



### Two January 2002 Supreme Court Rulings: **Toyota v. Williams & EEOC v. Waffle House**

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In *Williams v. Toyota* (2000), the 6th Circuit favored the plaintiff's claim that carpal tunnel syndrome substantially interfered with her major life activity of performing *manual tasks*. In *EEOC v. Waffle House* (1999), the 4th Circuit favored the employer's claim that an employee's prior agreement to binding arbitration precluded *victim-specific relief* in an EEOC-sponsored ADA lawsuit. The Supreme Court overturned both rulings, unanimously in *Toyota* (January 8, 2002) and 6–3 in *Waffle House* (January 15, 2002). Both cases were previewed in this column in July 2001.

#### **Toyota v. Williams**

The term I used in previewing *Toyota v. Williams* (2002) was “transparent.” I felt the Supreme Court would interpret the 6th Circuit ruling as an attempt to circumvent established precedents when *working* is the substantially limited *major life activity*. In prior cases, courts routinely obeyed an EEOC regulation requiring exclusion from a broad range of jobs when working is the targeted major life activity. Indeed, the 6th Circuit did so in *McKay v. Toyota* (1997), a case, like the present one, that involved carpal tunnel syndrome. In *McKay*, the 6th Circuit obeyed the EEOC regulation and ruled that the plaintiff was not substantially limited with respect to working because her educational background qualified her for various higher level jobs other than the one in question.

More recently, in *Sutton v. United Air Lines* (1999), Justice O'Connor questioned the EEOC's authority to even define *being disabled*<sup>1</sup> within the meaning of the ADA. O'Connor further questioned whether working itself is a valid major life activity in Title I of the ADA. Or as stated by O'Connor:

Because parties accept that the term “major life activities” includes working, we do not determine the validity of the cited regulations.

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<sup>1</sup>Congress authorized EEOC regulations for only Title I of the ADA (on Employment). Since the definition of “being disabled” applies to all five ADA Titles, O'Connor opined that the EEOC did not have congressional authority to regulate any aspect of that definition.

We note, however, that there may be some conceptual difficulty in defining “major life activities” to include work, for it seems “to argue in a circle to say that if one is excluded...that the exclusion constitutes an impairment, when the question you’re asking is, whether the exclusion itself is by reason of handicap.”

Accordingly, I expected that working as a major life activity would be addressed at some future time and that this (*Toyota v. Williams*) was the time. I thought the Supreme Court would view “manual tasks” as a surrogate for “working” and rule that neither manual tasks nor working are major life activities for Title I of the ADA. But, to paraphrase the Hertz commercials, that’s not exactly what happened.

### ***The Lower Court Rulings***

This was the third dance for Ella Williams and Toyota. In 1990, she took a job requiring use of pneumatic tools. This caused Williams much pain and her physician ordered work restrictions. Williams performed lighter duties for 2 years before filing for Workers Compensation. That claim was settled and she returned to work only to later file an ADA claim (that was also settled). After returning to work for a third time in 1993, Williams joined a work team responsible for performing four major job tasks. For whatever reasons, she performed only the first two tasks, and did so without pain. Then, in 1996, Toyota mandated that all team members rotate through all four job tasks. Unfortunately for Williams, tasks 3 and 4 caused her significant pain. As a result, her physician ordered a no-work restriction and Toyota fired her for poor attendance.

At trial, Williams claimed she was substantially limited in six major life activities, including: manual tasks, housework, gardening, playing with her children, lifting, and working. The district court ruled that housework, gardening, and playing with children are not major life activities and that Williams was not substantially limited with respect to either lifting or working. Critically, the district court also ruled that Williams’ claim of being substantially limited in manual tasks was inherently contradicted by her ability to perform two of the four job tasks.

The 6th Circuit ruled that in order to be substantially limited in performing manual tasks, Williams had to prove substantial interference with “a class of manual activities affecting the ability to perform tasks at work.” The 6th Circuit then reversed the district court, ruling that Williams was unable to perform tasks associated with assembly line, manual product handling, and manual building trade jobs that required tool gripping and repetitive motion with hands and arms extended at or above shoulder level for extended time periods. This part of the ruling suggested (to me) that “manual tasks” were merely surrogates for “working” itself.

