



NEWS REPORT

Date: 8 July 2009
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Title: UK Highest Court Clarifies the Width of the Definition of Disability Applied in UK Discrimination Legislation
Country: UK

Context

Issue at stake: Whether individuals whose disability were recurring, intermittent or had been successfully controlled could be classified as ‘disabled’ if their disability did not affect them at the time that a claim for reasonable accommodation arose.

Ground of discrimination: Disability

Source: House of Lords Judicial Committee (UK’s highest court) decision.

Field: Employment

Legislative provisions: Disability Discrimination Act 1995

Content:

Case: *SCA Packing v Boyle* [2009] UKHL 37. The case was brought by Elizabeth Boyle who alleged she had been discriminated against by her former employer of 32 years, SCA Packaging. She had developed vocal nodules which made it very difficult for her to speak. She managed to minimise successfully the effect of these nodules with a strict regime of treatment, which included specialist speech therapy and constant efforts to keep speaking quietly. Mrs Boyle began a legal action under the Disability Discrimination Act 1995 (the ‘DDA’) nine years ago in 2001 after her employer developed plans to remove partitions near her desk which had shielded her workspace from a noisy environment and thus made it easier for her to keep her voice quiet. Both Mrs Boyle and her surgeon opposed this step, and finally she argued that the employer had failed to make a reasonable adjustment. However, her employer argued that Mrs Boyle was no longer disabled, as her condition had responded well to treatment and no longer had an adverse effect on her life. Mrs Boyle responded by arguing that she had to maintain her treatment to prevent the disability returning.

The Court of Appeal in Northern Ireland held in favour of Mrs Boyle in October 2008 after long procedural delays, on the basis that the definition of disability contained in the DDA covered disabilities which were likely to recur, as they could be said to affect the day-to-day activities of a person who suffered from such impairments. However, case-law from English courts and tribunals had adopted a different position, and the employer appealed to the House of Lords. The Equality and Human Rights Commission intervened in support of Mrs Boyle and to argue for the approach favoured by the Court of Appeal in Northern Ireland.

Decision of the Court: The House of Lords agreed with the Court of Appeal and held that people with a physical or mental condition which varied in its severity over time should still be termed disabled if it was likely their condition would become substantial again in the future. The House of Lords also expressed serious concern about the length of time it had taken to resolve this preliminary issue.

Internet link source and additional information:

<http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090701/sca-1.htm> (last accessed 7th July 2009).