

WASHINGTON ADOPTS THE FEDERAL DEFINITION OF DISABILITY

By William G. Jeffery

This month, the Washington Supreme Court issued a significant decision in the case of *McClarty v. Totem Electric*; Totem Electric was represented by The Jeffery Group. Totem Electric asked the Supreme Court to provide a consistent and workable definition of a disability under the Washington Laws Against Discrimination, Chapter 49.60 RCW (“WLAD”). As a result, the Court determined that this State will follow the definition of a disability under the federal Americans with Disabilities Act (“ADA”) to define the term under the WLAD.

The WLAD prohibits discrimination in employment based on the presence of any sensory, mental, or physical disability. However, the Act itself does not define what constitutes a disability. The Washington Human Rights Commission defined the term as being an abnormality and the reason why the person having the condition did not get or keep the job in question. Under this extremely broad definition, a receding hairline would constitute a disability and thereby provide the basis for an employee to allege disability discrimination, if the employee had been subject to an adverse employment action. This broad definition resulted in employers being vulnerable to frivolous claims by disgruntled employees.

In 2000 the Washington Supreme Court suggested that in order to establish a disability discrimination claim a claimant had to prove that (1) he or she has or had a sensory, mental, or physical abnormality, and (2) that the abnormality has or had a substantially limiting effect on his or her ability to perform the job. This definition raised problems because it included any medically cognizable abnormality, which may or may not be a disability in the normal dictionary sense of “a physical or mental illness, or injury that incapacitates in any way.” Further, some obviously disabled persons, e.g., the blind or the paraplegic, may not be considered disabled under this definition if the condition does not substantially affect the person’s ability to perform the job.

In *McClarty v. Totem Electric*, the Court was presented with the need to define “disability” for purposes of the WLAD. The Court rejected the Human Rights Commission rule which defined “disability” in very broad terms as well as the later court definition. The Court provided a single definition of “disability” that can be applied consistently through the Washington statute by adopting the definition of disability set forth in the federal ADA. That is, a plaintiff bringing a claim under the WLAD, has a disability if he has (1) a physical or mental impairment that substantially limits one or more of his major life activities, (2) a record of such an impairment, or (3) is regarded as having such an impairment. In other words, a physical or mental impairment that is substantially limiting impairs a person’s ability to perform everyday activities.

With this new definition of disability, medical conditions that do not substantially limit one or more major life activities will not support a claim of disability discrimination in Washington. Thus, the insignificant, minor and trivial conditions such as back strain, a broken finger and the like will not be considered disabilities thereby enabling a more complete application of the employment at-will rule in this State.

McClarty v. Totem Electric, __ Wn. 2d __ (Washington Supreme Court, July 6, 2006)