No. 24-10841

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Rochelle L. Smith,
Plaintiff-Appellant,

v.

General Motors, LLC,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Texas, No. 23-cv-379
Hon. Reed O'Connor

BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

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STATEMENT OF INTEREST

Congress charged the Equal Employment Opportunity Commission ("EEOC") with interpreting the definition of "disability" under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12205a, and with interpreting and enforcing Title I of the ADA, 42 U.S.C. §§ 12116, 12117. In 2008, Congress amended the ADA to expand the scope of its protections. ADA Amendments Act of 2008 ("ADAAA"), Pub. L. No. 110-325, 122 Stat. 3553 (2008). In this case, the district court relied on pre-ADAAA law in analyzing whether the plaintiff had a covered disability. Because the EEOC has a substantial interest in the proper interpretation of the laws it enforces, the EEOC files this brief pursuant to Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE ISSUES[1]

1. Did the district court err in relying on pre-ADAAA law in analyzing whether the plaintiff had an actual disability?

2. Should the district court have considered the plaintiff's argument that her employer regarded her as disabled?

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

STATEMENT OF THE CASE

A. Statement of the Facts[2]

Defendant General Motors LLC ("GM") hired Plaintiff Rochelle Smith as a forklift driver for its Arlington Plant in February 2020. R.25 at 3 (¶6).[3] On August 29, 2020, Smith was operating a forklift when she swerved to avoid a GM automated vehicle and hit a pole. *Id.* at 3 (¶7). The forklift frame slammed into her forehead, causing her to lose consciousness. *Id.* at 3 (¶¶7,9). After an on-site nurse noted her swollen head, EMS transported Smith to the ER. *Id.* at 3 (¶¶8-10). There, Smith experienced a "significant headache," "stiffness in the neck and shoulders," and blurred vision, and was diagnosed with a concussion, a "head contusion," and "cervical strain." *Id.* at 3-4 (¶10).

A doctor cleared Smith to return to work on September 2 with restrictions, including a restriction to "sedentary work only" for three days. *Id.* at 4 (¶11). The next day, however, Smith went to GM's medical clinic

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[2] Because this appeal arises from a grant of GM's motion for judgment on the pleadings, the EEOC recounts the well-pleaded facts in Smith's Amended Complaint in the light most favorable to Smith. *See Great Lakes Ins., S.E. v. Gray Grp. Invs., L.L.C.*, 76 F.4th 341, 349 (5th Cir. 2023).

[3] The EEOC cites to the district court record using the following format: R.[Docket number] at [PageID number].

because she was experiencing a severe headache and dizziness. *Id.* at 4 (¶13). She visited a medical center the following day, where a doctor cleared her to return to work with a long-term, sedentary-only restriction. *Id.* at 5 (¶14). Smith's Amended Complaint also referenced some restrictions on standing, walking, lifting, pulling, reaching, bending, and riding on heavy equipment. *See generally id.* at 6-8 (¶¶19-22,24-26).

According to Smith's Amended Complaint, GM repeatedly assigned Smith to jobs that fell outside of her restrictions. *Id.* at 6-9 (¶¶19-26). In mid-September, GM assigned her to the Trim Shop, which involved "lifting heavy equipment and riding on heavy equipment"—actions that aggravated her back and neck injuries. *Id.* at 6 (¶19). When Smith complained, GM assigned her to the Stripping Department. *Id.* at 6 (¶20). This position also fell outside of Smith's work restrictions because it required hours-long, continuous standing. *Id.* In October, and again in February, GM assigned her to an inventory role in the Trim Shop that "consisted of long standing, reaching, pulling and walking"—actions at odds with Smith's work restrictions. *Id.* at 7 (¶¶21-22).

In March 2021, GM assigned Smith to two roles in the Trim Shop that it claimed would accommodate her injuries. *Id.* at 7-8 (¶¶24-26). Neither

did. *Id.* at 8 (¶¶25-26). The first required Smith to ride on heavy machinery and to walk, reach, and bend. *Id.* at 8 (¶25). The second involved janitorial work in the meeting and break rooms and required her to wash walls and cabinets, as well as pick up trash and clean tables. *Id.* at 8 (¶26). Smith complained to her supervisor and the union that these tasks violated her work restrictions. *Id.* 8-9 (¶¶27-28).

