

Top Story by *Human Resource Executive*® Magazine

[Send this article to a colleague](#)

Mental Impairments: 'Don't Jump to Conclusions'

June 23, 2005

by Anne Freedman

Just because an employee has a mental condition does not mean he or she is disabled according to the Americans with Disabilities Act, says Doug Towns, a partner in the law firm of Jones Day in Atlanta.

As with other illnesses, mental disabilities do not always fall within the stringent guidelines as set out in recent U.S. Supreme Court decisions indicating that such a disability would need to "substantially limit one or more of the major life activities."

Take the case of a locomotive that transported ammunition and a woman engineer at its controls who suffered from depression. After a series of leaves of absence, the woman was cleared to return to work, but her return to her engineering position was not cleared by the company's physician, pending his further consultation with her doctors.

After some fits, starts and delays, the woman eventually sued under the ADA and the court issued a summary judgment in favor of the company. A federal appeals court upheld the decision that the woman's mental impairment did not rise to the level of a disability.

Towns says he gets more inquiries about mental-health cases than physical disability cases because the disabilities are harder to identify, manage or accommodate. "It's a much tougher disability because it's not really expected," he says.

"A lot of companies just jump to the conclusion that there must be an accommodation," Towns says. Don't, he says.

HR executives initially need to determine whether the employee has a performance problem related to a mental condition, or separate from such a condition, he says. If a mental-health issue is involved, he advises:

- Ask what they want. Some employees aren't asking for an accommodation.
- Don't feel obliged to provide a requested accommodation. "It's simply a starting point for the dialogue," he says.
- Write down any accommodations, no matter how trivial, that are provided.
- Avoid stray comments that indicate your belief that a disability exists. "If you treat someone as disabled or refer to them [in that way] -- that may be enough to regard them as disabled."

By the same token, says Charles Lamberton, an attorney with his own firm in Pittsburgh who has litigated a number of employment-discrimination cases, "don't rule anything out at the outset. -- You need to be proactive. You need to show you are trying to be helpful -- .

"Employers tend not to talk about the accommodations that are out there and potentially available to employees and that -- tends to really hurt them because it shows there's not any really good faith in the process," he says.

Send questions or comments about this story to hreletters@lrp.com.

[Read from the Workindex.com archive](#)

All materials are copyright of Workindex.com, 2005. All rights reserved.