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**191 DLR A-1**

## **Disabilities**

### **Obesity Claim Under ADA Carries No Weight With Justices**



*By Kevin McGowan*

Oct. 3 — The U.S. Supreme Court Oct. 3 declined to review a rejected job applicant's claim that morbid obesity should be covered as an impairment under the Americans with Disabilities Act (*Morriss v. BNSF Ry. Co.*, U.S., No. 16-233, cert. denied 10/3/16).

Melvin Morriss, a 285-pound worker denied a machinist job by BNSF Railway Co., sought review of a U.S. Court of Appeals for the Eighth Circuit decision that the ADA doesn't cover obesity unless the condition is linked to an underlying physiological disorder.

The Equal Employment Opportunity Commission in an appeals court brief had supported Morriss' contention that morbid obesity, without more, is covered by the ADA.

But the Supreme Court without comment declined to take up the ADA coverage issue.

#### **Amended ADA's Meaning at Issue**

In seeking review, Morriss said under the ADA Amendments Act, which broadened the act's definition of covered conditions, morbid obesity should be deemed an "actual or perceived impairment" regardless of whether it's linked to another physiological condition.

"As millions of Americans suffer from the disease of obesity, it is imperative that employers be aware of their obligations under the ADA," he said.

The ADA, as amended in 2008, broadly protects workers who are "regarded as disabled," either because of an actual or perceived impairment, Morriss said.

The Eighth Circuit is the first appeals court to discuss morbid obesity under the ADA since the law was amended to broaden protections for workers with disabilities, he said.

#### **Conflict With Rehabilitation Act Case**

The U.S. Court of Appeals for the First Circuit in a Rehabilitation Act case said morbid obesity is a physiological disorder involving the metabolic and neurological systems, Morriss said.

The First Circuit also said regardless of the cause of an individual's obesity, a defendant that acts as if obesity affects the individual's bodily systems has "perceived" the individual as impaired, Morriss said.

The justices should grant review to resolve the conflict between the First Circuit's reading of the Rehabilitation Act, which shares its definitions with the ADA, and the Eighth Circuit's holding that the ADA doesn't cover morbid obesity on its own, Morriss said.

His case is "exceptionally important" because the Supreme Court hasn't construed the ADA's definition of disability since the act was amended, Morriss said.

"Congress' will cannot be ignored and courts cannot revert to narrowing the definition of disability," he said.

BNSF waived its right to file a brief opposing review.

Marks Clare & Richards LLC represented Morriss. Thompson & Knight LLP represented BNSF.

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#### **Snapshot**

- Lower court ruled ADA covers obesity only if linked to underlying physiological condition
- Justices decline to review if morbid obesity on its own is 'impairment' under ADA

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