

No. 26-1729

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Christopher Butler,
Plaintiff-Appellant,

v.

FedEx Supply Chain, Inc.,
Defendant-Appellee.

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

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

CATHERINE ESCHBACH
Acting General Counsel

CHRISTOPHER LAGE
Deputy General Counsel

JENNIFER S. GOLDSTEIN
Associate General Counsel

DARA S. SMITH
Assistant General Counsel

STEVEN WINKELMAN
Attorney

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Office of General Counsel
131 M St. N.E., 5th Floor
Washington, D.C. 20507
(202) 921-2564
steven.winkelman@eeoc.gov

TABLE OF CONTENTS

Table of Authorities	iii
Statement of Interest	1
Statement of the Issues	1
Statement of the Case	2
A. Statement of the Facts	2
B. District Court’s Decision	5
Argument	6
I. An impairment may constitute an actual disability under the ADA if, when active, it causes an individual difficulty or pain in performing a major life activity.	6
A. An impairment is an actual disability when it “substantially limits” at least one major life activity, and the term “substantially limits” must be construed broadly in favor of expansive coverage.....	6
B. An impairment may be substantially limiting when it causes an individual difficulty or pain in performing a major life activity.....	9
II. Under the correct standard, a reasonable jury could find that Butler’s hemorrhoids condition was an actual disability.	12
A. A reasonable jury could find that Butler’s hemorrhoids condition, when active, caused him difficulty or pain in performing at least one major life activity.....	12

B.	The district court did not properly analyze whether Butler’s hemorrhoids condition was substantially limiting.....	16
C.	This Court should remand for the district court to address the remaining elements of Butler’s disability discrimination claim.	19
Conclusion.....		20
Certificate of Compliance		22
Certificate of Service		24

TABLE OF AUTHORITIES

Cases

<i>Daimler v. Moehle</i> , No. 23-2611, 2025 WL 1355138 (3d Cir. May 9, 2025)	17
<i>Edwards v. Shelby Cnty.</i> , 159 F.4th 489 (6th Cir. 2025)	9
<i>Eshleman v. Patrick Indus., Inc.</i> , 961 F.3d 242 (3d Cir. 2020)	6-7
<i>Frank v. Gaos</i> , 586 U.S. 485 (2019)	20
<i>Gentles v. Borough of Pottstown</i> , No. 22-2925, 2025 WL 2082645 (3d Cir. July 24, 2025)	17
<i>Gogos v. AMS Mech. Sys., Inc.</i> , 737 F.3d 1170 (7th Cir. 2013)	11
<i>Gribben v. United Parcel Serv., Inc.</i> , 528 F.3d 1166 (9th Cir. 2008)	16
<i>Harper v. R & R Gen. Contractors, Inc.</i> , No. 23-cv-2073, 2024 WL 6848005 (C.D. Ill. Mar. 21, 2024)	12, 13
<i>Harrison v. Soave Enters. L.L.C.</i> , 826 F. App'x 517 (6th Cir. 2020)	14
<i>Hill v. Tangherlini</i> , 724 F.3d 965 (7th Cir. 2013)	17
<i>Howard v. Pa. Dep't of Pub. Welfare</i> , No. 11-cv-01938, 2013 WL 102662 (E.D. Pa. Jan. 9, 2013)	10
<i>Kengerski v. Harper</i> , 6 F.4th 531 (3d Cir. 2021)	20

