

No. 04-1577

In The
Supreme Court of the United States

—◆—
BRIAN LARA,

Petitioner,

v.

STATE FARM FIRE & CASUALTY COMPANY,

Respondent.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit**

—◆—
RESPONDENT'S BRIEF IN OPPOSITION

—◆—
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QUESTION PRESENTED

Whether an employee who has received nine months of leave, and continues to request additional leave for an uncertain length of time to cure his alleged disability, is entitled to indefinite leave as a reasonable accommodation under the Americans with Disabilities Act.

CORPORATE DISCLOSURE STATEMENT

- I. Respondent State Farm Fire & Casualty Company's Parent Corporation: State Farm Mutual Automobile Insurance Company.
- II. Publicly Held Companies Owning Ten Percent or More of Respondent State Farm Fire & Casualty Company's Stock: None.

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STATEMENT OF THE CASE

Petitioner Brian Lara (“Lara”) alleges Respondent State Farm Fire & Casualty Company (“State Farm”) failed to accommodate Lara’s alleged disability and terminated his employment in violation of Title I of the Americans with Disabilities Act (“ADA”). 42 U.S.C. §§ 12101-12213.

Lara worked for State Farm in Wichita, Kansas as a Fire Claims Representative (“Claims Rep”). (Pet.’s App. 2a.) As a Claims Rep, Lara’s duties required “walking, climbing, bending, reaching, stooping, crawling and lifting objects typically weighing less than 50 lbs.” (Pet.’s App. 2a.)

After sustaining a non-job related injury in May 2001, Lara underwent three surgeries and used over 130 full days of paid sick leave from May 2001 through February 2002. (Pet.’s App. 2a-3a.) State Farm dismissed Lara on February 16, 2002, pursuant to its Illness Benefits Policy, because Lara’s illness benefits expired. (Pet.’s App. 3a and 5a.) State Farm’s Illness Benefits Policy states as follows: “once PSL [Paid Sick Leave] and/or ML [Medical Leave] expires, the employee should be terminated [on grounds of] Illness Benefits Expired . . . since it has already been determined that there will not be a return to work.” (Pet.’s App. 3a.)

State Farm also has a policy that “if an employee believes an accommodation of a physical . . . impairment is needed to perform his . . . job, the employee should complete an Accommodation Request Form.” (Pet.’s App. 3a.) State Farm requires all employees needing an accommodation to submit accommodation requests in writing. (Pet.’s App. 3a.)

Lara completed an Accommodation Request Form (“Request”) on January 11, 2002 requesting, as an accommodation, “no roof claims until directed by the doctor”, and stated on the form that his “physical impairment is temporary!” (Pet.’s App. 3a and 19a.) After completing the Request, Lara underwent his third and final surgery on February 9, 2002. (Pet.’s App. 4a.) Lara’s sick leave expired during this recovery period. (Pet.’s App. 4a-5a.) After Lara’s third surgery, State Farm’s fire claim section manager sent an email to State Farm’s fire claim manager based upon the diagnosis by Lara’s doctor. The email stated Lara:

will not be able to return to work without significant restrictions for an unknown amount of time. The most probable time period before he could perform all the Field Claims Representative job description is 3-6 months from now, although it is not known if he will ever be able to perform this job without restrictions.

(Pet.’s App. 5a.)

From Lara’s initial May 2001 injury until his February 2002 termination, Lara provided State Farm with the following leave requests:

- May 31, 2001: stating Lara “Cannot Work” (Resp.’s App. 1);
- June 28, 2001: stating Lara “Cannot Work” with an “undetermined” return date (Resp.’s App. 2);
- July 9, 2001: stating “off work 6 wks” (Resp.’s App. 3);
- August 30, 2001: stating “Cannot Work” (Resp.’s App. 4);

- October 8, 2001: stating “Cannot Work” with an “undetermined” return date (Resp.’s App. 5);
- November 8, 2001 and December 20, 2001: limiting work to 4 hour work days (Resp.’s App. 6);
- **January 14, 2002: medical certification identifies “unknown” expected duration of Lara’s impairment (received about three weeks prior to Lara’s dismissal).** (Resp.’s App. 7-8) (emphasis added); and
- January 15, 2002: “may increase hours as tolerated.” (Resp.’s App. 9.)

