

CHAPTER 3

LIMITATION OF LIFE ACTIVITIES

An impairment, whether it is physical or mental, does not rise to the level of a disability under the Rehabilitation Act or the ADA unless the impairment substantially limits one or more major life activities. See 29 USC 706(8)(B) [Research Supp. A]; 42 USC 12111(8) [Research Supp. B]; 29 CFR 1630.2(m) [Research Supp. D]. The Rehabilitation Act and the ADA were not intended to cover minor or transitory conditions. See, e.g., *Colwell v. Suffolk County Police Department*, 158 F.3d 635, 642 (2nd Cir. 1998); quoting *Reeves v. Johnson Controls World Services, Inc.*, 140 F.3d 144, 152 (2nd Cir. 1998) (“The need to identify a major life activity that is affected by the plaintiff’s impairment plays an important role in ensuring that only significant impairments will enjoy the protection of the ADA.”); see also *Pryor v. Trane Company*, 138 F.3d 1024 (5th Cir. 1998); *Ryan v. Grae & Rybicki*, 135 F.3d 867, 870 (2nd Cir. 1998) (“[i]n assessing whether a plaintiff has a disability, courts have been careful to distinguish impairments which merely affect major life activities from those that substantially limit those activities.”). The nature, severity, and duration of the impairment must be considered in determining whether an individual meets the criteria for having a disability. The inquiry into whether an individual meets those criteria can be broken down into two questions:

- Does the physical or mental impairment impact one or more major life activities?
- Does the physical or mental impairment substantially limit the activity or activities?

The question of whether the impairment affects a major life activity concerns the nature of the impairment, and the question of whether a life activity is substantially limited concerns the severity and duration of the impairment.

The focus for the first question is whether the activity affected is a major life activity for all or a significant number of people. The focus for the second question is the effect of the impairment on the individual. In its *Compliance Manual*, § 902.4(a) [Research Supp. E], the Commission explains:

When analyzing the degree of limitation, one must remember that the determination of whether an impairment substantially limits a major life activity can be made only with reference to a specific individual. The issue is whether an impairment substantially limits any of the major

life activities of the person in question, not whether the impairment is substantially limiting in general. Thus, one must consider the extent to which an impairment restricts a specific individual's activities and the duration of that individual's impairment.

The focus on the individual is one of the major ways in which Congress targeted the respective pieces of legislation to reach the individuals whom it intended to protect. Not necessarily all individuals with a particular impairment fall within the coverage of the Rehabilitation Act and the ADA, and not necessarily all individuals with a particular impairment need the legal protections provided by the legislation. The focus on the individual also makes the Rehabilitation Act and the ADA exceptionally difficult to interpret and apply in a given case.

In most cases where there is a dispute about whether an impairment rises to the level of a disability, the dispute is not whether the impairment affects a major life activity. The dispute is about whether the impairment places a substantial limitation on a major life activity. If an individual claims to have a disability because osteoarthritis limits his or her ability to walk, the question will not be whether walking constitutes a major life activity. Clearly, it does. The question, if any, will be whether the particular limitation for a given individual amounts to a substantial limitation on the major life activity of walking.

Nonetheless, the discussion here begins with delineating the major life activities simply because if the activity the individual claims is limited is not a major life activity, there is no need to move on to the more difficult question of whether the individual is substantially limited in performing that activity.

I. MAJOR LIFE ACTIVITIES

An individual only has a disability if his or her impairment substantially limits one or more major life activities, but neither the Rehabilitation Act nor the ADA defines a major life activity. The Commission defines major life activities at 29 CFR 1630.2(i):

Major Life Activities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The EEOC adopted its regulation from DHHS regulations originally promulgated under Section 504 of the Rehabilitation Act. *See* 29 CFR 1630.2(i) [Research Supp. D]. The list is intended to be representative of major life activities and not exhaustive.

“Major life activities” are those basic activities that the average person in the general population can perform with little or no difficulty. Major life

activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. For example, other major life activities include, but are not limited to, sitting, standing, lifting, reaching. See Senate Report at 22; House Labor Report at 52; House Judiciary Report at 28.

Id. In other words, “[s]pecific activities that are similar to the listed activities in terms of their impact on an individual’s functioning as compared to the average person, also may be major life activities... Mental and emotional processes such as thinking, concentrating, and interacting with others are other examples of major life activities.” *Compliance Manual*, § 902.3(b) [Research Supp. E].

When a complainant alleges that the major life activity affected is one listed in the regulation, he is not also required to show that the impairment limits his employability generally. See *In re Veterans Administration*, 05840125 (1987). But the complainant cannot survive on a simple allegation even when the major life activity he claims is substantially limited is one listed in the regulations. The complainant must present specific evidence of the effect of the impairment on the claimed life activity in order to demonstrate a substantial limitation. See *Zeigler v. Postmaster General*, 01930854 (1994).

A. DEFINING MAJOR LIFE ACTIVITIES

The Commission notes in its *Compliance Manual*, § 902.3(a) [Research Supp. E], that “[t]here has been little controversy about what constitutes a major life activity.” In some respects, it is true that what constitutes a major life activity has not been a subject of great dispute in the courts or between the courts and the Commission. When it comes to activities such as seeing, hearing, speaking, breathing, and walking, there is little room, if any, for argument over the importance of those activities to the average person. Still, the Commission’s comment ignores a fundamental dispute in the Supreme Court about whether a major life activity is defined by its comparative importance on the scale of life’s activities, or by the frequency and extent of the activity compared to other life activities. The Commission’s comment also ignores some debate in the lower courts as to whether functions, such as lifting or concentrating, are life activities or merely functions that are necessary to life activities such as working and thinking. That debate, in turn, underscores the importance of properly defining the major life activity that is purportedly affected by a physical or mental impairment. Before discussing specific major life activities, then, it is worth discussing two Supreme Court cases that included significant discussions of what constitutes a major life activity.