## *The Supreme Court Ruling*

The Supreme Court expressed no opinion on “working, lifting, or other arguments for disability status,” thus leaving for another day the question of whether *working* can ever be a major life activity in an employment claim. Instead, the focus was on (a) manual tasks as a major life activity and (b) the criteria for substantial limitations in this domain.

On the first issue, the Supreme Court chose a strange solution. Even though manual tasks are cited in the EEOC regulations, the Court eschewed a ruling (implied in *Sutton*) on the validity the EEOC’s authority to define “being disabled.” Instead, the Court deferred to the original 1977 Department of Health, Education and Welfare (or HEW)<sup>2</sup> regulations for the Rehabilitation Act of 1973. The logic for doing so was statutory language within the ADA that states:

Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973...or the regulations issued by federal agencies pursuant to such title.

And, as fate would have it, the HEW regulations contain examples of major life activities that (in the words of Justice O’Connor) include “walking, seeing, hearing, and, as relevant here, performing manual tasks.”

Having taken an obscure route to affirm that manual tasks are a major life activity, the Court addressed the second issue—the criteria for being substantially limited in this domain. The Court saw no statutory or regulatory guidance and decided to provide it. According to Justice O’Connor:

Nothing in the text of the Act, our previous opinions, or the regulations suggests that a class-based framework should apply outside the context of the major life activity of working. While the Court of Appeals in this case addressed the different major life activity of performing manual tasks, its analysis circumvented *Sutton* by focusing on respondent’s inability to perform manual tasks associated only with her job. This was error. When addressing the major life activity of performing manual tasks, the central inquiry must be whether the claimant is unable to perform a variety of tasks *central to most people’s daily lives*, not whether the claimant is unable to perform the tasks associated with her specific job. Otherwise, *Sutton’s* restriction on claims of disability based on substantial limitation in working will be rendered meaningless because an inability to perform a specific job always can be recast as an inability to perform a class of tasks associated with that specific job [italics added by author].

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<sup>2</sup>The HEW ultimately became Health and Human Services (or HHS)

In short, O'Connor questioned whether working is a valid major life activity in *Sutton v. United Airlines* (1999), but did not rule on that issue either there or in the present case. However, O'Connor did rule that the "class-based framework" used by the 6th Circuit applies *only* to working and not to manual tasks, thus applying the logic from the EEOC regulation she objected to in *Sutton*. Of course, the end result was the same from Ella Williams's perspective, since the ruling means substantial limitations for manual tasks implicates only tasks that are "central to daily life." Examples of such tasks include household chores, bathing, and brushing teeth. Unfortunately for Williams, these are all tasks that she could admittedly perform.

### **EEOC v. Waffle House**

In previewing *EEOC v. Waffle House*, (1999) I felt it would be remembered as the climactic sequel to *Gilmer v. Interstate* (1991) and *Circuit City v. Adams* (2001). I also felt the ruling could go either way (i.e., it was not a "slam dunk"). Off the record, I thought that no matter who won, the decision would be 5-4. Furthermore, to win this case, I thought the EEOC needed a defection from one of the five justices in the *Circuit City* majority and that the most likely candidate from that group was Justice O'Connor. The major surprise (at least to me) was that both O'Connor and Kennedy defected (joining Breyer, Ginsburg, Souter & Stevens), leaving Rehnquist, Scalia, and Thomas on the losing end of a 6-3 decision.

#### ***The Gilmer and Circuit City Rulings***

Robert Gilmer, agreed, as a condition of his original employment (as a securities dealer) to arbitrate any future "dispute, claim, or controversy" involving himself and his employer. When fired at age 62, Gilmer filed an Age Discrimination (or ADEA) claim with the EEOC. The Supreme Court, interpreting the Federal Arbitration Act of 1925 (or FAA), ruled that Gilmer's original binding arbitration agreement applies to employment contracts and Gilmer lost his private right to sue in federal court. The ruling in *Circuit City v. Adams* (2001), though important in its own right, served primarily to generalize the *Gilmer* ruling (on federal employment claims) to state employment claims.

