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"Reasonable Accommodations For People With Psychiatric Disabilities Under The Americans With Disabilities Act (ADA)"

Introductory Fact Situation

A mid-Western gentleman we'll call Mr. B. worked for fifteen years as a custodian for a large city's school district containing thirty schools. Although he did not have any apparent disabilities when he was hired, Mr. B. developed "serious mental illnesses, including bipolar disorder, anxiety attacks and paranoid schizophrenia" and "went on a series of disability leaves." Possibly as a result of his age, disabilities, and/or his medication, Mr. B. walks slowly. After submitting supporting medical documentation from his psychiatrist, Mr. B. was granted the ADA reasonable accommodation of not having to clean classrooms at the relatively small-sized high school where he worked. Mr. B.'s job duties included cleaning "hallways, stairwells, locker rooms and the like…" Mr. B. was a good employee and was able to adequately perform his job with the accommodations of modified work duties and occasional medical leave. Most recently, Mr. B. was on one year of disability leave resulting from his mental illness. He is now ready to return to work and excited about the opportunity.

Ms. S., the school district's employee relations director, informs Mr. B. that he must undergo a medical examination, a requirement for all employees returning from disability leave. He is also told that he will be moved to one of the city's largest high schools and that "he would not receive any special accommodations" at the new school. Mr. B. looks at to the school with his foreman and they agree that he will not be able to do the work without accommodations. Mr. B. becomes anxious fearing that he will show up for work, do an inadequate job, and be terminated. Therefore, he does not report to work or for the medical examination.

Immediately thereafter, Ms. S. mails a letter to Mr. B. stating that he is terminated for not reporting to work or showing up for the medical examination. Before receiving the letter, Mr. B. provides tells his employer that he is not resigning but that he does not feel "up to the task" and submits a letter from his psychiatrist stating, "due to Mr. B.'s illness and his past inability to return to work, it would be in his best interest to return to a school that might be less stressful." The employer does not respond to this letter and terminates Mr. B.'s employment.

This fact situation is taken from the case of *Bultemeyer v. Fort Wayne Community Schools*.[2] The story of Robert E. Bultemeyer and his employer will be continued at the end of this legal brief. The situation described in *Bultemeyer* is not uncommon and raises many interesting issues involving the reasonable accommodations for employees with psychiatric disabilities under the Americans with Disabilities Act ("ADA"). Some of the issues raised in *Bultemeyer* are: what is the meaning of a "qualified individual with a disability," what constitutes a reasonable accommodation request, what duty do the employer and employee have to engage in the "interactive process," and when must an employer rescind discipline or termination decisions.

For Mr. Bultemeyer and all employees with psychiatric disabilities, disclosure of their condition is necessary in order to obtain a reasonable accommodation under the ADA.[3] However disclosure can be risky due to societal stigma regarding mental illness. In addition, evidence demonstrates that wages for employees with mental illness are 72-85% lower than wages for people without mental illness. [4]

Accommodating employees with psychiatric disabilities is also a complicated issue for employers. While recent studies have demonstrated that the costs of accommodations for a worker with mental illness are likely to be indirect costs,[5] there are also administrative difficulties that must be addressed when accommodation issues arise. Administrative issues involved may include: the satisfactory performance of job duties, maintaining regular attendance, a need for medical leave, compliance with workplace rules, instituting discipline, and managing how an employee interacts with others. An understanding of how the ADA addresses these issues is necessary in order to ensure proper decision making by employers and employees.

Overview of Reasonable Accommodations Under the ADA[6]

In 1990, Congress enacted the ADA, a civil rights law, to "assure equality of opportunity, full participation, independent living, and economic self-sufficiency" for individuals with disabilities.[7] Congress found that discrimination against individuals with disabilities existed in many areas, including employment and that people with disabilities have been relegated to "lesser" jobs and opportunities.[8] To combat this discrimination, Title I of the ADA specifically bars employers from discriminating against an individual with a disability because of that disability.[9]

Discrimination includes, "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability" absent undue hardship,[10] defined as "an action requiring significant difficulty or expense."[11]

An employer's duty to provide a reasonable accommodation is a "fundamental statutory requirement because of the nature of discrimination faced by individuals with disabilities."[12] ADA regulations, promulgated by the Equal Employment Opportunity Commission (EEOC), define reasonable accommodations as:

Modifications or adjustments to the work environment, or to the manner or circumstances under which the position … is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position … or … enjoy equal benefits and privileges of employment…[13]

The ADA provides a non-exhaustive list of reasonable accommodations that "may include":

> [J]ob restructuring, part- time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.[14]

With the possible exception of "qualified readers or interpreters," any of these accommodations may be required for an employee with a psychiatric disability.[15]

Reasonable Accommodation Process

The reasonable accommodation process generally begins with a request for a reasonable accommodation. Any statement by an employee, or someone speaking on behalf of the employee, that lets an employer know that an adjustment or change at work is needed for a reason related to a medical condition is considered a request for a reasonable accommodation under the ADA.[16] The request need not be in writing.[17] The request for a reasonable accommodation triggers the employer's duty to engage in an informal, interactive process with the employee to determine an appropriate reasonable accommodation.[18] Specific accommodations do not need to be identified by the employee although it is usually best if specific accommodations can be recommended. The employer should give "primary consideration" to the employee's preferred accommodation although employers are not obligated to provide the requested accommodation as long as an "effective" reasonable accommodation is provided.[19]

The reasonable accommodation process might also be triggered without an accommodation request if the employer has knowledge of an employee's disability and a reasonable basis exists for the employer to believe that an accommodation is required.[20] In such a situation, a dialogue with the employee should begin. At any point during the

reasonable accommodation process, if the employee refuses to engage in the interactive process, provide legally required information, or try a proposed effective reasonable accommodation, the employer's obligation to accommodate the employee could be extinguished.[21]

Medical Inquiries Under the ADA[22]

When the disability and/or need for the accommodation are not obvious, the employer may request reasonable medical documentation of a disability and the need for an accommodation.[23] The request for medical information must be "job-related" and "consistent with business necessity" and should be limited in scope so that it relates to the accommodation request.[24] In most cases, "an employer cannot ask for an employee's complete medical records" as such a request may lead to acquiring "information unrelated to the disability at issue and the need for accommodation."[25] All medical information must be kept confidential; meaning that medical information should be kept separate from personnel information and only staff who needs to know the medical information should have access to it.[26] State confidentiality laws may also apply.[27] For these reasons, caution is often advisable in obtaining and maintaining medical information from employees.