Finally, GM placed Smith in a "no job available" program and instructed her to go home. *Id.* at 9 (¶28). Smith received worker's compensation at this time. *Id.* at 5,9-10 (¶¶16,30,32).

GM terminated Smith's employment in March 2022, stating that Smith had been on worker's compensation for a year. *Id.* Smith alleges that she learned of the termination from a GM medical nurse when she was "visit[ing] GM for her bi-weekly doctor orders update." *Id.* at 5 (¶15). When Smith inquired into the reasons for termination, GM informed Smith that it would rehire her if she could get medically cleared within a week. *Id.* at 10 (¶31). According to Smith, GM wanted her "to ignore her doctor's orders." *Id.*

B. District Court's Decision

Smith filed suit *pro se* under, *inter alia*, the ADA, and GM moved for judgment on the pleadings. The magistrate judge issued a Findings, Conclusions, and Recommendation ("FCR"). R.114. He first recommended dismissing most of Smith's claims as time-barred. *Id.* at 4-6. He then recommended disposing of two additional claims, holding that Smith failed to satisfy the administrative charge-filing requirements for those claims. *Id.* at 6-7.

For Smith's sole remaining claim—termination in violation of the ADA—the magistrate judge held that Smith did not plead sufficient facts to show either that she was qualified for the job or that she had a disability. *Id.* at 8-11. And "[b]ecause she has not pleaded facts to show that she was disabled, she likewise cannot show that GM terminated her employment because of a disability." *Id.* at 11.

As to Smith's failure to plead that she had a disability, the magistrate judge first explained that the ADA defines disability to include "a physical or mental impairment that substantially limits one or more major life activities." *Id.* at 10 (quoting 42 U.S.C. § 12102(1)). He added that to "be substantially limited means to be unable to perform a major life activity

that the average person in the general population can perform, or to be significantly restricted in the ability to perform it." *Id.* (quoting *EEOC v. Chevron Phillips Chem. Co.*, 570 F.3d 606, 614 (5th Cir. 2009)).

The magistrate judge next determined that Smith's allegations that she was a "disabled employee" and limited to "sedentary work" were conclusory and held that the Amended Complaint was otherwise "devoid of any facts giving rise to an inference that she was disabled under the ADA." *Id.* He dismissed Smith's allegations in her response to GM's motion because it would be "improper … to rely on a response to a motion to assist the pleadings." *Id.* at 10-11 (citation omitted).[4]

But even if Smith's Amended Complaint had included the allegations mentioned in Smith's response briefing, the magistrate judge concluded,

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[4] Smith's response brief says that a doctor diagnosed her at some point with "on-going head and neck injur[ies]" as well as "Traumatic Brain Injury" and "Post Concussion Syndrome," and that she was placed on numerous long-term restrictions extending from the time of the accident until June 2023 (e.g., "driving/operating heavy equipment," "kneeling/squatting," "bending/stooping," "climbing," "overhead reaching," standing more than four hours a day, and walking more than two hours a day). R.87 at 14-17. *Cf. Lozano v. Schubert*, 41 F.4th 485, 490-91 (5th Cir. 2022) (collecting cases explaining that courts should consider *pro se* briefs as amendments to the complaint when considering motions to dismiss).

her allegations would still be "insufficient to establish that she was disabled." *Id.* at 11. The judge held that Smith's allegations regarding her medical restriction on lifting were insufficient. *Id.* Nor did she plausibly allege a substantial limitation on the major life activity of "working." *Id.* The magistrate judge reasoned that Smith "only alleges that she cannot perform her role as a forklift driver," "alleges no facts demonstrating that she is unable to work in other jobs," and "acknowledges that she can perform sedentary work." *Id.* The magistrate judge did not address Smith's allegations that GM "regarded [her] as having a disability," R.25 at 6 (¶18), or GM's rebuttal as to that point, R.83 at 13.

