No. 24-1651

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES DUPLEASE, personal representative of JERALDINE HARTSON, deceased,
Plaintiff-Appellant,

v.

COMPWEST INSURANCE CO.,
Defendant-Appellee.

On Appeal from the United States District Court
for the Western District of Michigan
Hon. Jane M. Beckering, District Judge
No. 1:23-cv-197

BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICUS CURIAE IN SUPPORT OF APPELLANT AND IN FAVOR OF REVERSAL

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STATEMENT OF INTEREST

Congress charged the Equal Employment Opportunity Commission ("EEOC") with interpreting, administering, and enforcing federal laws prohibiting workplace discrimination, including the employment provisions of the Americans with Disabilities Act of 1990 ("ADA"), as amended by the ADA Amendments Act of 2008 ("ADAAA"), 42 U.S.C. §§ 12101 *et seq*. This appeal concerns the proper pleading standard for claims under the ADA. In her complaint, Plaintiff Jeraldine Hartson alleged that she had a severe and potentially life-threatening reaction to antibiotics that precluded her from receiving any vaccines, and she sought an exemption from her employer's mandatory COVID-19 vaccination policy on that basis. She further alleged that her employer terminated her instead of accommodating her disability.

The district court dismissed her single-count failure-to-accommodate complaint with prejudice, ostensibly because it did not plausibly allege a qualifying disability. In so ruling, the court incorrectly imposed a heightened pleading standard on Hartson that exceeded the facial plausibility requirements of Federal Rule of Civil Procedure 8(a)(2). *See Bell Atl. Co. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S.

662, 678 (2009). Because the EEOC has a strong interest in the proper application of pleading standards to ADA claims, it offers its views to the Court. *See* Fed. R. App. P. 29(a).

STATEMENT OF THE ISSUES[1]

1. Did the district court err in concluding that Plaintiff failed to plausibly allege an ADA-covered disability when she alleged an allergy to vaccines that could result in her "serious disability and/or death," assertedly because she did not specify "the major life activities or bodily functions that her disabilities allegedly impact"?

2. Did the district court err in relying on emails attached to Defendant's motion to dismiss seeking more information about Plaintiff's disability—emails that were not mentioned in her complaint—to determine that Plaintiff was not disabled within the meaning of the ADA?

STATEMENT OF THE CASE

A. Statement of the Facts

The following allegations are based on Plaintiff-Appellant Jeraldine Hartson's Second Amended Complaint ("SAC"). Hartson worked for

[1] The EEOC takes no position on any other issue in this appeal.

Defendant-Appellee Compwest Insurance Co. ("Compwest"), a Blue Cross/Blue Shield of Michigan affiliate, as a Senior Business Development Consultant. SAC ¶ 9, R.52, Pg.ID#581. On November 1, 2021, Compwest announced that its employees needed to receive at least the first of two doses of a COVID-19 vaccine by December 8, and to receive their second dose by January 4. SAC ¶¶ 10-11, R.52, Pg.ID#581. The policy allowed employees to seek an exemption on medical or religious grounds, but Compwest placed all employees who were denied a requested exemption and did not get the vaccination on unpaid leave from December 8 through January 5 and then terminated them. SAC ¶¶ 11, 13, 24, R.52, Pg.ID#581-82.

Hartson was severely allergic to antibiotics. When she took erythromycin to treat her bronchitis, she had an allergic reaction requiring hospitalization to pump her stomach. SAC ¶¶ 35-37, R.52, Pg.ID#583-84. She had a similar reaction on another occasion when she developed a painful body rash from taking penicillin. SAC ¶ 38, R.52, Pg.ID#584. Because of her allergies, she never received a flu shot or other vaccines as an adult. SAC ¶ 39, R.52, Pg.ID#584.

Based on her fear of a severe allergic reaction to the COVID-19 vaccine, Hartson sought a two-year medical exemption from Compwest's mandatory vaccination policy. SAC ¶¶ 40-42, R.52, Pg.ID#584. As part of her request, she submitted a note from her physician explaining that she "has a medical condition that prohibits receipt of vaccine for C-19. The vaccine can cause this patient serious disability and/or death if [she] receives the covid-19 vaccine." SAC ¶ 41, R.52, Pg.ID#584 (alteration in original). Compwest denied her request without asking her physician for additional information or sending her for an independent medical examination, and did not provide a specific reason for denying her request. SAC ¶¶ 43, 45, R.52, Pg.ID#584. When she did not receive the vaccine by the deadline for the second shot, Compwest fired her. SAC ¶ 44, R.52, Pg.ID#584.

