

OREGON LAW UPDATE

Lack of Interpersonal Skills and the ADA

From the desk of John Kreutzer: Is a person who lacks interpersonal skills considered to have a disability under the Americans with Disabilities Act?

Claims Pointer: No. The lack of interpersonal skills attributable to ADHD and the inability to get along with coworkers does not amount to substantial impairment of the ability to engage in the major life activities of working or interacting with others.

case in point...

Weaving v. City of Hillsboro, 2014 WL3973411, --- F.3d --- (9th Cir. 2014).

Matthew Weaving was diagnosed with attention deficit hyperactivity disorder (“ADHD”) when he was six years old. Though prescribed medication, Mr. Weaving continued to experience interpersonal problems throughout his childhood and adolescence. In 1995 Mr. Weaving joined the Beaverton Police Department (“BPD”) as a police officer. Mr. Weaving received mixed performance reviews during his employment at BPD. His evaluations with the BPD described him as aloof, abrasive, too outspoken at inappropriate times, and some of Mr. Weaving’s supervisors noted that he had difficulty working in a team environment. By contrast, the evaluations also reflected that Mr. Weaving worked well with coworkers, was friendly, helpful, and hard working.

In 2006 Mr. Weaving began working for the Hillsboro Police Department (“HPD”). During the first year with the HPD, Mr. Weaving received positive feedback about his work with the HPD and working with others in the Department. In 2007, Mr. Weaving was promoted to sergeant while still working for the HPD. In an evaluation by Mr. Weaving’s Lieutenant for the period from May 2007 through April 2008, Mr. Weaving received mixed reviews. The evaluation stated that Mr. Weaving was professional toward the public and displayed empathy toward others; however, he was seen as “arrogant” toward other police officers.

Mr. Weaving’s interpersonal difficulties continued after his 2008 evaluation. Subordinate officers continued to complain about Mr. Weaving being “demeaning” and “intimidating.” A grievance was filed against Mr. Weaving in April 2009 for verbally reprimanding an officer over the open radio. Mr. Weaving was placed on paid administrative leave pending investigation of the grievance. While on leave, Mr. Weaving was diagnosed with adult ADHD. Mr. Weaving wrote a letter to the

human resources manager of the HPD informing her of the diagnosis and requested that he be reasonably accommodated for his condition. Approximately one month later, the HPD concluded its investigation into the grievance filed against Mr. Weaving. The memorandum summarizing the findings of the investigation stated in part: “In the short time Weaving has been employed at HPD, he has demonstrated time and again unacceptable interpersonal communication that suggests he does not possess adequate emotional intelligence to successfully work in a team environment, much less lead a team of police officers.” Based on recommendations in the report, the City conducted an independent medical evaluation on Mr. Weaving to evaluate his fitness for duty. Two doctors found Mr. Weaving fit for duty despite his ADHD diagnosis. After a hearing, the City ultimately terminated Mr. Weaving in December 2009.

Mr. Weaving sued the City under the Americans with Disabilities Act (“ADA”), alleging: (1) the City fired him because he had an impairment that limited his ability to work and interact with others; and (2) the City fired him because it regarded him as disabled. At trial, the jury returned a general verdict for Mr. Weaving, finding that he was disabled and that the City had discharged him because of his disability. The Ninth Circuit reversed, holding that, based on the evidence presented, the jury could not have found Mr. Weaving disabled under the ADA.

The ADA prohibits employers from discriminating against qualified individuals on the basis of a disability. 42 U.S.C. § 12112. A “disability” is a physical or mental impairment that substantially limits one or more major life activities of an individual. 42 U.S.C. § 12102(1). The current regulations indicate that a major life activity includes communicating, interacting with others, and working. 29 C.F.R. § 1630.2(j)(1)(i). An individual may establish coverage under the ADA based on an actual impairment, a record of having an impairment, or being regarded as having an



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impairment. Here, Mr. Weaving argued that he was substantially limited in major life activities of working and interacting with others.

After first concluding that Mr. Weaving's ADHD did not substantially limit his ability to work, the court next turned to Mr. Weaving's argument that his ADHD substantially limited his ability to interact with others. The court discussed two prior cases where it found "interacting with others" to be a major life activity. In *McAlindin v. County of San Diego*, 192 F.3d 1226 (9th Cir. 1999), the plaintiff suffered from panic attacks whenever plaintiff was faced with the possibility of having to interact with others. The attacks were so severe the plaintiff was housebound for at least twenty hours per day. The court found this to be enough evidence to warrant a finding that plaintiff had a disability covered under the ADA. The court was careful to note in *McAlindin* that in the context of plaintiff's ability to interact with others, the plaintiff must show he or she suffered from severe problems, for example, consistently high levels of hostility, social withdrawal, or failure to communicate when necessary.

In *Head v. Glacier Northwest, Inc.*, 413 F.3d 1053 (9th Cir. 2005), the court held that a plaintiff who avoided large crowds, whether it be family or the public, and who did not leave the house for weeks after losing his job, was sufficient evidence to show he suffered from a disability under the ADA. In these two cases, plaintiffs' issues were debilitating and both plaintiffs were essentially housebound and barely functional as a result of their "disability".

By contrast, the court concluded, Mr. Weaving's ADHD may have limited his ability to get along with others, but it did not substantially limit his ability to interact with others. Mr. Weaving did not present evidence showing he was housebound and suffered severe panic attacks whenever he had to interact with others. The court found that Mr. Weaving was able to engage in normal social interactions and get along with his superiors. The issues arose when he dealt with his peers and subordinates. Mere trouble of getting along with certain others does not render Mr. Weaving disabled under the ADA. Thus, the court concluded that no reasonable jury could have found Mr. Weaving disabled under the ADA and his ADHD did not substantially limit either his ability to work or to interact with others.



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