

## Legal Forum

### Americans With Disabilities Act: Recent and Pending U.S. Supreme Court Decisions and Implications for Spine Professionals

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This article highlights recent and pending United States Supreme Court cases interpreting employment provisions of the Americans with Disabilities Act and discusses their implications for spine professionals. The implications include how *Spine* readers approach evaluations of employees and job applicants with disabilities and workplace accommodations in light of the recent decisions. The cases pending before the Supreme Court involve orthopedic impairments and the “reasonableness” of certain workplace accommodations. Increasingly, spine professionals will be called on to assist in the analysis of these issues. This article will familiarize *Spine* readers with the legal interpretations under the Americans with Disabilities Act of “disability,” “mitigating measures,” “qualified individual,” and “reasonable accommodations.” It illustrates the ways in which spine professionals may be called on to help interpret and apply qualification and safety standards under the Americans with Disabilities Act to assist individuals, employers, attorneys, and other stakeholders in the employment of people with disabilities. [Key words: Americans with Disabilities Act, disability, impairments, mitigating measures, reasonable accommodations, qualified individual with a disability] *Spine* 2002;27:439–443

Employees, employers, rehabilitation professionals, attorneys, and other stakeholders regularly consult spine professionals about the employment of people with disabilities. As stakeholders, spine professionals are involved in the assessment of a person’s work-related disability and related workplace accommodations under the Americans with Disabilities Act of 1990 (ADA).<sup>2</sup> Under the ADA, an “interactive process” between employer and impaired employee typically is required for successful new or continuing employment and for return-to-work strategies.<sup>11</sup>

Recently, the United States Supreme Court has interpreted the ADA with regard to the definition of disability under the law, in general as affecting people with disabilities, and in particular as affecting people with orthopedic impairments. Familiarity with ADA caselaw and its interpretation will benefit *Spine* readers who participate in the evaluation of workplace disability, employment practices and standards, and the provision of workplace accommodations.

ADA Title I seeks to eliminate employment discrimination by private employers against people with disabili-

ties.<sup>5,10,24</sup> Title I provides that employers with 15 or more employees shall not discriminate against a qualified disabled individual in job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training; and other conditions of employment.<sup>8</sup> Recently, the Supreme Court has interpreted the ADA with regard to (1) coverage under the law of an impairment that is mitigated by other measures (e.g., by a prosthetic device), (2) the types of workplace accommodations that mitigate the disabilities of an employee, and (3) the responsibilities of the stakeholders in the accommodation process.

Blanck and Pransky<sup>11</sup> have examined recent demographics of work disability, societal approaches to workers with disabilities, and health care providers’ roles in evaluations of workplace accommodations. They have reviewed the National Health Interview Study findings that 31 million persons aged 18 to 69 years were restricted in the major life activity of working.<sup>19</sup> Of those individuals, approximately 16%, or almost 5 million people, had orthopedic impairments.<sup>16</sup> Undoubtedly, spine professionals will be called on to assist in the assessment of workplace disability and accommodations for many impaired individuals. Studies by Blanck<sup>4</sup> and by the Job Accommodation Network<sup>18</sup> have found that most workplace accommodations are cost effective and often lead to injury reductions on the job. Spine professionals familiar with the emerging caselaw and accommodation process may assist in cost-effective return-to-work and accommodation strategies, in ways that reduce the likelihood for costly litigation on the subject.

#### **Recent and Pending Supreme Court Decisions**

In 1999, the U.S. Supreme Court rendered three important decisions in ADA employment cases. During its 2001 term, the Court will review four ADA cases, each with far-reaching implications for the employment of persons with disabilities. The first major set of three ADA Title I cases discussed in this article, the Sutton trilogy, were decided in 1999 and include Sutton et al v. United Air Lines, Inc.,<sup>28</sup> Murphy v. United Parcel Service, Inc.,<sup>22</sup> and Albertson’s, Inc., v. Kirkingburg.<sup>1</sup> Decisions are pending in two other ADA Title I cases discussed herein: Toyota Motor Manufacturing Kentucky, Inc. v. Williams<sup>29</sup> and U.S. Airways, Inc. v. Barnett.<sup>30</sup>

The Sutton trilogy examined the definition of disability under the ADA, particularly the extent to which “mitigating measures” must be considered to determine whether a person is disabled under the law. The forthcoming decisions in Toyota v. Williams<sup>29</sup> and U.S. Air-

From the Iowa Law, Health Policy and Disability Center, Iowa City, Iowa.

Acknowledgment date: August 23, 2001.

Acceptance date: August 10, 2001.