B. District Court's Decision

Hartson sued Compwest, alleging that its failure to accommodate her disability and subsequent termination of her employment violated the ADA. SAC ¶¶ 49-65, R.52, Pg.ID#585-87. The district court granted Compwest's motion to dismiss the SAC with prejudice. District Court Opinion ("Op.") at 10, R.62, Pg.ID#717. The court concluded that Hartson

"has not plausibly alleged that she is disabled within the meaning of the ADA" because, although she identified her bronchitis and severe allergies to medicine, she did not "allege any facts regarding the major life activities or bodily functions that her disabilities allegedly impact." Op. at 8, R.62, Pg.ID#715. The note from Hartson's doctor stating that she faced a "risk of serious disability and/or death" from the COVID-19 vaccine did not help in this regard, in the court's view, because it, too, was "conclusory in the manner in which [it] describe[d] Plaintiff's disabilities and how they operate to affect her life" and "too vague to create a plausible inference that Plaintiff suffered from a disability within the meaning of the ADA." Op. at 8-9, R.62, Pg.ID#715-16. To support this conclusion, the court referred to "emails attached to Defendant's motion" stating Compwest's position that Hartson needed to identify her medical condition with greater specificity.[2] Op. at 9, R.62, Pg.ID#716. Because the SAC did "not suggest that she

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[2] Despite its reference to Compwest's email to Hartson, the court emphasized that it based its decision on whether the SAC, "on its face, alleges facts that create a plausible inference that Plaintiff was disabled within the meaning of the ADA," and not on whether the parties met their respective responsibilities during the interactive process. Op. at 9 n.6, R.62, Pg.ID#716.

identified for Defendant the condition constituting her disability" and did "not contain any facts about how her disabilities affect a major life activity or bodily function," the court concluded that it "f[e]ll short of even the lenient pleading standard for a disability under the ADA." Op. at 9, R.62, Pg.ID#716. Because Hartson had previously amended her complaint twice and had not sought another chance to amend, the court dismissed the SAC with prejudice, though it acknowledged that doing so was a "harsh sanction." Op. at 9-10, R.62, Pg.ID#716-17.

ARGUMENT

Hartson's Second Amended Complaint plausibly alleged an ADA-covered disability and should have survived Compwest's motion to dismiss.

The district court erred in concluding that Hartson failed to plausibly allege an ADA-qualifying disability because she failed to specify the major life activities or bodily functions her disabilities impacted. This interpretation held Hartson to an impermissibly high pleading standard, misapprehending her burden in bringing a failure-to-accommodate claim under the ADA.

A. A plaintiff alleging disability discrimination under the ADA as amended need only allege a facially plausible claim of disability, and need not allege a significant restriction on her major life activities.

Federal Rule of Civil Procedure 8(a)(2) directs that a civil complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Such a statement "give[s] the defendant fair notice of what the … claim is and the grounds upon which it rests." *Spengler v. Worthington Cylinders*, 615 F.3d 481, 492 (6th Cir. 2010) (quoting *Twombly*, 550 U.S. at 555 (second alteration in original)). Interpreting this rule in *Twombly* and *Iqbal*, the Supreme Court explained that to survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). "If a reasonable court can draw the necessary inference [of discrimination] from the factual material stated in the complaint, the plausibility standard has been satisfied. After all, 'plausibility' occupies that wide space between 'possibility' and 'probability.'" *Savel v. MetroHealth Sys.*, 96 F.4th 932, 943 (6th Cir. 2024) (cleaned up). This pleading standard does not require "detailed factual allegations," *Twombly*,

550 U.S. at 555, and a complaint need not contain all elements of a prima facie case of discrimination, *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 510-12 (2002); *Savel*, 96 F.4th at 943. Importantly, "the tenet that a court must accept as true all of the allegations contained in a complaint" remains intact. *Iqbal*, 556 U.S. at 678.