When an employee is returning to work from medical leave, an employer may make disability-related inquiries or require a medical examination if the "employer has a reasonable belief" the employee's medical condition impairs "the employee's present ability to perform essential job functions" or that the employee "will pose a direct threat due to a medical condition."[28] However, such inquiries or examination "must be limited in scope to what is needed to make an assessment of the employee's ability to work." An "employer may not use the employee's leave as a justification for making far-ranging disability-related inquiries or requiring an unrelated medical examination."[29]

Reasonable Accommodations for Employees With Psychiatric Disabilities

Reasonable Accommodations are only required for employees who meet the ADA's definition of disability although many employers find it good business to accommodate non-disabling conditions. Regarding psychiatric disabilities, EEOC Guidance states that conditions such as: major depression, bipolar disorder, anxiety disorders, obsessive compulsive disorder, post-traumatic stress disorder, schizophrenia, and personality disorders may constitute disabilities under the ADA if the impairment or its treatment result in a "substantial limitation of one or more major life activities."[30] Some major life activities that people with psychiatric disabilities may be limited in include: thinking, concentrating, learning, sleeping, interacting with others, caring for oneself, speaking, performing manual tasks, or working.[31]

In addition to the ADA's listing of possible reasonable accommodations, the Job Accommodation Network (JAN) identifies specific accommodations within these broad categories. These will be

discussed further below. JAN also provides information regarding some of the possible limitations that individuals with psychiatric disabilities may experience.[32] According to JAN, reasonable accommodations may be required to enable employees with psychiatric disabilities to effectively: maintain consistent attendance (or maintain stamina), work at full productivity, implement change (dealing with new supervisors, co-workers, job duties, or work environments), interact with others (including supervisors, co-workers, customers, or colleagues), handle stress or emotions, manage time, be organized, and/or remember relevant information.[33]

Examination of ADA Cases Involving Reasonable Accommodations for Employees with Psychiatric Disabilities

ADA situations revolve around the particular facts that are present in the employee's workplace. Therefore, while examining cases is a useful tool for analyzing reasonable accommodation issues, it should be remembered that each situation is unique. The cases examined below, involving accommodation situations for employees with psychiatric impairments, are intended to provide illustrative guidance for addressing these situations. It is important to be aware that ADA cases involving employees with non-psychiatric disabilities are also relevant to any ADA analysis.

The Request for a Reasonable Accommodation

Generally, employers need only accommodate known disabilities. In *Estades-Negroni v. Associates Corp. of North America*, the court held that the employer did not violate the law when it denied an employee's request for a reduced workload prior to the employee being diagnosed with depression.[34] The court noted that there was no evidence that the depression was evident at the time of the accommodation request.[35]

Further, a reasonable accommodation request must relate to an employee's disability. Therefore, in *Boutin v. Home Depot U.S.A., Inc.,* an employee with depressive disorder and anxiety who was previously granted a fixed schedule as a reasonable accommodation, was not entitled to a change in the start and finish times of his shift to accommodate his daughter's school schedule.[36] The court held that the employee's request was not reasonable, as the requested accommodation did not relate to the employee's disability even though the denial of the accommodation exacerbated the employee's anxiety.[37]

In requesting the accommodation, the employee should let the employer know of the existence of a disability, identify the limitations that result from the disability, and try to identify possible accommodations, if possible.[38] In *Russell v. T.G. Missouri Corp*., an employee with bipolar disorder stated to her supervisor, "I need to leave and I need to leave right now" and then left work before completion of her shift.[39] The employee claimed to be having an anxiety attack but did not mention any medical reason for her need to leave. Therefore, the court held that this statement was not sufficient to constitute a request for a reasonable accommodation

under the ADA. Although the employer was previously aware of the employee's disability, the employee's failure to mention a medical basis for her statement was fatal to her case.[40]

In *Taylor v. Principal Financial Group, Inc.,* an employee disclosed his bipolar disorder and asked his supervisor to investigate the condition.[41] The employee also requested a "reduction in … objectives" and "a lessening of the pressure." The court held that these statements did not sufficiently request a reasonable accommodation as no limitations resulting from the disability were disclosed. The court said, "This distinction is important because the ADA requires employers to reasonably accommodate limitations, not disabilities."[42]

Similarly, in *Rask v. Fresenius Medical Care North America*, a case decided December 6, 2007; a kidney dialysis technician with clinical depression sought a reasonable accommodation due to adverse side effects from the medication used to treat her condition.[43] The technician worked two days per week and had a poor attendance history. After being terminated from her job, she filed suit claiming that she should have been provided with a reasonable accommodation under the ADA. The court further found that there was no duty to accommodate Ms. Rask, as she never sufficiently requested a reasonable accommodation.[44] Ms. Rask had let her employer know that she was "having problems" with her medication and that she might "miss a day here and there because of it." The court held that even if Ms. Rask had advised her employer that she had depression and suggested "what a reasonable accommodation might be, no reasonable person could find that Ms. Rask 'specifically identif[ied]' her 'resulting limitations.'[45]

In *Rask*, the court put the "initial burden … primarily upon the employee ... to specifically identify the disability and resulting limitations, and to suggest the reasonable accommodations."[46] This holding was based on the fact that the ADA requires that employers make reasonable accommodations "to the known physical or mental limitations" of an individual with a disability.[47] The court stated, "Where, as here, 'the disability, resulting limitations, and necessary reasonable accommodations, are not open, obvious, and apparent to the employer, as is often the case when mental disabilities are involved, the initial burden rests primarily upon the employee ... to specifically identify the disability and resulting limitations, and to suggest the reasonable accommodations.[48]

In the cases discussed above, the courts did not require the employer to seek more information from the employee regarding the limitations caused by a known disability. EEOC guidance seems to recommend a different approach, *i.e.,* having employers seek more information from the employee if an accommodation request or documentation is deemed "insufficient."[49] Other cases have followed this approach, requiring that the employer seek clarification or additional information if it feels the information the employee provided is insufficient.