Shortly after the magistrate judge issued its FCR, Smith filed a Motion for a Jury Trial. *See* R.115. Both the district court and GM interpreted the motion as an objection to the FCR but concluded that Smith had not lodged specific objections. R.117 at 1; R.116 at 1-2.[5] The district

[5] Smith's motion, liberally construed—as it must be, *Brown v. Sudduth*, 675 F.3d 472, 477 (5th Cir. 2012); *Grant v. Cuellar*, 59 F.3d 523, 524 (5th Cir. 1995) (per curiam)— does include arguments that rebut the FCR's disability analysis and conclusion. For example, she argues that "[t]he motion implicates the 2008 amendments to the ADA, which broadened the definition of 'disability,'" she details how her various impairments limited numerous life activities throughout her employment, and she includes the statutory text of the definition of disability. R.115 at 3, 18-20, 28-31.

court reviewed the FCR *de novo* and accepted it upon finding no error. R.117.[6]

ARGUMENT

Under the ADA, a covered employer may not "discriminate against a qualified individual on the basis of disability." 42 U.S.C. § 12112(a). "Disability" means "a physical or mental impairment that substantially

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[6] Because the district court engaged in *de novo* review, this Court's review is *de novo* (rather than for plain error)—even assuming that Smith failed to lodge specific objections. "*De novo* review… means that the district court independently review[d] matters in the record," *Shiimi v. Asherton I.S.D.*, No. 92-5562, 1993 WL 4732, at *2 n.18 (5th Cir. Jan. 8, 1993), and "[w]hen … the district court undertakes an independent review of the record, [the Fifth Circuit's] review is *de novo*, despite any lack of objection [to the FCR]," *Alexander v. Verizon Wireless Servs., L.L.C.*, 875 F.3d 243, 248 (5th Cir. 2017). *See also Dennis v. U.S. Postal Serv.*, 564 F. App'x 85, 86 (5th Cir. 2014) ("[W]e do not require specific objections as a prerequisite to full review when the district court has engaged in de novo review."). This rule is "especially relevant in the context of *pro se* cases." *Alexander*, 875 F.3d at 248 (citation omitted). That the district court's statement might be "judicial boilerplate" makes no difference; it nonetheless "indicate[s] that [the district court] conducted an independent review of the record." *Id.* at 249. Indeed, the same district court judge underscored in a different order accepting an FCR that "*de novo* review mandates a from-scratch review of the record and application of the law to the facts of th[e] case." *Glick v. Am. Bar Ass'n*, No. 4:24-cv-00350, 2024 WL 3264514, at *1 (N.D. Tex. July 1, 2024). Whether Smith offered specific objections to the FCR is therefore irrelevant, and the appropriate standard of review is *de novo.*

limits one or more major life activities of such individual," "a record of such an impairment," or "being regarded as having such an impairment." 42 U.S.C. § 12102(1)(A)-(C). Smith pled that she was disabled under the first and third prongs of the statutory definition, which are known as the actual disability and regarded-as prongs. *See, e.g.,* 29 C.F.R. § 1630.2(g)(2). Specifically, she alleged that she was "a qualified individual with a disability" and that GM "also regarded [her] as having a disability by subjecting her to an adverse employment action . . . because of an actual or perceived physical impairment." R.25 at 6 (¶18). As explained below, the district court[7] used the wrong standard as to the actual disability prong and improperly ignored Smith's allegations as to the regarded-as prong.

I. The district court relied on a definition of "substantially limited" that the ADAAA expressly abrogated.

The district court erred in its analysis of the actual disability prong by using standards that Congress expressly abrogated in the ADAAA and that this Court has since rejected. The court held that to "be substantially limited means to be *unable to perform* a major life activity that the average

[7] Because the district court reviewed the FCR *de novo* and accepted its conclusions, R.117, the EEOC refers to both decisions together as those of the "district court."

person in the general population can perform, or to be *significantly restricted* in the ability to perform it." R.114 at 10 (emphases added). For this prevent-or-significantly-restrict standard, the district court cited *EEOC v. Chevron Phillips Chem. Co.*, 570 F.3d 606, 614 (5th Cir. 2009), which in turn cited 29 C.F.R. § 1630.2(j). R.114 at 10.

The district court used the wrong regulatory standard. That standard, cited in *Chevron Phillips*, appears in the pre-ADAAA version of the regulations. *See* 29 C.F.R. § 1630.2(j)(1)(i)-(ii) (1991) ("substantially limits" means "[u]nable to perform" or "[s]ignificantly restricted" in performing a major life activity). Congress has since rejected it. Indeed, this Court has acknowledged that *Chevron Phillips* "applied *pre*-ADAAA case law and [is] therefore inapposite." *Mueck v. La Grange Acquisitions, L.P.*, 75 F.4th 469, 481 (5th Cir. 2023).

