IN THE COURT OF APPEALS OF IOWA

No. 1-067 / 10-1501
Filed April 27, 2011

DAVID M. BEAVES,
Plaintiff-Appellant,

vs.

CITY OF DUBUQUE, IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Judge.

David Beaves appeals from the district court's grant of summary judgment to his employer, the City of Dubuque. **AFFIRMED.**

Kodi A. Brotherson and Michael J. Carroll of Babich Goldman, P.C., Des Moines, for appellant.

Les V. Reddick of Kane, Norby & Reddick, P.C., Dubuque, for appellee.

Heard by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

David Beaves appeals from the district court's grant of summary judgment to his employer, the City of Dubuque. Beaves contends the district court erred in finding Beaves was not "disabled" within the meaning of the Iowa Civil Rights Act, Iowa Code chapter 216 (2009). Beaves also argues the court erred in concluding the collective bargaining agreement in effect allowed the City to refer Beaves to the Municipal Fire and Police Retirement System of Iowa for an evaluation to determine if he could perform his duties as a firefighter after his hip replacement surgery. Upon our review, we find Beaves has presented no evidence to create a genuine issue of material fact that the City regarded him as disabled or believed he had a substantially limiting impairment that precluded him in the major life activity of working, within the statutory definitions. Therefore, Beaves has not established the first element to prove a prima facie case of discrimination on the basis of a disability. Accordingly, we affirm the district court's ruling granting the City's motion for summary judgment.

***I. Background Facts and Proceedings*.**

When viewed in the light most favorable to Beaves, the summary judgment record could establish the following facts: In August 1995, Beaves began working as a firefighter for the City of Dubuque. Over the years, Beaves developed right hip pain, with the pain becoming a severe problem in the fall of 2007. Beaves's doctor, Charles Morrow, recommended a hip replacement, and Beaves consented.

Beaves met with Dr. Morrow on January 1, 2008, for a final preoperative discussion prior to his surgery. Dr. Morrow's notes from that appointment state:

> [Beaves] has been through the preparation without problems encountered. His major question today is about what restrictions will be recommended for him postoperatively. We discussed this in detail. I told him that he should not run or jump and should not lift more than [fifty] pounds. The adverse consequences of exceeding this being earlier wear of the prosthesis and possible earlier need for revision surgery. [Beaves] says really adhering to those restrictions is not an option for him. He needs to do more than that at his job with the fire department and does not really feel that he has the option of obtaining a different job with lesser physical demand. We discussed this in great detail. I told him I would put on the restriction paper that he has none, but that it will also be recorded in his medical records that he and I have discussed this thoroughly. He is well aware that he has restrictions and the adverse consequences of not adhering to them. We will now proceed as planned with surgery.

Beaves informed Dubuque Fire Chief E. Daniel Brown via email that he would be out for three months due to an "orthopedic procedure." His email further stated: "[My physician] also informs me that barring any complications, there should be no ill effects post-surgery and that I should be able to return to work and perform my assigned duties at the same level as I can today." After Chief Brown inquired as to the specific procedure Beaves was having done, Beaves told him he was having his hip replaced. Beaves was hesitant to give Chief Brown the details of his surgery because he was afraid he might not be allowed to return to work after the surgery. Beaves explained that he had heard of another firefighter who had gone through the same procedure and was required to retire after his surgery.

In February 2008, Dr. Morrow performed a right total hip replacement upon Beaves. Beaves sustained no complications from surgery and convalesced without incident. Beaves participated in physical therapy after his surgery.

In April 2008, Beaves met with Chief Brown and Assistant Fire Chief Rick Steines about returning to work. Beaves told them he was doing great and that he anticipated returning to duty in May. Chief Brown and Assistant Chief Steines told Beaves they wanted to send him "for a disability pension."

On May 6, 2008, Beaves requested he be allowed to return to work. He presented a work release from Dr. Morrow showing no restrictions. Chief Brown advised that it was decided that Beaves be sent "to Iowa City for [a] disability evaluation." When Beaves asked why, Chief Brown responded that was what the City had done in the past. Chief Brown presented Beaves with the Municipal Fire and Police Retirement System of Iowa (MFPRSI) "application for disability retirement" form.

