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Are “Wi-Fi Allergies” an Impairment Covered by the ADA?

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Some individuals believe that electromagnetic hypersensitivity can be caused by electromagnetic fields emitted from computers, mobile phones, cell phone towers, TVs, radios, Wi-Fi connections and other technology. Although several organizations have tested this theory over the years, there is a lack of scientific evidence to correlate electromagnetic fields to the non-specific electromagnetic hypersensitivity symptoms such as headache, dizziness, fatigue, nausea, and rash. In 2004, the World Health Organization noted scientific research has not been able to support a causal relationship between electromagnetic fields and self-reported electromagnetic hypersensitivity. However, as time passes and technology develops, this may not continue to be the case.

On April 6, 2017, the Seventh Circuit affirmed a ruling by the Northern District of Illinois, Eastern Division, granting summary judgment in favor of an employer, in part, because the employee failed to present evidence that he was disabled within the meaning of the Americans with Disabilities Act (the ADA), 42 U.S.C. § 12101*, Hirmiz v. New Harrison Hotel Corp*., No. 16-3915, 2017 U.S. App. LEXIS 5978 (7th Cir. Apr. 6, 2017).

Article By
Lindsey D'Agnolo
Heyl, Royster, Voelker & Allen, P.C.
Employer's Edge

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The *pro se* plaintiff, George Hirmiz, was employed by defendant, a hotel operator, as a front desk clerk. On February 24, 2015, defendant terminated plaintiff’s employment for several reasons including sleeping on the job, abandoning his post, failing to report details of an incident where a guest was hurt during a fight, and failing to contact the police at the time of the incident. *See Hirmiz v. Travelodge Hotel Corp.,* No. 15 C 6874, 2016 U.S. Dist. LEXIS 132045 (N.D. Ill. Sept. 27, 2016). Plaintiff filed suit against defendant alleging failure to accommodate and discrimination pursuant to the ADA. (Plaintiff also filed a retaliatory discharge claim pursuant to Illinois common law which is not discussed here.)

In order to establish his claims under the ADA, the plaintiff must establish that he was disabled within the meaning of the ADA. The ADA defines a “disability” as: 1) a physical or mental impairment that substantially limits one or more major life activities; 2) a record of such impairment; or 3) an individual that is regarded as having such an impairment. The plaintiff alleged he was disabled within the meaning of the ADA because he experienced several symptoms including heavy sneezing, runny nose, headache, dizziness and numbness due to long-term exposure to electromagnetic voltage while employed by the defendant. However, the plaintiff failed to argue that his symptoms *substantially limited* one or more major life activity.

The district court held, and the Seventh Circuit agreed, that the plaintiff failed to present any evidence that he suffered from any “impairment” that “substantially limits” any of his “major life activities.” Plaintiff also failed to establish a record of an impairment or show he was regarded as having an impairment. As such, the court held plaintiff failed to show he was “disabled” within the meaning of the ADA and his claims were dismissed. (Note—the *pro se* plaintiff failed to comply with local court rules and did not file a response to defendant’s statement of undisputed material fact. Thus, the court accepted the defendant’s facts as true.)

In concluding that the plaintiff failed to show he was disabled within the meaning of the ADA, the Seventh Circuit commented briefly on electromagnetic hypersensitivity and noted there is dispute within the medical community

over whether sensitivity to electromagnetic voltage is a physical disorder or psychological disorder. If psychological, the court noted the symptoms may not constitute a disorder covered by the ADA and referenced the example of fear of black cats as trivial psychological distress. The court was able to avoid determining whether electromagnetic hypersensitivity is an "impairment" by finding that the plaintiff failed to show he was substantially limited in one or more major life activities, which is required under the ADA.

The Seventh Circuit avoided making this determination for now, but whether electromagnetic hypersensitivity or "Wi-Fi Allergies" constitute a physical impairment which might be covered by the ADA is a question that might not be far off in our legal future.

Interestingly, other countries have given some weight to "Wi-Fi Allergies." In 2011, the International Agency for Research on Cancer, a World Health Organization-affiliated body, classified electromagnetic fields as possibly carcinogenic and worthy of additional research. In 2013, a scientist in Australia was awarded workers' compensation benefits after he made a claim for nausea, disorientation and headaches at work after being exposed to equipment that emitted electromagnetic fields. In 2015, a French court awarded a woman monthly disability payments after she claimed that Wi-Fi and cell phones made her sick. Sweden officially recognizes electromagnetic hypersensitivity as a "functional impairment" affording sufferers a range of legal protections and accommodations. In 2015, Health Canada set limits on exposure to electromagnetic radiation.

In March of 2015, a court of appeals in New Mexico dismissed a plaintiff's case where he sought injunctive relief against a neighbor seeking to bar her from using any device that emitted electromagnetic fields because he claimed he experienced extreme electromagnetic hypersensitivity and sickness. The court dismissed his case because he did not provide qualified expert testimony regarding electromagnetic hypersensitivity. Notably, however, the plaintiff in that case claimed to have been receiving Social Security Disability since 1992 when the U.S. Social Security Administration declared him permanently and totally disabled due to chemical and electromagnetic hypersensitivity. *See Firstenberg v. Monribot*, 2015-NMCA-062.

Despite the lack of scientific evidence or research to support electromagnetic hypersensitivity at this time, ever-changing technology and our reliance on devices makes it easy to see how more people might develop "Wi-Fi Allergies." Employers might begin to see requests for accommodations based on electromagnetic hypersensitivity or claims for workers' compensation benefits where an employee claims symptoms of electromagnetic hypersensitivity from exposure at work. How far these claims will get without proper medical support is to be seen. But a word to the wise, the ADA prohibits retaliation against an employee who asserts his/her rights under the ADA, even if the underlying discrimination claim is meritless.

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