A Social Security Claimant's Statement That She is Disabled and Unable to Work Does Not Necessarily Preclude a Subsequent ADA Wrongful Termination Claim: Cleveland v. Policy Management Systems Corporation

Jane M. Keenan

Follow this and additional works at: https://dsc.duq.edu/dlr

Recommended Citation
Available at: https://dsc.duq.edu/dlr/vol38/iss2/12

This Recent Decision is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.
A Social Security Claimant's Statement that She is Disabled and Unable to Work Does Not Necessarily Preclude a Subsequent ADA Wrongful Termination Claim: Cleveland v. Policy Management Systems Corporation

The Supreme Court of the United States held that the application for or receipt of social security disability benefits does not automatically estop a plaintiff from maintaining an ADA claim and that no rebuttable presumption arises when the two claims coincide; however, such a plaintiff must be prepared to sufficiently explain any apparent contradiction between (1) statements of total disability and inability to work made for the purpose of obtaining disability benefits and (2) a claim that the plaintiff is able to work but has been wrongfully terminated under the ADA.


Approximately five months after Policy Management Systems Corporation1 ("PMSC") hired Carolyn Cleveland to perform background checks on potential employees of PMSC clients, Cleveland suffered a stroke.2 The stroke left Cleveland with a condition called aphasia,3 which impaired her ability to speak, remember, concentrate, and calculate.4

Cleveland then applied for social security disability benefits with the Social Security Administration, stating that she was "disabled" and "unable to work."5 While her claim for benefits was pending,


3. Aphasia is defined as the "defect or loss of the power of expression by speech, writing, or signs, or of comprehending spoken or written language, due to injury or disease of the brain centers." Dorland's Illustrated Medical Dictionary 110 (27th ed. 1994).


5. See Cleveland v. Policy Management Sys. Corp., 119 S. Ct. 1597, 1600 (1999). Cleveland's daughter completed the application because her mother's stroke left her unable
Cleveland recovered sufficiently to return to work at PMSC. She advised the Social Security Administration of this fact approximately two weeks later. Cleveland did not perform well upon returning to work and requested a number of accommodations that she thought would assist her; however, PMSC denied her requests. On July 11, 1994, the Social Security Administration noted that Cleveland had returned to work and denied her claim for disability benefits. PMSC fired Cleveland four days later for “poor job performance.”

On September 14, 1994, Cleveland renewed her application for disability benefits with the Social Security Administration and stated, “I continue to be disabled;” in supplemental paperwork, she stated her termination occurred “because I could no longer do the job because of my condition.”

The Social Security Administration denied her request in November 1994, and Cleveland responded by requesting a hearing before an Administrative Law Judge (“ALJ”). Cleveland was granted a hearing, and on September 29, 1995, the ALJ approved her request for disability benefits effective retroactively to the date of her stroke.

One week before the ALJ’s decision, Cleveland filed a lawsuit against PMSC, alleging that the company had wrongfully terminated her in violation of the Americans with Disabilities Act of 1990 (“ADA”) and the Texas Labor Code. Specifically, Cleveland

6. See Cleveland, 119 S. Ct. at 1600.
7. See id. Cleveland described this as an initiative taken by her after receiving additional paperwork regarding her request for benefits. See Petitioner’s Brief at 7, Cleveland (No. 97-1008). PMSC contended that she provided this information to the Texas Rehabilitation Commission, the company who received the application from the Social Security Administration, only after that agency contacted her and that the file maintained by the Social Security Administration contains no information showing that Cleveland ever withdrew her claim for disability benefits. See Respondent’s Brief at 4, Cleveland (No. 97-1008).
8. See Cleveland v. Policy Management Sys. Corp., 120 F.3d 513, 515 (5th Cir. 1997). Cleveland's requested accommodations included computer training, permission to take work home in the evening, an alternative position with PMSC, and the assistance of a counselor. See id.
9. See Cleveland, 119 S. Ct. at 1600.
10. See Cleveland, 120 F.3d at 515.
11. See id.
12. See Cleveland, 119 S. Ct. at 1600.
13. See id.
15. See Cleveland, 120 F.3d at 515. Cleveland alleged that PMSC violated the Texas
alleged that her employer violated the ADA by failing to provide her with reasonable accommodations that would have enabled her to perform her job. PMSC moved for summary judgment on the ground that Cleveland could not establish a prima facie case under the ADA because her application for and receipt of social security disability benefits estopped her from claiming that she was a "qualified individual with a disability" as defined in the ADA.

The United States District Court for the Northern District of Texas granted PMSC's motion for summary judgment on the ADA claim. In its ruling, the district court agreed with PMSC's contention that, through her application for and receipt of social security disability benefits, Cleveland admitted that she was totally disabled and that such an admission precluded her from proving an essential element of an ADA claim. In the district court's view, Cleveland could not prove that she was a qualified individual as defined by the ADA because of her earlier admission that she was totally disabled.

Cleveland appealed to the United States Court of Appeals for the Fifth Circuit, asserting that her application for and receipt of social security disability benefits did not estop her from proving that she is a "qualified individual with a disability" under the ADA. The court of appeals agreed and refused to adopt a "per se rule" that the application for or receipt of social security disability benefits

---

16. See Cleveland, 119 S. Ct. at 1600. The ADA prohibits most employers from discharging a disabled employee if that employee could "perform the essential functions of the . . . position" with "reasonable accommodation." 42 U.S.C. §§ 12112(a), 12111(8) (1994).

17. "A prima facie case consists of sufficient evidence . . . to get plaintiff past a motion for directed verdict in a jury case or motion to dismiss in a nonjury case; it is the evidence necessary to require a defendant to proceed with his case." BLACK'S LAW DICTIONARY 1190 (6th ed. 1990).

18. Estoppel is "[a] principle that provides that an individual is barred from denying or alleging a certain fact . . . because of that individual's previous conduct, allegation, or denial." Id. at 551.

19. See Cleveland, 120 F.3d at 515. "The term 'qualified individual with a disability' means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8) (1994).

