CONFIDENTIAL BENCH MEMO

McGEE MOOT COURT COMPETITION

NOT TO BE DISTRIBUTED

Students will assume the role of counsel in the civil case of Coleman v. The Paisley Academy, a disability discrimination claim arising under the Americans with Disabilities Act and its analogue state human rights law. The case is being heard by the United States Supreme Court.

ISSUES

1. Whether the EEOC's regulations and Interpretive Guidance in 42 U.S.C. § 1630.2 and 42 U.S.C. app. § 1630.2 respectively, interpreting the meaning of "substantially limits" under the ADA Amendments Act, are entitled to deference after Loper Bright Enterprises v. Raimando, and whether Respondent plausibly alleged she was an individual with a disability.

2. Whether an ADA plaintiff can meet Muldrow v. City of St. Louis's "some harm" standard by alleging her employer denied her request for a reasonable accommodation or, if some additional adverse employment action is required, whether a letter of reprimand meets the standard.

Each issue has two stated sub-issues, and each team must argue all sub-issues. Teams should also confine their arguments to those issues. The competition problem makes reference to several other potential other procedural or substantive issues that neither party is raising, and teams should neither brief nor argue those issues. Only United States Supreme Court cases are binding; all other case law is merely persuasive.

PROCEDURAL HISTORY

The case arises from the Federal District Court for the District of Minnetonka, which granted the Academy's Rule 12(b)(6) motion to dismiss Coleman's complaint for failure to state a claim upon which relief can be granted. Coleman appealed to the Fifteenth Circuit Court of Appeals, which reversed the lower court's decision. The United States Supreme Court granted the Academy a writ of certiorari to the to review the Fifteenth Circuit's decision.

FACTUAL BACKGROUND

Respondent Lisa Coleman works as a paraprofessional at the Academy, a private secular high school, where she is assigned to assist with English as a Second Language ("ESL") students. She was hired for the school year 2023-2024, which ran from September 5, 2023, to June 7, 2024. Coleman developed kidney stones and sought medical attention in late February 2024. She was treated with conservative measures and was able to pass several stones. She again developed several stones in March that similarly passed with conservative treatment. She used four days of sick leave during this time. In mid-April, she began experiencing increasing pain, nausea and vomiting. She was admitted to the hospital over a weekend where her doctors determined that she had some larger stones that were more difficult to pass. She received IV fluids and was discharged in time to turn to work. The intense pain continued, but by using a heating pad and over-the-counter pain medication, Coleman was able to complete her job duties, missing three days of work.

In late May 2024, the situation intensified. Coleman began to experience a fever along with a new bout of nausea and vomiting. Her doctors determined that she had multiple large stones in her kidneys that were unlikely to pass. On May 24, 2024, Coleman underwent a procedure called percutaneous nephrolithotomy (PCNL).[1] The procedure was done at an ambulatory surgery center. Her doctor placed a stent in her kidney and restricted her from lifting over ten pounds for two weeks. She was released from the surgery center to return home that day, but she

[1] PCNL "is a technique used to remove certain stones in the kidney or upper ureter (the tube that drains urine from the kidney to the bladder) that are too large for other forms of stone treatment such as shock wave lithotripsy or ureteroscopy." *Percutaneous Nephrolithotomy*, John Hopkins Medicine,https://www.hopkinsmedicine.org/health/treatment-tests-and-therapies/percutaneous-nephrolithonomy-pcnl. It involves making an incision and then using medical tools to break up and remove the large stone. *Id.*

needed to return in a week to have the stent removed. She missed one day of work (a Friday) for the procedure and another day of work (also a Friday) for the stent removal. Over the second weekend she developed a fever for which her doctor prescribed antibiotics and advised her to avoid working until she completed the prescription (two weeks).

Because she was in her first year in the position, Coleman had accrued only limited sick and personal leave.[2] She had exhausted all her available days at the time the doctor advised her not to work for two weeks. At that time, there was one week of school left, meaning she would need to take one week of unpaid leave. The paraprofessional contract allowed "dock days," which are unpaid leave days that can be granted at the discretion of the school principal. The contract also stated that dock days could not be used for leave during the first five days or the last five days of the school calendar. Coleman contacted Principal Sparks and requested waiver of the end-of-term leave limitation as a reasonable accommodation to allow her to use "dock days" to complete her antibiotic treatment and prescribed rest from working. Principal Sparks refused the request, stating that he had never allowed "dock days" to be used during that time.[3] He expressed his belief that kidney stones would not qualify as a disability under the ADA.