Lara submitted the following leave requests to State Farm **after his dismissal**:

- February 12, 2002: stating return to work date “unknown at this time. Approx. 3 months” (Resp.’s App. 10-11);
- February 18, 2002: stating Lara “May return to work on 2/18/02 without restrictions” (Resp.’s App. 12-13); and
- February 27, 2002 – placing Lara on restrictions for four weeks. (Resp.’s App. 13-14.)

Lara remained unable to perform the essential functions of a Claims Rep from the date of his dismissal, February 16, 2002, until May 13, 2002. (Pet.’s App. 6a.) Lara’s treating physician, Dr. Raymond Grundmeyer, III, testified during his deposition that Lara could return to work in an office setting on May 15, 2002 with the following restrictions: “(a) frequent or repetitive lifting, pushing, pulling, a maximum of 10 pounds; (b) occasional lifting, pushing, pulling, a maximum of 20 pounds; (c) no

prolonged sitting, standing, walking; (d) no excessive and/or repeated bending or twisting of the lower back; and (e) no kneeling, squatting, stooping, crawling and climbing.” (Pet.’s App. 7a.) The May 15th restrictions still prevented Lara from performing the essential functions of a Claims Rep.

A functional capability evaluation completed on August 8, 2002, approximately 14½ months after Lara’s leave initially began and 6 months after Lara’s dismissal, showed Lara could perform **light work** for 8 hours per day. (Pet.’s App. 7a.)



SUMMARY OF THE ARGUMENT

Lara alleges the Tenth Circuit’s decision in *Lara v. State Farm Fire & Casualty Co.*, No. 03-3248, 2005 WL 288819 (10th Cir. Jan. 27, 2005) conflicts with a decision issued by the First Circuit. The decision from the First Circuit is distinguishable from the Tenth Circuit’s decision in *Lara* for one major reason – the First Circuit employee requested leave with a specific date of return, whereas **Lara requested indefinite leave.**

Lara embraces the same rationale adopted by other Courts of Appeals – an employee’s failure to provide to the employer the expected duration of the impairment essentially requests indefinite leave.

The ADA does not contemplate requests for indefinite leave as a “reasonable accommodation.”

Lara’s request to this Court to provide detailed guidance to employers and employees for requesting additional leave as an ADA reasonable accommodation is

unnecessary. The EEOC, and existing case law, provide ample guidance on the issue of requesting an accommodation. Providing detailed requirements for such accommodation requests would interfere with the “essential” individualized assessment mandated by claims under the ADA.



REASONS FOR DENYING THE PETITION

I. SIGNIFICANT DIFFERENCES EXIST BETWEEN *LARA* AND *GARCIA* NEGATING ANY ALLEGED CONFLICT BETWEEN THE TWO CIRCUITS' DECISIONS.

A. Lara Requested Indefinite Leave, Failing to Provide a Specific Return to Work Date. Lara alleged State Farm should have accommodated his alleged disability by providing additional leave of three to six months (in addition to the eight months State Farm already provided). (Pet.'s App. 9a and 41a-42a.) The estimates Lara provided to State Farm “included no medical assessment that he would likely be able at that point to perform all of the essential functions of his job.” (Pet.'s App. 41a.) In support of Lara's leave request, he presented State Farm with “flatly contradictory medical assessments, including one that falsely stated he could return to work as of February 18, 2002, without restrictions.” (Pet.'s App. 43a; *see also* Pet.'s App. 10a.) The Tenth Circuit held that Lara's request for additional leave, “was essentially a request for an indefinite leave.” (Pet.'s App. 10a.)

In *Garcia-Ayala v. Lederle Parenterals, Inc.*, Lederle “had a policy of reserving a job for one year when employees had been out on [short term disability].” 212 F.3d 638,

642 (1st Cir. 2000). Lederle informed Garcia in June 1996 that her one-year job reservation period ran in March 1996, and Lederle terminated Garcia. *Garcia*, 212 F.3d at 642. Garcia requested additional leave for two months. *Garcia*, 212 F.3d at 647. Lederle rejected the request, and “embrace[d] a per se rule that any leave beyond its one-year reservation period was too long.” *Garcia*, 212 F.3d at 649.

Contrary to the leave Lara requested, Garcia requested “additional leave time with a specific date for return.” *Garcia*, 212 F.3d at 648. Therefore, the Tenth Circuit (*Lara*) and the First Circuit (*Garcia*) decisions reflect the rationale that “[w]ithout an expected duration of an impairment, an employer cannot determine whether an employee will be able to perform the essential functions of the job *in the near future*. . . .” *Cisneros v. Wilson*, 226 F.3d 1113, 1130 (10th Cir. 2000), *overruled on other grounds by Bd. of Trustees v. Garrett*, 531 U.S. 356 (2001). In other words, the failure to present evidence of the expected duration of the impairment directly impacts on the reasonableness of the employee’s requested leave accommodation.

