee perceived that the company was ignoring her (by not modifying her work). She stopped working in December 1996, was terminated by letter in January 1997 and began a series of legal actions that (1) ruled against her at the district court, (2) overturned the ruling at the circuit court and (3) reversed the ruling at the Supreme Court.

The ruling of the Supreme Court focused on questions of magnitude and breadth: how limiting must a disability be to be “substantially limiting” and how significant must a life activity be to be “major.” The conclusion was that the disability must impair the individual's daily life to an

extent that was not demonstrated in the case of Ms. Williams. The ruling also stated that for many impairments the decisions must be made on a case-by-case basis, since the same medical condition may produce vastly different outcomes in various individuals. According to the opinion: “An individualized assessment of the effect of an impairment is particularly necessary when the impairment is one whose symptoms vary widely from person to person. Carpal tunnel syndrome, one of [the] respondent's impairments, is just such a condition” (Section III). Whatever the responsibilities of Toyota toward Williams may have been, Toyota did not discriminate against her according to ADA.

The earlier statement that “the parties disagree about what happened next” touches a common theme in case management: When documentation is most needed for future determinations, it is most difficult to obtain. At the time this breakdown occurred between Toyota and Williams, there *may* have been an opportunity for mediation that may have precluded the next seven years of litigation. We cannot know that, but we can pinpoint that phase as a critical one that may have determined the course of the future. By the time the Supreme Court reviewed the case, the breakdown in communications was history and what counted was the appropriateness of the suit to the protection offered by ADA.

### ***Disabled From What?***

This opinion of the Supreme Court implies that the term *disability* must be rooted in as specific a context as possible. Perhaps this need for a stabilizing context

is true for all legal terms, even for all language. But it is particularly important when determining the responsibilities of an employer toward an individual who voluntarily both wants to work and wants to draw pay while not working. The culture of the society at large and of the workplace can skew the meaning of disability so that it fails to address cases in which it is most appropriate. It is in support of the careful application of the term that the Supreme Court ruled.

The opinion of the Supreme Court stated that the inability to do a specific job is quite different from the inability to perform duties of everyday living such as “household chores, bathing, and brushing one's teeth” (Section IV). The demands of a specific job—or even a specific company—cannot be applied to all individuals, whereas the demands of everyday living apply to all. To be disabled in terms of ADA then, one must be more than unable to perform a specific job. One must be challenged at nearly every turn of his or her existence.

What then is disability? To answer the question one must first ask the question, “In relation to what?” Disability is a relational concept. It is not “functional impairment”—that which physicians are trained to understand and measure. Disability is a concept that is not even understood in some cultures. It is so relational, in fact, that it is virtually impossible to picture someone disabled who is stranded alone on the proverbial tropical desert island.

The fact of the matter is that none of us is perfect or perfectly whole. Some of us are smarter, faster and more creative than others. Virtually all of us are “disabled” from playing professional sports because we lack the requisite physical skills. We have all seen and admired individuals who remain productive despite significant physical or mental limitations. Yet disability tends to be a “self-designated” term that entitles the individual to some special financial remuneration or special treatment. Do you think that Franklin Delano Roosevelt thought of himself as disabled? (Or Steven Hawking, Izaak Perlman or countless others?)

The Court has ruled that someone may be disabled from performing a certain specific job but not disabled according to ADA. The Social Security Disability Fund has its own definition of *disability*. Group disability insurance plan

language may have another. If someone designates himself or herself as disabled, the overriding question must be “In relation to what?”

The truth of the matter, since we all have limitations, is that we need to, both individually and collectively, focus not so much on our disability but on our abilities. In our society and our workplaces we need to create an environment that allows individuals to maximize their abilities through accommodation, assistive devices and tolerance of others, giving every individual the opportunity to achieve the fullness of his or her potential. Creating a society that allows each and every one of us the opportunity to be self-sufficient and productive will minimize the need for some of us to regard ourselves as “disabled.”