<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024)	9
<i>Lupyan v. Corinthian Colls., Inc.</i> , 761 F.3d 314 (3d Cir. 2014)	16-17
<i>Marinelli v. City of Erie</i> , 216 F.3d 354 (3d Cir. 2000)	17, 18
<i>Matthews v. Pa. Dep’t of Corr.</i> , 613 F. App’x 163 (3d Cir. 2015)	8, 9
<i>Mestas v. Town of Evansville</i> , 786 F. App’x 153 (10th Cir. 2019)	15
<i>Morgan v. Allison Crane & Rigging LLC</i> , 114 F.4th 214 (3d Cir. 2024)	7, 8, 9, 11, 13, 17, 18, 19
<i>Morrissey v. Laurel Health Care Co.</i> , 946 F.3d 292 (6th Cir. 2019)	9, 10
<i>O’Hanlon v. Uber Techs., Inc.</i> , 990 F.3d 757 (3d Cir. 2021)	20
<i>Paladino v. Newsome</i> , 885 F.3d 203 (3d Cir. 2018)	16
<i>Porter v. Merakey USA</i> , No. 22-2986, 2024 WL 3581169 (3d Cir. July 30, 2024)	17
<i>Qin v. Vertex, Inc.</i> , 100 F.4th 458 (3d Cir. 2024)	2
<i>Rinehart v. Weitzell</i> , 964 F.3d 684 (8th Cir. 2020)	13
<i>Shields v. Credit One Bank, N.A.</i> , 32 F.4th 1218 (9th Cir. 2022)	7

<i>Sutherland v. Peterson’s Oil Serv., Inc.</i> , 126 F.4th 728 (1st Cir. 2025).....	8
---	---

<i>Williams v. Tarrant Cnty. Coll. Dist.</i> , 717 F. App’x 440 (5th Cir. 2018)	16
--	----

Statutes

42 U.S.C. § 12102.....	7, 8, 11, 13, 15, 18
------------------------	----------------------

42 U.S.C. § 12111.....	1
------------------------	---

42 U.S.C. § 12112.....	6
------------------------	---

42 U.S.C. § 12116.....	1
------------------------	---

42 U.S.C. § 12117.....	1
------------------------	---

42 U.S.C. § 12205a.....	8
-------------------------	---

ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008).....	7, 8
--	------

Rules and Regulations

29 C.F.R. § 1630.2.....	8, 9, 10, 12, 13, 14, 15, 18, 19
-------------------------	----------------------------------

29 C.F.R. pt. 1630, app. § 1630.2(j)(4)	10
---	----

Fed. R. App. P. 29	1
--------------------------	---

Other Authorities

National Institute of Diabetes and Digestive and Kidney Diseases, <i>Hemorrhoids</i> (Oct. 2016), https://www.niddk.nih.gov/health-information/digestive-diseases/hemorrhoids	2
--	---

STATEMENT OF INTEREST

This appeal raises important questions concerning the proper standard for determining when an individual has a disability for purposes of an employment-discrimination claim under Title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12111 *et seq.*, as amended. The Equal Employment Opportunity Commission (EEOC) administers, enforces, and interprets Title I of the ADA, *see* 42 U.S.C. §§ 12116, 12117(a), and thus has a significant interest in the proper resolution of these questions. The EEOC files this brief under Federal Rule of Appellate Procedure 29(a)(2).

STATEMENT OF THE ISSUES¹

Christopher Butler alleges that FedEx Supply Chain, Inc., fired him because of his hemorrhoids condition in violation of the ADA. The district court determined that Butler could not show he had a disability because no reasonable jury could find that his condition substantially limited a major life activity. On that ground alone, the court granted summary judgment to FedEx on Butler's disability discrimination claim.

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

The issues presented are:

1. Whether an impairment may constitute an actual disability under the ADA if, when active, it causes an individual difficulty or pain in performing a major life activity.
2. Whether, under the correct standard, a reasonable jury could find that Butler's hemorrhoids condition was an actual disability (and, by extension, that his history of hemorrhoids was a "record of" a disability).

STATEMENT OF THE CASE

A. Statement of the Facts²

Butler worked at a FedEx warehouse, most recently as an Operations Supervisor. Appx91. Butler had a history of hemorrhoids.³ See Appx158-59, 508. When Butler had a flare-up, he experienced pain and rectal bleeding during bowel movements. See, e.g., Appx158, 508, 535, 615, 617-18, 794.

