

<b>PEOPLE COVERED UNDER SECTION 504 OF THE REHABILITATION ACT</b>
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When writing the Americans with Disabilities Act (ADA), Congress borrowed the definition of “disability” from the Rehabilitation Act of 1973. (Originally noted as “handicap.”<sup>1</sup>) For fifteen years, the courts had generously interpreted this definition to cover a wide range of physical and mental impairments. Below is a sampling of people that courts held were “disabled” under the Rehabilitation Act based on their impairments. The courts tended to decide questions of coverage quickly and easily, without extensive analysis.

**Epilepsy** – Person with epilepsy “disabled”: Reynolds v. Brock, 9<sup>th</sup> Cir. 1987.

**Diabetes** – Person with diabetes “disabled”: Bentivegna v. U.S. Dep’t of Labor, 9<sup>th</sup> Cir. 1982.

**Intellectual & Developmental Disabilities** – Person with intellectual and developmental disabilities “disabled”: Flowers v. Webb, E.D.N.Y. 1983.

**Bipolar Disorder** – Person with bipolar disorder “disabled”: Gardner v. Morris, 8<sup>th</sup> Cir. 1985.

**Multiple Sclerosis** – Person with multiple sclerosis “disabled”: Pushkin v. Regents of Univ. of Colorado, 10<sup>th</sup> Cir. 1981.

**Hard of Hearing** – Person who used hearing aid “disabled”: Strathie v. Dep’t of Transp., 3<sup>rd</sup> Cir. 1983.

**Vision in Only One Eye** – Person with vision in only one eye “disabled”: Kampmeier v. Nyquist, 2d Cir. 1977.

**Post-Traumatic Stress Disorder** – Person with PTSD “disabled”: Schmidt v. Bell, E.D. Pa. 1983.

**Heart Disease** – Person with heart disease “disabled”: Bey v. Bolger, E.D. Pa. 1982.

**Depression** – Person with depression “disabled”: Pridemore v. Rural Legal Aid Soc’y, S.D. Ohio 1985.

**HIV Infection** – Person with HIV infection “disabled”: Local 1812, Am. Fed’n of Gov’t Employees v. U.S., D.D.C. 1987.

**Asthma** – Person with asthma “disabled”: Carter v. Tisch, 4<sup>th</sup> Cir. 1987.

**Asbestosis** – Person with asbestosis “disabled”: Fynes v. Weinberger, E.D. Pa. 1985.

**Back Injury** – Person with back injury “disabled”: Schuett Inv. Co. v. Anderson, Minn. Ct. App. 1986.

***But now turn over the page . . . .***

## PEOPLE **NOT** COVERED UNDER THE ADA

Congress expected the definition of “disability” would be interpreted the same way under the ADA as it had been interpreted under the Rehabilitation Act. But instead of following Congress’ expectations, the courts have read the definition in a strict and constrained way. Below is a sampling of people that courts have considered to be **not “disabled”** under the ADA. In contrast to cases decided under the Rehabilitation Act, these courts have often devoted pages of contorted analysis to arrive at their conclusions.

**Epilepsy** – Person with epilepsy not “disabled”: Todd v. Academy Corp., S.D. Tex. 1999.

**Diabetes** – Person with diabetes not “disabled”: Orr v. Wal-Mart Stores, Inc., 8th Cir. 2002.

**Intellectual & Developmental Disabilities** – Person with intellectual and developmental disabilities not “disabled”: Littleton v. Wal-Mart Stores, Inc., 11<sup>th</sup> Cir. 2007.

**Bipolar Disorder** – Person with bipolar disorder not “disabled”: Johnson v. North Carolina Dep’t of Health and Human Servs., M.D.N.C. 2006.

**Multiple Sclerosis** – Person with multiple sclerosis not “disabled”: Sorensen v. University of Utah Hosp., 10<sup>th</sup> Cir. 1999.

**Hard of Hearing** – Person who used hearing aid not “disabled”: Eckhaus v. Consolidated Rail Corp., D.N.J. 2003.

**Vision in Only One Eye** – Person with vision in one eye not “disabled”: Albertson's, Inc. v. Kirkingburg, U.S. 1999.

**Post-Traumatic Stress Disorder** – Person with PTSD not “disabled”: Rohan v. Networks Presentations LLC, 4<sup>th</sup> Cir. 2004.

**Heart Disease** – Person with heart disease not “disabled”: Epstein v. Kalvin-Miller Intern., Inc., S.D.N.Y. 2000.

**Depression** – Person with depression not “disabled”: McMullin v. Ashcroft, D. Wyo. 2004.

**HIV Infection** – Person with HIV infection not “disabled”: Cruz Carrillo v. AMR Eagle, Inc., D.P.R. 2001.

**Asthma** – Person with asthma not “disabled”: Tangires v. Johns Hopkins Hosp., D. Md. 2000.

**Asbestosis** – Person with asbestosis not “disabled”: Robinson v. Global Marine Drilling Co., 5<sup>th</sup> Cir. 1996.