Device status category: 1.

Conflict of interest category: 12.

ways v. Barnett<sup>30</sup> will focus primarily on the scope of the reasonable accommodation provisions in the ADA. These workplace-related cases will be of interest to spine professionals because they involve, in *Toyota v. Williams*, repetitive stress injuries in the wrists, neck, and arms and, in *U.S. Airways v. Barnett*, back injury. Previous discussions in *Spine* of ADA workplace issues have been presented in related areas.<sup>6-9,14,22</sup>

#### ***Sutton et al v. United Airlines, Inc.***

Twin sisters, Karen Sutton and Kimberly Hinton, with uncorrected vision of 20/200 or worse, applied for employment with United Airlines as airline pilots. With corrective lenses, the sisters' vision was 20/20 or better. During their job interviews, both sisters were told that they did not meet the requirement for United Airlines pilots of uncorrected vision of 20/100 or better, and their interviews were terminated. After the sisters were not offered positions as pilots for United, they sued United under ADA Title I.

The Supreme Court ruled that the Sutton sisters were not disabled for purposes of the ADA and thereby were not covered by the protections of the law. In reaching its conclusion, the Court analyzed the definitional prongs in the ADA that an individual must satisfy to be considered disabled: (1) a physical or mental impairment that substantially limits a major life activity of such individual, (2) a record of such impairment, or (3) being regarded as having such an impairment.<sup>28</sup>

In *Sutton et al v. United Airlines, Inc.*, the Court concluded that the definition of disability requires an individualized inquiry, considering the use of corrective devices or medications. The Court reasoned that because the sisters had corrected visual acuity of 20/20 or better, they were able to function as if they did not have a visual impairment. The corrective measures, it was decided, had effectively eliminated the impairment; therefore, the sisters were not substantially limited in the major life activity of seeing.

The Court also concluded that United did not regard the sisters as having a substantially limiting impairment because they were not perceived as restricted in their ability to perform a class of jobs, in comparison with the average person having comparable training, skills, and abilities. The Court found that United did not regard the sisters as unable to be regional airline pilots or pilot instructors. Rather, United only believed that they were not qualified for the job of global airline pilot. After *Sutton et al v. United Airlines, Inc.*, spine professionals and others will need to evaluate the effectiveness and limitations of mitigating measures, such as prosthetic and orthopedic devices, and even self-correcting strategies.

#### ***Murphy v. United Parcel Service***

Murphy was a truck mechanic for United Parcel Service (UPS). He had high blood pressure, which when unmedicated measured approximately 250/160 mm Hg. According to his doctors, when Murphy took medication

for hypertension he was not limited in his activities. UPS required that their mechanics be certified to drive commercial motor vehicles in accordance with Department of Transportation (DOT) regulations. The DOT requires that drivers may not have high blood pressure that is likely to interfere with the safe operation of a commercial vehicle.<sup>22</sup>

UPS hired Murphy, although he was mistakenly granted certification by the DOT based on physicians' certifications that he met the standards. When UPS discovered the error, they required Murphy to be retested. During two retests, while medicated, Murphy's blood pressure was 160/102 mm Hg and 164/104 mm Hg, which exceeded DOT requirements. UPS then terminated Murphy because his blood pressure exceeded the DOT measures.

Murphy sued UPS, claiming that he was an individual with a disability covered by the ADA. The Court held that Murphy was not disabled for purposes of the ADA, because, following *Sutton et al v. United Airlines, Inc.*, his disability was mitigated by blood pressure medication in such a manner that he was not limited in a major life activity. Moreover, the Court concluded that Murphy was not regarded as disabled under the third prong of the definition. Murphy had worked as a mechanic before and after working for UPS. Therefore, Murphy was not limited in a class of jobs as shown by his work record, and UPS could not have regarded him as disabled for purposes of the ADA in not meeting the required DOT standards.

#### ***Albertson's, Inc. v. Kirkingburg***

Kirkingburg, a truck driver for Albertson's Grocery Stores, was monocular but was mistakenly certified as meeting the DOT standards requiring corrected distant visual acuity of at least 20/40 in each eye and binocular acuity of at least 20/40. After a physical examination on Kirkingburg's return from a leave of absence for an unrelated injury, a physician correctly assessed that Kirkingburg did not meet the applicable DOT standards. Independently of the standards, the DOT had implemented an experimental waiver program for drivers with deficient vision who had had recent commercial driving experience without incident. Kirkingburg applied for the waiver, but Albertson's fired him for failure to meet the DOT standard. Kirkingburg sued Albertson's, claiming discrimination under the ADA. He contended that under the ADA he was a qualified individual with a disability because he was able to meet the standards of a waiver program that the DOT had in place.