The application statement section of the form, completed by Chief Brown, stated: "I, . . . E. Daniel Brown, hereby apply for disability retirement under the provisions of Chapter 411 of the Iowa Code on behalf of [Beaves]." The application indicated the type of disability at issue was an "ordinary" disability, defined as "[a] disability resulting in an incapacity to perform assigned duties which is expected to be permanent." Beaves's right hip replacement was listed on the form as the reason for his inability to perform duties. Beaves and his spouse signed the application, along with Chief Brown. Beaves included a comment in the medical history portion of the application form, stating: "I do not understand why I am being forced to go through this process? I have an unrestricted release from my physician and I am in better condition post-surgery than pre-surgery." Additionally, the employer was required to complete a section of the form on the applicant's asserted disability. In the "Employer

Disability/Injury Report and Comment" section, Chief Brown's response stated: "Mr. Beaves is being sent for evaluation of total joint replacement and fitness for duty as a firefighter."

After Chief Brown told Beaves he would have to go through "disability pension," Beaves filed a grievance with his union. Beaves claimed that not being allowed to return to work when he had been released by his physician with no restrictions violated the parties' collective bargaining agreement. While the MFPRSI evaluation and grievance process were pending, Beaves continued on sick leave during May and June. Thereafter, he requested and was put on light duty, performing a variety of duties—mostly office duties.

In July, the MFPRSI sent Beaves to two different physicians at the University of Iowa Hospitals and Clinics for a "disability evaluation" by its medical board. The doctors reported their finding to the executive director of the MFPRSI. The first doctor opined that Beaves was not able to fully perform all firefighting activities, explaining:

> The [National Fire Protection Association (NFPA)] 1582 guidelines state[] (see 9.10.[7]) that "joint replacements . . . compromise the member's ability to safely perform essential job tasks . . . ."
>
> Mr. Beaves is clearly in otherwise excellent physical condition and has experienced complete resolution of osteoarthritic symptoms of pain and stiffness. However, despite his lack of symptoms and current excellent physical condition, he is at greater risk of sudden incapacitation in comparison to a firefighter who has not been treated with total [hip] arthroplasty. . . .
>
> In my opinion, as a consequence of the risks resulting from total hip arthroplasty, Mr. Beaves is not able to fully perform all firefighting activities and that this is a permanent condition.

The second physician similarly opined:

> There is some concern regarding more accelerated wear and tear of his joint if he were to pursue running, jumping, or lifting over [fifty] pounds. The absence of physical examination findings and his good physical condition suggest minimal current functional limitation. It would be unusual to restrict Mr. Beaves from his job specifically on this basis. . . .
>
> . . . I received a job description for the position of "Firefighter" from the [City] . . . . While no specific weight handling limits are described, part of the essential knowledge skills and abilities require the ability to handle "extreme physical and mental stress" and "perform heavy physical labor." At the current time, Mr. Beaves continues to have restrictions which limit him to [fifty] pounds. In reviewing the essential job requirements as set forth by the [NFPA], there are several duties which would exceed what Mr. Beaves would be able to perform such as lifting individuals up to [two hundred pounds]. Given this, despite his excellent physical condition, I do not find that he is able to perform all the duties of a firefighter.

On September 11, 2008, based upon those two doctors' opinions that Beaves was "unable to perform the full duties of a firefighter as a consequence of his surgery," the executive director of the MFPRSI granted Beaves an ordinary disability due to his right hip replacement, with benefit payments to begin that day. Beaves was taken off of light duty.

Beaves appealed the MFPRSI's decision. While the appeal was pending, he received disability payments. During that time, Beaves worked as a truck driver and a cabinet maker.

In September 2008, Beaves filed a complaint with the Iowa Civil Rights Commission (ICRC). His complaint asserted the City discriminated against him when it forced him to quit/retire because of his physical disability. Beaves's complaint stated he was forced to fill out the disability retirement application even though neither the City nor Chief Brown had any reason to claim he was disabled, was not allowed to return to work, and the City and the Chief continued

the process even after Beaves was released by his physician to return to work without restrictions. The ICRC ultimately administratively closed Beaves's complaint, finding:

> [The City] has articulated a legitimate, non-discriminatory reason for its decision. . . . It was within [the City's] discretion to request that [Beaves] submit to an evaluation by the Medical Board before being allowed to return to duty following his hip surgery. The union contract agreement states that [the City] "may require at any time a medical examination, performed by a physician selected by the City, to determine the eligibility of an employee to . . . return to work."
>
> While [Beaves] maintains the position that he has "no limitations" and "no restrictions," medical documentation from both his surgeon and from the Iowa Medical Board state otherwise.

