

## Legal Beat: ADHD Claim?

By Mathew B. Tully  
Question: My boss recently expressed concern about my performance — that I was "slipping up." I suffer from ADHD and the issues that he noted with my performance are consistent with my symptoms — does this count as a disability under the Rehabilitation Act?

A.

Likely yes. In order to state a claim under the Rehabilitation Act, the employee must show that he or she has a disability that substantially limits one or more major life activities. The Equal Employment Opportunity Commission has defined major life activities as "[f]unctions such as . . . learning, reading, concentrating, thinking, communicating, [and] interacting with others." The Commission also recognizes disabilities that limit brain function. In its regulations, the Commission has stated that "it should be easily concluded" that major depressive disorder, bipolar disorder, post-traumatic stress disorder, and intellectual disabilities substantially limit brain function. However, the determination of whether an impairment constitutes a disability is made on a case-by-case basis, and the Commission recognizes in its regulations that "not every impairment will constitute a disability." Therefore, if you can demonstrate that your Attention Deficit-Hyperactivity Disorder substantially limits a major life activity then you will likely be covered under the law.

Question: When I returned to work after being deployed with the Army Reserves, my agency assigned me to a position that was very different from the one I held before leaving for active duty. Can they do this?

A.

Likely not. The Uniformed Services Employment and Reemployment Rights Act (USERRA) provides for reemployment rights of federal employees following military service. USERRA prohibits an agency from changing an employee's status, including work assignment or benefits, due to military service. The employer's actions would be legitimate if, while you were away on active duty, the employer abolished your position. In such a scenario the employer must put the employee in another position of "like status, and pay." Thus, if the position you were placed in after returning from the Reserves is not of "like status and pay," the employer has violated USERRA.

Question: I'm a female fed employee who has been working in a hostile work environment. How do I know whether I should I file a discrimination complaint based on sex or gender or both?

A.

Sex and gender discrimination are typically viewed as coexisting; however for a sexually harassing hostile work environment claim, you should assert sex discrimination.