

inquired about his mental health during her exam. The only atypical aspect of Mr. Schneider's exam was that he was intermittently crying, but this could have been attributed to his opioid withdrawal or awareness that he would be spending the next 11 days in the detention center. In other words, the court did not find that Mr. Schneider's intermittent crying was enough to suggest a strong likelihood that he would attempt suicide. Ultimately, the Sixth Circuit ruled that Dr. Huq was entitled to qualified immunity because there was no evidence to show that Dr. Huq was aware of a strong likelihood of Mr. Schneider's suicidality, or that she disregarded that risk.

#### Discussion

In this case, the Sixth Circuit found that a jail physician did not act with deliberate indifference after she evaluated a pretrial detainee who later died by suicide because her clinical decision-making relied on her own examination and she had no indication the detainee was at risk for suicide. While there was information of Mr. Schneider's mental health history in an electronic format that Dr. Huq did not review, Dr. Huq performed her own exam, inquired about his mental health condition, and based her clinical decision-making on these findings. The court emphasized a higher standard of establishing liability in cases of suicide as they held the evidence would need to show a "strong likelihood" an inmate intended to attempt suicide for a clinician to be held liable, as described in *Barber*.

Predicting and preventing suicide presents challenges in all settings, and the court appeared to acknowledge this by indicating that a completed suicide does not necessarily imply negligence, but that significant indicators would need to be present to show deliberate indifference. The court reasoned that Mr. Schneider's intermittent tearfulness during the exam was not enough for Dr. Huq to infer a strong likelihood he would commit suicide, as it was in the setting of opioid withdrawal and being denied bond.

*Baker-Schneider* also highlights a challenge that many clinicians in all clinical environments encounter regarding the review of information in an electronic medical record. This case and *Gray* both support the notion that clinicians are liable for their decisions based on their own exam and the information they currently have, not necessarily information

possibly available to them. The critical distinction between collective knowledge and an individual's knowledge limits the amount of information for which an individual can be liable. In many cases, it would be unreasonable to expect a clinician to review an entire medical record, and in this case the court limited the physician's scope of information to that which the physician had at the time of her examination. Notably, the court did not speak to what the physician should have known.

## Employment Action Under the Americans With Disabilities Act

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### Inconsistent Claims of Disability Provide Evidence to Defeat Allegation of Wrongful Termination Under the Americans With Disabilities Act

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**Key words:** Americans with Disabilities Act; employment; wrongful termination; inconsistent claims

In *Pena v. Honeywell Int'l Inc.*, 923 F.3d 18 (1st Cir. 2019), the First Circuit Court of Appeals affirmed a district court's grant of summary judgment in favor of an employer in an action brought under the Americans with Disabilities Act (ADA), 42 U.S.C. § 1210 (1990), where the employee had inconsistencies between her application for Social Security Disability Income (SSDI) and her claims in the legal case.

Facts of the Case

Mayra Pena was employed by Honeywell International, Inc. (Honeywell), as a machine operator, starting in approximately 2008. Before 2012, Ms. Pena worked primarily in the respiratory department of Honeywell's production and assembly facility. In 2012, Honeywell determined that all employees would be cross-trained so they could work in multiple areas of the facility, depending on need. Ms. Pena was trained to work in all assembly departments, including the molding department, which ran machines 24 hours a day. Ms. Pena was assigned to the molding department in October 2012. She took medical leave for seasonal depression from November 29, 2012 to January 14, 2013. She had taken previous medical leaves of absence totaling 23 weeks.

Among her assignments, Ms. Pena worked in the molding department on a limited basis when she returned to work on January 14, 2013. She worked there without complaint for about one month. In late February 2013, she informed a senior human resources employee that she did not want to return to the molding department because "it was harmful to her emotionally" (*Pena*, p 22). Honeywell requested that she provide a doctor's note, which she supplied. Dr. James Greer stated in a letter, dated March 4, 2013, that Ms. Pena had reported an exacerbation of her anxiety symptoms, specifically when working in the molding department. Dr. Greer added that she had the capability to work in other departments. There was no mention in the letter of Ms. Pena's diagnosis, the basis for the recommendation other than her self-report, or any explanation of why she was specifically affected by the molding department.