After Beaves appealed to the Unites States Equal Employment Opportunity Commission (EEOC), the EECO adopted the findings of the ICRC and closed the file.

In October 2008, Beaves's union grievance was arbitrated. Thereafter, the arbitrator found Beaves submitted Dr. Morrow's medical release stating he had no restrictions "with the full knowledge he had physical restriction[s] which he withheld from Chief Brown." Additionally, the arbitrator found that:

> rigorous activity, including the wearing of heavy turn out gear plus carrying equipment for periods of time, is contemplated in the job description of a Dubuque fire fighter . . . wherein it states in pertinent part that
>
> > The employee in this class is responsible for performing hazardous tasks under emergency conditions. The work in this class demands heavy physical labor for periods of varying duration under hazardous conditions and in all weather conditions.

The arbitrator found Chief Brown chose to exercise his rights under the MFPRSI, and the arbitrator found Chief Brown's decision was not arbitrary, explaining that if "the Medical Board found [Beaves] to be capable of returning to work as a fire

fighter, a grievance seeking reinstatement with full back pay would have been in order." The arbitrator then concluded the City did not violate the collective bargaining agreement by not allowing Beaves to return to work.

In May 2009, the Disability Appeals Committee of the MFPRSI reversed the MFPRSI's initial decision. The committee did not specifically find any fault with the City requiring Beaves go through the disability retirement process for an evaluation, citing Iowa Code section 411.6(3). The committee noted that recommendations of the medical board were not conclusive and binding on the MFPRSI. The committee further noted that NFPA standards "are advisory only and are not binding on the [MFPRSI]." The committee found Dr. Morrow's opinion that Beaves was "fully capable of performing [his firefighter job] duties with no restrictions" more persuasive than the opinions of the two other physicians, and reversed the MFPRSI's decision. The board of trustees of the MFPRSI ratified the committee's decision, and the executive director of the MFPRSI reinstated Beaves for returning to work.

On September 18, 2009, Beaves filed his petition at law against the City asserting the City discriminated against him in violation of the Iowa Civil Rights Act (ICRA), Iowa Code chapter 216. Specifically, he claimed he was protected by the ICRA "because he either has a disability, is regarded as having a disability, or has a record of disability protected by Iowa Code [c]hapter 216." He argued the City's action of submitting his ordinary disability retirement application without his consent violated chapter 216. Additionally, he claimed that the City's actions

> were based upon assumptions or beliefs about people with joint replacements and their inability to perform their jobs rather than based upon specific determination of [Beaves's] ability to perform the essential functions of his job and, therefore, constitute[d] disability discrimination under the [ICRA].

On May 28, 2010, the City filed its motion for summary judgment, asserting no genuine issues of material fact were in dispute and it was entitled to summary judgment as a matter of law. The City asserted the collective bargaining agreement between the union, of which Beaves was a member, and the City allowed the City to request a physical examination "at any time" for an employee returning to work. The City maintained that the examination it required was "nothing more than a request that Beaves be examined to ensure that he was not a risk of harming himself and others before being returned to his job as a firefighter." The City referenced the NFPA guideline suggesting firefighters be examined for fitness to do their jobs after a joint replacement. Because, as the City asserted, "Beaves was not disabled or perceived as disabled by the [City], but rather was simply evaluated to determine if major hip replacement surgery impacted his ability to do his job," Beaves could not prove discrimination on the part of the City and it was entitled to summary judgment.

Beaves resisted, asserting genuine issues of material fact existed "with regard to his being 'regarded as' disabled" such that summary judgment was not proper. Beaves argued that the City "attempt[ed] to obtain summary judgment by focusing the [c]ourt's attention on decisions reached after the pivotal moment when the fire chief decided to file a disability retirement application."

On August 18, 2010, the district court entered its order granting the City's motion for summary judgment. The court found: "Before being allowed to return

to work, the fire chief required that [Beaves] be evaluated by the [MFPRSI]. He was sent for an evaluation as to whether he was fit for duty as a firefighter." The court seemed to conclude that Beaves's inability to perform his job as a firefighter did not constitute a substantial limitation in the major life activity of working. Additionally the court concluded that the collective bargaining agreement allowed the City to refer Beaves to the MFPRSI for a medical evaluation, and therefore its action did not constitute an illegal action.