Coleman then attempted to return to work that Monday. That morning, she developed nausea and had to go to urgent care. The urgent care doctor strongly advised her to go home and rest. She called the school and informed them that she would not return to work that day due to her health situation. Coleman returned to work the next day against doctor's orders. Although she

[2] She had not worked at the Academy long enough to qualify for Family and Medical Leave Act ("FMLA") leave or the state law equivalent.
[3] Principal Sparks had granted FMLA leave during this period to a paraprofessional who had just given birth.

was still experiencing pain and some nausea, she was able to finish out the rest of the week. Principal Sparks issued Coleman a Letter of Instruction (LOI), informing her that her absence violated the school's end-of-term leave policy, that she was required to comply with all school leave policies, including provision of adequate notice and attendance during the end-of-term week, and that the LOI would be placed in her personnel file.

Paraprofessionals at the Academy are covered by individual rather than union contracts. Coleman's contract indicated she was employed at will and had no assurance of continued employment in subsequent school years. Coleman's contract also set out, in relevant part, policies regarding accumulation of sick and personal leave, other leave policies, and performance review policies. At the Academy, each paraprofessional has a third-year review that results in an employee evaluation score. The evaluation score is based on several metrics and may affect salary decisions, eligibility for transfers to other positions within the school, and order of layoff if employees have the same level of seniority. Failure to comply with school policies is one factor that can be considered in calculating the evaluation score. Misconduct citations for policy violations that are more than two years old may be removed from the employee's record if there were no subsequent violations.

At the time she filed her complaint, the Academy had notified Coleman that her contract would be renewed for next year but had not confirmed her assignment. Coleman was concerned that her kidney stones may recur and that the Academy may deny future accommodation requests.[4] She was also concerned that the LOI may affect her future employment status and performance evaluation score. Coleman filed a timely discrimination charge with the Equal Employment

[4] Coleman's complaint does not allege that she has had a recurrence of her kidney stones since June 2024 but does allege that the type of stones she experienced have the potential to recur.

Opportunity Commission and received her right to sue letter. She then initiated this federal civil proceeding within the 90-day period after receipt of that letter.[5]

Coleman alleges that the Academy violated her rights under the ADA by denying her request for additional leave as a reasonable accommodation of her disability, severe kidney stones, and issuing her a LOI reprimanding her for taking unapproved leave and warning her of the consequences of any additional infractions. The Academy moved for dismissal of her claims, making two arguments: First, Coleman cannot establish her kidney stones were a disability under the ADA because they were too short-term to be "substantially limiting." Second, even if Coleman met the threshold to show a disability, Coleman cannot establish she suffered an adverse employment action based solely on the fact she was denied an accommodation or alternatively based on the Academy having issued her a LOI for her disability-related absence.

STANDARD OF REVIEW

Courts review dismissals under F. R. Civ. P. 12(b)(6) de novo. The Supreme Court applies a plausibility standard. The issues posed in this case are legal questions rather than questions of fact, so the advocates should accept what is in the fact pattern as true for purposes of this argument.

SUMMARY OF THE ARGUMENTS AND AUTHORITIES

Issue 1: Did Coleman Allege a Plausible Disability under the ADA?

Issue framing: The ADA protects employees against discrimination "based on disability," which is determined on an individualized basis. 42 U.S.C. § 12112 (a) (stating general rule); *id.* §

[5] There are no issues in dispute regarding the procedural background of plaintiff's claim.

12102(1) (defining disability "with respect to an individual"). The statute defines "disability" as 1) a physical or mental impairment that substantially limits one or more major life activities (known as the "actual disability" prong); 2) a record of such an impairment; or 3) being perceived as having an impairment. 42 U.S.C. § 12102(1). The ADA does not further define what is an "impairment" or what "substantially limits" means. The Equal Employment Opportunity Commission (EEOC) has issued regulations and Interpretive Guidance interpreting the component parts of the statutory definition, including whether short-term impairments can be substantially limiting under the actual disability or "record of" prongs. 29 C.F.R. § 1630.2(j)(1)(ix) (2025) provides that impairments that last less than six months can be substantially limiting. The Interpretive Guidance interprets that section as follows:

> Therefore, an impairment does not have to last for more than six months in order to be considered substantially limiting under the first or the second prong of the definition of disability. For example, as noted above, if an individual has a back impairment that results in a 20-pound lifting restriction that lasts for several months, he is substantially limited in the major life activity of lifting, and therefore covered under the first prong of the definition of disability. At the same time, "[t]he duration of an impairment is one factor that is relevant in determining whether the impairment substantially limits a major life activity. Impairments that last only for a short period of time are typically not covered, although they may be covered if sufficiently severe." Joint Hoyer-Sensenbrenner Statement at 5.

29 C.F.R. app. § 1630.2(j)(1)(ix).

Coleman urges the Court to defer to those regulations and guidance to find that her alleged impairment, severe kidney stones, plausibly meets the definition of an ADA disability. The Academy argues that the Court shouldn't defer to the EEOC because of the Supreme Court's ruling in *Loper Bright v. Raimondo*, and that under an independent interpretation of the statute, Coleman's kidney stones were too short-term to qualify.