On initial review of the case, the federal district court concluded that Kirkingburg's brain had developed "self-correcting" mechanisms for coping with his visual impairment. The Court found that Kirkingburg was not an individual with a disability and that even if he were an individual with a disability, he would not have been qualified to perform the job in question. Interestingly, the Court noted that self-correcting mitigation, whether

conscious or unconscious, may be considered a mitigating measure in the same manner as artificial aids, medications, or other devices. As found in *Sutton et al v. United Airlines, Inc.*, and in *Murphy v. United Parcel Service*, Kirkingburg was found not disabled under the ADA because his impairment was mitigated to such an extent that he was not substantially limited in a major life activity such as working.<sup>1</sup>

As did not occur in the previous cases in the trilogy, the Court also addressed whether Kirkingburg was a “qualified” individual with a disability under the ADA. The Court reasoned that because the waiver program was experimental and was designed to collect data regarding the experiences of experienced drivers with visual acuity deficits, but not a change of the regulatory visual acuity standards, the waiver did not modify the basic DOT safety-related requirements. Therefore, Albertson’s was justified in firing Kirkingburg when he could not meet the DOT standard. The Court noted that when Congress passed the ADA it acknowledged that federal health and safety rules could limit ADA application, and that the ADA may not require a company to participate in voluntary safety experimental waivers.<sup>1,2,5</sup>

The cases in the Sutton trilogy, taken together, illustrate the ways in which spine professionals should be aware of changing definitions of disability under the ADA, and the interaction of the caselaw with regulations of the DOT, the Occupational Safety and Health Administration, or other regulations that affect workplace health and safety. Spine professionals also will need to assess the appropriateness of workplace accommodations. Complex assessments will involve the degree to which individuals (1) self-compensate or mitigate orthopedic impairments in certain major life activities such as working and (2) may be reasonably accommodated to work safely and productively in various settings.

#### ***Toyota Motor Manufacturing Kentucky, Inc. v. Williams***

Williams was an employee in Toyota’s car assembly plant in Kentucky, working an assembly line when tendinitis and carpal tunnel syndrome developed in her hands and arms from the use of pneumatic tools. She was transferred to a paint inspection position in the quality control section of the plant and worked in that position for 3 years, inspecting paint and wiping cars as they moved on the assembly line. Toyota expanded Williams’ job duties to include wiping down cars with an oil-soaked sponge attached to a block of wood, at a rate of one per minute. The job required her to keep her hands and arms at shoulder height for long periods of time, which caused her tendinitis to reoccur with worse symptoms and to spread to her neck and shoulders.

Williams requested reassignment back to her former position, which Toyota refused. Toyota terminated Williams, and she sued under the ADA for failure to accommodate and wrongful termination. The district court ruled for Toyota. On appeal, the U.S. Court of Appeals for the Sixth Circuit reversed the decision and remanded

the case back to the district court to determine whether Toyota had failed under the ADA to accommodate Williams.

The issues before the Supreme Court include whether Williams was an individual with a disability under the ADA; the district court found that Williams was not an individual with a disability because she was not limited in the major life activity of working. The outcome will turn on whether Williams is seen as disabled under the ADA because she was unable to perform manual tasks such as gripping tools and repetitive tasks with hands and arms at or above shoulder level for extended periods of time.<sup>29</sup> In other words, the Court must determine whether Williams was limited substantially in the class of jobs of assembly line work, and thereby disabled under the ADA. The Court also will address whether Williams can perform the essential functions of the job with a reasonable accommodation, in this case the accommodation of reassignment to another job because an expert health professional had testified that Williams was unable to work her present job.

#### ***U.S. Airways, Inc. v. Barnett***

Barnett, a U.S. Airways cargo loader, sustained a serious back injury on the job. Barnett returned from disability leave, but when he could not lift freight, he transferred to U.S. Airways’ mailroom under the seniority system. Barnett’s physician recommended that he avoid heavy lifting, excessive bending, and prolonged standing or sitting.<sup>30</sup>

It was determined that Barnett was able to perform the essential functions of a job in the mailroom on the swing shift. Barnett continued to work in the mailroom, when he learned that other employees planned to transfer to the mailroom under the seniority system, which would require him to return to work in the cargo area. He then requested in writing a reasonable accommodation under the ADA to allow him to remain in the mailroom. He did not receive a response to his request for 5 months, and then U.S. Airways placed Barnett on injury leave, removing him from the mailroom, with no discussion about his request for accommodation.