Beaves now appeals.

II. Scope and Standards of Review.

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.907 (2009); *Alliant Energy-Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 873 (Iowa 2007). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Walderbach*, 730 N.W.2d at 199. The court reviews the record in a light most favorable to the opposing party. *Frontier Leasing Corp. v. Links Eng'g, L.L.C.*, 781 N.W.2d 772, 775 (Iowa 2010). We afford the opposing party every legitimate inference the record will bear. *Id*. "No fact question exists if the only dispute concerns the legal consequences flowing from undisputed facts." *McNertney v. Kahler*, 710 N.W.2d 209, 210 (Iowa 2006) (citation omitted).

***III. Discussion*.**

On appeal, Beaves contends the district court erred in finding Beaves was not "disabled" within the meaning of the ICRA. We disagree.

> The [ICRA] prohibits an employer from discriminating against a qualified person with a disability because of the person's disability. The statute, however, only pronounces a general proscription against discrimination and we have looked to the corresponding federal statutes to help establish the framework to analyze claims and otherwise apply our statute. *See Schlitzer v. Univ. of Iowa Hosps. & Clinics*, 641 N.W.2d 525, 529 (Iowa 2002) (federal Americans With Disabilities Act (ADA), 42 U.S.C. §§ 12101-213, is instructive in applying our statute); *Boelman [v. Manson State Bank]*, 522 N.W.2d [73, 79 Iowa 1994)] (Federal Rehabilitation Act, 29 U.S.C. § 794, used as a guide in applying our statute). Like the ADA, to recover under the Iowa statute, a claimant must establish: (1) he or she is a disabled person; (2) he or she is qualified to perform the job, with or without an accommodation; and (3) he or she suffered an adverse employment decision because of the disability.

Casey's Gen. Stores, Inc. v. Blackford, 661 N.W.2d 515, 519-20 (Iowa 2003).

The ICRA "broadly defines a disability as a 'physical or mental condition of a person which constitutes a substantial disability.'" *Id*. at 520 (citing Iowa Code § 216.2(5)). Implementing rules further define a "substantially handicapped person" as "any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is *regarded as having such an impairment*." Iowa Admin. Code r. 161-8.26(1) (2009) (emphasis added); *see also Vincent v. Four M Paper Corp.*, 589 N.W.2d 55, 60 (Iowa 1999). "Thus, in order to prove disability, a plaintiff must satisfy one of the definitions." *Cole v. Staff Temps*, 554 N.W.2d 699, 703 (Iowa 1996). Beaves concedes he does not have a physical or mental impairment within the ICRA's first definition of "disabled." Rather, he argues that

the City regarded him as disabled in violation of the ICRA, the third definition of disability.

A person is "'regarded as having an impairment' that substantially limits the person's major life activities when other people treat that person as having a substantially limiting impairment." *Id*. (citations omitted); *see also* 29 C.F.R. § 1630.2(*l*)(3) (2011) (defining "regarded as having such an impairment" under the ADA as a person who "[h]as [no physical or mental impairment] but is treated by [the employer] as having a substantially limiting impairment"); Iowa Admin. Code r. 161-8.26(5)(c) (defining "regarded as having such an impairment" under the ICRA as a person who "[h]as none of the impairments defined to be 'physical or mental impairments,' but is perceived as having such an impairment"). Consequently, "[t]he focus is on the impairment's effect upon the attitudes of others." *Cole*, 554 N.W.2d at 704; *see also Bearshield*, 570 N.W.2d at 922-23 (explaining the Unites States Supreme Court has stated the basic purpose of this part of the definition "is to ensure that handicapped individuals are not denied jobs or other benefits because of the prejudiced attitudes or the ignorance of others.").

"The term substantially limits means . . . [u]nable to perform a major life activity that the average person in the general population can perform . . . ." 29 C.F.R. § 1630.2(j)(1)(i). "Major life activities" include "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." Iowa Admin.Code r. 161-8.26(3).

> To be substantially limited in the major life activity of working, then, one must be precluded from more than one type of job, a specialized job, or a particular job of choice. If jobs utilizing an

> individual's skills (but perhaps not his or her unique talents) are available, one is not precluded from a substantial class of jobs. Similarly, if a host of different types of jobs are available, one is not precluded from a broad range of jobs.