In *Bragdon v. Abbott*, 524 U.S. 624, 118 S. Ct. 2196, 141 L. Ed.2d 540 (1998), the majority and the dissent reached different conclusions on whether reproduction

is a major life activity. Justice Kennedy, writing for the majority, focused on the comparative importance of reproduction as a life activity in concluding that it was a major life activity within the ambit of the ADA. Rejecting an argument that an activity must have a “public, economic, or daily character” in order to be a major life activity, Justice Kennedy wrote in *Bragdon*, at 524 U.S. 637–38, 118 S. Ct. at 2204–05,:

The statute is not operative, and the definition not satisfied, unless the impairment affects a major life activity. Respondent’s claim throughout this case has been that the HIV infection placed a substantial limitation on her ability to reproduce and to bear children. App. 14; 912 F. Supp., at 586, 107 F.3d, at 939. Given the pervasive, and invariably fatal, course of the disease, its effect on major life activities of many sorts might have been relevant to our inquiry. Respondent and a number of amici make arguments about HIV’s profound impact on almost every phase of the infected person’s life. See Brief for Respondent Sidney Abbott 24–27; Brief for American Medical Association as *Amicus Curiae* 20; Brief for Infectious Diseases Society of America *et al.* as *Amici Curiae* 7–11. In light of these submissions, it may seem legalistic to circumscribe our discussion to the activity of reproduction. We have little doubt that had different parties brought the suit they would have maintained that an HIV infection imposes substantial limitations on other major life activities.

From the outset, however, the case has been treated as one in which reproduction was the major life activity limited by the impairment. It is our practice to decide cases on the grounds raised and considered in the Court of Appeals and included in the question on which we granted certiorari. See, e.g., *Blessing v. Freestone*, 520 U.S. 329, 340, n. 3, 117 S. Ct. 1353, 1359, n. 3, 137 L. Ed.2d 569 (1997) (citing this Court’s Rule 14.1(a)); *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 760, 115 S. Ct. 2440, 2445–2446, 132 L. Ed.2d 650 (1995). We ask, then, whether reproduction is a major life activity.

We have little difficulty concluding that it is. As the Court of Appeals held, “[t]he plain meaning of the word ‘major’ denotes comparative importance” and “suggest[s] that the touchstone for determining an activity’s inclusion under the statutory rubric is its significance.” 107 F.3d, at 939, 940. Reproduction falls well within the phrase “major life activity.” Reproduction and the sexual dynamics surrounding it are central to the life process itself.

While petitioner concedes the importance of reproduction, he claims that Congress intended the ADA only to cover those aspects of a person’s life which have a public, economic, or daily character. Brief for Petitioner 14, 28, 30, 31; see also *id.*, at 36–37 (citing *Krauel v. Iowa Methodist Medical Center*,

95 F.3d 674, 677 (C.A.8 1996)). The argument founders on the statutory language. Nothing in the definition suggests that activities without a public, economic, or daily dimension may somehow be regarded as so unimportant or insignificant as to fall outside the meaning of the word “major.” The breadth of the term confounds the attempt to limit its construction in this manner.

As we have noted, the ADA must be construed to be consistent with regulations issued to implement the Rehabilitation Act. See § 42 USC 12201(a). Rather than enunciating a general principle for determining what is and is not a major life activity, the Rehabilitation Act regulations instead provide a representative list, defining the term to include “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” § 45 CFR 84.3(j)(2)(ii) (1997); § 28 CFR 41.31(b)(2) (1997). As the use of the term “such as” confirms, the list is illustrative, not exhaustive.

These regulations are contrary to petitioner’s attempt to limit the meaning of the term “major” to public activities. The inclusion of activities such as caring for one’s self and performing manual tasks belies the suggestion that a task must have a public or economic character in order to be a major life activity for purposes of the ADA. On the contrary, the Rehabilitation Act regulations support the inclusion of reproduction as a major life activity, since reproduction could not be regarded as any less important than working and learning. Petitioner advances no credible basis for confining major life activities to those with a public, economic, or daily aspect. In the absence of any reason to reach a contrary conclusion, we agree with the Court of Appeals’ determination that reproduction is a major life activity for the purposes of the ADA.

Chief Justice Rehnquist was joined by Justices Scalia and Thomas in arguing that the majority had misconstrued the significance of the word “major” in describing the life activities protected by the ADA. The dissent in *Bragdon*, 524 U.S. at 659–60, 118 S. Ct. at 2215, while agreeing that a major life activity need not have a public or economic character, noted:

...Unfortunately, the ADA does not define the phrase “major life activities.” But the Act does incorporate by reference a list of such activities contained in regulations issued under the Rehabilitation Act. § 42 USC 12201(a); § 45 CFR 84.3(j)(2)(ii) (1997). The Court correctly recognizes that this list of major life activities “is illustrative, not exhaustive,” *ante*, at 2205–2206, but then makes no attempt to demonstrate that reproduction is a major life activity in the same sense that “caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working” are.