20. See Cleveland, 120 F.3d at 515.

21. See Cleveland, 119 S. Ct at 1600.

22. See id.

23. See Cleveland, 120 F.3d at 515.
"automatically estops" an individual from simultaneously asserting a discrimination claim under the ADA.\textsuperscript{24} The court reasoned that it was "at least theoretically conceivable" that "under some limited and highly unusual set of circumstances" the two claims would not be "mutually exclusive" and offered three points that supported its rationale.\textsuperscript{25}

First, the court noted that, while the ADA requires an individualized inquiry when determining whether an individual is disabled, the Social Security Act ("SSA") considers some conditions to be presumptively disabling.\textsuperscript{26} Second, the court explained that, while the ADA requires that consideration be given to whether reasonable accommodations would enable an individual to perform her job before making a determination of disability, such a fact is irrelevant for social security disability benefit purposes.\textsuperscript{27} Finally, the court found that because the SSA sometimes permits an individual to work and still receive disability benefits, an absolute rule preventing an individual from pursuing both social security disability benefits and an ADA claim would be unsound.\textsuperscript{28}

Rather than adopting a per se rule that would bar all claims under the ADA when the individual has applied for or received social security disability benefits, the Fifth Circuit held that such an application or receipt creates a rebuttable presumption\textsuperscript{29} that the

\textsuperscript{24} Id. at 517.

\textsuperscript{25} Id. Judge Weiner, writing for the unanimous three-judge panel, explained that under these rare circumstances "the Social Security Administration's determination of an applicant's entitlement to social security disability benefits would not be synonymous with a determination that a plaintiff is or is not a 'qualified individual' under the ADA." Id.

\textsuperscript{26} Id. See, e.g., 20 C.F.R. § 404.1520(d) (1997) and 20 C.F.R. Pt. 404, Subpt. P, App. 1 (1997) (providing an extensive listing of impairments that may automatically qualify an individual for disability benefits under the SSA).

\textsuperscript{27} Cleveland, 120 F.3d at 517-18. The court referred to a memorandum issued by the Social Security Administration that stated:

The fact that an individual may be able to return to a past relevant job, provided that the employer makes accommodations, is not relevant to the issues to be resolved... Hypothetical inquiries about whether an employer would or could make accommodations that would allow return to a prior job would not be appropriate.

\textsuperscript{28} Id. at 518. The court was referring to the trial work period available under the SSA, which permits an individual to work for up to nine months while still receiving their disability benefits as well as a provision under the SSA that allows an individual who returns to work to continue to receive benefits if their earnings fall below a specified statutory level. See Cleveland, 120 F.3d at 518; 20 C.F.R. § 404.1592(a) (1997).

\textsuperscript{29} A rebuttable presumption "gives particular effect to [a] certain group of facts in absence of further evidence, and [creates an evidentiary burden] to contradict or rebut [the] fact presumed." BLACK'S LAW DICTIONARY 1267 (6th ed. 1990).
individual is judicially estopped from claiming that he is a "qualified individual with a disability" as defined in the ADA. The court suggested that an ADA plaintiff could overcome this presumption by producing reliable evidence that would demonstrate why a claim of total disability for benefit purposes is not inconsistent with a claim of status as a qualified individual with a disability under the ADA.

Nevertheless, when considering Cleveland's contention that her receipt of social security disability benefits and her ADA claim were not inconsistent under the rebuttable presumption test, the Fifth Circuit ruled that she was estopped from asserting that she was a "qualified individual with a disability" and affirmed the district court's grant of summary judgment. Because Cleveland consistently represented that she was totally disabled and unable to work while pursuing social security disability benefits, the court would not permit her to assert, in an ADA claim, that she could have performed the essential functions of her job.

The United States Supreme Court granted Cleveland's petition for a writ of certiorari because of a conflict among the circuit courts of appeal regarding the effect of the application for or receipt of social security disability benefits upon an ADA lawsuit.

In a unanimous opinion, the Court held that the application for or receipt of social security disability benefits does not automatically estop a plaintiff from maintaining an ADA claim and that no rebuttable presumption arises when the two claims

30. Cleveland, 120 F.3d at 518.
31. Id.
32. Id.
33. Id. The court stated that "[t]o permit Cleveland to make such an argument in the face of her prior, consistent, and until now uncontested sworn representations to the Social Security Administration would be tantamount to condoning her advancement of entirely inconsistent positions, a factual impossibility and a legal contradiction." Id.
35. Cleveland, 119 S. Ct at 1601. The two issues upon which the Court granted certiorari were:

(1) Whether the application for, or receipt of, disability insurance benefits under the Social Security Act, 42 U.S.C. § 423, creates a rebuttable presumption that the applicant or recipient is judicially estopped from asserting that she is a "qualified individual with a disability" under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; and (2) If it does not create such a presumption, what weight, if any, should be given to the application for, or receipt of, disability insurance benefits when a person asserts she is a "qualified individual with a disability" under the ADA?

Petitioner's Brief at 17, Cleveland (No. 97-1008).
coincide. At the outset, the Court noted that this case did not involve “directly conflicting statements about purely factual matters” because statements of total disability made in the context of applying for social security disability benefits suggest “a context-related legal conclusion.” The Court repeatedly emphasized that it was leaving the law related to statements containing purely factual contradictions “where we found it.”

The Court began its analysis by stating that the SSA and the ADA serve two different purposes, although both are aimed at helping individuals with disabilities. The purpose of the SSA, the Court noted, is to provide monetary benefits to insured individuals with a disability. The purpose of the ADA is to eliminate unwarranted

36. Cleveland, 119 S. Ct. at 1600. The unanimous ruling is expressed in a single paragraph that reads as follows:

We believe that, in context, these two seemingly divergent statutory contentions are often consistent, each with the other. Thus pursuit, and receipt, of SSDI [Social Security Disability Insurance] benefits does not automatically estop the recipient from pursuing an ADA claim. Nor does the law erect a strong presumption against the recipient’s success under the ADA. Nonetheless, an ADA plaintiff cannot simply ignore her SSDI contention that she was too disabled to work. To survive a defendant’s motion for summary judgment, she must explain why that SSDI contention is consistent with her ADA claim that she could “perform the essential functions” of her previous job, at least with “reasonable accommodation.”

Id.

37. Id. at 1601. Justice Breyer explained that “[a]n SSA representation of total disability differs from a purely factual statement in that it often implies a context-related legal conclusion, namely ‘I am disabled for purposes of the Social Security Act.’” Id.

