No. 23-2065

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JAMES HITCH,
Plaintiff-Appellant,

v.

THE FRICK PITTSBURGH,
Defendant-Appellee.

On Appeal from the United States District Court
for the Western District of Pennsylvania

BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICUS CURIAE IN SUPPORT OF APPELLANT AND IN FAVOR OF REVERSAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules and Regulations

Other Authorities

STATEMENT OF INTEREST

Congress charged the Equal Employment Opportunity Commission (EEOC) with interpreting the definition of "disability" under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12205a, and with administering and enforcing the ADA's prohibitions on employment discrimination and retaliation, *id.* §§ 12116, 12117(a), 12203(c).

The district court committed several legal errors with respect to Plaintiff's ADA claims, including imposing a higher pleading standard than that established by Federal Rule of Civil Procedure 8(a)(2) when dismissing his ADA retaliation and discrimination claims and requiring him to show a permanent or long-term impairment to plead a disability under the ADA. Because EEOC has a strong interest in the proper application of the laws it enforces, EEOC offers its views. *See* Fed. R. App. P. 29(a)(2).

STATEMENT OF ISSUES[1]

1. Did the district court incorrectly impose a heightened pleading standard in finding Plaintiff's allegations that he reported his disability and

[1] EEOC takes no position on any other issue in this appeal.

requested reasonable accommodations to be insufficient to plead protected activity for his ADA retaliation claim?

2. Did the district court err by dismissing Plaintiff's ADA discrimination claim on the grounds that he failed to show a long-term or permanent impairment and that his allegations regarding limitations with walking and standing were insufficient to plead a disability?[2]

STATEMENT OF THE CASE

A. Statement of the Facts[3]

Plaintiff James Hitch filed his Second Amended Complaint ("SAC") against Defendant The Frick Pittsburgh ("The Frick") alleging that The Frick discriminated and retaliated against him in violation of the ADA

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[2] It is unclear whether Plaintiff is pursuing on appeal a challenge to the dismissal of his ADA discrimination claim. *Compare* Brief for Appellant, Dkt. 14 at 4 (listing single issue on appeal related to retaliation claim), *with id.* at 7 (referring to "retaliation" and "failure to accommodate" claims and listing elements of failure-to-accommodate claim). Because EEOC has a strong interest in ensuring that courts apply the proper definition of "disability" and utilize proper pleading standards when evaluating ADA discrimination claims, we address this issue out of an abundance of caution and in an effort to be of assistance to the Court.

[3] Because this case was decided on a motion to dismiss, we recite the facts as stated in the SAC. *See Fowler v. UPMC Shadyside*, 578 F.3d 203, 210-11 (3d Cir. 2009) (factual allegations in complaint assumed to be true in evaluating motion to dismiss).

when it terminated him from his position as operations manager after he injured his back and requested related accommodations. II.App.130-39.[4]

Hitch began working as an operations manager with The Frick in December 2020. II.App.131 at ¶ 6. In February 2021, he fell on black ice in The Frick's parking lot and injured his back, legs, and spine. II.App.131 at ¶ 7. He was "diagnosed with bulging/herniated disks in back at L-4/5 L-3/4 L-2/3." II.App.131 at ¶ 7. Hitch's doctors prescribed extensive physical therapy, but this did not help his injuries, and he underwent surgery in June 2021. II.App.131 at ¶ 7. The SAC alleges that, in the two years since Hitch's injury, he has experienced "[p]ain and discomfort when sitting or standing" and that multiple doctors would "attest to the fact that [he] can't walk more th[a]n one thousand feet without difficulty and must constantly rotate positions from sitting to standing." II.App.131-32 at ¶¶ 7, 12.

Hitch "report[ed] his serious disability" to The Frick "and request[ed] reasonable accommodations." II.App.133 at ¶ 14. The SAC alleges that The Frick denied these accommodations and retaliated against Hitch through

[4] Appendix references take the form "[Volume number].App.[page number]."

"unwanted harassment, disability discrimination, and discharge." II.App. 131-33 at ¶¶ 7, 12, 14, 15. The Frick terminated Hitch at some point after his injury. II.App.131 at ¶ 8. The Frick claimed the termination was for leasing a vehicle without permission, but the SAC alleges that Hitch's supervisor instead authorized the lease. II.App.131-32 at ¶¶ 8, 9.

B. District Court's Decisions

The Frick moved to dismiss the SAC pursuant to Federal Rule of Civil Procedure 12(b)(6). The district court initially granted the motion in part and denied the motion in part. II.App.207-219.