In *Loper* Bright, the Court overruled so-called *Chevron* deference to hold that courts should generally decide questions of statutory construction using traditional tools of interpretation rather than automatically deferring to agency interpretations. The Court did not rule out all deference to agencies; it indicated that in some cases, Congress may have delegated discretionary authority to an agency. In those cases, under the Administrative Procedure Act (APA), the reviewing court should "fix[] the boundaries of [the] delegated authority[]" and ensur[e] the agency has engaged in reasoned decisionmaking within those boundaries." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024). The first sub-issue in this case is whether the original ADA and the ADA Amendments Act of 2008 (ADAAA) delegated discretionary authority to the EEOC to determine what "substantially limits" means. The second sub-issue is whether Coleman's kidney stones were too short-term to be "substantially limiting" even under the EEOC's interpretation of the ADA.

Teams may strategically choose to jump to the second sub-issue first. The Academy may argue that even if the Court defers to the EEOC, Coleman's claim was properly dismissed because the kidney stones resolved after only a few months and that is too short as a matter of law to be "sufficiently severe" under the EEOC's interpretation of "substantially limiting." Conversely, Coleman may argue that regardless of whether the Court defers to the EEOC's guidance that impairments lasting less than six months can be substantially limiting, it should at least give substantial weight to the EEOC's interpretation because they are well within the ADAAA's expressed intent that "disability" be broadly construed. In either case, the parties should also address directly the question of whether the EEOC's regulations and guidance are what the Court had in mind when it discussed situations where the courts' role is more limited.

Sub-issue 1: Deference to the EEOC's ADA Regulations and Interpretive Guidance

This issue raises questions that the lower courts have only begun to consider since the Supreme Court decided *Loper Bright*. There are very few cases involving the status of the EEOC's regulations, and at the time this brief is being prepared, only one circuit court case that addresses the ADA regulations specifically. Advocates will likely draw analogies from cases involving other agency rules and regulations. Many of the cases treat *Loper Bright* as a per se ruling that courts should not defer to agency interpretations. Coleman should argue that *Loper Bright* is actually a more constrained decision in which the Court rejected automatic deference if a statute is ambiguous but still directed courts to first determine the boundaries of the authority Congress delegated. If Congress gave an agency discretionary authority, the court should review the regulation only for whether it was reasonably within those boundaries.

Significant Cases:

Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024). Herring fishing companies in two separate lawsuits challenged a rule by the National Marine Fisheries Service (NMFS) that the Magnuson-Stevens Fishery Conservation and Management Act (MSA) permitted the NMFS to require fishing boats to bear the cost of an observer the MSA mandated to be on board their ships. The lower courts in both the First and D.C. Circuits held that they were required to defer to the NMFS's interpretation under the *Chevron* doctrine if the plaintiffs showed the statute was unclear on this point, as long as that interpretation was reasonable. The Supreme Court reversed, holding that the *Chevron* doctrine conflicted with "the traditional understanding of the judicial function, under which courts must exercise independent judgment in determining the meaning of statutory provisions." The most relevant part of *Loper Bright* for purposes of this year's competition is the following:

In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes "expressly delegate[ ]" to an agency the authority to give meaning to a particular statutory term. Batterton v. Francis, 432 U.S. 416, 425, 97 S.Ct. 2399, 53 L.Ed.2d 448 (1977) (emphasis deleted).[5] Others empower an agency to prescribe rules to "fill up the details" of a statutory scheme, Wayman v. Southard, 10 Wheat. 1, 43, 6 L.Ed. 253 (1825), or to regulate subject to the limits imposed by a term or phrase that "leaves agencies with flexibility," Michigan v. EPA, 576 U.S. 743, 752, 135 S.Ct. 2699, 192 L.Ed.2d 674 (2015), such as "appropriate" or "reasonable."[6]

> [5] See, e.g., 29 U.S.C. § 213(a)(15) (exempting from provisions of the Fair Labor Standards Act "any employee employed on a casual basis in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary)" (emphasis added)); 42 U.S.C. § 5846(a)(2) (requiring notification to Nuclear Regulatory Commission when a facility or activity licensed or regulated pursuant to the Atomic Energy Act "contains a defect which could create a substantial safety hazard, as defined by regulations which the Commission shall promulgate" (emphasis added)).
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> [6] See, e.g., 33 U.S.C. § 1312(a) (requiring establishment of effluent limitations "[w]henever, in the judgment of the [Environmental Protection Agency (EPA)] Administrator ..., discharges of pollutants from a point source or group of point sources ... would interfere with the attainment or maintenance of that water quality ... which shall assure" various outcomes, such as the "protection of public health" and "public water supplies"); 42 U.S.C. § 7412(n)(1)(A) (directing EPA to regulate power plants "if the Administrator finds such regulation is appropriate and necessary").

