

ADA PLAINTIFF COULD NOT PURSUE CLAIMS AFTER SSDI STATEMENT

CAPTION: In *Johnson v. ExxonMobil Corporation*, 426 F.3d 887 (CA 7 2005), a plaintiff's claim that he was unable to work because of his disability on his SSDI application judicially estopped both his ADA and ADEA claims.

Gordon Johnson worked at ExxonMobil's Joliet, Illinois refinery as an Administrative Line Supervisor. ExxonMobil had employed Johnson for over 28 years. Johnson suffered from epilepsy and had had his first epileptic seizure in 1973. He suffered from frequent seizures despite treatment with anti-seizure medication. His seizure disorder as well as the medication he took to control it affected his judgment, memory and his ability to concentrate; his medication also made him drowsy and incoherent. His disorder prohibited him from driving a motor vehicle. Because of the restrictions placed on his life activities by his disorder and the medications used to treat the seizure disorder, Johnson claimed that he was an individual with a disability under the Americans with Disabilities Act.

During his employment with ExxonMobil, Johnson claimed that his supervisor harassed him on a regular basis because of his disability and assigned his job duties to younger employees. Johnson also contended that his supervisor would not provide him with the training necessary to perform his job duties and advance in his career with ExxonMobil but would provide such training to younger employees.

On March 11, 2002, Johnson made known his complaints of age and disability discrimination to Human Resources at ExxonMobil. Three days later, ExxonMobil, through its managers, requested that Johnson sign a Notice of Resignation and voluntarily resign his employment with the company. Johnson thought otherwise of the request and refused to sign the document as he had just one and a half years until retirement. Left with no other choice to bring about the separation, ExxonMobil terminated Johnson's employment.

ExxonMobil's reason for terminating Johnson was that he had used its corporate credit card for personal purchases on several occasions and that this was against company policy. ExxonMobil claimed that Johnson was made aware of the policy at a business practice review training course and that Johnson had signed a "compliance statement" indicating that he understood the policies reviewed at the course. ExxonMobil also contended that Johnson had been verbally counseled concerning his inappropriate credit card use on at least two occasions preceding his termination.

Johnson responded that he was told no such thing and that he paid for personal expenses with personal funds. He also pointed out several younger employees who did the same thing but were not terminated.

In July 2002, Johnson filed a complaint in federal district court claiming age and disability discrimination. Thirteen months later, he filed for SSDI benefits and indicated on his application that he became "unable to work because of [his] disabling condition"

as of March 14, 2002 (which coincided with his termination date). The Social Security Administration later denied his application.

After a period for discovery in the federal lawsuit, ExxonMobil filed a motion for summary judgment contending that Johnson's SSDI application judicially estopped him from claiming that he was able to perform his job with or without reasonable accommodation as of the date of his termination. Johnson responded that his condition worsened shortly after his termination so that he could not work, that the application was completed more than a year after his termination and that he had not filled out the application himself. The district court denied the motion for summary judgment finding that Johnson had not received any SSDI benefits.

However, in October 2003, the Social Security Administration reversed its initial denial of Johnson's benefits application and awarded him benefits retroactive to his last day of employment with ExxonMobil.

Upon learning this, ExxonMobil immediately filed a motion for reconsideration of its summary judgment motion. This time the district court granted summary judgment as to the ADA claim, holding that Johnson did not sufficiently explain his inconsistent statements.

In January 2004, ExxonMobil filed yet another summary judgment motion arguing that Johnson could not recover damages on the ADEA claim and therefore proceeding with trial was futile. The district court denied the motion. Undaunted, ExxonMobil brought the issue up again at a jury instruction conference three days prior to trial. The court requested additional authority supporting the argument. ExxonMobil provided a letter and argued that Johnson could not establish a prima facie case of age discrimination because he had admitted that he could not perform his job at the level reasonably expected of him (a prima facie element of an ADEA claim).