The district court dismissed Hitch's ADA discrimination claim on the ground that he failed to sufficiently plead a disability in two respects. First, the court concluded that Hitch "must show that [his] injuries have a long-term or permanent effect [] on his ability to perform major life activities" and that Hitch failed to do so because he made no "allegations regarding the long-term effects of [his] injuries, the expected duration of his impairments, or the expected length of his recovery." II.App.212-13 (internal quotation marks omitted).

Second, the court concluded that "[e]ven if it could be reasonably inferred that the effects of Hitch's injuries are sufficiently permanent to

constitute a 'disability' under the ADA, Hitch has not established that his injuries 'substantially limited' him from engaging in 'major life activities.'" II.App.213. The court reasoned that although Hitch alleged "he experiences pain and discomfort when sitting or standing, and he cannot walk more than one thousand feet without difficulty," the only "support" he offered for this "claim" was that five doctors "will 'attest to the fact that [he] can't walk more than one thousand feet without difficulty and must constantly rotate positions from sitting to standing.'" II.App.213 (quoting II.App.132 at ¶ 12). This was insufficient because, the court maintained, it could not "accept speculation regarding future witnesses' potential testimony as a factual allegation." II.App.213. The court thus held that Hitch "failed to sufficiently establish" a substantial limitation in the major life activities of walking and standing. II.App.213.

With respect to Hitch's retaliation claim, the court concluded that Hitch did not sufficiently plead that he engaged in the protected activity of reporting his disability to The Frick and requesting reasonable accommodations. II.App.216-17. In the court's view, Hitch pleaded only "conclusory allegations" that did not "demonstrate that [he] actually engaged" in this activity. II.App.216. But the court believed Hitch did

establish that he engaged in the protected activity of filing an administrative complaint and thus initially declined to dismiss his retaliation claim. II.App.216-17.

The district court, however, subsequently dismissed Hitch's retaliation claim after The Frick filed a motion for reconsideration. I.App.1-11. The court explained that the administrative complaint attached to The Frick's motion made clear that the complaint actually post-dated the alleged retaliatory conduct because Hitch filed the complaint after The Frick already terminated him. I.App.8-9. Reiterating that the SAC "does [not] contain facts sufficient to show that Hitch engaged in other 'protected activities,'" the district court dismissed the retaliation claim and entered judgment closing the case. I.App.9; I.App.12.

ARGUMENT

The ADA prohibits retaliation and discrimination. 42 U.S.C. §§ 12112(a), 12203(a). To establish an ADA retaliation claim, an individual must show, *inter alia*, that he or she engaged in protected activity. *Shellenberger v. Summit Bancorp, Inc.*, 318 F.3d 183, 187 (3d Cir. 2003). Requesting a reasonable accommodation qualifies as protected activity. *Id.* at 191.

The ADA also prohibits employers from discriminating against qualified individuals "on the basis of disability." 42 U.S.C. § 12112(a). To establish an ADA discrimination claim, an aggrieved employee must show—among other requirements—that he or she is disabled within the meaning of the ADA. *Eshleman v. Patrick Indus., Inc.*, 961 F.3d 242, 245 (3d Cir. 2020). The ADA, enacted in 1990, was amended by the ADA Amendments Act (ADAAA) in 2008 "to clarify that the definition of 'disability' should be construed 'in favor of broad coverage of individuals . . . to the maximum extent permitted.'" *Matthews v. Pa. Dep't of Corr.*, 613 F. App'x 163, 167 (3d Cir. 2015) (alteration in original) (quoting 42 U.S.C. § 12102(4)(A)). The ADA defines disability as (1) an actual disability, meaning "a physical or mental impairment that substantially limits one or more major life activities"; (2) a record of such an impairment; or (3) being regarded as having such an impairment. 42 U.S.C. § 12102(1). Hitch alleged only an actual disability here.

The standard for pleading an ADA retaliation or discrimination claim at the motion-to-dismiss stage is not a demanding one. Federal Rule of Civil Procedure 8(a)(2) specifies that a civil complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to

relief." Fed. R. Civ. P. 8(a)(2). Interpreting this rule in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court explained that to survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). This pleading standard does not require "detailed factual allegations," *Twombly*, 550 U.S. at 555, and "the tenet that a court must accept as true all of the allegations contained in a complaint" remains intact, *Iqbal*, 556 U.S. at 678. The touchstone, both before and after *Twombly* and *Iqbal*, is whether the complaint "give[s] the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 555 (second alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

I. The district court erred by concluding that Hitch did not sufficiently plead that he engaged in the protected activity of requesting reasonable accommodations.