When the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits. The court fulfills that role by recognizing constitutional delegations, "fix[ing] the boundaries of [the] delegated authority," H. Monaghan, Marbury and the Administrative State, 83 Colum. L. Rev. 1, 27 (1983), and ensuring the agency has engaged in " 'reasoned decisionmaking' " within those boundaries, Michigan, 576 U.S. at 750, 135 S.Ct. 2699 (quoting Allentown Mack Sales & Service, Inc. v. NLRB, 522 U.S. 359, 374, 118 S.Ct. 818, 139 L.Ed.2d 797 (1998)); see also Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co., 463 U.S. 29, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983). By doing so, a court upholds the traditional conception of the judicial function that the APA adopts.

Id. at 394-96. The advocates should address whether the authority Congress delegated to the EEOC to promulgate regulations under the ADA, and more specifically the ADAAA, is analogous to the instances the Court describes.

The Academy will likely argue it is not, because the ADA's delegation language merely gives the agency authority to issue "regulations in an accessible format to carry out this subchapter," 42 U.S.C § 12116, without any limiting language mentioned by the Court that they be reasonable or appropriate. The ADAAA regulations are no more specific, stating only that "[t]he authority to issue regulations . . . under this chapter includes the authority to issue regulations implementing the definitions of disability in section 12102 of this title (including rules of construction) and the definitions in section 12103 of this title, consistent with the ADA Amendments Act of 2008." 42 U.S.C. § 12205a. Coleman will likely counter that the Court in *Loper Bright* was talking about exactly what Congress has done with the ADA, "expressly delegate[ing]" to an agency the authority to give meaning to a particular statutory term" and to "fill up the details" of the ADA's definitional scheme.

Sutherland v. Peterson's Oil Serv., Inc., 126 F.4th 728 (1st Cir. 2025). This is the only circuit court so far in a reported decision to have considered *Loper Bright's* impact on the EEOC's ADA regulations, and the court only mentions the issue in a footnote:

> In Section 12205a, Congress granted the EEOC "the authority to issue regulations implementing the definitions of disability in section 12102 of this title (including rules of construction) and the definitions in section 12103 of this title, consistent with the ADA Amendments Act of 2008." This is a quintessential example of Congress "expressly delegat[ing] to an agency the authority to give meaning to a particular statutory term." Loper Bright Enters. v. Raimondo, 603 U.S. 369, 394, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024) (cleaned up).

126 F.4th at 739 n. 5 (1st Cir. 2025). Coleman will likely point to this case for not only its suggestion that the ADA regulations easily qualify for continuing judicial deference as along as

they are reasonable, but also for the First Circuit's reasoning that the regulations clearly provide that an impairment doesn't have to be long-term to be substantially limiting. *Sutherland* cited a prior First Circuit ruling that, after the ADAAA, the circuit no longer required that impairments last six months or longer. *See Mancini v. City of Providence by & through Lombardi*, 909 F.3d 32, 41 (1st Cir. 2018) (concluding that "it is clear that injuries can comprise impairments, even when their impact is only temporary"). The Academy will likely argue that the decision lacks any detailed analysis on the delegation issue and that the First Circuit acknowledged that the knee injury experienced by Sutherland lasted more than six months.

Prichard v. Long Island University, No. 23-CV-09269(EK)(LB), 2025 WL 2163390 (E.D.N.Y. July 30, 2025). This recent case is not directly on point because it involves an EEOC Title VII regulation that permits the agency to issue "early right to sue letters" but may be cited by the Academy in support of its argument that courts are not deferring to EEOC regulations after *Loper Bright*. Title VII provides that the EEOC is to notify a charging party if it either dismisses a charge or has not commenced a civil proceeding within 180 days of the charge's filing, at which time the charging party has ninety days to initiate a private proceeding. 42 U.S.C. § 2000e-5(f)(1). The EEOC's regulation allows the agency to issue an early right to sue letter upon a charging party's request if the EEOC determines it is unlikely to file a civil action within the 180 day limit. 29 C.F.R. § 1601.28(a)(2). In *Prichard*, the district court reasoned that it did not have to defer to this regulation after *Loper Bright* because it conflicted with the plain language of the statute and prior cases deferred to it only because of *Chevron*. 2025 WL 2163390 at *2. Coleman may distinguish the case by noting the rule at issue is procedural rather than substantive, and there is no legislative history similar to the ADAAA showing Congress

delegated discretionary authority to the EEOC to adopt a broad meaning of the statutory language.

Skidmore v. Swift & Co., 323 U.S. 134 (1944). The parties may discuss what impact so-called *Skidmore* deference would have in this case. *Loper Bright* cited *Skidmore* to remind courts that they

> may—as they have from the start—seek aid from the interpretations of those responsible for implementing particular statutes. Such interpretations constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance consistent with the APA. And interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning.

Loper Bright, 603 U.S. at 394 (internal citations omitted). The Academy may argue that the history of the ADAAA, in which Congress criticized the EEOC for setting the standards too high, shows that the regulations should not be assumed to reflect informed judgment. Coleman may argue that the regulations do what Congress directed, enact a broad definition of "substantially limited" and the agency's expertise with the complexities of the ADA deserves considerable weight.