B. State Farm Challenged the Reasonableness of the Requested Accommodation. Lara alleges in his Petition for Writ of Certiorari that “no other court of appeals has imposed the requirement that the employee must provide the employers with the expected duration of his impairment in order to have his request for leave be considered a proper request for a reasonable accommodation under the ADA.” (Pet. 8.) This statement contradicts even *Garcia*’s recognition that “the burden of showing **reasonable** accommodation is on the plaintiff.” *Garcia*, 212 F.3d at 648 (emphasis added). In *Garcia*, Lederle did

not contest the reasonableness of the accommodation. *Garcia*, 212 F.3d at 649. In *Lara*, State Farm did object to the reasonableness of the requested accommodation because Lara requested indefinite leave.

The Tenth Circuit's decision in *Lara* reflects a similar decision from the Sixth Circuit that "when, as here, an employer has already provided a substantial leave, an additional leave period of a significant duration, with no clear prospects for recovery, is an objectively unreasonable accommodation." *Walsh v. United Parcel Service*, 201 F.3d 718, 727-28 (6th Cir. 2000) (citing *Hudson v. MCI Telecommunications Corp.*, 87 F.3d 1167, 1169 (10th Cir. 1996)). The *Walsh* court noted that its review of case law from all circuits "disclosed no cases where an employer was required to allow an employee to take a leave of absence for well in excess of a year – let alone indefinitely – as a reasonable accommodation to the employee's disability." *Walsh*, 201 F.3d at 727.

In *Walsh*, the employer gave an employee nearly 1½ years off from work, but the employee requested an additional ninety days off for an evaluation. *Walsh*, 201 F.3d at 727. Rejecting the employee's argument that he requested a reasonable accommodation of additional leave, the Sixth Circuit held that "when the requested accommodation has **no reasonable prospect of allowing the individual to work in the identifiable future**, it is objectively not an accommodation that the employer should be required to provide." *Walsh*, 201 F.3d at 727 (emphasis added). *Walsh* referenced a similar holding from *Hudson* that "where plaintiff has failed to present any evidence of the expected duration of her impairment as of the date of her termination, a request for medical leave

was unreasonable.” *Walsh*, 201 F.3d at 728 (citing *Hudson*, 87 F.3d at 1169.)

II. THE TENTH CIRCUIT’S DECISION IN *LARA* DOES NOT CONFLICT WITH DECISIONS FROM OTHER CIRCUITS.

The Fourth Circuit addressed the issue of whether an employee is entitled to essentially indefinite leave as an accommodation under the ADA, and held “that reasonable accommodation does not require [an employer] to wait indefinitely for [an employee’s] medical conditions to be corrected, especially in light of the uncertainty of cure.” *Myers v. Hose*, 50 F.3d 278, 283 (4th Cir. 1995); *see also Scarborough v. Natsios*, 190 F. Supp. 2d 5, 26 (D.D.C. 2002) (stating requests for indefinite leave are unreasonable as a matter of law.). In reaching this decision, the Fourth Circuit considered the provisions of the ADA, and its regulations, and stated “[n]othing in the text of the reasonable accommodation provision requires an employer to wait an indefinite period for an accommodation to achieve its intended effect.” *Myers*, 50 F.3d at 283.

The Seventh Circuit also considered an issue similar to the facts presented in this case in *Byrne v. Avon Prods. Inc.*, 328 F.3d 379, 380-81 (7th Cir. 2003). In *Byrne*, the employee argued “he should have been accommodated by being allowed *not* to work.” *Byrne*, 328 F.3d at 380-81. Arguing that leave may be a reasonable accommodation, Byrne requested not to work “for an extended time, which as far as the ADA is concerned[,] confesse[d] that he was not a ‘qualified individual’ in late 1998.” *Bryne*, 328 F.3d at 381.

