

What is a disability?

What is a disability? There are definitions of disability. The simplest of which is that life is more difficult for someone because of impairment. Under law a disability is defined. It is defined under different laws and the definitions are highly technical. Is it obvious that a person with one arm is disabled under law? How about a blind person? Well, what about a person with depression, bi-polar condition, a facial disfigurement? What about a sprained ankle?

It is obvious that disability is an elastic concept. But disabled to work must be defined. And that is where the Courts have struggled.

Several years ago our Supreme Court narrowed the definition of the disabled under the ADA to the following: to be protected and the EEOC defines a protected disability as follows:

You must be a qualified individual with a disability (defined below) who is capable of doing a job with or without accommodations (this is the QUID Rule).

Your disability must substantially limit one or more major life activities (the definition of a QUID).

I recently Judged a student's Moot Court where the question of whether a person with Turret's Syndrome was "disabled" under law. This is one of the toughest questions facing all lawyers. The person argued that they were capable of doing the job, with reasonable accommodations, working from home. The pivotal question was whether the person was substantially limited in a major life activity.

Is the ability to get along with others a substantial life activity? Certainly we all know people who cannot even get along with themselves! Does that make them disabled? Our 1st Circuit Court has ruled that the ability to get along with others is too elastic a concept to define it as substantially limiting a major life activity. That was on the facts of a case of a person who had basically periodic depression. The Court left open the question of whether "communication" was a substantial life activity.

Substantial life activities include: breathing, sleeping, and walking. I lost a finding of disabled where the EEOC defined my client as not disabled as she was capable of driving; she was not capable of walking.

Next came the Fallon Ambulance case, and I cannot stress too highly how important this case is to a practitioner in the field of disability discrimination law, or anyone seeking the protections under law. The Court went far beyond its bounds and far beyond what the EEOC would ever rule: remember, a person must be 1. A QUID, and 2. Substantially limited in one or more major life activities.

In Fallon we have the following facts: a one armed EMT, who maintains that she is NOT disabled, and that her one arm does not in any way prevent her from doing any activity!

All power to her, and so the Court agreed. But, they found her disabled within the meaning of the ADA, they said that it is quite obvious that despite all bravery and attempts to overcome the most debilitating of disabilities, she was disabled as she only had one arm.

Here was a person that clearly did not fall within the ADA definition. She said she was not a QUID, she said she was not substantially limited. The Court gave her the remedies and protections provided by law.

Where does that leave us in New Hampshire? I don't I know, there is the practical and technical side. Let me give you a concrete case. A client who has depression. This is a disability, but she does not consider herself as disabled; she was out for months of hospitalization for her condition. She came back fighting. Only to be treated as a miserable specimen, something she does not want. Is she protected under the ADA? She is being denied work and benefits, as the employer perceives her as disabled.

She is a QUID in the sense that she is capable of performing her job with or without reasonable accommodations.

She is not disabled, as that law is so narrowly defined before Fallon. She is in no way limited in any major life activity, as long as she takes her medications.

And so it goes, deformities can be covered, false limbs used, drugs utilized.... what did our Court teach us? That only the physically obvious will be recognized? As much as I like the decision for its strength and analysis, I wonder at its core reasoning and what the Supreme Court has done to take the guts out of a law that was meant to say:

Do you have the ability to do the job with maybe some modifications that are not so difficult?

Does your disability make your ability to get and maintain work nearly impossible, and if you are discriminated against because you have a disability, how can we help you?

And that to me is the ADA.