Sub-issue 2: Were Coleman's Kidney Stones Plausibly "Substantially Limiting

As noted above, nothing in either the ADA or ADAAA requires that an impairment last for any particular length of time in order to be "substantially limiting" under the actual or record of disability prongs. Congress added a durational threshold to the "regarded as" prong that excludes impairments that are "transitory and minor," which it defines as "an impairment with an actual or expected duration of 6 months or less." 42 U.S.C. § 12102(3)(B). The parties should avoid arguing that the "transitory and minor" threshold in the third prong applies to Coleman's claims under the first and second prongs. Coleman, however, should argue that the revised

"regarded as" prong shows Congress was aware of questions about duration and chose to exclude short-term impairments only under that prong.

Prior to the ADAAA, some courts had ruled that kidney stones were too short-term to substantially limit a major life activity under either the actual or record of prongs of the statutory definition. *See, e.g., Perez-Maspons v. Stewart Title Puerto Rico, Inc.*, 208 F. Supp. 3d 401, 422 (D.P.R. 2016) (characterizing plaintiff's bout with kidney stones that included a nine day hospital stay "a brief and temporary medical condition with discrete beginning and end points"); *Mastrio v. Eurest Servs., Inc.,* No. 3:13-CV-00564 VLB, 2014 WL 840229, at *5 (D. Conn. Mar. 4, 2014) (finding plaintiff's kidney stones were nothing more than a singular occurrence). These decisions were part of a broader approach taken by the lower courts to deny coverage based on duration. *See* Cheryl L. Anderson, *No Disability if You Recover: How the ADA Shortchanges Short Term Impairments*, 59 San Diego L. Rev. 63 (2022). Even post-ADAAA, some courts have continued to apply durational requirements to actual disability claims. *See id.* at 79.

Other courts, however, have recognized that the ADAAA mandates that they construe the definitions as broadly as the text permits, and emphasize that the degree of impairment is important even if it is for a short period of time. *See, e.g., Summers v. Altarum Inst., Corp.*, 740 F.3d 325, 330 (4th Cir. 2014); *Moore v. Jackson County Bd. of Educ.*, 979 F. Supp. 2d 1251, 1261 (N.D. Ala. 2013) (finding the fact a broken ankle was temporary irrelevant and emphasizing how it affected the plaintiff's ability to walk, stand and run). Coleman can counter-cite cases that, post-ADAAA, concluded a complaint alleging kidney stones meets the minimal standards for plausibility. *See Esparza v. Pierre Foods*, 923 F. Supp. 2d 1099, 1106 (S.D. Ohio 2013) (finding plaintiff's allegations regarding having to schedule surgery for kidney stones and a two-week recovery period afterward were sufficient to state a claim at the preliminary stage).

The Academy will likely argue that even though Congress intended a broad definition of disability, it nonetheless retained the "substantially limits" requirement. That term must mean something, and covering every impairment regardless of duration would mean things like the common cold, the flu, and similar minor conditions would qualify for ADA protections. *Clay v. Campbell Cnty. Sheriff's Office*, No. 6:12–cv–00062, 2013 WL 3245153, at *2–3 (W.D.Va. June 26, 2013) (reasoning that the ADA should not be construed such that "anyone who became ill and had to miss work for a period of time would suffer from a 'disability' under the ADA"). The ADA's original legislative history reflects that Congress did not intend to cover individuals with "a minor, trivial impairment, such as a simple infected finger." H.R. REP. NO. 485, 101st Cong., 2d Sess., pt. 2, at 52–53, reprinted in 1990 U.S.C.C.A.N. 303, 334. Coleman will likely argue that there is a significant difference between a "trivial" infected finger and a health condition such as kidney stones that require multiple medical interventions, including surgery, and prevent a person from working for a period of time.

The parties should address the relevance of the ADAAA's Rule of Construction on episodic and intermittent impairments, 42 U.S.C. § 12102(4)(D), which provides that "[a] impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." Coleman will likely argue this rule further reinforces Congress' intent to focus on individualized assessment of all circumstances surrounding the alleged impairment, not solely on its duration. The Academy will likely argue that the episodic rule does not help Coleman because her kidney stones were a single episode rather than a recurring impairment such as depression or alcoholism. Coleman may respond by noting the potential for kidney stones to recur, but in any event, the fact that the severity of her stones resulted in a surgical procedure and

several weeks of treatment that should be sufficient even if she does not experience another flare-up of the condition.

Significant Cases:

Mastrio v. Eurest Servs., Inc., No. 3:13-CV-00564 VLB, 2014 WL 840229, at *5 (D. Conn. Mar. 4, 2014). The plaintiff experienced kidney stones that caused him to be rushed to the emergency room and then undergo "a painful surgery for the kidney stones which included the insertion of a stent" two days later. He went on medical leave that lasted one month. During that time, his supervisor expressed considerable animus toward his being on leave. He was terminated two months after he returned from leave, at which time his supervisor told him he had taken too much time off. The court found "no doubt" that the plaintiff had demonstrated "'a physical or mental impairment that substantially limits one or more major life activities' because he could not go to work or even walk around." *Id.* at *5. But, the court also found the plaintiff was able to return to work after a month with no restrictions, and "no more limitations on any major life activities." *Id.* The court ultimately concluded that the plaintiff had alleged only a single occurrence, which was not a plausible disability "because disability must mean something more than a mere illness." *Id.* at *6.