As *Mueck* explained, because "[c]ourts initially construed the definition of disability narrowly, particularly in the context of determining whether an impairment substantially limited a major life activity … Congress enacted the … ADAAA … with the goal of reinstating a broad scope of protection to be available under the ADA." *Id.* at 479 (citations omitted). *See also* ADAAA, Pub. L. No. 110-325, §§ 2(a), 2(b)(1), 122 Stat.

3553 (2008) (hereinafter "ADAAA") (similar). Congress underscored that "[t]he definition of disability … shall be construed in favor of broad coverage," 42 U.S.C. § 12102(4)(A), and "the question of whether an individual's impairment is a disability under the [post-amendment] ADA should not demand extensive analysis," ADAAA § 2(b)(5). *See also Cannon v. Jacobs Field Servs. N. Am., Inc.*, 813 F.3d 586, 590 (5th Cir. 2016) (recognizing that the "amendments 'make it easier for people with disabilities to obtain protection under the ADA,' and that "[a] principal way in which Congress accomplished that goal was to broaden the definition of 'disability'" (quoting 29 C.F.R. § 1630.1(c)(4)).

Indeed, Congress expressly rejected the standard that the district court used, "convey[ing] congressional intent" that the pre-ADAAA standard "created an inappropriately high level of limitation." ADAAA § 2(b)(5); *see also id.* § 2(a)(8) (similar). It thus instructed the EEOC to "revise" its "regulations that define[] the term 'substantially limits' as 'significantly restricted' to be consistent with this Act." *Id.* § 2(b)(5)-(6); *see also* 42 U.S.C. § 12102(4)(B) ("The term 'substantially limits' shall be interpreted consistently with the findings and purposes of the ADA

Amendments Act of 2008."); 42 U.S.C. § 12205a (authorizing the EEOC to issue regulations implementing the definition of disability).

The EEOC's revised regulations state that "[a]n impairment *need not prevent, or significantly or severely restrict*, the individual from performing a major life activity in order to be considered substantially limiting," 29 C.F.R. § 1630.2(j)(1)(ii) (emphasis added), as this Court has recognized, *see, e.g., Epley v. Gonzalez*, 860 F. App'x 310, 313 (5th Cir. 2021); *Williams v. Tarrant Cnty. Coll. Dist.*, 717 F. App'x 440, 446 (5th Cir. 2018); *Mann v. Louisiana High Sch. Athletic Ass'n*, 535 F. App'x 405, 410 n.1 (5th Cir. 2013) (noting that where this Court has used pre-ADAAA standards, it has done so "because the amendments were not retroactive" and those cases "involved conduct occurring prior to the effective date of the amendments."). Rather, the term "substantially limits" "shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for 'substantially limits' applied prior to the ADAAA." 29 C.F.R. § 1630.2(j)(1)(iv); *see also Mueck*, 75 F.4th at 479 (same); *Cannon*, 813 F.3d at 590-91 (same).

Post-amendments, the correct coverage inquiry is "whether [the plaintiff's] impairment substantially limits his ability 'to perform a major

life activity as compared to most people in the general population.'" *Cannon*, 813 F.3d at 591 (quoting 29 C.F.R. § 1630.2(j)(1)(ii)); *Mueck*, 75 F.4th at 479 (same). The district court thus erred in using an outdated standard.

The district court also wrongly relied on pre-ADAAA case law in concluding that, even when considering Smith's allegations in her response briefing, her alleged lifting limitations did not qualify as a disability. Notably, the court's cited authority—*Tyler v. La-Z-Boy Corp.*, 506 F. App'x 265 (5th Cir. 2013), and *Ray v. Glidden Co.*, 85 F.3d 227 (5th Cir. 1996)—analyzed pre-amendments conduct and thus used the outdated disability definition to hold that the respective plaintiffs did not adduce sufficient evidence for purposes of summary judgment to show that their lifting restrictions substantially limited a major life activity. These cases' disability analyses are no longer good law. *See Mann*, 535 F. App'x at 410 n.1.

