



## And The Defense Wins

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On March 7, 2012, the Fourth Circuit affirmed the Western District of North Carolina's dismissal of a "regarded as" disabled claim under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et. seq.* DRI members [Stephen M. Thomas](#), [Michael P. Thomas](#) and [Susan W. Matthews](#) of **Patrick, Harper & Dixon, LLP** in Hickory, North Carolina, successfully represented the defendant employer, McCreary Modern, Inc.

McCreary Modern is a furniture manufacturer located in Newton, North Carolina. In late August 2007, the plaintiff applied for a cloth cutter position, which required that the employee regularly lift more than 50 lbs. and operate a large, circular knife. At the time she applied, the plaintiff was employed in a similar position for another furniture manufacturer. After an initial interview, McCreary Modern offered plaintiff the position, contingent upon her passing a medical examination and drug testing. During the examination, the plaintiff admitted to having low back pain, which required her to take prescription narcotic medication on a regular basis, but stated she had no restrictions that prevented her from performing the essential functions of the job. Medical records and a preliminary drug screening confirmed plaintiff's prescription narcotic use, but she passed the official drug screening test. McCreary Modern revoked the contingent offer of employment, and the plaintiff filed suit. Among other claims, she alleged that McCreary Modern had regarded her as disabled when it declined to hire her and used improper hiring standards to discriminate against disabled persons. Both of the plaintiff's claims fell under the ADA as it existed prior to the ADA Amendments Act of 2008.

The plaintiff filed suit in North Carolina state court, but the defendant removed the case to the Western District of North Carolina. On August 8, 2011, the Honorable Richard L. Voorhees granted summary judgment in favor of McCreary Modern on all claims. The district court held that under the McDonnell-Douglas analysis, the plaintiff could not make out a prima facie case of discrimination. Defense counsel argued that McCreary Modern could not have considered the plaintiff to be disabled, since she was currently working in a similar position, and even if it had, it never considered that her condition would limit her ability to perform a broad class of jobs, specifically those that do not involve heavy lifting and operating a dangerous knife. The district court also held that McCreary Modern was justified in its decision not to hire. The Fourth Circuit affirmed, and the district court, upon defense counsel's request, awarded the defendant a portion of its attorneys' fees.

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