The Academy may rely on this case to show that kidney stones that resolve in a short time do not plausibly meet the "substantially limits" requirement. The Academy may also point to the court's statement that the ADAAA regulations are not binding on it. Coleman may distinguish the case because it was decided prior to several circuit court decisions to overrule their prior rule excluding short-term or one-time occurrences. Coleman may also argue that the court misread a

prior circuit decision when it stated it was not bound by the EEOC regulations and Interpretive Guidance.

Esparza v. Pierre Foods, 923 F. Supp. 2d 1099 (S.D. Ohio 2013). Court found that plaintiff had plausibly alleged his kidney stones were a disability. The complaint stated that the plaintiff had to "request off work numerous times due to the pain ... and to attend medical treatment," that it was severe enough for him to 'schedule' surgery on September 20, 2010 to remove the stones, and that he was medically restricted from working 'for two weeks or until his condition improved." *Id.* at 1104–05 (cleaned up). The defendant argued the impairment as pled was temporary but the court rejected that argument, citing the ADAAA's new episodic rule. The court reasoned that "[w]hile the amended complaint is hardly a model of clarity, it does appear to meet minimal pleading requirements insofar as it alleges sufficient facts to draw a reasonable inference that Rosario had a disability or was regarded as disabled for purposes of the ADA." *Id.* at 1106.

Mueck v. La Grange Acquisitions, L.P., 75 F.4th 469, 480 (5th Cir. 2023), as revised (Aug. 4, 2023). The Fifth Circuit overruled an earlier opinion that required the plaintiff to allege an impairment that was permanent and long-term. The plaintiff alleged his alcoholism was a disability. The court recognized that "not only did the ADAAA generally seek to make it easier for plaintiffs to establish that they have a disability, but it plainly stated that an 'episodic" impairment—that is, an impairment that is not always active—can still qualify as a disability." The Academy may distinguish this case because it involved a plaintiff whose alcoholism had recurred over more than two decades, as opposed to the short few months Coleman suffered from kidney stones.

Summers v. Altarum Inst., Corp., 740 F.3d 325 (4th Cir. 2014). The plaintiff suffered fractures to his left leg and right ankle along with other injuries in a fall, which required surgery. The lower court dismissed his ADA claim because, despite finding his injuries to be "very serious," they were temporary because they were expected to heal within a year. The court rejected this conclusion, reasoning it "represented an entirely reasonable interpretation of *Toyota [Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 198 (2002)] and its progeny. But in 2008, Congress expressly abrogated *Toyota* by amending the ADA." Although the Fourth Circuit was the first appellate court to consider the ADAAA's expanded definition, the court concluded "the absence of appellate precedent presents no difficulty in this case: Summers has unquestionably alleged a 'disability' under the ADAAA sufficiently plausible to survive a Rule 12(b)(6) motion." *Id.* at 329-30. Coleman may rely on the court's finding that the EEOC regulations and Interpretive Guidance reasonably interpreted Congress' intent to expand the ADA's disability definition. The Academy may distinguish the case based on the fact the plaintiff's impairment prevented him from walking for a year, which even prior to the ADAAA could have been considered substantially limiting.

Issue 2: Did Coleman Allege a Plausible Adverse Employment Action?

Issue Framing: Coleman alleged that the Academy failed to accommodate her kidney stones by waiving the end-of-term leave limitation. Title I of the ADA prohibits employers from "discriminat[ing] against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). Title I defines "discriminate" to include "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual

with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer." *Id.* § 12112(b)(5)(A).

The first sub-issue is whether the plaintiff must show an adverse employment action beyond the employer's denial of a reasonable accommodation request. The district court in the competition problem agreed with the Academy that a plaintiff alleging failure to reasonably accommodate must show the employer's actions disadvantaged some term, condition or privilege of the plaintiff's employment. The circuit court reversed, concluding that Coleman doesn't need to show any more "adverse employment action" than the fact the Academy denied her a reasonable accommodation for her disability, because that action meets the Supreme Court' *Muldrow* standard requiring only that plaintiff allege she suffered "some harm."

The parties may approach this issue in varied ways. The second sub-issue is whether the Letter of Instruction (LOI) Coleman's supervisor issued to her was itself an "adverse employment action." If the Court holds that it was, it could decline to decide more broadly that no further adverse employment action required beyond the accommodation denial. Coleman may, therefore, choose to rest on the narrower alternative argument about the LOI first. Whichever way they choose to structure their arguments, the parties will need to address what amounts to "some harm" in disability discrimination cases under *Muldrow* (the problem states the parties agree *Muldrow* applies to the ADA).