The district court correctly recognized that Hitch alleged that he requested reasonable accommodations and that such requests qualify as protected activity for the purposes of an ADA retaliation claim. II.App.216. Indeed, the SAC contains multiple allegations that Hitch "asked for

reasonable accommodations which he never received," "requested reasonable accommodations to do his job which were denied to him," and "report[ed] his serious disability to [The Frick] and request[ed] reasonable accommodations for the same." II.App.131-33 at ¶¶ 7, 12, 14. But the court concluded that Hitch pleaded only "conclusory allegations" that did not "demonstrate that [he] actually engaged" in this activity because the SAC did not detail "the manner in which [Hitch] reported his disability or requested accommodations; what Hitch allegedly reported and requested; to whom he made his alleged reports and requests; or when he made them." II.App.216. This conclusion suffers from several critical flaws.

First, there is no requirement that Hitch "demonstrate" that he "actually engaged" in protected activity at the motion-to-dismiss stage. II.App.216. Instead, a court evaluating a motion to dismiss must "accept all factual allegations as true" and cannot require evidentiary support for these allegations. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citation omitted); *see Estabrook v. Safety & Ecology Corp.*, 556 F. App'x 152, 157 (3d Cir. 2014) (court erred by suggesting that plaintiff must "present evidence" to survive motion to dismiss).

Second, the mere fact that Hitch's allegations lacked specificity did not render them "conclusory," as the district court asserted. II.App.216. A conclusory allegation is one that contains merely "a 'formulaic recitation of the elements of a . . . claim' or other legal conclusion." *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 789 (3d Cir. 2016) (alteration in original) (quoting *Iqbal*, 556 U.S. at 681); *Martinez v. UPMC Susquehanna*, 986 F.3d 261, 266 (3d Cir. 2021) (distinguishing between "factual allegation[s]" and "restatement[s] of the ultimate legal issue" a plaintiff must prove). While "legal conclusions . . . are discounted in the analysis" of a motion to dismiss, "allegations of historical fact . . . are assumed to be true even if 'unrealistic or nonsensical,' 'chimerical,' or 'extravagantly fanciful.'" *Connelly*, 809 F.3d at 789 (quoting *Iqbal*, 556 U.S. at 681).

Although the district court claimed that Hitch's allegations were conclusory, "it did not specifically identify any allegations that, being mere legal conclusions, should have been discounted." *Connelly*, 809 F.3d at 790. Indeed, Hitch did not allege a legal conclusion (for example, that he "engaged in protected activity") but instead a factual one (that he reported his disability to The Frick and requested reasonable accommodations). *See McDermott v. Clondalkin Grp., Inc.*, 649 F. App'x 263, 268 (3d Cir. 2016)

(plaintiff's allegations were not legal conclusions because they "d[id] not paraphrase in one way or another the pertinent statutory language or elements of the claims in question") (internal quotation marks omitted). Although the district court wanted more *specific* facts—when and to whom Hitch made his accommodation requests—the absence of those specifics does not render the actual facts alleged invalid or conclusory.

Finally, the law does not require the level of detail the district court demanded here at the motion-to-dismiss stage. "To survive a motion to dismiss, a complaint need not be detailed." *Martinez*, 986 F.3d at 265. Instead, this Court has reaffirmed that, even after *Iqbal* and *Twombly*, Rule 8(a)(2) requires only a "short and plain statement" of entitlement to relief to provide fair notice of the claim and the factual basis on which it rests. *Connelly*, 809 F.3d at 786 (quoting *Twombly*, 550 U.S. at 555); *see also Fowler*, 578 F.3d at 211-12 ("Although Fowler's complaint is not as rich with detail as some might prefer, it need only set forth sufficient facts to support plausible claims.").

It is therefore not fatal to Hitch's claim that the SAC does not specify exactly when and to whom he reported his disability and made accommodation requests. *See, e.g.*, *Phillips v. Superintendent Chester SCI*, 739

F. App'x 125, 129 (3d Cir. 2018) (per curiam) (plaintiff sufficiently pleaded deliberate indifference claim despite not specifying "exactly when he told each of the[] defendants about his meal problems, how many times they each were told, [and] what exactly they were told," as "these issues are best addressed at the summary judgment stage"); *Estabrook*, 556 F. App'x at 155 (court erred by dismissing sexual-harassment claim based on failure to allege "dates or times" when harassment of other women occurred, as "[t]his level of specificity . . . is not required" at motion-to-dismiss stage) (citation omitted). The district court erred by requiring more detail to survive a motion to dismiss.