² Because this appeal arises from a grant of summary judgment, the facts must be construed in the light most favorable to Butler, as the non-moving party, and all reasonable inferences must be drawn in his favor. See *Qin v. Vertex, Inc.*, 100 F.4th 458, 469 (3d Cir. 2024).

³ Hemorrhoids "are swollen and inflamed veins around [the] anus or in [the] lower rectum." National Institute of Diabetes and Digestive and Kidney Diseases, *Hemorrhoids* (Oct. 2016), <https://www.niddk.nih.gov/health-information/digestive-diseases/hemorrhoids>.

Butler also experienced pain when sitting, walking, and standing, making these activities more difficult. *See, e.g.,* Appx158-59, 161, 219-20, 227.

The pain Butler experienced was far from trivial. At times, the pain prevented him from sitting on hard surfaces and he had to use a “donut pillow.” Appx159. At others, the pain was so intense that he was “on bedrest with suppositories.” Appx159. To minimize painful bowel movements, Butler sometimes avoided eating, causing him to lose weight. Appx168, 220, 265-66. On multiple occasions, he “had to leave work ... because of [his] pain,” and later “it had gotten so bad, [he] was leaving, ... [in the] middle of the day.” Appx159-60; *see also* Appx535 (Butler “had to leave work early because of pain and bleeding”).

In March 2020, Butler asked for — and FedEx granted him — permission to use intermittent leave under the Family and Medical Leave Act (FMLA). Appx94-95, 160. This arrangement allowed Butler to take time off up to two times a week when he had a flare-up. Appx94. Over the next fifteen months, from March 2020 to around April 2021, Butler used intermittent leave about ten to fourteen times. *See* Appx159, 848.

Butler’s manager, Peggy Hill, expressed frustration with his use of intermittent leave. On multiple occasions, Hill told Butler she was “not

happy when he had to leave work due to his hemorrhoids” and that “he needed to get his medical issues under control.” Appx160. Sometimes, when Butler asked to use leave, Hill pressured him to continue working by “complaining about [his] hemorrhoids” and telling him that existing backlogs were “because of [his] health issues.” Appx160. Other managers — Shanna Slike and Brant Curtis — similarly believed that Butler’s medical leave burdened Hill or other FedEx employees. Appx267-68 (Slike); Appx421 (Curtis).

In May 2021, Butler told Hill he needed surgery for his hemorrhoids and that he could potentially need several months to recover. Appx161. By June 2021, Butler’s managers — Hill, Slike, and Curtis — had proposed firing him for alleged performance issues. Appx330 (Hill, Slike, and Curtis “wanted to proceed with a term”). Citing Butler’s “history of protected absences,” FedEx instead decided to put him on a Performance Improvement Plan (PIP) to “reduce risk.” Appx329.

Butler ultimately took continuous FMLA leave for his surgery and recovery from July 2021 through August 2021, before returning to work in September 2021. Appx96, 160, 162. FedEx imposed the PIP on Butler that same month, after he returned to work. Appx347-49. A month later, in

October 2021, FedEx fired him. Appx263, 384. FedEx maintains that it fired Butler based on his failure to successfully complete the PIP alongside a history of documented performance and misconduct issues. Appx823. Butler maintains that FedEx fired him because of his hemorrhoids condition and use of protected leave. Appx861-64, 872.

B. District Court's Decision

Butler filed this action, asserting a claim for disability discrimination under the ADA (among other claims). Appx845. Butler argued, among other things, that his hemorrhoids condition was an actual disability because it substantially limited several major life activities, including his ability to sit, stand, walk, and pass bowel movements. Appx858-59.

The district court granted summary judgment to FedEx. The court rejected Butler's disability discrimination claim solely on the ground that he could not show he had a disability. *See* Appx37-42. Specifically, the court determined that Butler did not have an actual disability because no reasonable jury could find that "his hemorrhoids condition substantially

limited his ability to sit or stand or pass bowel movements at any point in time prior to his termination.” Appx38-39.⁴

This appeal followed. Appx1.