Sub-issue 1: Do Plaintiffs Need to Plead More than Mere Denial of a Reasonable Accommodation?

Although their language varies, most courts agree that the plaintiff must show that she 1) has a disability under the ADA; 2) was able to perform the essential functions of the position in

question; and 3) her employer refused the plaintiff's request for a reasonable accommodation. Some circuit courts have articulated an additional requirement, that the plaintiff show the accommodation denial affected the terms, conditions, or privileges of her employment. *See Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252, 264 (1st Cir. 1999); *Kelleher v. Wal-Mart Stores, Inc.*, 817 F.3d 624, 632 (8th Cir. 2016); *Beasley v. O'Reilly Auto Parts*, 69 F.4th 744, 754–55 (11th Cir. 2023); *Marshall v. Fed. Exp. Corp.*, 130 F.3d 1095, 1099 (D.C. Cir. 1997). Other courts, including a more recent panel of the Eighth Circuit in an analogous religious accommodation case, have concluded that the plaintiff need not show any further adverse action beyond the accommodation denial. *Exby-Stolley v. Bd. of Cnty. Comm'rs*, 979 F.3d 784, 799 (10th Cir. 2020) (en banc); *Cole v. Grp. Health Plan, Inc.*, 105 F.4th 1110, 1114 (8th Cir. 2024) (religious accommodation claim).

A recent Supreme Court case, *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024), likely will have a significant impact on this issue. Most of the cases requiring some additional adverse employment action were decided before that case, and the cases that say the adverse action must be "material" are likely superseded by *Muldrow*.

Significant cases:

Muldrow v. City of St. Louis, 601 U.S. 346 (2024). *Muldrow* was a disparate treatment sex discrimination claim brought under Title VII of the Civil Rights Act of 1964. Muldrow alleged her employer transferred her from job to another because she was a woman. The lower courts had dismissed Muldrow's claims because she had not shown the transfer created a "significant" disadvantage to the terms and conditions of her employment, such as a change in status or rank, or a significant change in work duties. The Supreme Court concluded that there was no language

in Title VII that required plaintiffs to meet any sort of heightened standard. Instead, the plaintiff need only show that she suffered "some harm" from the employer's discriminatory actions.

Coleman will likely argue that *Muldrow* supports finding that when an employer denies an employee with a disability a reasonable accommodation of that disability, the employer has committed an adverse employment action and no further evidence is required. The ADA states that discrimination includes failure to accommodate, and there is no language in the Act that heightens the standard beyond that. The cases requiring some additional impact on the plaintiff's employment mistakenly apply the "significant" or "material" harm standard that the Supreme Court rejected. She was suffered "some harm" *i.e.,* was disadvantaged, by not being given the accommodation to which she was entitled under the ADA.

The Academy will likely argue that discrimination laws like Title VII and the ADA have long been understood to require plaintiffs to show they suffered an adverse employment action that affected the terms and conditions of their employment. While *Muldrow* rejected a "significant" or "material" standard, it nonetheless reasoned that the plaintiff had to show some "disadvantageous" change in an employment term or condition. *Muldrow*, 601 U.S. at 354. That suggests that it isn't sufficient to show merely that an employer denied a reasonable accommodation. As the Court in *Muldrow* explained, the plaintiff has to show the discriminatory action changed the "what, where, when" of her employment. *Id.* Here, Coleman did not lose any compensation and nothing about her job responsibilities changed because the Academy refused to waive the end of term leave rule. The only thing she can point to is the LOI, which the Academy will argue is insufficient as described below.

Exby-Stolley v. Bd. of Cnty. Comm'rs, 979 F.3d 784 (10th Cir. 2020) (en banc). The plaintiff, Exby-Stolley, alleged that her employer denied her request to accommodate a workplace injury that was preventing her from completing her job duties. The trial court gave a jury instruction that required the plaintiff to prove she "was discharged from employment or suffered another adverse employment action by Defendant." *Id.* at 789. A Tenth Circuit panel held that instruction was proper because the term "adverse employment action" was shorthand for the statutory language prohibiting discrimination "in regard to job application procedures, ... [or] other terms, conditions, or privileges of employment." The en banc Tenth Circuit reversed, reasoning that the term appeared nowhere in the statute. Moreover, the court stated that "[i]t is hard to imagine that a federal statute might place an 'affirmative' . . . obligation on an employer [to reasonably accommodate], and yet expose that employer to absolutely no consequences for breaching the obligation, so long as that employer does not take some additional action—that is, an adverse employment action." *Id.* at 795. The court also observed that imposing an additional adverse employment action element would interfere with the ADA's remedial purpose, "promoting full participation and equal opportunity . . .effectuated in meaningful part by the 'affirmative obligation' that the ADA places on covered employers 'to make a reasonable accommodation.'" *Id.* at 797.