Whether the court ultimately believes a plaintiff will be able to prove her case is irrelevant at the dismissal stage: "[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Twombly*, 550 U.S. at 556 (citation omitted). The touchstone, both before and after *Twombly* and *Iqbal*, is whether the complaint "give[s] the defendant fair notice of what the … claim is and the grounds upon which it rests." *Id.* at 555 (second alteration in original) (citation omitted); *id.* at 565 n.10 (differentiating between an acceptable complaint with enough factual information that the defendant "would know what to answer" from an impermissible conclusory complaint affording the defendant "little idea where to begin").

The question facing the district court here, then, was "whether the complaint states a claim for relief that is plausible, when measured against

the elements of an ADA claim." *Darby v. Childvine, Inc.*, 964 F.3d 440, 444 (6th Cir. 2020). The ADA forbids discrimination against qualified individuals "on the basis of disability." 42 U.S.C. § 12112(a). The form of disability discrimination at issue in this case is a failure to provide a "reasonable accommodation[] to the known physical or mental limitations of an otherwise qualified individual with a disability." 42 U.S.C. § 12112(b)(5)(A); *see Morrissey v. Laurel Health Care Co.*, 946 F.3d 292, 298 (6th Cir. 2019). To establish a valid ADA failure-to-accommodate claim, a plaintiff must show, *inter alia*, that she was disabled within the meaning of the statute. As relevant here, Hartson was required to allege that she had "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1)(A). "[S]o long as the complaint notifies the defendant of the claimed impairment, the substantially limited major life activity need not be specifically identified in the pleading." *EEOC v. J.H. Routh Packing Co.*, 246 F.3d 850, 854 (6th Cir. 2001); *see also Fowler v. UPMC Shadyside*, 578 F.3d 203, 213-14 (3d Cir. 2009) (explaining that *J.H. Routh* remains good law even after *Twombly* and *Iqbal*).

Courts interpreting the ADA initially imposed an excessively narrow definition of a qualifying disability under the statute, "le[aving] the ADA

too compromised to achieve its purpose." *Hostettler v. Coll. of Wooster*, 895 F.3d 844, 848 (6th Cir. 2018). In response, Congress passed the ADAAA to "restore the intent and protections of the" ADA. Pub. L. No. 110-325, 122 Stat. 3553; *see also id.* § 2(b)(1), 122 Stat. 3553, 3554 (codified at 42 U.S.C. § 12101 note) (explaining that the ADAAA's purposes include "reinstating a broad scope of protection to be available under the ADA"). Among the ADAAA's chief purposes was a rejection of the overly strict standard courts had previously applied to determine which impairments were "substantially limit[ing]" enough to qualify as disabilities under the ADA. *Id.* § 2(b)(4), 122 Stat. 3553, 3554; *see also id.* § 2(a)(7), 122 Stat. 3553, 3553 (explaining that the Supreme Court "interpreted the term 'substantially limits' to require a greater degree of limitation than was intended by Congress"); *id.* § 2 (b)(5), 122 Stat. 3553, 3554 (stating that the standard applied by courts to the question of substantial limitation was "inappropriately high," and explaining that "the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis").

The amended statute explains that "major life activit[ies] … include[] the operation of a major bodily function," and "major bodily functions," in

turn, include "functions of the immune system." 42 U.S.C. § 12102(2)(B). It specifically notes that the term "substantially limits" does not require a "significant[] restrict[ion]" on a major life activity. Pub. L. No. 110-325, § 2(a)(8), 122 Stat. 3553, 3554 (codified at 42 U.S.C. § 12101 note). More generally, the statute provides that the applicable "definition of disability … shall be construed in favor of broad coverage of individuals … to the maximum extent permitted by the terms of this chapter." 42 U.S.C. § 12102(4)(A).

The EEOC's regulations implementing the ADAAA similarly emphasize the breadth of the statutory definition of "disability." Congress explicitly vested the EEOC with "the authority to issue regulations implementing the definitions of disability" in accordance with the ADAAA. 42 U.S.C. § 12205a; *see also* Pub. L. No. 110-325, §2(b)(6), 122 Stat. 3553, 3554 (codified at 42 U.S.C. § 12101 note) (explaining that Congress expected the EEOC to "revise that portion of its current regulations that defines the term 'substantially limits' … to be consistent with this Act, including the amendments made by this Act"); *cf. Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2263 (2024) (explaining that Congress may "expressly delegate to an agency the authority to give meaning to a

particular statutory term" (quotation marks and alterations omitted)); *id.* at 2263 n.5 (giving statutory examples).