38. Id. at 1601-02, 1603 and 1604 (stating “our consideration of this latter kind of [legal] statement consequently leaves the law related to the former, purely factual, kind of conflict where we found it,” “as we said, we leave the law in respect to purely factual contradictions where we found it,” “[a]lthough these cases for the most part involve purely factual contradictions (as to which we do not necessarily endorse these cases, but leave the law as we found it), we believe a similar insistence upon explanation is warranted here, where the conflict involves a legal conclusion”). In this last reference, the Court was referring to cases that have held that a party cannot “create a genuine issue of fact ... simply by contradicting [a] ... previous sworn statement.” Id. at 1604 (citing Colantuoni v. Alfred Calcagni & Sons, Inc., 44 F.3d 1, 5 (1st Cir. 1994); Rule v. Brine, Inc., 85 F.3d 1002, 1011 (2nd Cir. 1996); Hackman v. Valley Fair, 932 F.2d 239, 241 (3rd Cir. 1991); Barwick v. Celotex Corp., 736 F.2d 946, 960 (4th Cir. 1984); Albertson v. T.J. Stevenson & Co., 749 F.2d 223, 228 (5th Cir. 1984); Davidson & Jones Dev. Co. v. Elmore Dev. Co., 921 F.2d 1343, 1352 (6th Cir. 1991); Slowiak v. Land O’Lakes, Inc., 987 F.2d 1293, 1297 (7th Cir. 1993); Canfield Tires, Inc. v. Michelin Tire Corp., 719 F.2d 1361, 1365-66 (8th Cir. 1983); Kennedy v. Allied Mutual Ins. Co., 952 F.2d 262, 266 (9th Cir. 1991); Franks v. Nimmo, 796 F.2d 1230, 1237 (10th Cir. 1986); Tippens v. Celotex Corp., 805 F.2d 949, 953-64 (11th Cir. 1986); Pyramid Sec. Ltd. v. IB Resolution, Inc., 924 F.2d 1114, 1123 (D.C. Cir. 1991); Sinskey v. Pharmacia Ophthalmics, Inc., 982 F.2d 494, 498 (Fed. Cir. 1992)).

39. Id. at 1601.

40. Id. The SSA defines “disability” as an “inability to engage in any substantial gainful
discrimination against individuals who are disabled.\textsuperscript{41} Justice Stephen Breyer, speaking for the undivided Court, acknowledged that, on the surface, it may seem logically inconsistent to allow a plaintiff who claims to be totally disabled in his application for social security disability benefits to pursue an ADA claim on the basis that he was a "qualified individual with a disability."\textsuperscript{42} The Court disagreed, however, with the Fifth Circuit view that an individual's application for or receipt of social security disability benefits warranted the use of a rebuttable presumption to judicially estop that same individual from advancing a successful ADA claim.\textsuperscript{43}

The Court supported its decision by explaining four differences between the definitions, provisions, and interpretations of the two statutes that would logically permit claims under each to co-exist.\textsuperscript{44} First, the Court discussed the role of "reasonable accommodation" under each statute and noted that, while the ADA requires a claimant to show that he could perform the essential functions of his job with or without reasonable accommodation, the SSA does not take into account the existence or use of reasonable accommodation when making a disability determination.\textsuperscript{45} Because the role of reasonable accommodation is irrelevant in the SSA context, the Court concluded that a plaintiff could consistently and simultaneously apply for social security disability benefits under the SSA and seek recovery for discriminatory treatment under the ADA.\textsuperscript{46}

activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A) (1994). The impairment must be "of such severity that [she] is not only unable to do [her] previous work but cannot, considering [her] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." § 423(d)(2)(A). The ADA defines "disability" as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12101(2) (1994).

\textsuperscript{41} See Cleveland, 119 S. Ct. at 1601.

\textsuperscript{42} Id. Justice Breyer explained that the Fifth Circuit "thought, in essence, that claims under both Acts would incorporate two directly conflicting propositions, namely 'I am too disabled to work' and 'I am not too disabled to work.'" Id.

\textsuperscript{43} Id. Specifically, the Court stated that "despite the appearance of conflict that arises from the language of the two statutes, the two claims do not inherently conflict to the point where courts should apply a special negative presumption like the one applied by the Court of Appeals here." Id.

\textsuperscript{44} Id.

\textsuperscript{45} Id.

\textsuperscript{46} Cleveland, 119 S. Ct. at 1602.
Second, the Court explained that the SSA contained a list of specific impairments that automatically qualify an individual for disability benefits.\(^\text{47}\) Because it is possible that an individual could automatically qualify for SSA benefits on this basis and yet still remain able to perform the essential functions of her job with or without reasonable accommodation as required by the ADA, the Court found that it would be inappropriate to altogether bar or establish a negative presumption against a potential ADA claim.\(^\text{48}\)

Third, the Supreme Court, like the court of appeals, determined that, because certain provisions of the SSA permit an individual to work while still receiving disability benefits, it was improper to automatically apply a rebuttable presumption against an ADA plaintiff who had applied for or received social security disability benefits.\(^\text{49}\) Justice Breyer noted that it is also conceivable that the nature of an individual’s disability at the time she applies for or receives social security disability benefits may not be the same as when she files an ADA claim; thus, the two claims may co-exist.\(^\text{50}\)

Finally, the Court relied on the Federal Rules of Civil Procedure, which allow a plaintiff to proceed on alternative or hypothetical grounds, and reasoned that an individual who has simply applied for social security disability benefits should not be hindered by a negative presumption when filing an ADA claim.\(^\text{51}\)

Notwithstanding its rejection of the rebuttable presumption requirement, the Court acknowledged that it was certainly possible that claims under both statutes could, in fact, conflict and that, in those cases, summary judgment would be appropriate.\(^\text{52}\) The Court

\(^{47}\) Id. When processing a social security disability benefits claim, the Social Security Administration uses a five-step procedure to gauge whether an individual meets the criteria for receiving disability benefits. The third step reads: “When your impairment(s) meets or equals a listed impairment in Appendix 1. If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education and work experience.” 20 C.F.R. § 404.1520(d) (1998).

\(^{48}\) Cleveland, 119 S. Ct. at 1603.

\(^{49}\) Id. Like the court of appeals, the Supreme Court was specifically referring to the trial work period available under the SSA and the availability of benefits when earnings fall below a specified level. Id. See 20 C.F.R. § 404.1592 (1998) and 20 C.F.R. § 404.1592a (1998).