Hansen v. Seabee Corp., 688 N.W.2d 234, 243 (Iowa 2004). "[E]vidence that the employer views the employee as unable to perform a particular job is insufficient to prove the employer regarded the employee as having a substantial limitation on the employee's ability to work." *Bearshield*, 570 N.W.2d at 923 (citations omitted). In analyzing facts similar to the case at hand, other courts have granted summary judgment concluding an employer's consideration of an employee to be unfit for employment as a firefighter does not establish the employer regarded the employee as having a substantial limitation on a "broad range of jobs." *See, e.g.*, *Shipley v. City of Univ. City*, 195 F.3d 1020, 1023 (8th Cir. 1999); *Smith v. City of Des Moines*, 99 F.3d 1466 (8th Cir. 1996); *Welsh v. City of Tulsa*, 977 F. 2d 1415, 1419 (10th Cir. 1992); *Serrano v. Cnty. of Arlington*, 986 F. Supp 992, 995 (E.D. Va. 1997). "[F]irefighters alone do not constitute a 'class of jobs.'" *Bridges v. City of Bossier*, 92 F.3d 329, 335 (5th Cir. 1996) (citation omitted).

Here, there is no genuine issue of material fact as to why Chief Brown filed the disability application with the MFPRSI on behalf of Beaves. Beaves presented no evidence that he was referred to the MFPRSI for any other reason than to determine whether he was able to perform the work duties of a firefighter. And significantly, Beaves presented no evidence that Chief Brown believed Beaves's hip replacement would prevent him from working a broad class of jobs.

Beaves had total hip replacement surgery. The NFPA guidelines, which the MFPRSI considers advisory, state that "joint replacements . . . compromise the member's ability to safely perform essential job tasks." Based upon the guidelines, the Chief and City referred Beaves to the MFPRSI for an evaluation to determine if Beaves was physically able to perform the intense and physical job duties of a firefighter. Beaves focuses exhaustively on the fact that the application stated it was for "disability retirement." However, the process, including the evaluation, looked at both sides of the equation. After the evaluation, if Beaves was found fit to perform his job as a firefighter and therefore not disabled, he would have been returned to work. If the medical board determined that Beaves was disabled and thus not fit to perform his job as a firefighter, then he would be retired and eligible for disability pension benefits. The MFPRSI initially determined that Beaves was disabled based upon the opinions of two doctors, but it later reversed its decision and Beaves was in fact reinstated.

Beaves has simply presented no evidence to create a genuine issue of material fact that the City regarded him as disabled or believed he had a substantially limiting impairment that substantially limited him in the major life activity of working, within the statutory definitions. We are not permitted to speculate about what Chief Brown may have been thinking. Although we must consider the record in a light most favorable to Beaves, and grant him every legitimate inference, the inference must not be based upon conjecture or speculation. *Castro v. State*, ___ N.W.2d ___, ___ (Iowa 2011).

In sum, Beaves has not established the first element to prove a prima facie case of discrimination on the basis of a disability. We therefore agree with the district court that no genuine issues of material fact exist as to whether Beaves was "disabled" within the meaning of IRCA. Accordingly, we affirm the district court's ruling granting the City's motion for summary judgment.[1]

AFFIRMED.

Sackett, C.J., concurs; Doyle, J., dissents.

[1] Beaves also argues the district court erred in concluding the collective bargaining agreement allowed the City to refer Beaves to the MFPRSI for an evaluation. However, Beaves does not assert a claim for a violation of the collective bargaining agreement. Because we agree with the district court that no genuine issues of material fact as to whether Beaves was "disabled" within the meaning of IRCA and find this to be dispositive of the appeal before us, we do not address this issue.

DOYLE, J. (dissenting)

I respectfully dissent. My colleagues conclude Beaves presented no evidence to create a genuine issue of material fact that the City regarded him as disabled or believed he had a substantially limiting impairment that precluded him in the major life activity of working, within statutory definitions. I disagree.

It is not in dispute that the City had the right, under the collective bargaining agreement, to request a physical examination of Beaves to determine his fitness for duty before returning to work as a firefighter. Indeed, Beaves acknowledges the City was allowed to select and pay for a physician to complete an evaluation. But that is not what happened. Instead of requesting such an examination, the City submitted on behalf of Beaves an application for disability retirement to the pension board, which resulted in Beaves being placed on mandatory disability retirement from the department. Beaves contends the "City acted illegally in perceiving him as disabled and requiring him to file for disability retirement benefits when there was no objective evidence to support its position he was disabled." The City maintains the disability retirement application was "nothing more than a request that Beaves be examined to ensure that he was not at risk of harming himself and others before being returned to his job as a firefighter."