The applicable EEOC regulations explain that in assessing whether an impairment substantially limits a "major life activity," "the term 'major' shall not be interpreted strictly to create a demanding standard for disability," and need not be "of 'central importance to daily life.'" 29 C.F.R. § 1630.2(i)(2) (citing Pub. L. No. 110-325, § 2(b)(4), 122 Stat. 3553, 3554, codified at 42 U.S.C. § 12101 note)). With respect to the necessary degree of limitation, the regulations state that "[t]he term 'substantially limits' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA"—it "is not meant to be a demanding standard." 29 C.F.R. § 1630.2(j)(1)(i); *cf. Darby*, 964 F.3d at 445 (referring to the ADAAA's "'rule of construction' that tips in favor of coverage" in close cases). The regulations also explain in pertinent part that "[a]n impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." 29 C.F.R. § 1630.2(j)(1)(vii).

B. Given the ADAAA's expansive definition of disability, the SAC met Rule 8(a)(2)'s facial plausibility standard.

Based on the expansive definition of "disability" under the ADAAA, the district court erred in concluding that the SAC failed to allege enough facts about major life activities or bodily functions to survive Compwest's motion to dismiss. Again, at the dismissal stage, the plaintiff need not amass sufficient evidence to prove her claim. Instead, the question is whether the facts alleged, accepted as true, state a plausible claim for relief. *Iqbal*, 556 U.S. at 678; *Forman v. TriHealth, Inc.*, 40 F.4th 443, 448 (6th Cir. 2022) ("Plausibility requires showing more than the 'sheer possibility' of relief but less than a 'probab[le]' entitlement to relief." (quoting *Fabian v. Fulmer Helmets, Inc.*, 628 F.3d 278, 280 (6th Cir. 2010)); *Darby*, 964 F.3d at 444.

Hartson met that standard. The SAC did not merely offer a conclusory assertion that she was disabled within the meaning of the ADA or a generic recitation of the required statutory elements. Instead, it set out the factual basis for her assertion that she had a covered disability. It explained that Hartson had severe allergic reactions to erythromycin and penicillin, once necessitating hospitalization and stomach pumping, and

that these reactions precluded her from taking flu shots or other vaccines. SAC ¶¶ 34-39, 41, R.52, Pg.ID#583-84. The SAC also described the note from Hartson's physician to Compwest stating that her condition prohibited her from taking the COVID-19 vaccine, which could cause her "serious disability and/or death." SAC ¶¶ 40-41, R.52, Pg.ID#584. Accepted as true, these allegations indicate that Hartson has impairments (her severe allergic reactions) that substantially limit a major bodily function (her immune system), thus limiting a major life activity.[3] *See* 42 U.S.C. § 12102(1)(A), (2).

The district court concluded that the SAC "does not allege any facts regarding the major life activities or bodily functions that her disabilities allegedly impact." Op. at 8, R.62, Pg.ID#715. But that is incorrect. Accepted as true, the SAC's allegations indicated both the bodily functions

[3] The SAC also stated that Hartson suffers from bronchitis. SAC ¶ 35, R.52, Pg.ID#583. Because "breathing" is on the non-exhaustive list of major life activities included in the ADAAA, 42 U.S.C. § 12102(2)(A), bronchitis could potentially constitute a substantially limiting impairment as well. *See* 42 U.S.C. § 12102(1)(A); *Wilson v. Indus. Com. Cleaning Grp., Inc.*, No. 19-cv-2198, 2021 WL 3190555, at *7 (E.D. Pa. July 28, 2021) (stating that bronchitis may constitute a disability under the ADA); *Godbolt v. Trinity Prot. Servs., Inc.*, No. 14-cv-3546, 2017 WL 2579020, at *10 (D. Md. June 12, 2017) (same).