While the court in *Rask*, put the burden on the employee with a mental disability to properly articulate a reasonable accommodation request, the court in the case discussed at the beginning of this brief, *Bultemeyer*, felt that employers needed to be understanding of employees with mental disabilities. In *Bultemeyer,*

the employee's psychiatrist requested a "less stressful" environment. No other specific accommodation was requested other than a "less stressful" environment, the employer was required to engage in the interactive process with the employee. The psychiatrist's letter can be seen as requesting that accommodations previously in place be reinstated and that Mr. Bultemeyer be reassigned to a smaller school. The court stated that, if the employer thought that the doctor's letter was vague ambiguous, it should have sought clarification.[50] The *Bultemeyer* discussed the issue in some depth stating:

> An employee's request for reasonable accommodation requires a great deal of communication between the employee and employer ... [B]oth parties bear responsibility for determining what accommodation is necessary ... [N]either party should be able to cause a breakdown in the process for the purpose of either avoiding or inflicting liability… A party that obstructs or delays the interactive process is not acting in good faith. A party that fails to communicate, by way of initiation or response, may also be acting in bad faith.[51]

> In a case involving an employee with mental illness, the communication process becomes more difficult. It is crucial that the employer be aware of the difficulties, and 'help the other party determine what specific accommodations are necessary…' [P]roperly participating in the interactive process means that an employer cannot expect an employee to read its mind and know that he or she must specifically say "I want a reasonable accommodation," particularly when the employee has a mental illness. The employer has to meet the employee half-way, and if it appears that the employee may need an accommodation but doesn't know how to ask for it, the employer should do what it can to help. '[T]he employer must make a reasonable effort to determine the appropriate accommodation … through a flexible, interactive process that involves both the employer and the [employee] with a disability.' [internal citations omitted].[52]

The above language from *Bultemeyer* was cited favorably in the case *Taylor v. Phoenixville School District*.[53] In *Taylor v. Phoenixville School District*, the son and husband of a secretary with bipolar disorder requested accommodations although no specific accommodations were suggested. The court stated:

> What matters under the ADA are not formalisms about the manner of the request, but whether the employee or a representative for the employee provides the employer with enough Infor mation that, under the

circumstances, the employer can be fairly said to know of both the disability and desire for an accommodation.[54]

Based on these cases, it seems to behoove employers to inquire further if they have knowledge of a disability but are unsure whether a reasonable accommodation was specifically requested. If the employee answers that no accommodation is needed, than the employer has likely fulfilled its duty under the law. If there an employee feels that an accommodation may be needed, than the interactive process should be initiated to identify possible effective reasonable accommodations.[55] This appears to be a safer practice for employers than taking the position that "as you only told us about your disability but not your limitations, we have no further obligations under the ADA." For employees, identifying specific accommodations is desirable whenever possible.

As part of the interactive process, the employer and employee should work together to identify possible accommodations. Of the categories of possible reasonable accommodations listed in the ADA, the four most utilized by employees with psychiatric disabilities are: job restructuring, part-time or modified work schedules, reassignment, and reasonable modifications of the work environment and/or policies. A sampling of ADA cases involving these accommodations will be examined to illustrate some of the issues involved.

Job Restructuring

One category of possible reasonable accommodations listed in the ADA is job restructuring.[56] Job restructuring may include: reassigning non-essential functions, having an employee work from home, altering the manner in which a job function is performed, and changing interpersonal interaction among employees or between an employee and a supervisor.[57] An employer is not required to reallocate essential job functions, although it may chose to do so.[58] Appropriate and reasonable modifications in interpersonal interactions depend on the specific situation involved and may include: providing for regular meetings, modifying the manner in which expectations are communicated, (using written means instead of oral communication or vice versa), utilizing checklists, and redirecting activity when necessary. [59]

Modifying Interpersonal Interaction

The case of *Taylor v. Phoenixville School District*, discussed earlier, is worth examining in more depth as it involves the reasonable accommodation of job restructuring, including interpersonal interaction and training issues.[60] *Taylor* involved an elementary school principal's secretary who worked at the school district for twenty years before she had an onset of bipolar disorder. Due to her condition, the secretary started experiencing paranoid delusions, hyperactivity, and psychoses necessitating a hospitalization.[61] As a result, Mrs. Taylor was substantially limited in the major life activity of thinking. Mrs. Taylor had been an exemplary employee

through the years but the arrival of her mental illness coincided with the arrival of a new principal. After her hospitalization, Mrs. Taylor's husband and son spoke with the personnel department in order to arrange for reasonable accommodations upon her return to work. Medical information to support the accommodation request was provided at the school's request.[62]

The school did not provide any reasonable accommodations for Mrs. Taylor.[63] However, at the advice of an administrative assistant in the personnel department, the principal started documenting errors that Mrs. Taylor committed. Beginning four days after Mrs. Taylor returned to work, the principal started compiling his secretary's errors into a "bullet-format list" and calling Mrs. Taylor in for frequent disciplinary meetings. Although she had not previously been disciplined in twenty years with the school district, Mrs. Taylor began receiving formal disciplinary notices almost every month for about a year until she was terminated. The principal "did not speak to her informally and in-person about problems as they arose." The principal did, however, save "letters containing typos, photographed her desk and trash can, … the office refrigerator, and waited to confront her with the evidence in the disciplinary meetings."[64]

In addition to these actions, the principal made many changes to Mrs. Taylor's job upon her return to work.[65] These changes included: new office policies, new forms, relocating documents, rearranging furniture, discarding Mrs. Taylor's "old filing system," throwing out files, including files in Mrs. Taylor's desk, and increasing the number of responsibilities in Mrs. Taylor's job description form twenty-three to forty-two. A new computer system was also installed. Mrs. Taylor was disoriented by the changes and felt that they made it more difficult for her to do her job. The court acknowledged that it is expected for a new principal would make changes but was troubled by the "abrupt, seemingly hostile manner" in which the changes were made. [66]

Less than one year after returning to work, Mrs. Taylor's employment was terminated.[67] She then filed an employment discrimination lawsuit under the ADA. The appellate court held that the school district had notice of Mrs. Taylor's disability and her need of reasonable accommodations due to the conversations between the personnel department and her family. The district also had notice of Mrs. Taylor's disability due to the fact that she experienced symptoms at work prior to her hospitalization. The court found that the school district exercised bad faith and violated its duty to engage in the interactive process to identify appropriate reasonable accommodations.[68]

Possible reasonable accommodations identified by the court included: increasing "job responsibilities slowly," giving Mrs. Taylor more time and/or training to learn the computer, and lessening the amount of "formal, written reprimands."[69] Regarding interpersonal interactions, the court cited the EEOC compliance manual stating that:

> Supervisors play a central role in achieving effective reasonable accommodations for their employees. In some circumstances, supervisors may be able to adjust their methods as a reasonable accommodation by, for example, communicating assignments, instructions,

> or training by the medium that is most effective for a particular individual (*e.g.,* in writing, in conversation, or by electronic mail)." 2 *EEOC Compliance Manual,* Enforcement Guidance for Psychiatric Disabilities, at 26.[70]

By way of limitation, the court also noted that an "employee is not entitled to a supervisor ideally suited to his or her needs" and that the ADA "does not require lowering standards or removing essential functions of the job."[71]

Taylor demonstrates that putting an employee with a disability under a microscope or treating them in a more hostile manner than other employees is not a good idea, especially when the employee has significant mental illness. Discipline should always be applied in an even-handed manner although reasonable accommodations should be considered if they would help an employee comply with workplace rules.