ARGUMENT

- I. An impairment may constitute an actual disability under the ADA if, when active, it causes an individual difficulty or pain in performing a major life activity.**
 - A. An impairment is an actual disability when it “substantially limits” at least one major life activity, and the term “substantially limits” must be construed broadly in favor of expansive coverage.**

Title I of the ADA prohibits a covered entity from “discriminat[ing] against a qualified individual on the basis of disability” in employment.

42 U.S.C. § 12112(a). To prove disability-based disparate treatment, a plaintiff must show that (1) he had a disability, (2) he was a qualified individual, and (3) his employer took an adverse employment action against him because of his disability. *See Eshleman v. Patrick Indus., Inc.*, 961

⁴ The court also rejected Butler’s argument that his documented history of hemorrhoids was a “record of” a substantially limiting impairment that could constitute a disability under a different prong of the statutory definition. *See* Appx41. But that rejection turned entirely on the court’s earlier determination that Butler’s hemorrhoids condition was not an actual disability.

F.3d 242, 245 (3d Cir. 2020). The statute defines the term “disability” to include “a physical or mental impairment that substantially limits one or more major life activities of [an] individual,” 42 U.S.C. § 12102(1)(A), which is often called the “actual disability” prong.⁵

In 2008, Congress enacted the ADA Amendments Act (ADAAA) to “expand[] the scope of disability coverage under the ADA.” *Morgan v. Allison Crane & Rigging LLC*, 114 F.4th 214, 217 & n.3 (3d Cir. 2024) (citing Pub. L. No. 110-325, 122 Stat. 3553 (2008)). The ADAAA mandates that “the ‘definition of disability ... shall be construed in favor of broad coverage of individuals’ and ‘to the maximum extent permitted.’” *Id.* at 221 (alteration in original) (quoting 42 U.S.C. § 12102(4)(A)). The ADAAA also rejected prior judicial and agency interpretations that had narrowly construed the term “substantially limits.” Pub. L. No. 110-325, § 2(b), 122 Stat. 3553; *see also Shields v. Credit One Bank, N.A.*, 32 F.4th 1218, 1223 (9th Cir. 2022).

⁵ The statute also defines “disability” to include “a record of such an impairment” or “being regarded as having such an impairment,” 42 U.S.C. § 12102(1)(B)-(C), which are often called, respectively, the “record of” and “regarded as” prongs. In his summary judgment briefing below, Butler argued only that he had a disability under the “actual disability” and “record of” prongs. *See* Appx857-60.

Courts must now “interpret the term ‘substantially limits’ consistently with the liberalized purposes of the ADAAA.” *Matthews v. Pa. Dep’t of Corr.*, 613 F. App’x 163, 167 (3d Cir. 2015) (citing 42 U.S.C. § 12102(4)(B)). And “because the term ‘substantially limits’ should be ‘construed broadly in favor of expansive coverage,’” determining whether an impairment is substantially limiting “‘should not demand extensive analysis.’” *Morgan*, 114 F.4th at 223 n.39 (quoting 29 C.F.R. § 1630.2(j)(1)(i), (iii)); *see also* Pub. L. No. 110-325, § 2(b)(5), 122 Stat. 3553 (“the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations,” and “the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis”).⁶

⁶ Congress authorized the EEOC “to issue regulations implementing the definitions of disability in [42 U.S.C. § 12102] (including rules of construction) ... consistent with the [ADAAA],” 42 U.S.C. § 12205a, and conveyed its “expectation” that the EEOC would exercise that authority to broaden the definition of “substantially limits,” Pub. L. No. 110-325, § 2(b)(6), 122 Stat. 3553. Accordingly, the agency’s regulation construing “substantially limits” and providing rules of construction remains entitled to deference. *See Sutherland v. Peterson’s Oil Serv., Inc.*, 126 F.4th 728, 738 n.5 (1st Cir. 2025) (EEOC’s authority to enact regulations implementing definition of disability “is a quintessential example of Congress ‘expressly delegat[ing] to an agency the authority to give meaning to a particular

B. An impairment may be substantially limiting when it causes an individual difficulty or pain in performing a major life activity.