### **Case Management: Dave**

While we should use the term *disabled* in a way that prevents it from becoming a blank check to inactivity, we certainly cannot and would not want to eradicate the term. Disabilities and their claims happen. On a practical level, let's examine a problematic disability case that was successfully handled by a third-party case management company under the agency of a nurse case manager (nurse CM). This case, too, dealt mostly with carpal tunnel syndrome. It also displays the communication breakdowns that easily give rise to deadlock, often a precursor of litigation. It involves Dave, who was plagued with severe physical pain and ambivalence toward his workplace. And it shows that a diligent, informed third party can create a new relationship that allows the parties involved to act in an informed, proactive way.

On June 6, 2000, Dave informed the nurse CM that he had pain that extended from his back to his shoulders, as well as pain tingling in his fingers on both hands. He had a computed tomography (CT) scheduled for the next day and planned on being back at work June 11, contingent on the results of the CT. In addition to his physical problems, he claimed he

feared he was getting negative marks at work for lost time, and that he was afraid he might lose his job as a consequence. Additionally, he was being “yelled” at “because I can't do the work,” that involves pushing around 40- to 100-pound machines. From his supervisors' point of view, he was unhappy and was noticeably interested in the “good deal” long-term disability pay would be under his company's policy, and they considered him at risk of abusing LTD benefits.

Over the next week, the nurse CM contacted Dave's human resources department, his attending physician and Dave again. By June 11, he was not back at work. By June 14, an electromyogram (EMG) confirmed that he had carpal tunnel syndrome. In this case, the employee had ambivalence toward the workplace, but also was responsive to the phone calls from the nurse CM. On June 15, he returned a message and said he was worried about his disability paycheck not being able to cover his expenses, including his truck that could be repossessed. In addition to being responsive, he apparently did not want to cause unnecessary delays, including having to wait until a June 25 appointment concerning the carpal tunnel syndrome. Dave rescheduled his appointment and by June 19, the nurse CM received a physician's certification of severe bilateral carpal tunnel syndrome.

Although the physician's certification recommended a disability duration from June 7 through August 31, the nurse CM intervened because there was insufficient medical documentation from Dave's treating physician to support and authorize the disability absence and make the recommendation to the employer. Therefore, she approved a duration through July 5, and inquired for more clinical information. That information came in the form of surgery for carpal tunnel release, which Dave underwent on June 29. Thus, his disability leave was extended through August 9 to accommodate recovery from the surgical procedure and return to work.

By looking at the sequence of events,

we can see that the nurse CM made frequent contact with the employee and other related parties. Although this was a troublesome case (considering what the employee reported and what was reported about the employee), active case management may have produced better outcomes for the employer and employee. The employee was given enough attention so that he presumably felt “heard,” and that is important, since one underlying motivation behind lawsuits is the desire to be heard. At the same time, the nurse CM remained objective, consistently applied the benefit, and insisted routinely for corroborative evidence to justify the disability duration recommended by the physician.

The obvious lessons offered by this case are that case management should involve these three ingredients in order to resolve difficult cases: frequent communication, good documentation and an inclusive approach that blends together medical expertise with objectivity, employer policy and employee explanation.

This vigilance helps create a different cultural context in which the word *disability* is constantly defined as a physical or psychological limitation as it affects a specific person operating under a specific benefit plan. Because each party (including the employee and the physician) is bound to have eccentricities, because disabilities such as carpal tunnel syndrome can have highly varied effects on individuals, and because the loss in morale that logically accompanies a disability can further obstruct communication, vigilance cannot be sacrificed to anyone's convenience. Early, frequent intervention will reduce the likelihood of unnecessary loss, whether that loss registers in the individual's dignity, the company's bottom line or the expense of litigation. ♦

### **Endnote**

1. Supreme Court of the United States: *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, Certiorari To The United States Court Of Appeals For The Sixth Circuit, No. 00—1089. Argued November 7, 2001; decided January 8, 2002.

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