\(^{50}\) Id.

\(^{51}\) Id. The Federal Rules of Civil Procedure provide that “a party may set forth two or more statements of a claim or defense alternatively or hypothetically . . . . A party may also state as many separate claims or defenses as the party has regardless of consistency.” FED. R. CIV. P. 8(e)(2).

\(^{52}\) Cleveland, 119 S. Ct. at 1603. Summary judgment is appropriate when the plaintiff “fails to make a showing sufficient to establish the existence of an element essential to [her] case, and on which [she] will bear the burden of proof at trial.” Id. (citing Celotex Corp. v.
explained that, when an ADA plaintiff asserts that she is a "qualified individual with a disability" and is able to work with or without reasonable accommodation, but has previously stated that she was totally disabled in an application for social security disability benefits, she must provide an explanation to resolve the apparent conflict in order to avoid summary judgment.\textsuperscript{53}

In the instant case, the Court concluded that Cleveland offered an explanation of the apparent discrepancy between her two claims and ruled that she should have been permitted to present these explanations to the trial court.\textsuperscript{54} The Court vacated the judgment of the court of appeals and remanded the case.\textsuperscript{55}

The enactment of the Americans with Disabilities Act of 1990 was hailed as a sweeping advancement for the civil rights of disabled individuals.\textsuperscript{56} The purpose of the ADA is to eliminate discrimination against disabled Americans.\textsuperscript{57} The ADA prohibits employers from discriminating against qualified individuals with a disability in application procedures, hiring, advancement, discharge, compensation, job training, or any other matter affecting

---

\textsuperscript{53} Cleveland, 119 S. Ct. at 1603. The Court stated "an ADA plaintiff cannot simply ignore the apparent contradiction that arises out of the earlier SSDI [Social Security Disability Insurance] total disability claim [but] rather, she must proffer a sufficient explanation." \textit{Id.} The Court went on to state that the "explanation must be sufficient to warrant a reasonable juror's concluding that, assuming the truth of, or the plaintiff's good faith belief in, the earlier statement, the plaintiff could nonetheless 'perform the essential functions' of her job, with or without 'reasonable accommodation.'" \textit{Id.} at 1604.

\textsuperscript{54} \textit{Id.} The Court noted that Cleveland asserted that her statements made in pursuit of social security disability benefits were "accurate" if examined "in the time period in which they were made." \textit{Id.} (citing Petitioner's Brief at 43, \textit{Cleveland}, (No. 97-1008)).

\textsuperscript{55} \textit{Cleveland}, 119 S. Ct. at 1604.


\textsuperscript{57} Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (1994). Section 12101(b) identifies the purpose of the act as follows:

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and (4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities. 42 U.S.C. § 12101(b).
A "qualified individual with a disability" is defined as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires."

The ADA, however, is not the only federal disability statute; the Social Security Act contains two programs, Social Security Disability Insurance ("SSDI") (established in 1956) and Supplemental Security Income ("SSI") (established in 1972), which also address the needs of disabled individuals. These two programs focus on providing financial support to individuals who are unable to work due to a disability. SSDI provides benefits to disabled workers, while SSI provides benefits to poor individuals with disabilities. Under the SSDI program, an individual is considered to be disabled "only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy."

Although the ADA was enacted after the SSDI program, it did not change or supersede the disability benefit program. As a result, the judicial system had to resolve the determination of what effect, if any, the application for or receipt of social security disability benefits had on a plaintiff's ADA claim. One line of cases has held

59. 42 U.S.C. § 12111(8). According to the statute, the term "reasonable accommodation" may include: (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisitions or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

62. See Diller, supra note 56, at 1005 n.8.
63. 42 U.S.C. § 423(d)(2)(A) (1994). When determining whether an individual is eligible for disability benefits under SSDI, no consideration is given to whether "work exists in the immediate area in which [the individual] lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work." 42 U.S.C. § 423(d)(2)(A).
64. See Diller, supra note 53, at 1006. Miller notes that "the disability benefit programs are rarely mentioned in the legislative history of the ADA." Id.
65. See Id. In addition to the case law addressing the effect, if any, that the application
that the application for or receipt of such benefits estops or otherwise precludes a plaintiff from proceeding with an ADA claim.\textsuperscript{66} For example, in one of the earliest cases, the United States District Court for the Eastern District of North Carolina held, in \textit{Reigel v. Kaiser Foundation Health Plan of North Carolina},\textsuperscript{67} that a plaintiff who consistently represented that she was totally disabled and unable to work on applications for private disability insurance benefits and social security disability benefits was unable to demonstrate that she was a qualified individual under the ADA.\textsuperscript{68}

Similarly, in \textit{Garcia-Paz v. Swift Textiles, Inc.},\textsuperscript{69} the United States District Court for the District of Kansas rejected the ADA claim of a plaintiff with multiple sclerosis by concluding that the plaintiff's application for and receipt of both company-sponsored long-term disability benefits and social security disability benefits estopped her from claiming that she was a qualified individual with a disability as required under the ADA.\textsuperscript{70} The plaintiff argued that such a decision would undermine the effectiveness of the ADA and that she should not be estopped from filing an ADA claim because for or receipt of social security disability benefits has on an ADA claim, there are numerous cases that address the effect that application for or receipt of worker's compensation benefits or private insurance benefits has on an ADA claim. See, e.g., \textit{Pegues v. Emerson Elec. Co.}, 913 F. Supp. 976 (N.D. Miss. 1996) (addressing the effect of receipt of worker's compensation benefits on ADA claim); \textit{Miller v. U.S. Bancorp}, 926 F. Supp. 113 (S.D.N.Y. 1996) (addressing the effect of application for disability benefits available through a company policy on ADA claim). There are also numerous cases that address the effect of application for or receipt of any kind of disability benefits on state law disability discrimination claims. See, e.g., \textit{August v. Offices Unlimited, Inc.}, 981 F.2d 576 (1st Cir. 1992) (addressing the effect of application for private disability insurance benefits on state disability discrimination claim); \textit{Ward v. Westvaco Corp.}, 859 F. Supp. 608 (D. Mass. 1994) (same). Notwithstanding the differences among these statutes, many courts analogize to these cases to determine the effect of the application for and receipt of social security disability benefits on a plaintiff's ADA claim. See, e.g., \textit{Reigel v. Kaiser Found. Health Plan of N.C.}, 859 F. Supp. 963 (E.D.N.C. 1994) (relying on \textit{August v. Offices Unlimited, Inc.}, 981 F.2d 576 (1st Cir. 1992) and \textit{Beauford v. Father Flanagan's Boys' Home}, 831 F.2d 768 (8th Cir. 1987)) and \textit{Garcia-Paz v. Swift Textiles, Inc.}, 873 F. Supp. 547 (D. Kan. 1994).