at issue and the disruption caused by her allergies. The district court also stated that the letter from Hartson's physician outlining the reasons she could not take the vaccine was too "conclusory" and "vague," and failed to sufficiently "describe Plaintiff's disabilities and how they operate to affect her life." Op. at 8-9, R.62, Pg.ID#715-16. But the doctor's note, standing alone, is not itself a pleading subject to Rule 8(a)(2)'s standards; the court erred to the extent it conflated the degree of specificity in the note with the plausibility requirements of Rule 8(a)(2). Read together with the rest of the SAC, the letter stated that her medical condition created such a high risk of "serious disability and/or death" from the vaccine that she was "prohibit[ed]" from receiving it. SAC ¶ 41, R.52, Pg.ID#584. Far from merely a rote recitation of the elements of a claim, the allegations about the note provide additional context for Hartson's contentions, pushing the complaint even further into the realm of the plausible—the touchstone under *Twombly* and *Iqbal*.[4] *See Twombly*, 550 U.S. at 570; *Iqbal*, 556 U.S. at

[4] We take no position on whether the parties met their respective obligations to engage in an interactive process, an issue the district court explicitly declined to address. *See supra* at 5 n.2; Op. at 9 n.6, R.62, Pg.ID#716; *see also Kleiber v. Honda of Am. Mfg., Inc.*, 485 F.3d 862, 871-72

678; *see also Sturgill v. Am. Red Cross*, 114 F.4th 803, 807-08 (6th Cir. 2024) ("[W]e must take care to read the complaint's allegations 'as a whole.'" (quoting *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 47 (2011)).

C. The district court should not have relied on the emails attached to Compwest's motion for dismissal.

The district court also relied on "emails attached to Defendant's motion" to conclude that Hartson's accommodation request did not sufficiently describe her medical condition necessitating an exemption to the vaccination policy, and stated that her allegations "do not suggest that she *identified for Defendant* the condition constituting her disability." Op. at 9, R.62, Pg.ID#716 (emphasis added). As an initial matter, because Hartson did not reference this email material in the SAC, the court should not have considered it at the dismissal stage.[5] *See Wershe v. City of Detroit*, 112 F.4th

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(6th Cir. 2007) (describing obligation of both the employer and the employee to engage in good faith in an interactive process).

[5] We note that although a defendant may rely on matters outside the pleadings to convert a motion to dismiss into one for summary judgment, Fed. R. Civ. P. 12(d), Compwest did not purport to do that here, and the court did not analyze the dismissal motion as such. Op. at 6, R.62, Pg.ID#713. If the court had wanted to treat the dismissal motion as one for summary judgment, moreover, it would have had to provide Hartson notice and "a reasonable opportunity to present all the material that is pertinent to the motion," which it did not do. Fed. R. Civ. P. 12(d); *see also Bates v. Green Farms Condo. Ass'n*, 958 F.3d 470, 484 (6th Cir. 2020)

357, 372-73 (6th Cir. 2024) (explaining that a court considering a motion to dismiss may consider "exhibits attached to the motion to dismiss briefing" only if they "are referred to in the [c]omplaint and are central to the claims contained therein" (alteration in original) (quoting *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008))). More importantly, the email does not establish that Hartson was not disabled; at most, it indicates that Compwest requested additional information about the issue. *See* BCBS email to Hartson, R.56-3 at 3, Pg.ID#621 ("[Y]our request for medical accommodation in its current form is DENIED. If you provide greater detail and specificity your request may be reconsidered."). Whether she sufficiently identified her condition to Compwest is relevant to her actions during the interactive process, *see Kleiber*, 485 F.3d at 871, not to whether she had a disability within the meaning of the statute. Indeed, the district court itself correctly noted that the parties' actions during the interactive process were "irrelevant to the Court's assessment as to whether the Second Amended Complaint, on its face, alleges facts that create a

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(explaining that if a court plans to convert a dismissal motion to one for summary judgment, it must first notify the parties and give them a reasonable opportunity to present all pertinent material).

plausible inference that Plaintiff was disabled within the meaning of the ADA." Op. at 9 n.6, R.62, Pg.ID#716.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be vacated and the case remanded for further proceedings.

Respectfully submitted,

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October 21, 2024

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 3,565 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 6th Cir. R. 32(b)(1).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Book Antiqua 14 point.

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CERTIFICATE OF SERVICE

I certify that on this 21st day of October, 2024, I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I certify that all counsel of record are registered CM/ECF users, and service will be accomplished via the appellate CM/ECF system.

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ADDENDUM

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