The Effect of Sutton v. United Air Lines on People with Diabetes: Selected Federal Court Cases

The following are examples of cases in which people with diabetes have been prevented from pursuing discrimination claims because they have been found, at the summary judgment stage, to not have met the definition of disability under the Americans with Disabilities Act or the Rehabilitation Act. These cases involve people who have experienced severe short and/or long term complications of diabetes and, in most cases, involve situations in which the employer admits that the reason the adverse employment action was taken was because of the person's diabetes (e.g., employer claims person cannot do the job safely because of his or her diabetes) and/or situations where the employer's refusal to make reasonable accommodations resulted in the person becoming too ill to perform the job. It should be emphasized that these are only examples of the difficulties that people with diabetes have faced since the Sutton Trilogy. While some people with diabetes have, indeed, been able to prevail on the definition of disability issue, it has only been at great cost in terms of experts and, all too often, the need to bring an appeal on the definition of disability issue.

Appeals Court Cases

Scheerer v. Potter, 443 F. 3d 916 (7th Cir. 2006) Court affirms grant of summary judgment to employer on claim that it failed to accommodate plaintiff’s diabetes. Plaintiff has type 2 diabetes and uses insulin. He asked for an assistant to help with his duties as postmaster in a small post office, but his requests were ignored for several months while his diabetes worsened. At the time he had recently experienced a foot ulcer requiring several months of treatment, a problem so severe that within a few months his foot would have to be amputated. The court found that plaintiff did not have a disability despite the seriousness of his diabetes and the fact that it resulted in amputation. In reaching this conclusion, the court likened his dietary restrictions to those used for weight loss and focused on the fact that he had never experienced severe hypoglycemia or serious complications prior to the amputation.
**Shultz v. Potter,** 142 Fed. Appx. 598 (3rd Cir. 2005) Court affirmed summary judgment on plaintiff’s claim of disability discrimination against the U.S. Postal Service. The court held that allegations that plaintiff’s diabetes required her to watch what she ate, consume sugar when her blood glucose (sugar) levels were low, and take insulin when those levels were high were insufficient to survive summary judgment. The court found it significant evidence against plaintiff that she had only been hospitalized for diabetes three times in fifteen years.

**Salim v. MGM Grand Detroit,** 106 Fed. Appx. 454 (6th Cir. 2004) Court upheld summary judgment for employer that terminated employee with insulin-treated diabetes who worked as a blackjack dealer at defendant’s casino. Plaintiff used diet, exercise, and insulin to manage her diabetes. Although plaintiff did not have any difficulties with her diabetes outside of work, when she was assigned to work the late shift (8 p.m. to 4 a.m.) she experienced problems on the job on a number of occasions (including blurry vision, stomach cramps and dizziness) due to hyperglycemia (high blood glucose) and hypoglycemia (low blood glucose). Plaintiff made several requests to change shifts, but defendant denied these requests and eventually terminated her. The district court granted summary judgment, and the appeals court affirmed, holding that plaintiff had not shown she was substantially limited in any major life activities where she had not presented any evidence of how her condition limited her ability to perform housework or to walk, and she was not limited in her ability to work or think because she had never experienced problems outside of the workplace. Court found she was not substantially limited in caring for herself in part because plaintiff showed no likelihood of severe hypoglycemia so long as she was not working at night.

**Orr v. Wal-Mart Stores, Inc.,** 297 F.3d 720 (8th Cir. 2002) Eighth Circuit upheld grant of summary judgment against plaintiff with type 1 diabetes finding he did not have a disability under the ADA. Plaintiff, a pharmacist, was discharged for taking lunch breaks to eat. Plaintiff argued the lunch breaks were necessary to control his diabetes, citing hypoglycemia he had experienced on the job as a result of delay in eating lunch. Court found arguments about how failure to properly manage plaintiff’s diabetes would incapacitate him to be arguments about how his impairment “might, could, or would” limit him that could not be considered in light of *Sutton*. Court rejected without specific discussion plaintiff’s claim that he was substantially limited in his ability to see, speak, type, read, and walk.

**Nordwall v. Sears Roebuck & Co.,** 46 Fed. Appx. 364 (7th Cir. 2002) Seventh Circuit affirms lower court grant of summary judgment against employee with type 1 diabetes, finding that she is not substantially limited in either working or caring for herself. The court focused on plaintiff’s ability to perform everyday personal hygiene and household tasks in finding she was not substantially limited in caring for herself. The court discounted the blackouts and dizziness that
plaintiff experienced numerous times as fleeting, and ignored her arguments about her need to carefully balance food, exercise, and medication in order to avoid severe hypoglycemia. The court held that plaintiff was not substantially limited in working where she had performed her job successfully for many years (before it became highly stressful) and applied for many other jobs prior to her termination.

District Court Cases

**Smith v. United States Marshals Service, 2006 U.S. Dist. Lexis 7597 (D. Vt. 2006)** Court granted summary judgment to defendant against plaintiff with type 2 diabetes who was disqualified from a position as a U. S. Marshal because of his diabetes with the government citing a high Hemoglobin A1C test result (a test which shows the results of blood glucose values over 2 - 3 months) and evidence of peripheral neuropathy. Court found that, despite the explicit disqualification because of diabetes, there was not sufficient evidence to withstand summary judgment that plaintiff was either substantially limited in working or that defendant perceived him to be so. Court did not consider any major life activities other than working, nor did it question the medical basis for the defendant’s finding that plaintiff was medically unqualified.