II. The district court erred by concluding that Hitch did not sufficiently plead an actual disability to sustain his discrimination claim.

The district court gave two reasons for concluding that Hitch failed to sufficiently plead a disability: that Hitch showed neither a permanent or long-term impairment nor a substantial limitation in a major life activity. II.App.212-15. Should this Court consider Hitch's discrimination claim, it should find that both reasons are incorrect.

A. The district court erred by requiring Hitch to show a permanent or long-term impairment to plead an actual disability.

The district court concluded that Hitch "must show that [his] injuries have a long-term or permanent effect [] on his ability to perform major life activities," and that Hitch failed to do so because he made no "allegations regarding the long-term effects of [his] injuries, the expected duration of his impairments, or the expected length of his recovery." II.App.212-13 (internal quotation marks omitted). This conclusion was incorrect because the ADA contains no requirement that an impairment be long-term or permanent in nature to establish an actual disability. The statutory definition of actual disability looks to whether the impairment "substantially limits one or more major life activities" but does not speak to how long the impairment or associated limitations must last. *Compare* 42 U.S.C. § 12102(1)(A), *with id.* § 12102(3)(B) (excluding "transitory and minor" impairments from "regarded-as" coverage, with "transitory" defined as "an actual or expected duration of 6 months or less"). And, while the Supreme Court originally held that an impairment must be "permanent or long term" to qualify as a disability, *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 198 (2002), "[t]he ADAAA . . . changed the

ground rules and defenestrated this requirement," *Mancini v. City of Providence*, 909 F.3d 32, 40 (1st Cir. 2018); *see* ADAAA, Pub. L. No. 110-325, 122 Stat. 3553 at § 2(b)(5) (2008) (rejecting *Toyota* as "creat[ing] an inappropriately high level of limitation necessary to obtain coverage").[5]

Accordingly, this Court, and multiple other circuits, have recognized that temporary conditions may qualify as disabilities after the ADAAA. *Matthews*, 613 F. App'x at 167-68; *Mueck v. La Grange Acquisitions, L.P.*, 75 F.4th 469, 481 (5th Cir. 2023); *Shields v. Credit One Bank, N.A.*, 32 F.4th 1218,

[5] In enacting the ADAAA, Congress criticized EEOC's then-existing regulations for defining the term "substantially limits" to mean "significantly restricted," explaining that this "express[ed] too high a standard" for obtaining coverage. ADAAA, 122 Stat. 3553 at § 2(a)(8). EEOC then rescinded those regulations, which had listed "[t]he permanent or long term impact" of an impairment as a factor informing the "substantially limited" analysis. 29 C.F.R. § 1630.2(j)(2)(iii) (1991); *see also* Regulations To Implement the Equal Employment Provisions of the Americans with Disabilities Act, as Amended, 76 Fed. Reg. 16978, 17013 (Mar. 25, 2011). In revising the regulations, EEOC rejected "any specific minimum duration that an impairment's effects must last in order to be deemed substantially limiting." 76 Fed. Reg. at 16982; *see also* 29 C.F.R. § 1630.2(j)(1)(ix) ("The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting . . . ."). Instead, "[t]he duration of an impairment is one factor that is relevant in determining whether the impairment substantially limits a major life activity." 29 C.F.R. pt. 1630, app. § 1630.2(j)(1)(ix) (quoting 154 Cong. Rec. 13,766 (2008) (Joint Hoyer-Sensenbrenner Statement on the Origins of the ADA Restoration Act of 2008, H.R. 3195, at 5)).

1225 (9th Cir. 2022); *Hamilton v. Westchester Cnty.*, 3 F.4th 86, 93-95 (2d Cir. 2021); *Summers v. Altarum Inst., Corp.*, 740 F.3d 325, 330-32 (4th Cir. 2014); *Gogos v. AMS Mech. Sys., Inc.*, 737 F.3d 1170, 1172-73 (7th Cir. 2013).