Within the ADAAA's expansive coverage, an impairment may be substantially limiting when it causes an individual difficulty or pain in performing a major life activity. As the Sixth Circuit recently explained, "individuals who can technically perform an activity, but with difficulty, pain, or risk, may still be substantially limited." *Edwards v. Shelby Cnty.*, 159 F.4th 489, 502 (6th Cir. 2025) (citing *Morrissey v. Laurel Health Care Co.*, 946 F.3d 292, 300 (6th Cir. 2019)).

That outcome is sensible because, although the substantial-limitation inquiry focuses on an individual's "ability ... to perform a major life activity as compared to most people in the general population," an impairment "need not prevent, or significantly or severely restrict, the individual from performing a major life activity" to be substantially limiting. 29 C.F.R. § 1630.2(j)(1)(ii); *see also Morgan*, 114 F.4th at 223 n.39; *Matthews*, 613 F. App'x at 167. Instead, courts may consider whether the impairment increases "the difficulty, effort, or time required to perform a

statutory term'" (alteration in original) (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024))).

major life activity,” or the “pain experienced when performing a major life activity.” 29 C.F.R. § 1630.2(j)(4)(ii); *see also Howard v. Pa. Dep’t of Pub. Welfare*, No. 11-cv-01938, 2013 WL 102662, at *11 (E.D. Pa. Jan. 9, 2013) (considering fact that plaintiff “regularly experiences pain while performing these [major life] activities”).

Given these considerations, “an individual whose impairment causes pain ... that most people would not experience when performing [a] major life activity may be substantially limited.” 29 C.F.R. pt. 1630, app. § 1630.2(j)(4). For example, if an impairment “precludes [an individual] from standing for more than two hours without significant pain,” then the individual “would be substantially limited in standing, since most people can stand for more than two hours without significant pain.” *Id.*; *see also Morrissey*, 946 F.3d at 300 (plaintiff was substantially limited where she experienced “difficulty walking, standing, lifting, and bending” due to pain). Simply put, the fact that an individual can manage to perform a major life activity, but only with great difficulty or pain, does not preclude a finding that he is substantially limited.

Furthermore, an impairment may be substantially limiting even when it only episodically or temporarily causes an individual difficulty or

pain in performing a major life activity. The ADA, as amended by the ADAAA, now expressly covers impairments that are “episodic or in remission” that “would substantially limit a major life activity *when active*.” 42 U.S.C. § 12102(4)(D) (emphasis added); *see also Gogos v. AMS Mech. Sys., Inc.*, 737 F.3d 1170, 1173 (7th Cir. 2013) (when episodic impairments are involved, the “relevant issue” is whether the impairments “substantially limited a major life activity when they occurred”). Likewise, this Court has held that a temporary impairment may constitute a disability, explaining that “duration of impairment *is not dispositive* of whether someone is disabled.” *Morgan*, 114 F.4th at 222-23; *see also id.* at 221 n.29 (collecting decisions from other circuits reaching the same conclusion).

One remaining question is whether the degree of difficulty or pain an individual experiences must exceed some minimal threshold to be considered substantially limiting. This Court need not resolve that question here because, as we explain in greater detail below (*infra* at 19), a reasonable jury could find that the degree of difficulty and pain Butler experienced was, by any reasonable measure, enough to be substantially limiting. This case thus does not require this Court to determine whether there is a minimal threshold or, if so, where its lower limits lie.

II. Under the correct standard, a reasonable jury could find that Butler's hemorrhoids condition was an actual disability.

A. A reasonable jury could find that Butler's hemorrhoids condition, when active, caused him difficulty or pain in performing at least one major life activity.