The *Gilmer* ruling unleashed a rash of binding arbitration agreements. The EEOC, in turn, took a strong stance against these agreements stating, in Policy Order 915.002 (1997) that:

An increasing number of employers are requiring as a condition of employment that applicants and employees give up their right to pursue employment discrimination claims in court and agree to resolve disputes through binding arbitration. These agreements may be presented in the form of an employment contract or be included in an employee handbook or elsewhere. Some employers have even

included such agreements in employment applications. ...The Commission is not unmindful of the case law enforcing specific mandatory arbitration agreements, in particular, the Supreme Court's decision in [*Gilmer v. Interstate*, 1991]...Nonetheless, for the reasons stated herein, the Commission believes that such agreements are inconsistent with civil rights laws.

The Policy Order contains various reasons why the EEOC will vigorously oppose mandatory arbitration agreements, and its prosecution of the *Waffle House* case illustrates that resolve. Critically, neither *Gilmer* nor *Circuit City* precluded EEOC sponsored lawsuits, since the EEOC has independent statutory authority. Indeed, in *Gilmer*, the Supreme Court ruled that the EEOC may "bring actions seeking independent classwide and equitable relief." The question addressed in *Waffle House*, therefore, is the scope of that relief.

### *The Waffle House Ruling*

In his employment application, Eric Baker signed an agreement to settle any future dispute or claim against Waffle House in binding arbitration. Sixteen days into his job Baker suffered a seizure and was discharged. Baker filed an ADA claim with the EEOC. After a failed attempt at conciliation, the EEOC filed suit on behalf of Baker alleging he was discriminated against because of his disability and that the violation was "intentional, and done with malice or with reckless indifference to [his] federally protected rights." The EEOC requested an injunction against Waffle House, as well as backpay, reinstatement, and compensatory and punitive damages for Baker. Waffle House, in turn, filed an FAA claim to hold Baker to his arbitration agreement.

The district court favored Baker, reasoning that the arbitration agreement was not part of the actual employment contract. The 4th Circuit ruled that the arbitration agreement was valid and binding, meaning that like Robert Gilmer, Eric Baker forfeited his private right of action.<sup>3</sup> The 4th Circuit also ruled that although the EEOC has independent statutory authority, the remedies available to the EEOC are limited to injunctive relief and cannot include victim-specific relief (i.e., reinstatement, backpay, compensatory damages, and punitive damages). The court's reasoning was as follows:

When the EEOC seeks make-whole relief for a charging party, the federal policy favoring enforcement of private arbitration agreements outweighs the EEOC's right to proceed in federal court because in that circumstance, the EEOC's public interest is minimal, as the EEOC seeks primarily to vindicate private rather than public interests. On the other hand, when the EEOC is pursuing large-scale injunctive relief, the balance tips in favor of the EEOC enforcement

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<sup>3</sup>Actually, arbitration agreements aside, the private right to sue is lost whenever the EEOC decides to sponsor a lawsuit within its allotted time frame (180 days). In such circumstances, individuals may intervene, but the case belongs to the EEOC regardless of the wishes of the claimant.

efforts in federal court because the public interest dominates the EEOC's action.

The 2nd Circuit previously rendered a similar ruling in *EEOC v. Kidder Peabody* (1998), but the 6th Circuit permitted the full compliment of victim-specific relief in *EEOC v. Frank's Nursery* (1999). Thus, the Supreme Court took this case to resolve the dispute among the circuit courts and ruled in favor of the EEOC (and the 6th Circuit).

Speaking for the majority, Justice Stevens viewed the 4th Circuit ruling as an ill-fated attempt to compromise between the goals of the FAA (to resolve private disputes) and the EEOC (to serve a public function). Or as stated by Stevens:

Rather than attempt to split the difference, we are persuaded that, pursuant to Title VII and the ADA, whenever the EEOC chooses from among the many charges filed each year to bring an enforcement action in a particular case, the agency may be seeking to vindicate a public interest, not simply provide make-whole relief for the employee, even when it pursues entirely victim-specific relief. To hold otherwise would undermine the detailed enforcement scheme created by Congress simply to give greater effect to an agreement between private parties that does not even contemplate the EEOC's statutory function.