In another case, *Cannice v. Norwest Bank Iowa N.A.,*[72] an employee with depression sought a private, unmonitored telephone line as a reasonable accommodation so that he could contact his "support network" when necessary. The court held that the employee was not entitled to this accommodation as he could not show that the lack of a private phone line "impaired his ability to work or aggravated his disability" even though the lack of a private phone caused some anxiety. The court found it significant that the employee did not allege that he would have been able to continue functioning in his job had the accommodation been provided.[73]

WORK AT HOME

On occassion, an employee may need to work at home on due to a psychiatric disability. The EEOC has prepared a fact sheet titled, Work At Home/Telework as a Reasonable Accommodation.[74] The fact sheet states that the ADA does not require that employers create a teleworking policy if none exists. However, people with disabilities should be able to participate in such a program if it does exist.[75] Even if an employer does not have a teleworking policy, the EEOC asserts that employers have to consider such an accommodation for a person with a disability.[76] While some courts have found working at home is a reasonable accommodation, most courts have strictly interpreted these types of reasonable accommodation requests.

For example, working at home was deemed unreasonable in *Mason v. Avaya Communications, Inc*.[77] In *Mason*, a service coordinator had post-traumatic stress disorder (PTSD) after witnessing the death of several of her co-workers at her prior job with the U.S. Postal Service. Later, while employed with Avaya, a co-worker named Lunsford pulled out a knife during a confrontation when the plaintiff was not present. However, Mason's learning that the knife-brandishing employee would be returning to the worksite triggered her PTSD. She therefore requested permission to work at home when this seemingly dangerous co-worker was present at the workplace. In the alternative, Ms. Mason requested that Lunsford be transferred to a different location. The court held that these

accommodation requests were not reasonable because physical attendance at the administration center was an essential function of the service coordinator position as it is a low-level position requiring supervision and teamwork.[78]

On the other hand, in *Humphrey v. Memorial Hospitals Association*, the court held that working at home might be a reasonable accommodation for a medical transcriptionist with obsessive-compulsive disorder (OCD) when others in the same position were allowed to work from home.[79] The employee had previously been provided a flexible start time as an accommodation but it proved ineffective. *Humphrey* demonstrates two general rules. One rule is that workplace modifications provided to employees without disabilities may need to be required as reasonable accommodations for employees with disabilities. The second rule is that the duty to accommodate is ongoing and is not satisfied by one attempt.[80]

Part-Time or Modified Work Schedules

In addition to job restructuring, part-time or modified work schedules may be appropriate accommodations for an individual with a psychiatric disability, especially someone who requires active treatment or whose stamina is limited due to their disability or medication.[81] This accommodation may include: leave for a period of time, intermittent leave, extra break time, modifying shifts, or flexible work schedules.[82]

In *Breen v. Department of Transportation*, a file clerk with obsessive-compulsive disorder (OCD) sought to modify her work schedule by taking one day off every two weeks and to make up the time by working an extra hour each workday after normal work hours.[83] The employee asserted that the extra hour after business hours would allow her the uninterrupted time necessary to do filing due to her OCD. The employer asserted that the employee's attendance at the workplace was required every business day and that one day off every two weeks was therefore not reasonable. The court disagreed and found that an issue of fact existed as to whether the employee's proposed accommodations were reasonable, especially as there were not critical duties requiring her presence at work.[84]

However, in *Earl v. Mervyns, Inc.*, a store area coordinator with OCD was not allowed the requested accommodation of clocking in whenever she arrived as a modification to the employer's tardiness policies.[85] This accommodation was deemed unreasonable, especially as the employee's psychiatrist testified that there was no reasonable accommodation the employer could have provided that would have enabled the employee to arrive at work on time.[86] This demonstrates the need for employees to ensure that submitted documentation supports their accommodation request.

Similarly, in a case discussed earlier, *Rask v. Fresenius Medical Care North America*, the accommodation sought by a technician with depression was the ability to have sudden, unscheduled absences to manage the adverse reaction to her medications.[87] The court held that the employee was not qualified as she was unable to perform the essential job function of regular and reliable attendance with or without a reasonable accommodation. Regular

and reliable attendance was particularly important as the job involved caring for "seriously ill patients." While the technician might personally benefit were the accommodation granted, it would not assist her in performing her job. Therefore, the accommodation request was deemed unreasonable.[88]

Leave

In addition to the accommodations discussed above, leave for a period of time may be a reasonable accommodation for employees with psychiatric disabilities even though this may require modification of leave or attendance policies. Leave should be granted and an employee's job kept open absent undue hardship for the employer.[89] Utilizing temporary workers or having co-workers temporarily handle job duties may be reasonable in leave situations. It is important to note that leave situations may involve Family and Medical Leave Act (FMLA), which provides up to twelve weeks of leave per year, as well as the ADA.[90] Under the ADA however, the amount of leave that is reasonable depends on the circumstances of the particular situation. It is best if an individual or their medical providers can specify a needed period of leave as requests for indefinite leave are sometimes deemed to be unreasonable.[91]

Medical leave of four to five months for treatment for an employee with PTSD was deemed reasonable in *Rascon v. U.S. West Communications, Inc.*[92] Although the employer characterized the leave as "extraordinary," the court found that the four to five-months of leave provided was actually "more restrictive" and "less accommodating" than leave required under company policy which provided up to one year of medical leave.[93]

However, in *Byrne v. Avon Products, Inc.,* an "extended" period of leave was deemed unreasonable for an employee with major depression.[94] The employee was unable to stay awake on the job and could not show that the leave would enable him to become qualified to perform his job. Therefore, the leave request was unreasonable and rendered the employee unqualified under the ADA.[95]

