

# Obesity Alone Does Not Qualify as a Disability Under the ADA says the 8th Circuit

## Labor & Employment Law Update

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The Eighth Circuit Court of Appeals recently affirmed a Nebraska federal court's decision ruling that to constitute an ADA impairment, obesity, even morbid obesity, must be the result of a physiological disorder or condition. In the case of *Morriss v. BNSF Ry. Co.*, Case No. 14-3858 (8<sup>th</sup> Cir. April 5, 2016), the court held that a morbidly obese job applicant rejected for a position as a railroad machinist could not show he was regarded as disabled under the ADA.

Melvin Morriss applied for a machinist position with BNFS Railway Company in March 2011. He was extended a conditional offer of employment contingent upon a satisfactory medical review. Morriss completed a medical questionnaire indicating he was 5'10" and 270 pounds. BNSF doctors conducted two examinations which revealed Morriss' weight to be higher, with a body mass index (BMI) of over 40. Pursuant to its policy, BNSF did not hire any new applicants for safety-sensitive positions that had a BMI of 40 or greater. Consequently, BNSF revoked its conditional offer of employment.

Morriss filed suit alleging disability discrimination under the Americans with Disabilities Act (ADA), as amended by the ADA Amendments Act of 2008 (ADAAA), claiming that his obesity was a disability. To prevail on his claim, Morriss had to show that his obesity was a "physical impairment" – which is defined by the EEOC as a physiological disorder or condition affecting one or more body systems. Morris pointed to other interpretative EEOC guidelines that exclude physical characteristics, such as weight within the normal range. Thus, an individual's obesity would only have to be result of a physiological disorder if his weight was within the normal range. Because Morris' weight was outside the normal range, he claimed he did not have to show a physiological disorder. The court rejected Morriss' interpretation noting that the more natural reading was that "an individual's weight is generally a physical characteristic that qualifies as a physical impairment only if it falls outside the normal range *and* it occurs as the result of a physiological disorder."

Morriss also argued that following the adoption of the 2008 ADA amendments, courts have found that that obesity constitutes a physical impairment, even without an underlying physiological disorder. However, the court adroitly pointed out that Congress did not direct the EEOC to change its definition of physical

impairment, thereby affirming the necessity of having obesity be the result of a physiological disorder or condition in order to be deemed a disability under the ADA.

With *Morriss*, the 8<sup>th</sup> Circuit joined the 2<sup>nd</sup> and 6<sup>th</sup> Circuits and other state and federal courts in rejecting the idea that obesity alone is a disability under ADA. However, employers should be mindful that this issue remains unsettled and more decisions, not necessarily consistent with *Morriss*, will surely follow.

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