Beasley v. O'Reilly Auto Parts, 69 F.4th 744, 754–55 (11th Cir. 2023). The plaintiff, Beasley, was deaf and predominately used American Sign Language. He asked his employer to provide an ASL interpreter for meetings, training, and a company picnic, as well as a text summary of nightly pre-shift meetings, which the company refused. The First Circuit first concluded that ADA plaintiffs have to show some adverse employment action in reasonable accommodation cases before parsing each of Beasley's requests to determine if they affected his terms and

conditions of employment. The court explained that "discrimination in the form of a failure to reasonably accommodate is actionable under the ADA only if that failure negatively impacts the employee's hiring, advancement, discharge, compensation, training, and other terms, conditions, and privileges of his employment." *Id.* at 754 (cleaned up).

The First Circuit parsed the specific claims and concluded that Beasley suffered an adverse employment action when he did not receive the nightly pre-shirt meeting text summaries, because those meetings addressed safety concerns. He also met the standard for his claim the employer refused to provide an interpreter for a potential disciplinary meeting that resulted in a "write up" regarding his attendance. The court recognized effective communication may have allowed him to resolve that meeting more successfully. But he did not establish that he experienced an adverse employment action when the employer denied the ASL interpreter for a forklift training he was able to successfully complete without one, or for a company picnic where his wife interpreted for him.

Sub-issue 2: If More Is Required, Is a Letter of Instruction Sufficient?

If the Court determines that ADA plaintiffs cannot prove discrimination based on disability from the mere fact the employer refused to provide a reasonable accommodation, Coleman will need to establish some other harm to a term, condition or privilege of employment from the Academy's refusal to allow her the additional time off during the last week of the school term. In the lower courts, she pointed to the LOI she received for missing work on the day she tried to return to work but couldn't complete the day. The LOI was placed in her personnel file and could potentially affect the evaluation score she would receive after a third-year review. If she had no further infractions, however, after two years the letter would drop off her record.

The Academy will likely argue that even after *Muldrow*, some lower courts have held that a letter of reprimand that does not actually result in disciplinary action is not enough to meet the "some harm" standard. *See, e.g., Kelso v. Vilsack,* No. CV 19-3864 (EGS/ZMF), 2024 WL 5159101, at *7 (D.D.C. Dec. 18, 2024) (finding letters of instruction and reprimand were insufficient because they did not change any of the terms, conditions or privileges of plaintiff's employment); *McBride v. C&C Apartment Mgmt. LLC*, No. 21 CIV. 02989 (DEH), 2024 WL 4403701, at *9 (S.D.N.Y. Oct. 1, 2024), *appeal dismissed* (Dec. 26, 2024) (finding that being issued disciplinary warnings did not in themselves constitute some harm). Without some actual change to salary, rank or other element of the plaintiff's job, these courts find there has been no change in the "what, where, when" of the plaintiff's employment.

Coleman may argue that other courts have recognized that a letter of reprimand or other threats of discipline do affect the terms and conditions of employment because the employee has to work under altered conditions. *See Staton v. DeJoy*, No. 1:23-CV-03223-SBP, 2025 WL 42821, at *8 (D. Colo. Jan. 7, 2025) (considering being "threatened with discipline, 'red-flagged,' and generally subjected to heightened scrutiny at work" as some harm under *Muldrow*); *see also Marshall v. Fed. Exp. Corp.*, 130 F.3d 1095, 1099 (D.C. Cir. 1997) (recognizing that "working conditions [that] inflict pain or hardship on a disabled employee, [where] the employer fails to modify the conditions upon the employee's demand, and the employee simply bears the conditions, . . . could amount to a denial of reasonable accommodation, despite there being no job loss, pay loss, transfer, demotion, denial of advancement, or other adverse personnel action").

Another potentially significant case:

Holmes v. Washington Metro. Area Transit Auth., 723 F. Supp. 3d 1 (D.D.C. 2024). This case involves a retaliation claim under Title VII, which requires the employee suffered an materially adverse employment action from engaging in protected activity such as filing a charge of discrimination. The trial court summarized the law in the D.C. Circuit that things like criticisms and reprimands without any other disciplinary action are usually not adverse employment actions. However, they can be if they serve as "building blocks" to justify a later adverse action. In *Holmes*, the employer cited earlier reprimands to justify its later actions suspending and demoting the plaintiff. *Id.* at 17.

Coleman may use this case to argue the LOI would be a "building block" to justify terminating, suspending or demoting her in the next two years. The Academy would likely note the court did not endorse a general "building block" theory but said the earlier actions were relevant to showing a later suspension and demotion violated the plaintiff's rights. If either party raises this case they should be prepared to address whether it is significant that retaliation claims require plaintiffs to show they suffered a *material* adverse employment action, which is the standard that *Muldrow* rejected for intentional discrimination claims. *See Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (requiring retaliation plaintiffs show "a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination) (internal citations omitted).