Reassignment

Reassignment to a vacant position for which the employee is qualified may be an appropriate accommodation under the ADA and may be useful for an employee has limitations in handling a heavy workload, workplace stress, or who needs periodic leave.[96] However, reassignment is generally not reasonable where it is sought to obtain a new supervisor or to escape certain co-workers.[97]

Therefore, in *Gaul v. Lucent Technologies, Inc*., the court denied reassignment due to "prolonged and inordinate stress" caused by co-workers.[98] The court noted that the employer would only be able to obtain temporary compliance as compliance depended on the employee's "stress level at any given moment." Further, the accommodation was administratively burdensome due to the number of factors beyond the employer's control.[999]

Reassignment was a possible reasonable accommodation for a police officer with depression in *Williams v. Philadelphia Housing Authority Police Department*.[100] In *Williams*, a police officer with depression who could not carry a gun sought position in the radio room or a

training room assignment where he would not have to carry a weapon. The court held that a transfer in this situation could constitute a reasonable accommodation under the ADA.[101] The *Williams* case is interesting as the court noted that reasonable accommodations may be required for employees who are "regarded as" being disabled.[102] It should be noted that other courts have held that employees who are "regarded as being disabled are not entitled to reasonable accommodations.[103]

Reasonable Modification of the Work Environment and/or Policies

Another possible reasonable accommodation is modification of the work environment and/or workplace policies and procedures.[104] For employees with psychiatric disabilities, these accommodations may include: revising policies regarding: attendance, working from home, leave, training, service animals, personal assistants, or job coaches.[105] Some of these accommodations have been discussed previously, *i.e.*, job restructuring; modified work schedules, including leave or working from home, and reassignment. In addition, employees with psychiatric disabilities may require: additional time for training or learning new tasks, that co-workers undergo sensitivity training, the elimination of distractions, including permitting music or white noise at work stations, or assistance with note taking or other job duties.[106]

EEOC regulations and guidance stat that providing extra training, a temporary job coach to assist in training, or having another employee assist with job duties are possible reasonable accommodations.[107] For example, in *Borkowski v. Valley Central School District*, the court held that it was a question of fact whether providing a teacher's aide to assist with classroom control for times that a school librarian taught classes is a reasonable accommodation.[108] However, in E*.E.O.C. v. Amego, Inc*., a nurse at a medical facility could not fulfill the essential job function of administering drugs to patients due to the employee's depression.[109] The court held that the employee was not entitled to a reasonable accommodation of having another employee perform this function.[110]

As previously mentioned, extra training and time to learn job duties was seen as possible reasonable accommodations by the court in *Taylor v. Phoenixville School District*.[111] Likewise, in *Kennelly v. Pennsylvania Turnpike Commission*, the court held that extra training and reassignment were potential reasonable accommodations for an employee with panic disorder.[112] The court also held that a question of fact existed regarding whether the employer's failure to provide training exacerbated the employee's psychological trauma.[113]

In *Jarvis v. Potter*, a U.S. Postal Service employee with PTSD had previously punched a co-worker who startled him.[114] He therefore requested that his co-workers be instructed, "not to startle him or approach him from behind." The case involved the Rehabilitation Act although such cases are analyzed the same as ADA situations.[115] The request was not deemed reasonable in this circumstance, as it would not be effective in assisting the employee act appropriately in the workplace. In addition, the employee told his employer that:

> [H]is PTSD was getting worse and that he could no longer stop at the first blow, that if he hit someone in the right place he could kill him, and that he could not return to the workplace and be safe.[116]

The court used a direct threat analysis in this situation. EEOC regulations define "direct threat" as "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation."[117] Note that employers must investigate reasonable accommodations in assessing direct threat situations. Direct threat situation require "an individualized assessment of the individual's present ability to safely perform the essential functions of the job." The individualized assessment must be based on "a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence." The factors to be considered in assessing a direct threat include:

> (1) The duration of the risk;
> (2) The nature and severity of the potential harm;
> (3) The likelihood that the potential harm will occur; and
> (4) The imminence of the potential harm.[118]

Courts generally have held that the existence of a direct threat is a defense to be proved by the employer.[119] The court in *Jarvis* held that the employer met this standard and that the employee posed a direct threat that could not be eliminated or reduced by a reasonable accommodation. To support this conclusion, the court pointed to prior incidences of violence and the employee's own incriminating statements quoted above. The court also noted that Mr. Jarvis' "symptoms would last indefinitely, he could erupt at any moment if startled, and it was highly likely that someone would startle him, even if inadvertently." The court also stated that, "the law does not require the Postal Service to wait for a serious injury before eliminating such a threat."[120]

Rescinding Discipline as a Policy Modification

Another issue that arises is whether an employer must rescind discipline after learning of a disability. EEOC guidance states that employers are not required to excuse past misconduct, as "reasonable accommodation is always proactive."[121] However, employers:

> [M]ust make reasonable accommodation to enable an otherwise qualified employee with a disability to meet such a conduct standard in the future, barring undue hardship, except where the punishment for the violation is termination.[122]

When a disability is known prior to instituting discipline, reasonable accommodations should be considered to enable an employee to comply with reasonable

workplace and conduct rules.[123] However, if an employee's misconduct is not related to the disability, discipline is appropriate. In *Davila v. Qwest Corp*., Inc., an employee with bipolar disorder engaged in misconduct by failing to report an accident involving the company vehicle.[124] The court held that this misconduct was unrelated to his disability and therefore the employer did not violate the ADA by disciplining the employee.

The cases discussed above demonstrate many issues that arise when assessing reasonable accommodations for employees with psychiatric disabilities. In order to probe the issue a little further, let us return to the situation of Mr. Bultemeyer described in the beginning of this legal brief.

Conclusion of the Introductory Fact Situation

Remember Mr. Bultemeyer? Here is what happened next in his case:

After being terminated from his employment, Mr. Bultemeyer filed a Charge of the Discrimination with the EEOC and then a Complaint of Discrimination in the U.S. District Court. The district court found in favor of the employer on summary judgment and Mr. Bultemeyer appealed to the U.S. Court of Appeals for the 7th Circuit.[125]

The appellate court decided the following issues:

1. Was Mr. Bultemeyer a qualified individual with a disability able to perform the essential functions of his job with or without a reasonable accommodation?