Speaking for the dissent, Justice Thomas spoke to the interaction between arbitration rulings and EEOC lawsuits. For example, it seems reasonably clear that if a claimant pursues arbitration and loses, the principle of *res judicata* (or claim preclusion) precludes capture of victim-specific relief in a later EEOC lawsuit. It is also reasonably clear that if a plaintiff wins in arbitration, the monetary relief in such a claim mitigates potential monetary relief in a subsequent EEOC lawsuit if the remedies are overlapping. What seems unclear, however, is the fate of a larger award in a prior arbitration ruling versus a smaller overlapping award in a subsequent EEOC lawsuit. Of course, all three of these scenarios are theoretical, since Baker filed his EEOC claim instead of pursuing arbitration.

## Conclusions

I still feel there was transparency in the Supreme Court's decision to review *Toyota v. Williams* (2002), and that its unanimous ruling signals a no-toleration policy toward any form of working as a major life activity in a Title I ADA claim.<sup>4</sup> Justice O'Connor also expressed hostility toward carpal tunnel syndrome itself, stating the following:

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<sup>4</sup>Title I of the ADA covers employment. This does not mean that working cannot serve as a major life activity for the other four Titles of the ADA.

While cases of severe carpal tunnel syndrome are characterized by muscle atrophy and extreme sensory deficits, mild cases generally do not have either of these effects and create only intermittent symptoms of numbness and tingling. ... Given these large potential differences in the severity and duration of the effects of carpal tunnel syndrome, an individual's carpal tunnel syndrome diagnosis, on its own, does not indicate whether the individual has a disability within the meaning of the ADA.

Ironically, Ella Williams was a probable loser even with proof of substantial limitations in performing manual tasks. Fundamentally, *being disabled* within the meaning of the ADA requires fitting into a narrow interval or band. At the lower end of this band, a physical or mental impairment must be sufficiently restrictive. At the upper end, it cannot be so restrictive as to preclude performance of essential job functions, either with or without accommodations. Had Ella Williams succeeded in elevating above the lower band, she would have likely been beyond the upper band, since her accommodation request was to eliminate two essential job functions.<sup>5</sup>

As for *EEOC v. Waffle House* (2002), it may well become one of the blockbuster rulings of the decade, considering what was at stake for plaintiffs. The *Gilmer* ruling still precludes the private right of action. However, had the EEOC lost to Waffle House, the only mechanism for obtaining victim-specific relief would be through arbitration. Therefore, this is a major victory for the EEOC, and the EEOC is likely to use it to challenge future attempts by employers to force arbitration agreements as a condition of employment.<sup>6</sup> For their part, employers who pursue the binding arbitration route face the prospect of dual defenses, although it is likely that plaintiffs made aware of this ruling will hold off on arbitration in order to give the EEOC the opportunity to prosecute their claims.

As a final point to note, on February 4, 2002, as I was finishing this article for our much-too-patient editor, the 9th Circuit ruled on the Supreme Court remand in *Circuit City v. Adams* (2001).<sup>7</sup> Interestingly, the arbitration agreement used by Circuit City, in addition to forcing binding arbitration, provides for meager remedies (e.g., 1 year back pay, 2 years front pay and punitive damages limited to \$5,000). The agreement also stipulates that the employee pay half of the arbitration costs. Had Adams been permitted to sue on the applicable state statute (the California Fair Employment and Housing Act), and had he prevailed, he would have been eligible for a much larger mone-

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<sup>5</sup>Another way of viewing this quandary is that Ella Williams faced what the 5th Circuit termed an "insurmountable barrier" in *Prewitt v. Postal* (1981).

<sup>6</sup>It should be noted, however, that the EEOC approves of ADR (alternative dispute resolution) when it is voluntarily agreed to by a claimant.

<sup>7</sup>See *Circuit City v. Adams* (No. 98-15992). Electronic citation: <http://laws.findlaw.com/9th/9815992.html>

tary award and for attorney fees. The 9th Circuit ruled that “such an arrangement is unconscionable under California law” and declared “the entire arbitration agreement unenforceable.” The 9th Circuit also noted that its ruling is consistent with *Gilmer v. Interstate* (1991), where the Supreme Court ruled that:

By agreeing to arbitrate a statutory claim, an employee does not forgo the substantive rights afforded by the statute; he only submits to their resolution in an arbitral, rather than a judicial forum.

In short, even though an employee loses the private right of action by agreeing to binding arbitration, employers are not free to establish rules and/or remedies that are inconsistent with the state of federal statute that applies.

### References

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