**Wilson v. MVM, Inc., 2005 U.S. Dist. LEXIS 9849 (E.D. Pa. 2005)** Plaintiff who worked as a security officer at a federal courthouse (employed by a contractor under the direction of the U.S. Marshals Service), and has diabetes and cardiovascular disease, was medically disqualified by doctors working for the Marshals Service (and, as a result, terminated) because the doctor described his diabetes as “uncontrolled” due to high blood glucose values. However, according to the court, plaintiff’s diabetes was controlled with medication and thus could not constitute an actual disability.

**Jimenez v. Potter., 2005 U.S. Dist. Lexis 21241 (W.D. Tex. 2005)** Plaintiff, who has diabetes and an anxiety disorder, had blurry vision related to his diabetes, was limited in performing manual tasks, and had other limitations related to his anxiety disorder. The court granted summary judgment for the employer, holding that plaintiff had failed to show that any major life activities were limited because he continued to do his job, could perform many manual tasks, and continued to drive and participate in his children’s sporting activities.

**White v. Coyne Intl. Enterprises Corp., 2003 U.S. Dist. LEXIS 15347 (N.D. Ohio 2003)** Plaintiff was terminated after he informed a supervisor that he was experiencing dizziness and blurred vision at work due to a diabetic episode and needed to go home. Court held that under Ohio law – which tracks the ADA – no reasonable jury could find that employee was substantially limited in the major life activity of working where the episodic variations in plaintiff’s blood glucose level were not permanent or long term and where plaintiff had not proved
that he is significantly restricted in his ability to perform either a class of jobs or a broad range of jobs. Plaintiff was also ineligible for protection because he failed to consistently take medication for his diabetes or control his diet; the court held that a plaintiff is required to take available mitigating measures in order to be protected.

**Darst v. Vencor Nursing Ctrs., 2003 U.S. Dist. LEXIS 14829 (S.D. Ind. 2003)** Plaintiff, a registered nurse with insulin-treated diabetes, was terminated after missing several days of work for diabetes-related reasons. The court held that plaintiff does not have a disability because of the effectiveness of her treatment regimen. The court reached this conclusion even though plaintiff had numerous serious episodes of hypoglycemia, including two at work (one requiring an ambulance) as well as neuropathy and fertility problems.

**Bushman v. Electrolux Home Products, 2003 U.S. Dist. LEXIS 4507 (N.D. Iowa 2003)** Court granted summary judgment for employer against laid-off factory employee based on finding that plaintiff had a "mild form" of diabetes because it did not require insulin or an exercise regimen and because plaintiff stated that timely administration of medication leaves him no different than any other non-disabled individual. This conclusion was reached even though plaintiff had two toes amputated as a result of his diabetes and it was his inability to wear the prescribed footwear that led to his layoff.

**Jones v. Baltimore County, 2001 U.S. Dist. Lexis 7064 (D. Md. 2001)** Plaintiff, who has diabetes and heart disease, worked as a storeroom clerk and had a number of "diabetic reactions" on the job. Ultimately he suffered congestive heart failure on the job, and was subsequently deemed medically unqualified, given a 25 pound lifting restriction which could not be accommodated, and retired. The court held he was not substantially limited in his ability to work because he was still capable of performing other types of clerical positions, and obtained employment in an analogous position after he was terminated.

**Carlson v. Rent-A-Center, 237 F. Supp. 2d 114 (D. Me. 2002)** Summary judgment granted to defendant where plaintiff with diabetes had had two infections (one of which resulted in gangrene) and could not walk more than a mile on a good day and a half-mile on a bad day. The court found these limits were not severe when measured against the walking abilities of the average person in the general population and that the infections were not severe or enduring. Court further found plaintiff was not regarded as having a disability even though he was terminated when defendant received a note from plaintiff's doctor indicating that plaintiff needed to be on permanent light duty due to diabetes-related complications.

plaintiff failed to present evidence that his type 2 diabetes is a disability. Court found plaintiff’s one-time five week recuperation after a hospital stay too short and plaintiff’s occasional hypoglycemic reactions not significant enough because he recovered from each reaction within an hour, and there was no evidence that his symptoms of dizziness, weakness, or difficulty concentrating were “severe”. Court reached this conclusion even though plaintiff experienced at least four hypoglycemic reactions in a sixteen-month period, three of which were at work and one of which led to his failing a test that resulted in his discharge.


Court granted summary judgment against plaintiff security guard and who has diabetes treated with insulin and poor vision, finding that he did not have a disability. This conclusion was reached despite the fact that plaintiff had no vision in one eye and was losing vision in the other eye as a result of his diabetes, and had four episodes of serious hypoglycemia at work over a two-year period (one requiring a hospital visit). The court held the plaintiff did not have a disability because he stated that “with insulin injections and a proper diet, he can control his diabetes and prevent diabetic attacks”. In the court’s view, Sutton means that a person who asserts that he “can” control his diabetes through medication or other mitigating measures (even if that person does not always successfully do so) does not have a disability.