\textsuperscript{66} See, e.g., \textit{Garcia-Paz}, 873 F. Supp. 547.

\textsuperscript{67} 859 F. Supp. 963 (E.D.N.C. 1994).

\textsuperscript{68} Id. at 970. The court, referring to the plaintiff's "patently" contradictory assertions that she was totally disabled and yet able to work, noted that the plaintiff "cannot speak out of both sides of her mouth with equal vigor" and granted the defendant's motion for summary judgment. Id. at 973, 970.

\textsuperscript{69} 873 F. Supp. 547 (D. Kan. 1995).

\textsuperscript{70} \textit{Garcia-Paz}, 873 F. Supp. at 555. Karen Garcia-Paz was fired from her position of account executive because of her "inability to develop and maintain positive relationships." Id. at 554. She alleged that she suffered from multiple sclerosis, that her employment problems were related to fatigue caused by her disease, and that her employer had fired her because of this disability. Id.
the decision entitling her to disability benefits was made by a third party. The court found these contentions unpersuasive. Instead, the court held that her assertions on the disability benefit applications that she could not perform the essential functions of her job precluded her, as a matter of law, from maintaining an ADA claim.

Also adopting this reasoning, the United States Court of Appeals for the Ninth Circuit in *Kennedy v. Applause, Inc.* rejected the ADA claim of a sales representative who alleged that she was fired due to the effects of chronic fatigue syndrome because she had made statements in both state disability and social security disability applications that she was "completely disabled for all work-related purposes." The court affirmed the trial court's summary judgment decision based on its conclusion that the plaintiff's sworn statements on the disability benefit applications, along with her physician's testimony that she was completely disabled, outweighed her deposition testimony that she was not totally disabled and was a qualified individual under the ADA.

On the same day, the United States Court of Appeals for the Third Circuit decided *McNemar v. The Disney Store, Inc.*, a case involving an HIV-positive plaintiff who claimed he was fired in violation of the ADA. After he was terminated, he sought and was

71. Id. at 555-56.
72. Id.
73. Id. at 556.
74. 90 F.3d 1477 (9th Cir. 1996).
75. *Kennedy*, 90 F.3d at 1481 n.2. The court also noted that Kennedy's personal physician judged her to be unable to work for any purposes. *Id.* at 1480.
76. *Id.* at 1481. The court found it unnecessary to invoke the doctrine of judicial estoppel because it found there to be no genuine issue of material fact and, therefore, determined that summary judgment was a more appropriate resolution of the case. *Id.* at n.3. The court described the plaintiff's deposition in her ADA claim as "uncorroborated and self-serving," noted that it "flatly contradic[ed] both her prior sworn statements and the medical evidence," and concluded that it did not present "a sufficient disagreement to require submission to a jury." *Id.* (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986)).
77. 91 F.3d 610 (3rd Cir. 1996).
78. *McNemar*, 91 F.3d at 616. The defendant fired the plaintiff after he took two dollars from the store's cash register, in violation of company policy, to buy cigarettes and failed to replace the money or make a record of his taking the money. *Id.* at 613-15. The plaintiff disclosed during questioning about this occurrence that he was HIV-positive. *Id.* at 614. His complaint alleged violations of the ADA, ERISA, and the New Jersey Law Against Discrimination as well as common law claims of defamation, invasion of privacy, violation of public policy, intentional infliction of emotional distress, disclosing medical records of an individual with AIDS, and breach of an implied duty of good faith and fair dealing. *Id.* at 616 n.6.
awarded state disability benefits and social security disability benefits.\textsuperscript{79} The court noted that in each of these applications, the plaintiff swore under penalty of perjury that he was unable to work because of his disability.\textsuperscript{80} Agreeing that the doctrine of judicial estoppel was properly invoked by the district court,\textsuperscript{81} the Third Circuit held that the plaintiff's unconditional statements of total disability on his benefits applications barred him from asserting that he was a qualified individual with a disability under the ADA.\textsuperscript{82} The court did not agree that such a decision forced a plaintiff to choose between seeking disability benefits and filing a claim under the ADA.\textsuperscript{83}

In the 1997 case of \textit{Harris v. Marathon Oil Co.},\textsuperscript{84} the United States Court of Appeals for the Fifth Circuit affirmed a district court's decision to estop a plaintiff who claimed he was totally disabled when applying for social security benefits from prevailing in an ADA claim against his employer.\textsuperscript{85} The jury found in favor of the plaintiff in the ADA claim; however, the employer was successful in a motion for judgment as a matter of law when it claimed that the plaintiff's certifications in his application for disability benefits that he was completely disabled made it impossible for him to claim that he was capable of performing the

\textsuperscript{79} \textit{Id} at 615. Plaintiff also received an exemption from repayment of an educational loan from the Pennsylvania Higher Education Agency after he certified that he was "unable to work and earn money." \textit{Id} at 615-16.

\textsuperscript{80} \textit{Id.} at 615.

\textsuperscript{81} \textit{Id.} at 618. The court adopted the two-part test articulated in Ryan Operations G.P. v. Santiam-Midwest Lumber Co., 81 F.3d 355, 361 (3rd Cir. 1996) which requires (1) that "the party's present position be inconsistent with a position formerly asserted;" and (2) that "the party assert either or both of the inconsistent positions in bad faith - - i.e., 'with intent to play fast and loose' with the court." \textit{Id.} at 618 (quoting \textit{Ryan}, 81 F.3d at 361).

\textsuperscript{82} \textit{McNemar}, 91 F.3d at 619. \textit{But cf.} Krouse v. American Sterilizer Comp., 126 F.3d 494, 503 & n.5 (3rd Cir. 1996) (acknowledging criticism of the \textit{McNemar} decision as "well-founded" and advising district courts within the Third Circuit "not to assume that \textit{McNemar} always bars an individual's ADA claims merely because prior representations or determinations of disability exist in the record").