Honeywell determined that the physician's letter was inadequate to make a determination regarding accommodations sought by Ms. Pena. On March 8, 2013, Ms. Pena was informed that either she could work in the molding department or she would have to go home. Ms. Pena left and never returned to work. Honeywell attempted to contact Ms. Pena about return to work options, and in April 2013 Honeywell asked Dr. Greer for additional documentation. Ms. Pena supplied information for a reasonable accommodation request and attached a letter from Dr. Greer, which included her diagnosis of major depressive disorder and commented that a return to the molding department would exacerbate

her symptoms. Honeywell requested medical records to explain why her symptoms prevented her from working specifically in the molding department. Honeywell sent her a letter on April 8, 2013, indicating that they had not received records and, therefore, had insufficient information for further action. In late April 2013, Ms. Pena's lawyer responded that the release of sensitive medical records was unnecessary and an invasion of privacy. Honeywell and Ms. Pena's attorney communicated back and forth about the documentation of her medical need for accommodations. Honeywell terminated Ms. Pena's employment on June 17, 2013, on the basis of job abandonment because she had not come to work since March 8, 2013.

Ms. Pena applied for SSDI in September 2013, stating that she was totally disabled and had been since March 8, 2013. The SSDI application required the claimant to attest to making true and correct statements. Regarding her SSDI claim, an independent evaluator gave a diagnosis of somatoform disorder. The administrative law judge in her SSDI case found that she had "been suffering from somatoform disorder and was totally disabled as of March 8, 2013" (*Pena*, p 24).

During the same time period, Ms. Pena filed a legal suit against Honeywell in April 2015, asserting violations of the ADA and various Rhode Island laws. She claimed that Honeywell unlawfully terminated her employment on the basis of her disabilities, failed to provide reasonable accommodations, and retaliated against her. During discovery, she provided deposition testimony in November 2016. A hearing to consider Honeywell's motion to dismiss was heard in September 2017. The court considered whether there were inconsistencies in her application for SSDI and her legal action against Honeywell. The court concluded that Ms. Pena had not met the requirements of *Cleveland v. Policy Management Systems Corporation*, 526 U.S. 795 (1999) to overcome the discrepancy. The district court granted summary judgment in favor of Honeywell. Ms. Pena appealed the decision.

Ruling and Reasoning

The First Circuit Court of Appeals reviewed the facts in the light most favorable to Ms. Pena. The ADA prevents employment discrimination on the basis of a disability. Under the ADA, the plaintiff must demonstrate that she was disabled

under the definition of the ADA, that she was a “qualified individual,” and that the employer took an adverse action because of the person’s disability. At question in this case was whether Ms. Pena’s inconsistencies between her SSDI application and her legal case against Honeywell could be reconciled. The court reviewed the *Cleveland* case, which also involved inconsistencies in a prior SSDI statement and a claimant’s position in an ADA litigation. *Cleveland* takes the position that a court “should require an explanation of any apparent inconsistency with the necessary elements of the ADA claim” (*Pena*, p 28, citing *Cleveland*, p 807).

Ms. Pena argued that she had provided a sufficient explanation of the inconsistencies. One of her arguments was that “being disabled under the ADA is different from being disabled for SSDI benefits, because the ADA takes into account an employer’s duty to make reasonable accommodations” (*Pena*, p 28). The Circuit Court agreed with the district court that Ms. Pena had not met her burden under *Cleveland* to provide a reasonable explanation for the inconsistencies. The court noted, “In her SSDI application, Pena offered no qualification of any sort to her statement that she was totally disabled as of March 8, 2013” (*Pena*, p 29). The court specifically mentioned that she submitted her SSDI application under penalty of perjury and while represented by counsel. The court added that she argued a cause and date to get her SSDI benefit. It was further noted that “[s]omatiform disorder is not the disability for which Pena had claimed to Honeywell she needed reasonable accommodations” (*Pena*, p 29). Additionally, during her deposition in the case against Honeywell, Ms. Pena was asked “several times to explain the statements in her SSDI application, and Pena repeatedly

stated that she was totally disabled as of March 8, 2013.” The court found this persuasive that it reinforced her inconsistencies, rather than explained them. The court further rejected Ms. Pena’s subsequent attempts to explain away her deposition testimony and attribute the claimed March date to her attorney. The court ruled that the district court properly granted Honeywell’s motion for summary judgment.

#### Discussion

For claimants, this case highlights how statements made in one legal context can be used in another context. Here, inconsistencies between the two settings precluded Ms. Pena from continuing her legal case for wrongful termination against her employer under the ADA when she failed to provide sufficient justification for the observed inconsistencies.

For clinicians, this case underscores the challenges faced when a patient requests disability documentation. Statistically, most mental health clinicians are asked to complete paperwork in support of a disability claim (Christopher P, Bouland R, Recupero R, *et al.*: Psychiatric residents’ experience conducting disability evaluations. *Acad Psychiatry* 34: 211–5, 2010). Clinicians should consider whether they have sufficient information to make a disability assessment and provide documentation, as well as expertise and time, to address the problem. Clinicians should have a candid discussion with their patient about what they can and cannot comfortably and competently state about a person’s disability and associated accommodations. In some cases, the clinician may need to refer the patient to another mental health provider for disability assessment.