http://www.ca2.uscourts.gov/decisions/isysquery/ebec432a-2471-4a17-975b-df22182999a4/1/doc/12-4505_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/ebec432a-2471-4a17-975b-df22182999a4/1/hilite/ (Last accessed Jan. 8, 2014)

Employment: Discharged Police Officer Who Received Disability Benefits Is Not Barred From Also Asserting ADA Claims

Hoback v. City of Chattanooga, No. 12-6171 (6th Cir. Dec. 20, 2013)

The Sixth Circuit has found that receipt of disability benefits (ostensibly because the recipient is physically or mentally unable to work) does not bar the recipient from also asserting ADA claims (ostensibly because the recipient was able to work but the employer failed to provide a reasonable accommodation).

Mickel Hoback was a Chattanooga police officer from July 2000 until his employment was terminated in June 2009. After joining the Chattanooga police force Hoback enlisted in the military and served in Iraq. When he returned from active duty, he was diagnosed with Post-Traumatic Stress Disorder (PTSD) and he received medication and counseling through the Veterans Administration (VA).

In April 2009, Hoback complained to his therapist about a number of symptoms. The therapist made an appointment for Hoback to meet with a doctor to change his medication. When that doctor asked him if he ever thought about dying and he answered that he thought about getting shot, the doctor filled out a Certificate of Need for Involuntary Commitment, indicating that Hoback was suicidal. However, Hoback was not involuntarily committed and instead, he drove himself to a hospital, stayed overnight and was released the next day.

After learning of the incident, the City placed Hoback on administrative leave and asked him to take a psychological fitness for duty test. Hoback met with the City's doctor, who reviewed the Certificate for Need for Involuntary Commitment and concluded that he was not fit for duty due to his PTSD. After receiving the doctor's report, the City informed Hoback that he had to either accept a new position or take leave under the Family Medical Leave Act. Hoback requested a second opinion and was reevaluated by a new doctor, who concluded that Hoback was fit for duty, but that the City might want to consider putting Hoback in a position where the administration could monitor him as he returned to work.

Nonetheless, the police chief fired Hoback on June 21, 2009, after his administrative leave was exhausted, basing his decision on the first doctor's report. Hoback appealed to the City council which upheld the police chief's decision. After he was terminated, Hoback requested and received a third evaluation and that doctor also concluded that Hoback was fit for duty.

Hoback sued the City for violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973. The discrimination claim went to a jury, which found in his favor. The district court denied the City's motions for a new trial and in the alternative for judgment as a matter of law. The City appealed.

HELD: The Sixth Circuit affirmed the jury's verdict finding that the City violated Hoback's rights under the ADA.

DISCUSSION: On appeal, the City argued that the jury verdict should be set aside as it was "categorically inconsistent" with Hoback's request for disability benefits and because Hoback made false statements to his doctor at the VA for the purpose of increasing his disability benefits. The Sixth Circuit noted that the City's two arguments were essentially arguments for equitable estoppel, but the Circuit Court declined to set aside the jury's verdict on these bases. The court based its decision on the fact that Hoback never indicated that he was "unable to work" and the City could point to no "obvious inconsistencies" between Hoback's application for the disability benefits and his position taken in the litigation – i.e., that he was able to work. *See Johnson v. Oregon*, 141 F.3d 1361, 1370 (9th Cir. 1998) ("As we have explained, the law does not require plaintiffs to choose between applying for benefits and pursuing an ADA claim. They may do both.") As far as the false statements that Hoback made to his doctor to increase his benefits, the Sixth Circuit found that particular fact went to Hoback's credibility, which the jury had weighed when it found in his favor. The Sixth Circuit therefore adopted the reasoning of the district court and affirmed its decision.

http://www.ca6.uscourts.gov/opinions.pdf/13a1046n-06.pdf (last accessed Jan. 7, 2014)

Equal Protection: City Limit on Total Taxicab Permits and Requirement that New Permits Be Issued in Groups of At Least Ten Is Rationally Related to Legitimate Purpose

Kansas City Taxi Driver's Assoc. v. City of Kansas, No. 13-1343 (8th Cir. Dec. 19, 2013).

In Kansas City a taxi permit is required in order to pick up passengers. For some time the number of taxis was unlimited. However, in 2005 the city enacted ordinance 76-73, which caps the number of permits at 500. At the time there were 554 permits and thus no new permits would be issued until the number dropped below 500. Additionally, the ordinance required that new applicants only be permitted if they apply for a package of at least ten permits. As a result if the number dropped to 499 only existing permit holders could get the one available taxi permit, and in order for a new driver or company to enter the market the total permits in circulation must drop to 490 or less.

Two cabdrivers and the Kansas City Taxi Cab Divers Association sued to overturn the ordinance, arguing it excludes new entrants from the market. They contended the disparate treatment of existing and new taxi drivers violated the Equal Protection Clause. The District Court granted summary judgment for Kansas City. The cab drivers appealed.

HELD: The Eighth Circuit affirmed the district court, holding the ordinance was rationally related to a legitimate government purpose.

DISCUSSION: The Eighth Circuit began by noting that cab drivers are not a suspect class and that driving a cab is not a fundamental right, meaning the ordinance would survive an Equal