   Appellate Court Decision: Yes. Mr. Bultemeyer was qualified even though he did not report for the medical examination or for work.[126]

2. Did Mr. Bultemeyer request a reasonable accommodation for his return to work thereby requiring the employer to engage in the interactive process?

   Appellate Court Decision: Yes. The letter from Mr. Bultemeyer's psychiatrist was enough information to constitute a reasonable accommodation request and supported Mr. Bultemeyer's assertion that he was "up to the task." [127]

   a. If there was an accommodation request, what accommodation was requested and what response was required from the employer?

   Appellate Court Decision: As discussed on pages 8-9, the court held that the psychiatrist's letter can be seen as requesting

that accommodations previously in place be reinstated and that Mr. Bultemeyer be reassigned to a smaller school. The employer was therefore required to engage in the interactive process.[128]

b. If there was an accommodation request, did the employer and employee engage in the interactive process in good faith to determine necessary reasonable accommodations?

Appellate Court Decision: The employer caused the breakdown of the interactive process by refusing to respond to the psychiatrist's letter. As noted above, Mr. Bultemeyer's refusal to show up for work or a medical examination was not the cause of the breakdown of the interactive process.[129]

3. Did the termination of Mr. B.'s employment violate the ADA or must the employer rescind the termination?

Appellate Court Decision: As the employer had knowledge of Mr. Bultemeyer's disability and that a reasonable accommodation was requested, the employer had an obligation to reconsider terminating Mr. Bultemeyer's employment. The doctor's letter was not "too little, too late" as the employer claimed.[130]

As noted earlier, the Appellate Court went into a fair degree of depth exploring issues surrounding psychiatric disabilities in the workplace in finding in favor of Mr. Bultemeyer and reversing the trial court. The court emphasized that the employer's failure to understand, or even try to understand Mr. Bultemeyer's mental illness was a major problem in this case and chided the employer and the district court for "forgetting that Bultemeyer is mentally ill."[131]

The Court also felt that the employer's actions demonstrated a lack of good faith. This was particularly true as the employer:

> [T]ried to take hasty advantage of what it saw as an opportunity to rid itself of a problem, a disabled employee… [W]hen it had the opportunity, it got rid of him, fired Bultemeyer as soon as it could… acting in bad faith.[132]

Surprisingly, after criticizing the employer and district court for not understanding mental illness, the appellate court labeled as "irrational fear" Mr. Bultemeyer's

concern that he would pass the physical only to be unable to perform his duties at the new high school leading to termination of his employment.[133] However, based on the employer's actions in terminating Mr. Bultemeyer's employment as quickly as possible, it seems that his fear was not only quite rational but also prescient. Significantly, the court stated that even if the employer viewed Mr. Bultemeyer's concerns as irrational, these were a result of his mental illness and the employer "had a duty to engage in the interactive process and find a reasonable way for him to work despite his fears."[134] The fact that the employer "made no inquiry about what Bultemeyer found stressful at Northrop" was fatal to the employer's position.[135]

LESSON LEARNED

Bultemeyer contains the following lessons for employers that can be utilized as best practices in the area of reasonable accommodation:

- Try to understand the nature of an employee's disability, particularly in cases involving psychiatric disabilities.
- Use caution when discontinuing accommodations.
- Be careful in ascertaining whether a communication constitutes a reasonable accommodation request
- If an accommodation request or medical information seems vague or incomplete, seek clarification.
- When in doubt, engage in the interactive process and make sure that your actions demonstrate good faith.
- Before instituting discipline, be sure that there is no obligation to investigate reasonable accommodations.

Conclusion

While reasonable accommodations for employees with psychiatric disabilities generally do not involve out-of-pocket costs for employers, there are often administrative issues that must be examined. Employers can benefit by having proper policies and procedures in place and by making an effort to understand the nature of the employee's disability. It is important that employers engage in the interactive process and act in good faith when addressing reasonable accommodation requests. Both employers and employees should utilize available resources and be willing to be creative in finding reasonable accommodation solutions. Often, the interactive process will lead to an effective reasonable accommodation that will help the employee adequately perform the essential job functions in a way that also allows for a productive, well-functioning work environment.

Notes:

1. This legal brief was written by Alan M. Goldstein, Senior Attorney with Equip for Equality, the Illinois Protection and Advocacy Agency (P&A). Equip for Equality is providing this information under a subcontract with the DBTAC: Great Lakes ADA Center, University of Illinois at Chicago, U.S. Department of Education, National Institute on Disability Rehabilitation and Research Award No. H133A060097. Mr. Goldstein would like to thank Equip for Equality Legal Advocacy Director Barry C. Taylor for his valuable assistance with this article.
2. *Bultemeyer v. Fort Wayne Community Schools,* 100 F.3d 1281 (7th Cir. 1996).
3. "Keep it to Yourself? The Costly Stigma of Mental Illness," *Health Management and Policy*, W.P. Carey School, Arizona State University; October 11, 2006, www.knowledge.wpcarey.asu.edu/article.cfm?articleid=1312.
4. *Id*.
5. *Id*.
6. This legal brief is not intended to be an in-depth discussion on the legal requirements regarding reasonable accommodation; nor will it provide a full discussion of many important ADA terms and concepts, such as the definitions of "disability," "qualified," "undue hardship," "fundamental alteration," "interactive process," appropriate "medical inquiries," "direct threat," and "essential functions." For additional information on these topics, please see *EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship*, No. 915.002 (October 22, 2002), www.eeoc.gov/policy/docs/accommodation.html; *EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)*, No. 915.002 (July 27, 2000), www.eeoc.gov/policy/docs/guidance-inquiries.html; 42 U.S.C. §§ 2102(2), 12111(8); 29 C.F.R. §1630.2(g)-(n); 29 C.F.R. pt. 1630 app. §§ 1630.2(g)-(n).