An employee's request for indefinite leave in *Wood v. Green* caused the Eleventh Circuit Court of Appeals to reverse the district court's denial of the defendant's motion for judgment as a matter of law. *See generally Wood v. Green*, 323 F.3d 1309, 1312-14 (11th Cir. 2003). In *Wood*, the Eleventh Circuit recognized:

Wood was requesting an indefinite leave of absence. Wood might return to work within a month or two, or he could be stricken with another cluster headache soon after his return and require another indefinite leave of absence. **Wood was not requesting an accommodation that allowed him to continue work in the present, but rather, in the future – at some indefinite time.**

Wood, 323 F.3d at 1314 (emphasis added).

Quoting a previous decision by the Eleventh Circuit, the court in *Wood* stated “an employer did not violate the ADA by ‘refusing to grant [an employee] a period of time in which to cure his disabilities where the employee sets no temporal limit on the advocated grace period, urging only that he deserves sufficient time to ameliorate his conditions.’” *Wood*, 323 F.3d at 1313 (quoting *Duckett v. Dunlop Tire Corp.*, 120 F.3d 1222, 1226 (11th Cir. 1997) (per curiam)).

All of these decisions have one common factor: an employee's failure to assert a temporal limit on his or her request for additional leave as an accommodation, or his or her failure to present the employer with the expected duration of the impairment. The Tenth Circuit's decision in *Lara* reflects these same principles, negating Lara's claim that the Tenth Circuit's holding “places it at odds with the other U.S. circuit courts of appeals.” (Pet. 8.)

III. AMPLE GUIDANCE EXISTS FOR EMPLOYEES AND EMPLOYERS REGARDING AN EMPLOYEE'S REQUEST FOR ACCOMMODATION UNDER THE ADA.

The Equal Employment Opportunity Commission (“EEOC”) published, and maintains on its website, *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act*, No. 915-002, Oct. 17, 2002 (“EEOC’s Guidance Notice”). The EEOC’s Guidance Notice “clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship.” For example, EEOC’s Guidance Notice provides an employee with information on how to request an accommodation, noting the ADA does not require magic words or phrasing. The EEOC’s Guidance Notice also describes the types of accommodations contemplated by the ADA, including the possibility of leave.

Case law from this Court, and the Courts of Appeals, also provide this information. In some instances, the EEOC’s Guidance Notice may be more accessible to employers and employees than opinions from this Court and/or the Courts of Appeals.

Lara, however, requests this Court to issue more detailed instructions for employees and employers regarding a request for additional leave as an accommodation. If this Court issues such detailed guidelines, it would interfere with the “individualized assessment” courts must make as deemed “essential” by this Court in *School Board v. Arline*, 480 U.S. 273, 287 (1987), or as the ADA requires of employers (i.e., participation in the “interactive process”.)



CONCLUSION

The Tenth Circuit's decision in *Lara* reflects the rationale of decisions from other Courts of Appeals. The decision does not require employees requesting additional leave as an accommodation under the ADA to take any action beyond that contemplated by the ADA. Lara's requested relief exceeds the relief contemplated by the ADA by requiring employers to permit certain individuals to take indefinite leave. Furthermore, a decision by this Court establishing specific requirements for employers and employees minimizes the role of individual assessment by Courts of ADA claims, which this Court previously determined was "essential," or the ADA required "interactive process." Detailed requirements by this Court are also unnecessary due to the EEOC's Guidance Notice. Therefore, this Court should deny Lara's Petition for Writ of Certiorari.

Respectfully submitted,
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Resp. App. 1

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Resp. App. 2

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Resp. App. 3

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Resp. App. 4

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[LOGO] **State Farm Insurance Companies**

EMPLOYEE MEDICAL CERTIFICATION FORM
Confidential Medical Information

In order to determine your eligibility for illness benefits, the following information must be provided by your physician. Return the completed form to the Regional Medical Director no later than Jan. 21, 02 (Enter date) Failure to provide complete information may result in leave without pay.

I hereby authorize the release to my employer, State Farm Insurance Companies, any medical information relating to my present disability.

Employee's Signature /s/ Brian Lara Date Jan. 14, 02

**This form is not a
request for FMLA Protection**

If you plan to request FMLA protection, a completed FMLA Designation Request form must be received by your medical department within two days of your return to work.

Forms are available from the Medical or Human Resources Department, or may be transmitted to the Medical Department electronically via E-Mail or HPDesk.