\textsuperscript{83} \textit{McNemar}, 91 F.3d at 620. The court stated that:

[the fact that the choice between obtaining federal or state disability benefits and suing under the ADA is difficult does not entitle one to make false representations with impunity . . . . Nothing grants a person the authority to flout the exalted status that the law accords statements made under oath or penalty of perjury . . . . Nothing permits one to undermine the integrity of the judicial system.

\textit{Id.} at 620.

\textsuperscript{84} 108 F.3d 332 (5th Cir. 1997).

\textsuperscript{85} \textit{Harris}, 108 F.3d at 332; \textit{Harris v. Marathon Oil Co.}, 948 F. Supp. 27, 30 (W.D. Tex. 1996).
essential functions of his job. The district court agreed and noted that to allow the plaintiff to assert that he was qualified to perform the essential functions of his job while still collecting disability benefits would "countenance a fraud" on either the court or the Social Security Administration.

While there are numerous cases applying the estoppel doctrine or otherwise precluding ADA recovery by a plaintiff who has applied for or received social security disability benefits, a line of cases rejecting this reasoning has also developed. In one of the earliest decisions in this line, the United States District Court for the Northern District of Illinois, in Smith v. Dovenmuehle Mortgage, Inc., ruled in favor of an ADA plaintiff by denying an employer's motion for summary judgment that was based upon the theory of judicial estoppel. The court found it significant that, although the

86. Harris, 948 F. Supp. at 29. The district court noted:
The Plaintiff does not dispute that he successfully advanced his "total disability" assertion not only before the long-term disability plan administrator, but also before the Social Security Administration. With equal enthusiasm, Mr. Harris proclaimed at trial that he was ready, willing, and most importantly, able to perform the essential functions of an oil field pumper. These positions are at best inconsistent. Id. at 29.

87. Id.

88. See, e.g., Smith v. Midland Brake, Inc., 138 F.3d 1304, 1312 (10th Cir. 1998) (expressly rejecting the doctrine of judicial estoppel in ADA cases where the plaintiff has alleged total disability on an application for social security disability benefits); Pegues v. Emerson Elec. Co., 913 F. Supp. 976, 980 (N.D. Miss. 1996) (holding that a finding of disability by the Workers' Compensation Commission or the Social Security Administration does not "necessarily foreclose" an ADA claim); Heise v. Genuine Parts Comp., 900 F. Supp. 1137, 1152 (D. Minn. 1995) (holding that receipt of social security disability benefits is "relevant to demonstrate the extents of [one's] disability" but is not considered a "judgment that [plaintiff] could not perform his job").

89. Several cases addressed the effect of statements of total disability in disability applications on claims made under The Rehabilitation Act of 1973 and concluded that the doctrine of estoppel does not apply. See, e.g., Overton v. Reilly, 977 F.2d 1190 (7th Cir. 1992) and Kupferschmidt v. Runyon, 827 F. Supp. 570 (E.D. Wis. 1993). The Rehabilitation Act of 1973, 29 U.S.C. § 794 (1994), was the predecessor of the ADA and required "federal agencies and federally funded programs to provide reasonable accommodations to persons with disabilities." Diller, supra note 56, at 1003 n.2. The ADA requires agencies enforcing either statute to apply them "in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements." 42 U.S.C. § 12117(b) (1994). As a result, a number of courts rely on cases involving The Rehabilitation Act of 1973 as precedent for decisions regarding the effect of statements of total disability made for purposes of obtaining disability benefits on an ADA claim. See, e.g., Heise, 900 F. Supp. at 1152; Smith v. Dovenmuehle Mortgage, Inc., 859 F. Supp. 1138, 1141-42 (N.D. Ill. 1994).

90. 859 F. Supp. 1138 (N.D. Ill. 1994).

91. Smith v. Dovenmuehle Mortgage, Inc., 859 F. Supp. 1138 (N.D. Ill. 1994). In this case, Smith alleged that he was fired and denied company-sponsored disability benefits because he had AIDS. Id. at 1140. Defendant argued that, because Smith applied for and received benefits from the SSA after certifying that he was disabled, he was precluded from
plaintiff claimed to be disabled after he was terminated, both the plaintiff and his physician subsequently testified that he had recovered from his disability.\textsuperscript{92} Further, the court noted that the theory of judicial estoppel would unfairly force the plaintiff to choose between seeking disability benefits and filing an ADA claim and would also undermine the anti-discrimination purposes of the ADA.\textsuperscript{93}

In 1997, the United States Court of Appeals for the District of Columbia Circuit explicitly departed from the judicial estoppel theory and ruled in \textit{Swanks v. Washington Metropolitan Area Transit Authority}\textsuperscript{94} that application for or receipt of social security disability benefits does not bar an individual from seeking recovery under the ADA.\textsuperscript{95} The court based its decision on the fact that the determination of eligibility for social security disability benefits does not take into account the claimant's ability to work were reasonable accommodations provided.\textsuperscript{96} The \textit{Swanks} court bolstered its reasoning by relying on memoranda from both the Social Security Administration and the Equal Employment Opportunity Commission ("EEOC").\textsuperscript{97} These indicate, respectively, that the effect of reasonable accommodations is not a factor in determining eligibility for social security disability benefits and that the receipt of such benefits does not establish a per se bar against

---

\textsuperscript{92} \textit{Id.} at 1142.

\textsuperscript{93} \textit{Id.} The court remarked:

Defendant's position [of judicial estoppel] would place plaintiff in the untenable position of choosing between his right to seek disability benefits and his right to seek redress for an alleged violation of the ADA. Moreover, it would conflict with one of the stated purposes of the ADA which is to combat "the continuing existence of unfair and unnecessary discrimination and prejudice [that] denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and [that] costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity."

\textit{Id.} (citing 42 U.S.C. § 12101(a)(9) (1994)).

\textsuperscript{94} 116 F.3d 582 (D.C. Cir. 1997).

\textsuperscript{95} \textit{Swanks}, 116 F.3d 582. Officer Swanks argued that he was fired because of his spina bifida, which caused him to suffer urinary infections, incontinence and, consequently, frequent absences from work. \textit{Id.} at 583-84. Defendant alleged that Swanks was fired because he could not produce his Special Police Certification when asked, and because he lied about having a current certification. \textit{Id.} at 584.