   See also, DBTAC: Great Lakes ADA Center 2007 Legal Briefs titled: *Reassignment as a Reasonable Accommodation Under the Americans with Disabilities Act; Employee Leave as a Reasonable Accommodation Under the Americans with Disabilities Act; Medical Examinations and Inquiries Under the Americans with Disabilities Act*; *The ADA Restoration Act* (for information how the bill for the ADA Restoration Act proposes changing the ADA definitions of disability).
7. *See* 42 U.S.C. § 12101(a)(8).
8. 42 U.S.C. § 12101(a)(4), (5).
9. 42 U.S.C. § 12112(a).
10. 42 U.S.C. §12112(b)(5)(A).
11. 42 U.S.C. §12111(10)(A).
12. *See EEOC Enforcement Guidance on Reasonable Accommodation, supra,* Questions 1 and 2.
13. 29 C.F.R. § 1630.2(o)(1)(ii), (iii).
14. 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o).
15. *See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship, supra. See also e.g.*, *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002) (modifying workplace policies); *Garcia-Ayala v. Lederle Parenterals, Inc.,* 212 F.3d 638, 646 (1st Cir. 2000) (leave); *Carr v. Reno*, 23 F.3d 525, 530, (D.D.C. 1994) (work at home).

As used in this legal brief, the term "psychiatric disability" follows the definition in *EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities*, *supra*, www.eeoc.gov/policy/docs/psych.html; *See also,* 29 C.F.R. §1630.2(h)(2). Question 1 of the EEOC Guidance states: "The ADA defines a mental impairment as '[a]ny mental or psychological disorder, such as . . . emotional or mental illness.' Examples of 'emotional or mental illness[es]' include major depression, bipolar disorder, anxiety disorders (which include panic disorder, obsessive compulsive disorder, and post-traumatic stress disorder), schizophrenia, and personality disorders. The current edition of the American Psychiatric Association's

Notes (continued):

Diagnostic and Statistical Manual of Mental Disorders (now the fourth edition, DSM-IV) is relevant for identifying these disorders."

16. *See EEOC Enforcement Guidance on Reasonable Accommodation, supra,* Questions 1 and 2.
17. *Id.* at Question 3.
18. *Id.* at Question 1; 29 C.F.R. § 1630.2(o)(3).
19. *EEOC Enforcement Guidance on Reasonable Accommodation, supra,* Question 35; *See also,* 29 C.F.R. pt. 1630 app. §1630.9.
20. *See Mulholland v. Pharmacia & Upjohn, Inc.*, 52 Fed.Appx. 641, 647 (6th Cir. 2002) (involving a request for written instruction from an employee who had a traumatic brain injury).
21. *See, e.g., Jackson v. City of Chicago*, 414 F.3d 806, 808-809 (7th Cir. 2005).
22. *See EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA*, *supra*, www.eeoc.gov/policy/docs/guidance-inquiries.html; DBTAC: Great Lakes ADA Center 2007 Legal Brief on *Medical Examinations and Inquiries Under the Americans with Disabilities Act*.
23. *EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA, supra*, Questions 5-7.
24. *Id.*at Questions 7, 10; 42 U.S.C. §12112(d)(4)(A).
25. *EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA, supra*, at Question 10.
26. 42 U.S.C. §12112(d)(4)(C).
27. *See, e.g.,* Illinois Mental Health and Develeopmental Disabilities Confidentiality Act, 740 ILCS 110, *et seq*. (2002).
28. *Id.*at Question 17.
29. *Id*.
30. *EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities*, *supra*, Question 1. 42 U.S.C. § 12102(2); 29 C.F.R. § 1630.2(g).
31. *Id.; EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities*, *supra*, at Question 3.
32. *See* the Job Accommodation Network's Searchable Online Accommodation Resource on Psychiatric Impairments, www.jan.wvu.edu/soar/psych.html.
33. *Id.*
34. *Estades-Negroni v. Associates Corp. of North America*, 377 F.3d 58, 64 (1st Cir. 2004).
35. *Id; See also, Stout v. Social Security Administration*, 2007 WL 707337 (E.D. Ark. Mar. 5, 2007) (where the court found no evidence that the employer knew of the employee's depression when she was demoted due to performance issues).
36. *Boutin v. Home Depot U.S.A., Inc.,* 490 F.Supp.2d 98, 106 (D.Mass. 2007).
37. *Id*.
38. *See EEOC Enforcement Guidance on Reasonable Accommodation, supra,* Questions 1 and 2.
39. *Russell v. TG Missouri Corp*., 340 F.3d 735, 742 (8th Cir. 2003).
40. *Id.*
41. *Taylor v. Principal Financial Group, Inc.,* 93 F.3d 155 (5th Cir. 1996).
42. *Id.* at 163-64. *See also Rask v. Fresenius Medical Care North America*, 2007 WL 4258620 (8th Cir. 2007), discussed below.
43. *Rask v. Fresenius Medical Care North America*, 2007 WL 4258620, 1 (8th Cir. 2007).
44. *Id.* at 2-3.

Notes (continued):

45. *Id.,* (Internal citation and emphasis in original omitted).
46. *Rask*, 2007 WL 4258620 at 2 (internal quotation marks, original emphasis and citation omitted).
47. 42 U.S.C. §12112(b)(5)(A).
48. *Rask*, 2007 WL 4258620 at 2 (internal quotation marks, original emphasis and citation omitted).
49. *See EEOC Enforcement Guidance on Disability-Related Inquiries, supra*, Questions 7, 11.
50. *Bultemeyer,*100 F.3d at 1285-86.
51. *Bultemeyer,*100 F.3d at 1285 (internal quotations and citations omitted).
52. *Id.* (internal quotations and citations omitted).
53. *Taylor v. Phoenixville School District*, 184 F.3d 296, 312 (3rd Cir. 1999).
54. *Id.* at 313.
55. *See EEOC Enforcement Guidance on Reasonable Accommodation, supra,* Question 5.
56. 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o).
57. 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630 app. §§ 1630.2(o), 1630.9.
58. *See EEOC Enforcement Guidance on Reasonable Accommodation, supra.*
59. *See* JAN's Searchable Online Accommodation Resource on Psychiatric Impairments, www.jan.wvu.edu/soar/psych.html.
60. *Taylor v. Phoenixville School District*, 184 F.3d 296, 302-03 (3rd Cir. 1999).
61. *Id. at* 302-03.
62. *Id.* at 303.
63. *Id.* at 314.
64. *Id.* at 304.
65. *Id.* at 304-05.
65. *Id.* at *304-05*
66. *Id.*
67. *Id.* at 305.
68. *Id.* at 313-17.
69. *Id.* at 319.
70. *Id*. at 319, n. 10.
71. *Taylor,* 184 F.3d at 319, n. 10.
72. *Cannice v. Norwest Bank Iowa N.A.* 189 F.3d 723, 728 (8th Cir. 1999).
73. *Id*.
74. http://www.eeoc.gov/facts/telework.html.
75. *Id*. at Question 1.
76. *Id*. at Question 2.
77. *Mason v. Avaya Communications, Inc*., 357 F.3d 1114 (10th Cir. 2004).
78. *Id*. at 1120. *See also Mobley v Allstate Insurance Company*, 2006 WL 2735906 (S.D. Ill. Sept. 22, 2006), where the court found that working from home was an unreasonable accommodation for a staff claims service adjustor who needed to be present at the workplace for meetings and mediations. The court also stated that the provided accommodation of a distraction free environment was effective.