To establish an actual disability under the foregoing framework, Butler had to show that (i) his hemorrhoids condition was a mental or physical impairment; (ii) his hemorrhoids condition, when active, caused him difficulty or pain in performing at least one major life activity; and (iii) most people in the general population do not experience similar difficulty or pain in performing that major life activity. Viewing the record in the light most favorable to Butler, a reasonable jury could find that he made each showing.

First, there appears to be no dispute that Butler's hemorrhoids condition was a physical impairment. *See* 29 C.F.R. § 1630.2(h)(1) (defining "[p]hysical or mental impairment" to include "[a]ny physiological disorder or condition ... affecting one or more body systems," including the "digestive" system); *Harper v. R & R Gen. Contractors, Inc.*, No. 23-cv-2073, 2024 WL 6848005, at *3 (C.D. Ill. Mar. 21, 2024) (plaintiff's allegation that he had a hemorrhoids condition "clearly identifies a physical impairment").

The district court itself determined as much, stating that “a reasonable factfinder could conclude that [Butler’s] hemorrhoids condition amounted to an impairment.” Appx40. FedEx did not contest that point in its summary judgment briefing. *See* Appx817-23.

Second, the record contains evidence from which a reasonable jury could find that Butler’s hemorrhoids condition, when active, made it more difficult and painful for him to sit, stand, walk, and pass bowel movements. *See, e.g.,* Appx158-59, 161, 219-20, 227, 508, 535, 615, 617-18, 794. Each of those is a major life activity. Indeed, the ADA provides that “major life activities” include “walking” and “standing,” as well as “the operation of a major bodily function,” including “digestive” and “bowel” functions. 42 U.S.C. § 12102(2); *see also Rinehart v. Weitzell*, 964 F.3d 684, 688 (8th Cir. 2020) (plaintiff’s allegations that his impairment, when active, caused him to “suffer[] through difficult and time-intensive digestive symptoms” were “sufficient to allege a disability under [Title II of] the ADA”). The EEOC’s implementing regulations say essentially the same thing, while adding “sitting” as a major life activity. 29 C.F.R. § 1630.2(i)(1); *see also Morgan*, 114 F.4th at 224 (listing “sitting” among major life activities); *Harper*, 2024 WL 6848005, at *3 (plaintiff adequately alleged that

his hemorrhoids condition was a disability where he “specifically identifie[d] the areas in which he alleges a substantial limitation in major life functions,” including “moving, sitting, and walking”).

Third, and finally, a reasonable jury could find that most people in the general population do not experience similar difficulty or pain when sitting, standing, walking, or passing bowel movements. At a minimum, most people do not experience painful rectal bleeding while passing bowel movements. A jury could reach these findings without the aid of medical testimony or evidence. *See* 29 C.F.R. § 1630.2(j)(1)(v) (“The comparison of an individual’s performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical analysis.”); *cf.* *Harrison v. Soave Enters. L.L.C.*, 826 F. App’x 517, 525 (6th Cir. 2020) (reasonable jury “could determine that the majority of the general population can kneel” without medical evidence).

In short, a reasonable jury could find that Butler’s hemorrhoid condition was a physical impairment; that his condition, when active, caused him difficulty or pain in performing a major life activity; and that most people in the general population do not experience similar difficulty

or pain when performing the same activity. As a result, a reasonable jury could find that Butler had an actual disability.⁷

None of this is to suggest that a hemorrhoids condition will necessarily constitute an actual disability or that all persons with the condition, who may experience different levels of difficulty or pain in performing major life activities compared to Butler, would be able to adduce sufficient evidence to survive summary judgment. As always, the plaintiff bears the burden to show that his condition substantially limits a major life activity. But here, Butler has produced sufficient evidence for the question to go to the jury.