**Back Injury** – Person with back injury not “disabled”: Wood v. Crown Redi-Mix, Inc., 8<sup>th</sup> Cir. 2003.

## BACKGROUND INFO FOR PEOPLE COVERED UNDER REHAB ACT AND ADA

The Rehabilitation Act originally referred to people covered under the Act as “handicapped” individuals. This changed in 1992, when the Act was amended to cover individuals with “disabilities.” Pub. L. No. 102-569.

A statement of Congress’ expectations with regard to the definition of “disability” under the ADA is nicely captured in:

Steny H. Hoyer, *Not Exactly What We Intended Justice O’Connor*, WASH. POST, Jan. 20, 2002, at B01.

### CITATIONS

#### Page 1 – “People Covered Under Section 504 of the Rehabilitation Act”

Intellectual & developmental disabilities (“mental retardation”): *Flowers v. Webb*, 575 F. Supp. 1450, 1456 (E.D.N.Y. 1983).  
Epilepsy: *Reynolds v. Brock*, 815 F.2d 571, 574 (9<sup>th</sup> Cir. 1987).  
Diabetes: *Bentivegna v. U.S. Dep’t of Labor*, 694 F.2d 619, 621 (9<sup>th</sup> Cir. 1982).  
Bipolar Disorder: *Gardner v. Morris*, 752 F.2d 1271, 1280 (8<sup>th</sup> Cir. 1985).  
Multiple Sclerosis: *Pushkin v. Regents of Univ. of Colorado*, 658 F.2d 1372, 1377, 1387 (10<sup>th</sup> Cir. 1981).  
Hard of Hearing: *Strathie v. Dep’t of Transp.*, 716 F.2d 227, 230 (3<sup>rd</sup> Cir. 1983).  
Vision in Only One Eye: *Kampmeier v. Nyquist*, 553 F.2d 296, 299 n.7 (2d Cir. 1977).  
Post-Traumatic Stress Disorder: *Schmidt v. Bell*, No. 82-1758, 1983 WL 631, at \*10 (E.D. Pa. 1983).  
Heart Disease: *Bey v. Bolger*, 540 F. Supp. 910, 927 (E.D. Pa. 1982).  
Depression: *Pridemore v. Rural Legal Aid Soc’y*, 625 F. Supp. 1180, 1185-86 (S.D. Ohio 1985).  
HIV Infection: *Local 1812, Am. Fed’n of Gov’t Employees v. U.S.*, 662 F. Supp. 50, 54 (D.D.C. 1987).  
Asthma: *Carter v. Tisch*, 822 F.2d 465, 466 (4<sup>th</sup> Cir. 1987).  
Asbestosis: *Fynes v. Weinberger*, 677 F. Supp. 315, 321 (E.D. Pa. 1985).  
Back Injury: *Schuett Inv. Co. v. Anderson*, 386 N.W. 2d 249, 253 (Minn. Ct. App. 1986).

#### Page 2 – “People Not Covered Under the ADA”

Intellectual & developmental disabilities (“mental retardation”): *Littleton v. Wal-Mart Stores, Inc.*, No. 05-12770, 2007 WL 1379986, at \*2-4 (11<sup>th</sup> Cir. 2007).  
Epilepsy: *Todd v. Academy Corp.*, 57 F. Supp. 2d 448, 452-54 (S.D. Tex. 1999).  
Diabetes: *Orr v. Wal-Mart Stores, Inc.*, 297 F.3d 720, 724-25 (8<sup>th</sup> Cir. 2002).  
Bipolar Disorder: *Johnson v. North Carolina Dep’t of Health and Human Servs.*, 454 F. Supp. 2d 467, 473-74 (M.D.N.C. 2006).  
Multiple Sclerosis: *Sorensen v. University of Utah Hosp.*, 194 F.3d 1084, 1087-89 (10<sup>th</sup> Cir. 1999).  
Hard of Hearing: *Eckhaus v. Consolidated Rail Corp.*, No. Civ. 00-5748 (WGB), 2003 WL 23205042, at \*8-10 (D.N.J. 2003).

Vision in Only One Eye: *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555, 562-67 (1999).  
Post-Traumatic Stress Disorder: *Rohan v. Networks Presentations LLC*, 375 F.3d 266, 273-78 (4<sup>th</sup> Cir. 2004).  
Heart Disease: *Epstein v. Kalvin-Miller Intern., Inc.*, 100 F. Supp. 2d 222, 224-29 (S.D.N.Y. 2000).  
Depression: *McMullin v. Ashcroft*, 337 F. Supp. 2d 1281, 1294-99 (D. Wyo. 2004).  
HIV Infection: *Cruz Carrillo v. AMR Eagle, Inc.*, 148 F. Supp. 2d 142, 144-46 (D.P.R. 2001).  
Asthma: *Tangires v. Johns Hopkins Hosp.*, 79 F. Supp. 2d 587, 594-96 (D. Md. 2000).  
Asbestosis: *Robinson v. Global Marine Drilling Co.*, 101 F.3d 35, 36-37 (5<sup>th</sup> Cir. 1996).  
Back Injury: *Wood v. Crown Redi-Mix, Inc.*, 339 F.3d 682, 685-86 (8<sup>th</sup> Cir. 2003).