

Employee's Receipt of Social Security Benefits May Prevent a Subsequent Claim for Disability Discrimination under the ADA

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An employee who applies for and receives Social Security disability benefits may be judicially estopped from bringing a disability discrimination claim under the Americans with Disabilities Act (the "ADA") according to a recent Louisiana District Court case. *Tanner v. BD LaPlace, LLC*.

Paul Tanner was separated from his employment with BD LaPlace LLC ("BD") for job abandonment in March 2016 after he refused to submit to a mandatory fitness for duty evaluation ("FDDE"). Tanner was employed with BD as a crane operator. In 2016, BD received complaints of Tanner's erratic workplace behavior. After investigation, BD required Tanner to undergo a mandatory FFDE. Tanner refused to comply with the testing. Accordingly, BD determined that Tanner had abandoned his position.

Tanner filed a charge for disability discrimination with the Equal Employment Opportunity Commission ("EEOC") in September 2016. Seven months later, he applied for and received Social Security benefits in which he provided sworn testimony to the Social Security Administration ("SSA") stating he became disabled on March 1, 2016. The SSA found that Tanner was, in fact, disabled, and backdated his disability to February 10, 2016. Tanner then filed suit alleging discrimination under the ADA.

The Court held that Tanner was precluded from bringing an ADA claim because of his sworn testimony provided to the SSA that he was "totally disabled" as of February 10, 2016. Relying on the Supreme Court's decision in *Cleveland v. Policy Mgt. Sys. Corp.*, 526 US 795, 806 (1999), the court here determined that it was Tanner's responsibility to explain the contradiction, which he failed to do.

Employers should always request and review SSA records from a plaintiff. If a plaintiff has received Social Security benefits, an employer may use the plaintiff's own sworn testimony provided to the SSA to defeat a disability discrimination claim.

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