On the day of trial, prior to jury selection, the court asked Johnson's attorney what evidence would be presented to explain the inconsistency between his allegation that he could perform the job at the level reasonably expected of him (his ADEA claim) and that he was unable to perform the job (his SSDI claim). Johnson's attorney argued that Johnson's recollection of the date of his total disability was inaccurate. The court granted summary judgment holding that Johnson was judicially estopped from proving an element of his ADEA claim. Johnson appealed the decisions to the Seventh Circuit Court of Appeals.

The Court of Appeals began its analysis with a plaintiff's prima facie case under the ADA: a plaintiff must show that, "with or without reasonable accommodation," he can "perform the essential functions of the employment position that [he] holds." [42 U.S.C. § 12111\(8\)](#). Johnson's claim on his SSDI application that he was unable to work because of his disability seemed to directly contradict this element of the ADA claim. Exxon contended that Johnson's ADA claim was therefore judicially estopped.

The Court turned to a discussion of the doctrine of judicial estoppel:

The doctrine of judicial estoppel prevents a party from adopting a position in a legal proceeding contrary to a position successfully argued in an earlier legal proceeding. Judicial estoppel is “an equitable concept providing that a party who prevails on one ground in a lawsuit may not ... in another lawsuit repudiate that ground.” [United States v. Hook, 195 F.3d 299, 306 \(7th Cir.1999\)](#) (quoting [Ogden Martin Systems of Indianapolis v. Whiting Corp., Ogden Martin Systems of Indianapolis v. Whiting Corp., 179 F.3d 523, 526 \(7th Cir.1999\)](#) (internal quotation marks omitted)). The purpose of this doctrine is to protect the integrity of the judicial process. [New Hampshire v. Maine, 532 U.S. 742, 749, 121 S.Ct. 1808, 149 L.Ed.2d 968 \(2001\)](#).

Statements by applicants for SSDI benefits do not always judicially estop their ADA claims:

In [Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 119 S.Ct. 1597, 143 L.Ed.2d 966 \(1999\)](#), the Court held that, “[D]espite the appearance of conflict that arises from the language of the two statutes, the two claims do not inherently conflict to the point where courts should apply a special negative presumption.... That is because there are too many situations in which an SSDI claim and an ADA claim can comfortably exist side by side.” [Cleveland, 526 U.S. at 802-03, 119 S.Ct. 1597](#). This is so, the Court reasoned, because the ADA allows for “reasonable accommodation” of the disability, while the Social Security Administration does not when determining SSDI eligibility. [Id. at 803, 119 S.Ct. 1597](#). As this Court noted in [Feldman v. American Memorial Life Insurance Co., 196 F.3d 783 \(7th Cir.1999\)](#), “Sufficient divergence exists between the definitions of ‘disability’ under the ADA and SSDI that, in some circumstances, an individual can claim truthfully both that she is unable ‘to engage in any substantial gainful activity’ under the SSDI but is also a ‘qualified individual with a disability’ under the ADA.” [Feldman, 196 F.3d at 790](#).

Nevertheless, summary judgment is appropriate when a plaintiff “fails to make a sufficient showing to establish the existence of an element essential to [her] case on which [she] will bear the burden of proof at trial.” ... And a plaintiff’s sworn assertion in an application for disability benefits that she is, for example, “unable to work” will appear to negate an essential element of her ADA case[-that she can perform the essential functions of her job]-at least if she does not offer a sufficient explanation. [Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 119 S.Ct. 1597, 143 L.Ed.2d 966 \(1999\)](#).

According to the appeals court, Johnson did not sufficiently explain the contradiction but merely argued that he was mistaken in his SSDI application as to when he became unable to work as a result of his disability. The court also noted that Johnson had failed to take

any steps to correct his mistake on the dates and did not repay any of the SSDI benefits that he had received. Johnson needed to provide a sufficient explanation as to why his position on the SSDI application did not contradict his position that he was able to do the job for purposes of his ADA claim. He failed to do that and the appeals court affirmed summary judgment on that claim.

As to the ADEA claim, the appeals court noted that Johnson's burden was even more difficult because the ADEA does not allow for the use of reasonable accommodation when demonstrating that a plaintiff could perform his job duties satisfactorily. The court went on to also affirm the summary judgment ruling on the ADEA claim as well.