Barnett suggested accommodations for cargo area jobs, for instance, that he be provided with special cargo lifting equipment or that the job be restructured so that he would perform only office work in the warehouse. U.S. Airways did not respond until after Barnett filed an ADA lawsuit, and then denied the requests for accommodations. U.S. Airways informed Barnett that under the seniority system he could bid for jobs that he could do with his restrictions, but no such jobs were available to Barnett.<sup>30</sup>

The district court dismissed the ADA claims against U.S. Airways. On appeal, the Ninth Circuit Court of Appeals reversed the lower court on the issue of U.S. Airways’ failure to engage in the interactive process of accommodation. The appellate court reasoned that U.S. Airways failed to engage in a process to identify work-

place accommodations that might work for Barnett within the cargo area jobs or by reassignment. The Supreme Court reviewed *U.S. Airways, Inc. v. Barnett* as to whether the ADA requires U.S. Airways to assign a disabled employee to a different position as an accommodation, even though another employee is entitled to the position under the employer's seniority system.<sup>27</sup>

Whatever the outcome in *U.S. Airways, Inc. v. Barnett*, the case will spur spine professionals to evaluate employee workplace restrictions and capabilities, and evaluate accommodations as part of the ADA's interactive process. Assessment of reassignment as reasonable accommodation will be required; for instance, in circumstances where an employee is injured on the job, unable to perform a job, or denied accommodations to allow him or her to continue with a job. In light of the Sutton trilogy, these determinations will need to be made in the context of various mitigating measures.

## ■ Conclusions

Recent and pending ADA caselaw highlights the important and evolving role of spine professionals in the assessment and accommodation of workplace disability. Spine professionals will increasingly make such contributions as these to the complex dialogue about the composition, quality, and competitiveness of the American work force.<sup>13,21</sup>

1. What types of work skills will employees need for American employers to remain competitive in the United States and abroad, and how will they be assessed?
2. Will our increasingly diversified and aging work force include millions of persons with disabilities?
3. What will be the characteristics and qualifications of the workforce of persons with disabilities?
4. What types of job training, technology, and accommodations will be available to that workforce?
5. How will recent changes in American disability, welfare, and health care policy affect that workforce?

A primary way to assess these questions is through assessment of information regarding their impact on persons with disabilities and their employers.<sup>12,17,26</sup> Although researchers and spine professionals approach this question from distinct perspectives, employers, policy-makers, and disabled individuals will gain a more complete perspective about the effects of these employment policies if information is gathered using a range of approaches from a variety of sources.<sup>3</sup>

Last, it is worth emphasizing that spine professionals will continue to play an important role in the workplace accommodation process. In 2001, the Supreme Court decided the case *PGA Tour v. Martin*.<sup>23</sup> Although this case was an ADA Title III case, not focused on employment but on public accommodations, the Court's analysis of the concept and scope of reasonable accommodation will likely influence future ADA employment cases.

As was widely reported, Casey Martin, a professional golfer, has Klippel-Trenaunay-Weber Syndrome, a circulatory disorder, which renders him unable to walk for extended periods of time.<sup>20</sup> Martin requires a golf cart to move between shots to participate in golf. Martin requested the PGA allow him to use a golf cart in the third stage of the qualifying school after he successfully completed the first two stages using a golf cart. The PGA denied his request, and Martin sued under the ADA. The trial court ruled, and the Court of Appeals affirmed, that the PGA must allow Martin to use a cart in the school and in any competitions for which he qualified.

The Supreme Court addressed whether the PGA could deny Martin the use of a golf cart, as an ADA accommodation, because it would alter the nature of its tournaments.<sup>23</sup> The Court concluded that Martin should be allowed to use a golf cart during PGA-sponsored events because it is a reasonable accommodation. The Martin case highlights the need for professionals to address workplace accommodations in an individualized manner in ways that promote productivity, workplace health, and safety. Spine and other professionals increasingly should be aware of the evolving ADA when addressing disability in the workplace or on the golf course.

For additional information about ADA caselaw and related research, see The Law, Health Policy and Disability Center web site at [www.its.uiowa.edu/law](http://www.its.uiowa.edu/law). The Center provides a neutral forum, open to diverse opinion, for assessing the impact of related federal and local policies and laws. The Center serves as an interdisciplinary bridge between academics, policy makers, researchers, industry officials, community advocates, and consumers.<sup>15</sup>

## ■ Key Points

- Definition of disability under the ADA.
- Scope of ADA's reasonable accommodation requirement.
- Scope of job qualifications under the ADA.

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