⁷ For similar reasons, a reasonable jury could find that Butler had a disability under the “record of” prong. Specifically, a jury could find that Butler’s documented history of hemorrhoids constituted a “record of” a substantially limiting impairment. 42 U.S.C. § 12102(1)(B); *see also* 29 C.F.R. § 1630.2(k)(1) (“An individual has a record of a disability if the individual has a *history of* ... a mental or physical impairment that substantially limits one or more major life activities.” (emphasis added)); *Mestas v. Town of Evansville*, 786 F. App’x 153, 157 (10th Cir. 2019) (reasonable jury could find that plaintiff had “record of” disability based on documented back injury and requests to take time off because of back pain). The district court thus erred in concluding otherwise.

B. The district court did not properly analyze whether Butler's hemorrhoids condition was substantially limiting.

In finding that Butler's hemorrhoids condition was not substantially limiting, the district court's analysis went astray in several critical respects.

As an initial matter, the district court discounted much of Butler's evidence regarding his limitations because it came from his (or others') deposition testimony. Appx39. But a plaintiff's "testimony alone regarding the significance of his impairment" may be "sufficient to create a genuine issue of material fact at the summary judgment stage." *Gribben v. United Parcel Serv., Inc.*, 528 F.3d 1166, 1170 (9th Cir. 2008); *see also Williams v. Tarrant Cnty. Coll. Dist.*, 717 F. App'x 440, 448 (5th Cir. 2018) (plaintiff's declaration testimony alone "create[d] a genuine dispute of material fact for whether her impairments [were] substantially limiting").

That result is consistent with the general rule that a plaintiff's non-conclusory testimony, "when based on personal knowledge and directed at a material issue, is sufficient to defeat summary judgment." *Paladino v. Newsome*, 885 F.3d 203, 209 (3d Cir. 2018) (quoting *Lupyan v. Corinthian*

Colls., Inc., 761 F.3d 314, 320 (3d Cir. 2014)).⁸ Here, Butler’s testimony regarding his limitations (i.e., the difficulty and pain he experienced) was non-conclusory, based on personal knowledge, and directed at a material issue. It was therefore sufficient to defeat summary judgment.

To the extent the district court thought something more than nonexpert testimonial evidence was required here, it was mistaken. Medical testimony or evidence is not necessary to show that an impairment was substantially limiting when the impairment is “within the comprehension of a jury that does not possess a command of medical or otherwise scientific knowledge.” *Morgan*, 114 F.4th at 225 (quoting *Marinelli v. City of Erie*, 216 F.3d 354, 360 (3d Cir. 2000)); see also *Porter v. Merakey USA*, No. 22-2986, 2024 WL 3581169, at *2 (3d Cir. July 30, 2024) (“[M]edical testimony is not necessary to establish that a condition is substantially

⁸ *Accord Daimler v. Moehle*, No. 23-2611, 2025 WL 1355138, at *4 (3d Cir. May 9, 2025) (“[S]elf-serving deposition testimony, based on personal knowledge, can create a genuine issue of material fact.”); *Gentles v. Borough of Pottstown*, No. 22-2925, 2025 WL 2082645, at *3 n.8 (3d Cir. July 24, 2025) (similar). See also *Hill v. Tangherlini*, 724 F.3d 965, 967 (7th Cir. 2013) (“As we have repeatedly emphasized over the past decade, the term ‘self-serving’ must not be used to denigrate perfectly admissible evidence through which a party tries to present its side of the story at summary judgment.” (citations omitted)).

limiting.”). Here, Butler’s hemorrhoids condition and its effects are readily “amenable to comprehension by a lay jury.” *Marinelli*, 216 F.3d at 361.

The district court also faulted Butler for not providing evidence reflecting the precise frequency, duration, or severity of any limitations to his major life activities (i.e., how often, how long, and how significantly his hemorrhoids affected his ability to sit, stand, walk, or pass bowel movements). *See* Appx39-40.