Notes (continued):

79. *Humphrey v. Memorial Hospitals Association*, 239 F.3d 1128, 1134 (9th Cir. 2001). The *Humphrey* court also examined leave as a possible reasonable accommodation.
80. *Id.* at 1138.
81. 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o).
82. *See* JAN's Searchable Online Accommodation Resource on Psychiatric Impairments, www.jan.wvu.edu/soar/psych.html.
83. *Breen v. Department of Transportation*, 282 F. 3d 839, 840 (D.C. Cir. 2002).
84. *Id*. *See also*, *Ralph v. Lucent Technologies, Inc*., 135 F.3d 166, 172 (1st Cir. 1998) (finding that a four week interim part-time assignment was a reasonable accommodation, even though the employer had already afforded a wide variety of accommodations previously). *But see, Treanor v. MCI Telecomms. Corp*., 200 F.3d 570, 575 (8th Cir., 2000) ("the ADA does not require an employer to create a new part-time position where none previously existed." The court did not explore whether current full-time position could have been done on a part-time basis).
85. *Earl v. Mervyns*, *Inc.*, 207 F.3d 1361, 1367 (11th Cir. 2000).
86. *Id*.
87. *Rask v. Fresenius Medical Care North America*, 2007 WL 4258620, 1 (8th Cir. 2007).
88. *Rask*, 2007 WL 4258620 at 1-2.
89. *See EEOC Enforcement Guidance on Reasonable Accommodation, supra,* Question 44.
90. The FMLA is found at 29 U.S.C. § 2601 *et. seq.* (1993). This legal brief will not address leave under the FMLA and will only discuss leave under the ADA. It should be noted that, if both the ADA and FMLA apply, "An employer should determine an employee's rights under each statute separately, and then consider whether the two statutes overlap regarding the appropriate actions to take." *EEOC Enforcement Guidance on Reasonable Accommodation, supra,* Question 21. The law providing the broadest protection to the employee should then be followed. 29 C.F.R. § 825.702. *See also*, *EEOC Fact Sheet: The Family Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964*, July 6, 2000.
91. *See, e.g., Wood v. Green*, 323 F.3d 1309 (11th Cir. 1998); *Walsh v. United Parcel Service,* 201 F.3d 718 (6th Cir. 2000).
92. *Rascon v. U.S. West Communications, Inc*., 143 F.3d 1324, 1337 (10th Cir. 1998).
93. *Id.* at 1334-35.
94. *Byrne v. Avon Products, Inc.,* 328 F.3d 379, 381 (7th Cir. 2003).
95. *Id*.
96. 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o); *See generally*, *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002). *See also, Gile v. Untied Airlines*, 213 F. 3d 365 (7th Cir. 2000) (reassignment and leave were possible accommodations for an employee with depression and anxiety disorder);
97. See, e.g., *Ozlek v. Potter,* 2007 WL 4440051, (3rd Cir. 2007); *Gaul v. Lucent Technologies, Inc*., 134 F.3d 576, 580 (3rd Cir. 1998).
98. G*aul,* 134 F.3d at 580-81.
99. *Id*. at 581.
100. *Williams v. Philadelphia Housing Authority Police Department,* 380 F.3d 751, (3rd Cir. 2004).
101. *Id*. at 773. *See also, Mustafa v. Clark County School District*, 157 F.3d 1169 (9th Cir. 1998). (A teacher with PTSD, depression, and panic attacks could be accommodated by being assigned to a non-classroom setting).
102. *Id*. at 773.

Notes (continued):

103. *See, e.g., Kaplan v. City of North Las Vegas*, 323 F.3d 1226, 1231-33 (9th Cir. 2003); *Weber v. Strippit, Inc.,* 186 F.3d 907, 916-17 (8th Cir. 1999).
104. 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o).
105. *See* JAN's Searchable Online Accommodation Resource on Psychiatric Impairments, www.jan.wvu.edu/soar/psych.html.
106. *Id.*
107. 29 C.F.R. pt. 1630 app. § 1630.9; *EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities, supra*, Question 27.
108. *Borkowski v. Valley Central School District*, 63 F.3d 131, 143 (2nd Cir, 1995).
109. E.*E.O.C. v. Amego, Inc*., 110 F.3d 135, 148-149 (1st Cir, 1997).
110. *Id*.; Regarding essential function issues, *see also, Skerski v. Time Warner Cable Co*., 257 F.3d 273 (3rd Cir. 2001) (A fact issue existed whether climbing was an essential function for a cable television installer with anxiety disorder).
111. *Taylor,* 184 F.3d at 319.
112. *Kennelly v. Pennsylvania Turnpike Commission,* 208 F. Supp. 2d 504, 514-16 (D.C. 2002).
113. *Id*. at 514.
114. *Jarvis v. Potter,* 500 F.3d 1113, 1124 (10th Cir. 2007).
115. *Id*. at 1120; 29 U.S.C. § 794(a), *et seq*.
116. *Jarvis,* 500 F.3d at 1124.
117. 29 C.F.R. § 1630.2(r); *Jarvis,* 500 F.3d at 1121-23.
118. *Id*.
119. *Jarvis,* 500 F.3d at 1122.
120. *Id.* at 1123-24.
121. *See EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities*, *supra*, Question 31.
122. *Id*.
123. *See, e.g., Bultemeyer v. Fort Wayne Community Schools,* 100 F.3d 1281 (7th Cir. 1996).
124. *Davila v. Qwest Corp*., *Inc.*, 113 Fed.Appx. 849, 853-54, 2004 WL 2005915 (10th Cir. 2004) (unpublished).
125. *Bultemeyer***,** 100 F.3d at 1282.
126. *Id.* at 1284-85.
127. *Id.* at 1285.
128. *Id.* at 1285-86.
129. *Id.*
130. *Id.*
131. *Id.*
132. *Id.* at 1286-87.
133. *Id.* at 1286.
134. *Id.*
135. *Id.*