The district court reached a contrary conclusion by relying on decisions that either pre-dated the ADAAA or relied on pre-ADAAA cases. First, the court cited *Rinehimer v. Cemcolift, Inc.*, 292 F.3d 375, 380 (3d Cir. 2002), for the proposition that a "temporary, non-chronic impairment of short duration is not a disability covered by the ADA," II.App.212, but that decision, issued in 2002, pre-dated the ADAAA. Second, the court relied on *Sampson v. Methacton School District*, 88 F. Supp. 3d 422, 436 (E.D. Pa. 2015), for the proposition that Hitch "must show that the injuries have a 'long-term or permanent effect,' on his ability to perform 'major life activities,'" II.App.212, but *Sampson* also relied on cases that either pre-dated the ADAAA or that addressed conduct that occurred prior to the ADAAA's effective date. Specifically, *Sampson* cited *Bolden v. Magee Women's Hospital of University of Pittsburgh Medical Center*, 281 F. App'x 88 (3d Cir. 2008), which pre-dated the ADAAA's effective date of January 1, 2009, and *Macfarlan v. Ivy Hill SNF, LLC*, 675 F.3d 266 (3d Cir. 2012), where this Court applied the pre-ADAAA standard because the relevant events occurred

before the ADAAA's effective date. *See Macfarlan*, 675 F.3d at 270 (reciting that MacFarlan was terminated in 2008). Finally, the district court relied on *Amiot v. Kemper Insurance Co.*, 122 F. App'x 577, 580 (3d Cir. 2004), for the proposition that "allegations regarding the long-term effects of Hitch's injuries, the expected duration of his impairments, or the expected length of his recovery" were required to establish a disability, II.App.213, but *Amiot*, issued in 2004, also pre-dated the ADAAA.

Because these cases all rely on pre-ADAAA standards, they are no longer "good law in . . . determining" disability. *Morrissey v. Laurel Health Care Co.*, 946 F.3d 292, 299 (6th Cir. 2019); *see also Britting v. Sec'y, Dep't of Veterans Affs.*, 409 F. App'x 566, 570 (3d Cir. 2011) (pre-ADAAA disability standard "more demanding"). The district court thus erred by requiring Hitch to show a permanent or long-term impairment to plead an actual disability under the ADA.

B. The district court erred by concluding that Hitch's allegations regarding limitations with walking and standing were insufficient to plead an actual disability at the motion-to-dismiss stage.

The district court next concluded that, "[e]ven if it could be reasonably inferred that the effects of Hitch's injuries are sufficiently

permanent to constitute a 'disability' under the ADA," dismissal of his discrimination claim was still appropriate because he had "not established that his injuries 'substantially limited' him from engaging in 'major life activities.'" II.App.213. This conclusion, too, was incorrect.

As an initial matter, to the extent the district court faulted Hitch for failing to "establish" a substantial limitation, this was error. As this Court has recognized, "the appropriate threshold question" at the motion-to-dismiss stage is "whether [the plaintiff] *pleaded* [he] is an individual with a disability," not whether the plaintiff "can[] prove [he] is disabled." *Fowler*, 578 F.3d at 213.[6] "Even post-*Twombly*," this Court has explained, "a plaintiff is not required to establish the elements of a *prima facie* case but instead, need only put forth allegations that raise a reasonable expectation that discovery will reveal evidence of the necessary element." *Id.* (internal quotation marks omitted).

[6] *Fowler* concerned a disability discrimination claim brought under the Rehabilitation Act of 1973. This Court reviews Rehabilitation Act claims under the same standards governing ADA claims. *See Berardelli v. Allied Servs. Inst. of Rehab. Med.*, 900 F.3d 104, 117 (3d Cir. 2018) (collecting cases).

Nor, "at this early pleading stage," must a plaintiff "go into particulars about the life activity affected by [his] alleged disability or detail the nature of [his] substantial limitations." *Id.* Instead, it is enough for the complaint to "identif[y] an impairment, of which [the employer] allegedly was aware and allege[] that such impairment constitutes a disability." *Id.* And, even after the pleading stage, the threshold for establishing a substantial limitation "is not meant to be a demanding standard." 29 C.F.R. § 1630.2(j)(1)(i); ADAAA, 122 Stat. 3553 at § 2(b)(5) ("[T]he question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis[.]"); *Ruggiero v. Mount Nittany Med. Ctr.*, 736 F. App'x 35, 40-41 (3d Cir. 2018) (relying on this relaxed standard in concluding that plaintiff sufficiently pleaded disability at motion-to-dismiss stage).