Employee's Name: Brian Lara

Diagnosis or Medical Facts: S/P Thoraco-lumber fusion

Disability/Incapacity Start Date: May 23, 2001

End Date/Release to Return to Work: Nov. 26, 2001

Expected Duration of Incapacity (if ongoing): Unknown

Resp. App. 9

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[LOGO] **State Farm Insurance Companies**

EMPLOYEE MEDICAL CERTIFICATION FORM
Confidential Medical Information

In order to determine your eligibility for illness benefits, the following information must be provided by your physician. Return the completed form to the Regional Medical Director no later than _____ (Enter date) Failure to provide complete information may result in leave without pay.

I hereby authorize the release to my employer, State Farm Insurance Companies, any medical information relating to my present disability.

Employee's Signature /s/ Brian Lara Date 2-12-02

**This form is not a
request for FMLA Protection**

If you plan to request FMLA protection, a completed FMLA Designation Request form must be received by your medical department within two days of your return to work.

Forms are available from the Medical or Human Resources Department, or may be transmitted to the Medical Department electronically via E-Mail or HPDesk.

Employee's Name: Brian Lara

Diagnosis or Medical Facts: Patient underwent a L1 vertebrectomy and [illegible]

Disability/Incapacity Start Date: 2/9/02

End Date/Release to Return to Work: Unknown at this time. Approx. 3 months.

Expected Duration of Incapacity (if ongoing): Approx. 3 months

Treatment/Medication Prescribed: Surgery; Pain meds (Percent 7.5), Flexeril

Surgical Procedure (if applicable): L. vertebrectomy [illegible] approach

Hospitalization: X In-patient Out-Patient

Work Restrictions, if any: no work

Duration of Restriction: May increase as tolerated

Additional Comments: Approx. 3 months. Will assess on next appt.

PHYSICIAN INFORMATION

Physician's Name: Raymond W. Grundmeyer [illegible], M.D.

Name: Grundmeyer [illegible], M.D. Specialty: Neurosurgery

Address: 3305 E. Douglas Ste 101 Wichita, KS 67218

Phone Number: (316) 685-2828 Fax: (316) 685-2122

Physician's Signature: R.W. Grundmeyer MD Date: 2/22/02

**ABAY NEUROSCIENCE CENTER •
3305 EAST DOUGLAS SUITE 101
316-685-2525 • FAX 316-685-2122**

WORK RELEASE

DATE 2/18/02

PATIENT NAME Brian Lara

EMPLOYER State Farm

DIAGNOSIS S/P Li Vertebrectomy

Released from work until _____

May return to work on 2/18/02 without restrictions.

May return to work on ___ with the following restrictions.

Frequent or repetitive lifting/pushing/pulling a maximum of ___ pounds.

Occasional lifting/pushing/pulling of a Maximum of ___ pounds

No prolonged sitting/standing/walking.

No excessive and/or repeated bending and/or twisting of the lower back

No kneeling/squatting/stooping/crawling/climbing

No excessive and/or repeated flexion or extension of the neck.

No overhead work

Sedentary work only (desk job)

Other _____

Restrictions are for a period of 4 6 8 weeks. Thereafter, restrictions may be **GRADUALLY** lifted, but only as tolerated by the patient.

_____ We have prescribed medications, which may alter their ability to operate heavy equipment or motor vehicles.

DATE OF NEXT APPOINTMENT 3/18/02

/s/ R.W. Grundmeyer MD
Physician's Signature

**ABAY NEUROSCIENCE CENTER •
3305 EAST DOUGLAS SUITE 101
316-685-2525 • FAX 316-685-2122**

WORK RELEASE

DATE 2/27/02

PATIENT NAME Brian Lara

EMPLOYER State Farm Insurance

DIAGNOSIS S/P [Illegible]

_____ Released from work until _____

_____ May return to work on _____ without restrictions.

X May return to work on immediately with the following restrictions.

X Frequent or repetitive lifting/pushing/pulling a maximum of 10 pounds.

X Occasional lifting/pushing/pulling of a Maximum of 20 pounds

_____ No prolonged sitting/standing/walking.

_____ No excessive and/or repeated bending and/or twisting of the lower back

X No kneeling/squatting/stooping/crawling/climbing

_____ No excessive and/or repeated flexion or extension of the neck.

- No overhead work
- Sedentary work only (desk job)
- Other _____

- Restrictions are for a period of 4 6 8 weeks. Thereafter, restrictions may be **GRADUALLY** lifted, but only as tolerated by the patient.
- We have prescribed medications, which may alter their ability to operate heavy equipment or motor vehicles.

DATE OF NEXT APPOINTMENT 3/18/02

/s/ R.W. Grundmeyer MD
Physician's Signature
