

First Circuit Rules Inconsistent SSDI Statements Doom ADA Claim

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In [*Pena v. Honeywell International, Inc.*](#), issued on July 22, 2019, the U.S. Court of Appeals for the First Circuit denied a former employee's petition for rehearing *en banc* of the court's April 26, 2019, decision addressing whether her inconsistent statements on her Social Security Disability Insurance (SSDI) benefits application and complaint precluded her from bringing a claim pursuant to the Americans with Disabilities Act (ADA). Specifically, in applying for SSDI benefits, Pena, the former employee, had consistently asserted that she was totally disabled as of the last date she worked at Honeywell. However, in her complaint against Honeywell, Pena alleged that she was a qualified individual with a disability and thus able to perform the essential functions of the job, with or without an accommodation. Because Pena failed to explain these inconsistencies, the court held that her ADA claims against Honeywell were precluded by the doctrine of judicial estoppel.

Background

Honeywell determined that all of its production and assembly-line employees should be cross-trained in various departments. Pena, who regularly worked in the respiratory department, was thereafter required to cross-train in the molding department, among other areas of the facility. Prior to and after Honeywell's decision to have employees cross-train, Pena took several medical leaves due to her depression and anxiety. After the decision, she began working in the molding department for several hours a week, and spent the remainder of her time working in the respiratory department. Shortly thereafter, Pena complained that working in the molding department was "harmful to [her] emotionally." She also provided a doctor's note stating that Pena had reported that working in the molding room had exacerbated her anxiety. Without more information, Honeywell was unable to substantiate Pena's complaint and informed her that if she refused to work in the molding department, she would have to go home. On March 8, 2013, Pena left work and never returned.

After she left work, Pena clarified that the "noise, speed, and overall environment [of the molding department] gives [her] anxiety, palpitations." The company thereafter exchanged multiple correspondences with her attorney and received several notes from her doctor explaining, among other things, that the "noise levels, chemical odors, and the presence of robotics" in the molding department made it particularly stressful for Pena. On May 22, 2013, Honeywell wrote to Pena's attorney again stating that her doctor's notes did not explain the connection between her medical diagnosis and her ability to work in the molding department, given that the items identified by her

doctor were also true of working conditions in other departments, including the respiratory department where Pena regularly worked. The letter also explained that the respiratory department would remain Pena's primary department, but that all employees would be rotating among all areas of the facility, not just the molding department. Moreover, the rotations would be "as brief as 15 minutes, or as long as one week." Pena's attorney did not respond to this letter.

On June 17, 2013, after Pena had been absent for more than three months and used all of her medical leave, the company terminated her due to job abandonment. Approximately two months later, she applied for SSDI benefits. On her application, she claimed that she was totally disabled as of the last date that she worked at Honeywell by stating, "I became unable to work because of my disabling condition on March 8, 2013," and "I am still disabled."

The Court's Analysis

On April 16, 2015, Pena filed a complaint in Rhode Island Superior Court (the civil action was subsequently removed to the U.S. District Court for the District of Rhode Island) alleging that the company had violated the ADA and state law. The district court granted the company's motion for summary judgment, holding that Pena's claims were precluded by judicial estoppel due to her inconsistent statements on her SSDI application. The doctrine of judicial estoppel prevents a party from taking a position in one proceeding that contradicts the position it took in an earlier proceeding. Pena appealed the district court's decision to the First Circuit, arguing that being disabled under the ADA is distinguishable from being disabled for the purpose of qualifying for SSDI benefits, as the ADA considers reasonable accommodations. On April 26, 2019, the First Circuit affirmed the district court's decision, noting that Pena had provided "no qualification of any sort to her statement that she was totally disabled as of March 8, 2013." ([*Pena v. Honeywell International, Inc.*](#), 923 F.3d 18 (1st Cir. 2019)). Specifically, at her deposition, Pena had failed to explain the discrepancies between her claims made in the ADA litigation and in her SSDI application, and instead reinforced the discrepancies. Additionally, Pena subsequently submitted a self-serving affidavit in an attempt to minimize her deposition testimony. The court declined to consider the affidavit, as it was an improper method of creating a genuine issue of a material fact.

Pena filed a petition for rehearing *en banc* with the First Circuit, which the court denied for the aforementioned reasons.

Key Takeaways

The court expressly stated that its order denying the petition for rehearing *en banc* "does not foreclose different successful SSDI beneficiaries from filing ADA claims, *provided they reconcile any differences in their positions ...*" (emphasis added). The court's decision highlights the importance of obtaining all documents and evidence related to a plaintiff's statements, correspondence, disability applications, etc., to determine if the plaintiff has made inconsistent assertions regarding his or her disability. At the same time, employers are wise to engage in the interactive process with employees who have applied for SSDI benefits regardless of statements made on their SSDI applications, as they may be entitled to bring ADA claims if they can adequately explain discrepancies during ensuing litigation.

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