Hitch sufficiently pleaded a disability under these standards. As the district court recognized, Hitch alleged "injuries [that] fit within the ADA's broad definition of an 'impairment,'" namely, that "he 'was diagnosed with bulging/herniated disks in back at L-4/5 L-3/4 L-2/3[,]' and that he underwent extensive physical therapy and surgery." II.App.211-12 (alteration in original) (quoting II.App.131 at ¶ 7). And, although Hitch was

"not required . . . to go into particulars about the life activity affected by [his] alleged disability or detail the nature of [his] substantial limitations," *Fowler*, 578 F.3d at 213, he did identify significant limitations in the major life activities of walking and standing. *See* 42 U.S.C. § 12102(2)(A) (walking and standing are major life activities). Specifically, he alleged that, in the two years since his injury in February 2021, he had experienced "[p]ain and discomfort when sitting or standing" and that multiple doctors would "attest to the fact that [he] can't walk more th[a]n one thousand feet without difficulty and must constantly rotate positions from sitting to standing." II.App.131-32 at ¶¶ 7, 12. Further, he alleged that the "extensive physical therapy" his doctors originally prescribed did not work, requiring surgery in June 2021. II.App.131 at ¶ 7. These allegations are more than sufficient to plead a disability at the motion-to-dismiss stage. *See, e.g.*, *Matthews*, 613 F. App'x at 168-69 (plaintiff who alleged he "experienced considerable difficulty walking" for several months sufficiently pleaded disability at motion-to-dismiss stage despite "[a] certain lack of specificity" in complaint) (internal quotation marks omitted); *Ruggiero*, 736 F. App'x at 40 (plaintiff sufficiently pleaded disability by "identif[ying] her specific

impairments" and "further alleg[ing] that those impairments limited certain life activities").

The district court reasoned that Hitch failed to properly "support" these claimed limitations because he offered only allegations regarding his doctors' "future . . . testimony," which the court deemed too "speculati[ve]." II.App.213. But there is nothing improper or speculative about alleging in a complaint what medical evidence or witnesses' testimony will show; indeed, it is difficult to see what else a plaintiff could do at the motion-to-dismiss stage where consideration of extrinsic evidence is generally improper. *See Schuchardt v. President of the United States*, 839 F.3d 336, 348 (3d Cir. 2016) (rejecting district court's conclusion that plaintiff could not rely in his complaint on media reports and disclaiming court's imposition of "limitations on the scope or source of facts that a plaintiff may plead"). The district court thus erred by rejecting as improper or speculative Hitch's allegations as to what his five doctors would attest regarding his medical condition.

In any event, "there is no general rule that medical evidence is always necessary to establish a disability," even after the pleading stage. *Ashton v. Am. Tel. & Tel. Co.*, 225 F. App'x 61, 66 (3d Cir. 2007) (per curiam);

see Marinelli v. City of Erie, 216 F.3d 354, 360-61 (3d Cir. 2000) (rejecting categorical rule requiring medical evidence in all cases); *EEOC v. AutoZone, Inc.*, 630 F.3d 635, 643 (7th Cir. 2010) ("[N]o language in the ADA or implementing regulations states that medical testimony is required."); 29 C.F.R. § 1630.2(j)(1)(v) ("scientific, medical, or statistical analysis" generally not required to establish substantial limitation). And, as discussed above, there is no requirement at the motion-to-dismiss stage that plaintiffs support their factual allegations with *any* evidence at all. *Supra* p. 9. The district court thus erred by deeming Hitch's allegations about his own experience insufficient to "support" his claimed limitations at the motion-to-dismiss stage.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Respectfully submitted,

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September 28, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to 3d Cir. L.A.R. 28.3(d) & 46.1(e), I certify that, as an attorney representing an agency of the United States, I am not required to be admitted to the bar of this Court. *See* 3d Cir. L.A.R. 28.3, comm. cmt. I also certify that all other attorneys whose names appear on this brief likewise represent an agency of the United States and are also not required to be admitted to the bar of this Court. *See id.*

I certify that this brief complies with the type-volume limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B)(i) because it contains 4,255 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and 3d Cir. L.A.R. 29.1(b). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word for Office 365 ProPlus in Book Antiqua 14-point font, a proportionally spaced typeface.

Pursuant to 3d Cir. L.A.R. 31.1(c), I certify that the text of the electronically filed version of this brief is identical to the text of the hard copies of the brief that will be filed with the Court. I further certify pursuant to 3d Cir. L.A.R. 31.1(c) that, prior to electronic filing with this

Court, I performed a virus check on the electronic version of this brief using Trend Micro Office Scan, version 14.0.8515, and that no virus was detected.

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CERTIFICATE OF SERVICE

On September 28, 2023, I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I certify that all counsel of record are registered CM/ECF users, and service will be accomplished via the appellate CM/ECF system.

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