But such evidence is neither necessary nor dispositive in determining whether an impairment is substantially limiting. An impairment need not be long-lasting. This Court has held that “duration of impairment *is not dispositive* of whether someone is disabled,” because even a temporary impairment may qualify as a disability. *Morgan*, 114 F.4th at 222-23. An impairment’s manifestations need not be frequent. The statutory definition of disability encompasses episodic or recurring impairments that “would substantially limit a major life activity *when active*.” 42 U.S.C. § 12102(4)(D) (emphasis added). Nor must an impairment be severe. The EEOC’s regulations provide that an impairment “need not ... *significantly or severely* restrict” an individual’s ability to perform a major life activity to be substantially limiting. 29 C.F.R. § 1630.2(j)(1)(ii) (emphasis added).

Even putting aside that problem, Butler in fact *did* provide evidence from which a jury could infer that the degree of difficulty and pain he experienced was, by any reasonable measure, enough to be substantially limiting. Butler repeatedly testified he suffered “a lot of pain” due to his hemorrhoids, Appx158, 161, 169, and the effects of that pain laid bare its severity. Indeed, the pain was occasionally so intense that it forced Butler to leave work in the middle of the day, Appx160, and he sometimes chose to avoid eating to minimize painful bowel movements, Appx168. Pain that is serious enough to force a person to leave work or skip meals is serious enough to be substantially limiting — especially when that term is “construed broadly in favor of expansive coverage.” *Morgan*, 114 F.4th at 223 n.39 (quoting 29 C.F.R. § 1630.2(j)(1)(i)).

In short, although Butler did not try to quantify his pain on a numerical scale, his testimony would nonetheless allow the jury to assess its qualitative severity.

C. This Court should remand for the district court to address the remaining elements of Butler’s disability discrimination claim.

The district court’s flawed disability analysis was the sole basis for its grant of summary judgment on Butler’s disability discrimination claim. It

did not address the remaining elements of that claim. Accordingly, this Court should remand for the district court to address those elements in the first instance. *See Kengerski v. Harper*, 6 F.4th 531, 541-42 (3d Cir. 2021) (declining to consider element on which “the [d]istrict [c]ourt did not expressly rule,” and remanding for trial court to address that element in the first instance); *see also O’Hanlon v. Uber Techs., Inc.*, 990 F.3d 757, 762 n.3 (3d Cir. 2021) (“[A]s a ‘court of review, not of first view,’ we will analyze a legal issue without the district court’s having done so first only in extraordinary circumstances.” (quoting *Frank v. Gaos*, 586 U.S. 485, 493 (2019))).

We express no view on whether Butler could establish those elements on remand.

CONCLUSION

For the foregoing reasons, this Court should vacate the district court’s grant of summary judgment on Butler’s disability discrimination claim under the ADA and remand for further appropriate proceedings.

Respectfully submitted,

CATHERINE ESCHBACH
Acting General Counsel

CHRISTOPHER LAGE
Deputy General Counsel

JENNIFER S. GOLDSTEIN
Associate General Counsel

DARA S. SMITH
Assistant General Counsel

/s/ Steven Winkelman
STEVEN WINKELMAN
Attorney
D.C. Bar No. 1048481
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Office of General Counsel
131 M St. N.E., 5th Floor
Washington, D.C. 20507
(202) 921-2564
steven.winkelman@eeoc.gov

September 9, 2026

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.*

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 4,044 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Book Antiqua 14 point.

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 Microsoft Windows Defender, Antivirus Version 1.459.49.0, and that no virus was detected.

/s/ Steven Winkelman
STEVEN WINKELMAN
Attorney
D.C. Bar No. 1048481
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Office of General Counsel
131 M St. N.E., 5th Floor
Washington, D.C. 20507
(202) 921-2564
steven.winkelman@eeoc.gov

September 9, 2026

CERTIFICATE OF SERVICE

I certify that on September 9, 2026, 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.

/s/ Steven Winkelman
STEVEN WINKELMAN
Attorney
D.C. Bar No. 1048481
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Office of General Counsel
131 M St. N.E., 5th Floor
Washington, D.C. 20507
(202) 921-2564
steven.winkelman@eeoc.gov