

## LEGAL CORNER

By Harvey Mars, Esq.

Imagine you are a musician who uses a hearing aid. Other than that, you play perfectly (or close to perfectly!) Let's say your conductor doesn't like the fact that you use a hearing aid and fires you. Are you protected by federal law? I'll answer that question at the end of this article. First, some history.

On July 26, 1990, in order to accord disabled individuals a greater level of protection from discrimination than they had under state law, President George H. W. Bush signed into law the Americans With Disabilities Act, 42 U.S.C. Sect. 12101. This law, heralded as one of the most important pieces of civil rights legislation since the Civil Rights Act of 1964, specifically targeted workplace discrimination of disabled employees. The law both prohibited employers from engaging in discriminatory practices as well imposing upon them an obligation to reasonably accommodate disabled employees who, with assistance, could perform the essential functions of their job.

With such a wide remedial function, great things were expected of the ADA. It was widely believed that this statute would eradicate much of the culturally entrenched bias that existed with regard to handicapped individuals.

Unfortunately, like many other pieces of legislation, the ADA's full potential was never realized.

This, in no small part, was the result of several Supreme Court decisions that severely restricted application and enforcement of the ADA. The most notorious of these decisions was *Sutton v. United Air Lines, Inc.* 527 U.S. 471 (1999).

The facts in *Sutton* involved twin sisters who suffered from severe my-

# Disabled?

## *New protections for disabled musicians and other workers*

opia (nearsightedness). The sisters claim arose from their both being denied employment as commercial airline pilots for American Airlines. Both met all the minimum requirements for the position, except for the airline's vision requirement, which was 20/100 or better vision without the aid of corrective lenses. American Airlines asserted that it rejected both applicants solely based upon their failure to satisfy the position's minimum requirements.

Shortly after their rejection from employment, charges were filed with the EEOC and a suit was initiated in the U.S. District Court for the District of Columbia, alleging discrimination under the ADA.

The district court, however, dismissed the suit, holding that since the claimants could fully correct their visual impairments by using glasses, they did not suffer from a disability that impacted upon a major life function. Satisfying this definition of disability is decisive of whether or not the ADA applies. Finding that it didn't was fatal to their suit.

The lower court's decision was appealed and the Supreme Court affirmed the district court's ruling even though it was contrary to EEOC regulations and the determinations of several circuit courts of appeals.

Delivering the opinion of the court, Sandra Day O'Connor held that corrective measures such as glasses, hearing aids and even medication could be taken into account by a court when determining whether an individual is disabled. Thus, the twins could not be deemed disabled under the ADA since they could wear glasses.

By the same logic, individuals who suffer from diabetes or high blood pressure may not be deemed disabled because their conditions may be controlled with use of medication.

Under the court's interpretation of disability, it is hard to fathom any medical condition that would satisfy this definition.

In response to the outcry of advocates for the disabled (including the American Diabetes Association), on Sept. 17, 2008, President George W. Bush signed into law the Americans With Disabilities Amendments Act. It goes into effect on Jan. 1, 2009.

This statute specifically reverses the effect of *Sutton* by providing that mitigating factors shall not be taken into consideration by courts when evaluating whether an individual is disabled.

The statutory amendment also undoes the restrictive interpretation that the Supreme Court placed upon what constitutes a major life activity as well as when an individual may be regarded as having a covered a disability.

I applaud Congress' enactment of this statute and its acknowledgment that the Supreme Court's decisions were wrongly decided.

Now that this corrective legislation has been implemented, I anticipate that the ADA may now be able to effectively achieve its originally intended goals. This is great news for all working Americans, especially the millions who suffer from a disability.

O.K., let's go back to the question that I opened my article with. As a musician, are you protected under the law if you have to use a hearing aid? Under the new Americans With Disabilities Amendments Act, I argue that yes, you are protected. If you are fired for no other reason than that you use a hearing aid, you have grounds for a federal lawsuit. Of course, if you're working under a union contract, the first step is to contact Local 802. ☐

*Harvey Mars is one of Local 802's lawyers. Legal questions are welcome from 802 members. E-mail them to [JurMars566@aol.com](mailto:JurMars566@aol.com). For those who are interested in reading additional articles that Mars has authored, please check out his new Web site at [www.HarveyMarsAttorney.com](http://www.HarveyMarsAttorney.com). Click on "Publications & Articles" from the top menu. All of his past Allegro articles can be found there as well. Nothing in these articles should be construed as formal legal advice given in the context of an attorney-client relationship.*

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