This Court's decision in *Cannon*, 813 F.3d at 590-91, provides a framework for applying the correct, post-amendments standard for the actual disability analysis. In *Cannon*, the plaintiff suffered from an inoperable rotator cuff injury that resulted in a ten-pound lifting restriction and other limitations. *Id.* at 588. The district court held on summary judgment that Cannon had not shown that he was disabled because his

"injured shoulder did not substantially impair[] his daily functioning." *Id.* at 590 (alteration in original). This Court reversed, holding that "[w]hatever merit that finding of no disability may have had under the original ADA, it is at odds with changes brought about by the ADA Amendments Act of 2008." *Id.* The court observed that "[t]he inquiry in this post-amendment case is … whether Cannon's impairment substantially limits his ability 'to perform a major life activity as compared to most people in the general population.'" *Id.* at 591 (quoting in part 29 C.F.R. § 1630.2(j)(1)(ii)). Using that "more relaxed standard," this Court held that the evidence that "[Cannon] is unable to lift his right arm above shoulder level and that he has considerable difficulty lifting, pushing, or pulling objects with his right arm" supported "a conclusion that Cannon's injury qualifies as a disability[.]" *Id.* Thus, *Cannon*, rather than *Tyler* or *Ray*, provides the correct analysis.

II. The district court failed to consider whether Smith adequately pled that she was "regarded as" disabled.

The district court should have considered Smith's allegation that GM "regarded [her] as having a disability by subjecting her to an adverse employment action, race discrimination, job promotion denial and

termination because of an actual or perceived physical impairment." R.25 at 6 (¶18). Post-amendments, an individual seeking to show that she was disabled under the regarded-as prong need only show "that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment *whether or not the impairment limits or is perceived to limit a major life activity*." 42 U.S.C. § 12102(3)(A) (emphasis added); *see also Burton v. Freescale Semiconductor, Inc.*, 798 F.3d 222, 230 (5th Cir. 2015) (quoting statutory provision). Given that the district court concluded that Smith had failed to plead that her impairments substantially limited a major life activity, it should have addressed the regarded-as prong.

Focusing on the regarded-as prong is especially appropriate in a case like this one, where the district court disposed of Smith's failure-to-accommodate claims on other grounds, leaving only her termination claim. *See, e.g.*, 29 C.F.R. § 1630.2(g)(3) ("Where an individual is not challenging a covered entity's failure to make reasonable accommodations … it is generally unnecessary to proceed under the 'actual disability' or 'record of' prongs, which require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. In these cases, the

evaluation of coverage can be made solely under the 'regarded as' prong of the definition of disability, which does not require [that showing]."); *Alexander v. Wash. Metro. Area Transit Auth.*, 826 F.3d 544, 547 (D.C. Cir. 2016) ("[A]fter the 2008 Amendments, the regarded-as prong has become the primary avenue for bringing [ADA discrimination claims with no accommodation component].").

GM argued before the district court that Smith could not satisfy the regarded-as prong, and in doing so relied solely on pre-ADAAA case law—namely, *McInnis v. Alamo Cmty. Coll. Dist.*, 207 F.3d 276 (5th Cir. 2000), and *Aldrup v. Caldera*, 274 F.3d 282 (5th Cir. 2001). R.83 at 13. Quoting language from those decisions, GM argued that Smith had to show that her employer entertained a misperception about her: either Smith must show that GM believed that she had a substantially limiting impairment that she does not in fact have, or she must show that her impairment is not so limiting as GM believed. *Id.* Congress abrogated that standard with the ADAAA. Post-ADAAA, the level of limitation caused (or perceived to be caused) by the impairment is irrelevant to the regarded-as prong—a plaintiff need only establish that she was "subjected to an action prohibited under [the ADA] because of an actual or perceived physical or mental

impairment *whether or not the impairment limits or is perceived to limit a major life activity.*" *Burton*, 798 F.3d at 230 (alteration in original) (emphasis added) (quoting 42 U.S.C. § 12102(3)(A)).

CONCLUSION

For the foregoing reasons, the EEOC respectfully requests this Court conduct the disability analysis under the standards set out by the ADAAA.

Respectfully submitted,

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December 9, 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) and Fifth Circuit Rules 29.2, 29.3, and 32.2 because it contains 3,514 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Fifth Circuit Rule 32.2.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Fifth Circuit Rule 32.1, 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 December 9, 2024, I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I certify that, pursuant to Plaintiff-Appellant's request at Appellate Docket No. 17, I e-mailed a copy of the foregoing brief to Plaintiff-Appellant at rochellesmithdallas@gmail.com. I certify that counsel of record for Defendant-Appellee are registered CM/ECF users, and service for Defendant-Appellee will be accomplished via the appellate CM/ECF system.

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