\textsuperscript{96} \textit{Id.} at 584. After describing the five-step process used by the Social Security Administration in determining whether an individual is disabled for disability benefits purposes, the court noted that "nowhere ... does the Social Security Administration take account of the possible effect of reasonable accommodation on a claimant's ability to work." \textit{Id.} at 585.

\textsuperscript{97} \textit{Id.} at 585-86.
an ADA claim.\textsuperscript{98} The court noted, however, that its decision did not label evidence regarding the application for or receipt of disability benefits as irrelevant in all ADA cases.\textsuperscript{99}

The issue was addressed again in 1997 by the United States Court of Appeals for the Eleventh Circuit in \textit{Talavera v. School Board of Palm Beach County}\textsuperscript{100} when it considered a district court's application of judicial estoppel to bar a secretary who asserted in her application for social security disability benefits that she was "homebound" from advancing an ADA claim against her employer.\textsuperscript{101} In its reversal, the appellate court referred to the \textit{Swanks} court's focus on the five-step process for obtaining social security disability benefits and the enforcement guidelines promulgated by the EEOC as persuasive evidence that the definition of disability was not the same for social security disability determination and ADA purposes.\textsuperscript{102} The court also found it significant that the plaintiff in this case specifically noted on her disability application that reasonable accommodations were not provided to her before she was terminated.\textsuperscript{103} The Eleventh Circuit rejected a per se rule that would automatically prevent a plaintiff who had asserted that she was totally disabled in an application for

\textsuperscript{98} The court points to an Information Memorandum from the Social Security Administration that states that "[t]he fact that an individual may be able to return to a past relevant job, provided that the employer make accommodations, is not relevant." \textit{Id.} at 585. (citing DANIEL L. SKOLER, COMM'R SOC. SEC. ADMIN., DISABILITIES ACT INFO. MEM. 2. NO. SG3P2 (1993)). The court also acknowledged that the EEOC issued enforcement guidelines that specifically negated the use of judicial estoppel. Those guidelines state:

Because of the fundamental differences in the definitions used in the ADA and the terms used in disability benefits programs, an individual can meet the eligibility requirements for receipt of disability benefits and still be a "qualified individual with a disability" for ADA purposes. Thus, a person's representations that s/he is "totally disabled" or "unable to work" for purposes of disability benefits are never an absolute bar to an ADA claim. \textit{Swanks}, 116 F.3d at 586 (citing EEOC ENFORCEMENT GUIDANCE ON THE EFFECT OF REPRESENTATIONS MADE IN APPLICATIONS FOR BENEFITS ON THE DETERMINATION OF WHETHER A PERSON IS A "QUALIFIED INDIVIDUAL WITH A DISABILITY" UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990 at 3 (1997)).

\textsuperscript{99} \textit{Swanks}, 116 F.3d at 587. In the court's example, evidence that a plaintiff indicated on an application for disability benefits application that he could not have done the job even with reasonable accommodation would be relevant evidence that may bar a subsequent ADA claim. \textit{Id.} See also Blanton v. Inco Alloys Int'l, Inc., 123 F.3d 916 (6th Cir. 1997) (clarifying the Sixth Circuit's rejection of judicial estoppel in ADA cases but noting that plaintiff's admissions and the medical evidence presented in the case rendered plaintiff unable to perform his former job as a matter of law).

\textsuperscript{100} 129 F.3d 1214 (11th Cir. 1997).

\textsuperscript{101} Talavera, 129 F.3d at 1215.

\textsuperscript{102} \textit{Id.} at 1218-19.

\textsuperscript{103} \textit{Id.} at 1220.
social security disability benefits from bringing an ADA claim.\(^{104}\) However, it also adopted a rule that prevents an ADA plaintiff from asserting that statements made in her application for social security disability benefits were untrue.\(^{105}\)

In *Griffith v. Wal-Mart Stores, Inc.*,\(^{106}\) the United States Court of Appeals for the Sixth Circuit overruled a district court decision that precluded the ADA claim of a plaintiff who applied for and was granted social security disability benefits for a recurring back injury.\(^{107}\) Similar to the D.C. and Eleventh Circuits, the Sixth Circuit relied on the SSA's exclusion of the effect of reasonable accommodation when determining eligibility for disability benefits as a factor mandating against the use of a per se rule.\(^{108}\) The *Griffith* court did not rely on this factor alone; it held that judicial estoppel was altogether inappropriate because it would allow an administrative decision by the Social Security Administration to usurp the "truth-seeking" role of the court.\(^{109}\) Instead, the Sixth Circuit ruled that statements made in an attempt to obtain social security disability benefits should be evaluated as merely one piece of relevant evidence and "analyzed under traditional summary judgment principles."\(^{110}\)

---

104. *Id.* The court noted that "[a] certification of total disability on an SSD application does mean that the applicant cannot perform the essential functions of her job without reasonable accommodation. It does not necessarily mean that the applicant cannot perform the essential functions of her job *with* reasonable accommodation." *Id.*

105. *Id.* The court rationalized that "an ADA plaintiff should not be permitted to disavow any statements she made in order to obtain SSD benefits." *Id.*

106. 135 F.3d 376 (6th Cir. 1998).

107. *Griffith*, 135 F.3d at 383. In *Griffith*, the plaintiff claimed that Wal-Mart discriminated against him in violation of the ADA by firing him due to his back injury. *Id.* at 378. The defendant claimed that Griffith was fired for "failing to report to work and lack of dependability." *Id.*

108. *Id.* at 382. The court notes that "judicial estoppel does not apply because the answers given in a Social Security disability benefit application are not necessarily inconsistent with a plaintiff's claim that he could have worked at his job, during the relevant period, with a reasonable accommodation." *Id.*

109. *Id.* Specifically, the court supported its rejection of the doctrine by stating that "[a]pplying judicial estoppel under the circumstances presented here would be inappropriate given that the truth-seeking function of the court would be supplanted by an agency administrative decision rendered without an evidentiary hearing." *Id.*

110. *Id.* at 383. The court followed the approach adopted by the Seventh Circuit in *Weigel v. Target Stores*, 122 F.3d 461 (7th Cir. 1997), which provided that:

> [w]hen a defendant in an ADA action relies on [statements of total disability made to obtain disability benefits] as the basis for contending that a plaintiff is not a "qualified individual," the plaintiff is free to come forward with additional evidence that shows she could perform the essential duties of a desired position with or without reasonable accommodation notwithstanding the fact that she might have been deemed disabled under some other statutory or contractual framework.
In 1998, the United States Court of Appeals for the Ninth Circuit considered *Johnson v. State of Oregon*,\(^{111}\) a case involving an ADA plaintiff who had represented that she was disabled or totally disabled on applications for social security disability benefits and for private short-term disability benefits and in a letter to the Internal Revenue Service, which she wrote in an attempt to explain the late filing of her tax return.\(^{112}\) In rejecting a per se rule of judicial estoppel, the court noted that analysis of whether a person is a qualified individual with a disability under the ADA is "highly fact-specific," while the determination of disability under the Social Security Act is the result of a "generalized assessment."\(^{113}\) The *Johnson* court was also convinced that forcing plaintiffs to choose between applying for disability benefits and seeking relief for discrimination under the ADA would undermine the purpose and effectiveness of the ADA.\(^{114}\) Nevertheless, the Ninth Circuit specifically stated that its ruling in *Johnson* did not make representations of total disability irrelevant in an ADA claim and acknowledged that while a per se rule was undesirable, judicial estoppel could still be invoked in specific cases if the facts warranted such an invocation.\(^{115}\)

The United States Supreme Court’s decision in *Cleveland* is

\(^{111}\) *Johnson*, 141 F.3d at 1364-65.

\(^{112}\) Id. at 468.

\(^{113}\) Id. at 1364. The plaintiff suffered from carpal tunnel syndrome and alleged that her former employer was unwilling to make reasonable accommodations which would have allowed her to perform her job. *Id.* at 1364.

\(^{114}\) Id. at 1366. Similar to the D.C. and Eleventh Circuits, the court made reference to the failure of the social security disability benefit process to take into account the effect of reasonable accommodations and to the enforcement guidelines issued by the EEOC. *Id.* at 1366-67.

\(^{115}\) Id. at 1368. The court reasoned that the doctrine of judicial estoppel might result in the following:

Some potential plaintiffs might abandon pursuit of their rights under the ADA if they could not apply for disability benefits. Faced with the financial pressures accompanying the loss of a job and the uncertainty and length of litigation, individuals might well elect immediate benefits over the pursuit of even the most meritorious ADA claim. Such a situation would not only harm the individuals the ADA seeks to protect, it would also protect the very activity the ADA seeks to eliminate: discrimination against disabled individuals. Employers who discriminate unlawfully would be shielded from liability if their victims could sue them only if they did not apply for disability benefits.

*Id.* (footnote omitted).

\(^{115}\) Id. at 1369. The court remarked that judicial estoppel would be within a trial court's discretion when "prior representations on disability benefits [applications] may demonstrate that a claimant is playing fast and loose with the courts, seeking advantage by advancing mutually exclusive contentions before the court and benefits providers." *Id.*
correct as far as concluding that Carolyn Cleveland should have been afforded the opportunity to explain the discrepancy between her claim, while seeking social security disability benefits, that she was totally disabled, and her later claim that she was a qualified individual with a disability under the ADA. Cleveland's assertion that her statements of total disability on social security disability benefit applications were made in a context that did not consider the effect of reasonable accommodations was accurate and warranted further investigation.\textsuperscript{116} Similarly, the \textit{Cleveland} Court was correct in concluding that Cleveland should have been able to expound on her explanation that the statements on her claims for disability benefits were accurate at the time she made them and did not inherently conflict with her ADA claim.\textsuperscript{117}

Moreover, the Court's decision that the application for or receipt of disability benefits must not operate to "automatically estop" an individual from pursuing recovery under the ADA is sound.\textsuperscript{118} The differences in both the purpose of the SSA and ADA statutes and the process by which a disability determination is made under each make an automatic preclusion unjust and unwarranted.\textsuperscript{119} However, the \textit{Cleveland} Court erred in rejecting the Fifth Circuit's rule that statements of total disability made in pursuit of disability benefits establish a rebuttable presumption that an individual cannot be a qualified individual with a disability under the ADA.

The establishment of a rebuttable presumption that an individual who has applied for or received social security disability benefits cannot be a qualified individual with a disability under the ADA does not hamper the effectiveness of the ADA nor does it set back the advancements gained by the disabled community through the passage of the Act. Rather, such a presumption enhances the integrity of both the social security disability process and a cause of action brought under the ADA by preventing an individual who has asserted that she is completely disabled or totally unable to work from essentially disavowing those statements when pursuing recovery under the ADA without overcoming a significant, but not impossible, barrier.

The Court's minimal requirement that a plaintiff must merely

\textsuperscript{116} Cleveland, 119 S. Ct. at 1604.  
\textsuperscript{117} Id.  
\textsuperscript{118} Id. at 1600.  
\textsuperscript{119} GARY PHELAN AND JANET BOND ARTERTON, DISABILITY DISCRIMINATION IN THE WORKPLACE § 5:18 at 44 (1999).
any inconsistency between her two claims does not give proper weight to the sworn statements, made while seeking social security disability benefits, that she was totally disabled and allows her to assert two contrary positions without due scrutiny from the courts. The adoption of a rebuttable presumption against the validity of an ADA claim made by an individual who has already asserted that she is completely and totally disabled in an earlier proceeding does not prevent a qualified individual from prevailing under the ADA. Instead, it requires that such an individual convincingly demonstrate to the court that, while statements of total disability made in order to obtain disability benefits were true and accurate, she can nonetheless prove that she could perform the essential functions of her job with or without reasonable accommodations. Such a requirement is evenhanded and strikes an appropriate balance among the interests of the disabled, the anti-discriminatory purpose of the ADA, and the integrity of the judicial system.\footnote{121}

\textit{Jane M. Keenan}

\footnote{120. \textit{Cleveland}, 119 S. Ct. at 1604. The Court stated: When faced with a plaintiff's previous sworn statement asserting "total disability" or the like, the court should require an explanation of any apparent inconsistency with the necessary elements of an ADA claim. To defeat summary judgment, that explanation must be sufficient to warrant a reasonable juror's concluding that, assuming the truth of, or the plaintiff's good faith belief in, the earlier statement, the plaintiff could nonetheless "perform the essential functions" of her job, with or without "reasonable accommodation."}