Calling a tail a leg does not make it a leg. The MFPRSI application is clear and specific on its face. It is an application for *retirement* from the department based upon disability. It is not, as the City suggests, merely an application for evaluation of fitness for duty. The submission of the application presupposes an employee is disabled, for the form itself requires the applicant to

"indicate which type of disability you believe is applicable." More importantly, submission of the application to the pension board put the wheels in motion to retire Beaves from the department, not from a particular job.

The central and dispositive question here is whether there is a genuine issue of material fact as to whether Chief Brown regarded Beaves as "disabled," under the ICRA definition, when he submitted the retirement application to the pension board on behalf of Beaves.[2] I believe there is.

The City would be entitled to a judgment as a matter of law on Beaves's ICRA claim if it was clear that Chief Brown perceived Beaves to only be unable to perform his particular job as a firefighter. *See Shipley v. City of Univ. City*, 195 F.3d 1020, 1023 (8th Cir. 1999); *Smith v. City of Des Moines*, 99 F.3d 1466, 1474 (8th Cir. 1996). However, if Chief Brown believed that Beaves's hip replacement would prevent him from working a broad class of jobs, then Beaves would be "disabled" under the ICRA, and entitled to proceed with his lawsuit. *See Christensen v. Titan Distrib., Inc.*, 481 F.3d 1085, 1093 (8th Cir. 2007).

Thus, it is Chief Brown's subjective belief that matters here. The test is not what a reasonable observer would conclude the employer believed, but rather, what the employer actually thought when he took this employment action. The City asserts that Chief Brown sent Beaves to the pension board for an evaluation of his fitness for duty as a firefighter because Chief Brown had questions about the impact of the hip replacement on Beaves's ability to perform full duties of a firefighter. However, it cannot be discerned from the record

[2] It is noted the district court made no finding or comment as to whether there was such a genuine issue of material fact, so one must infer it found no showing of a disability.

exactly what Chief Brown was thinking when he submitted the disability application on behalf of Beaves. When Beaves told Chief Brown he was doing great and anticipated returning to duty in May, Chief Brown responded Beaves was going to be sent "for a disability pension." Asked why, Chief Brown said that was what the City had done in the past. Even after presenting a work release from Dr. Morrow showing no restrictions, Chief Brown verified that Beaves was being sent "to Iowa City for [a] disability evaluation" and required Beaves to fill out a portion of the disability retirement form. Asked why he chose sending Beaves to the pension board rather than to Tri-State Occupational Health for evaluation, Chief Brown responded it was due to the joint replacement medical procedure, the seriousness of the condition, and it was a process they followed in the past. He mentioned two previous experiences, both involved joint replacements. One firefighter had a hip replacement and his doctor would not release him to return to work opining the firefighter would be a danger to himself, to other firefighters, and to the citizens he was to protect. The firefighter took voluntary retirement. The other firefighter had a shoulder replacement and his doctor would not release him to return to work. Chief Brown sent him to the pension board for evaluation. He was found not able to perform the functions of a firefighter and was placed on disability retirement. The firefighter did not appeal the decision. Chief Brown also reviewed the NFPA standard that states "joint replacements . . . compromise the member's ability to safely perform essential job tasks."

Chief Brown's decision to send Beaves to the pension board was made before he had any medical information concerning Beaves's post-surgical

condition. He continued to pursue his course of action even after receiving Dr. Morrow's release to work with no restrictions. Clearly, his decision was not based upon any knowledge he then had about Beaves's specific situation; in fact, he ignored what he did know—that Beaves had no restrictions upon return to work.

In citing to the nature of the medical procedure, past experience with two department employees who had joint replacements, and his own concerns for the safety of Beaves and those around him, Chief Brown's own testimony suggests, perhaps, his perception of Beaves's condition may have been based on myth, fear, or stereotype. Intent is a state of mind difficult of proof by direct evidence. *State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992) (citations omitted). Proof of intent may be inferred by conduct. On its face, the application submitted by Chief Brown was for Beaves's disability retirement from the department. Chief Brown, stated on the disability retirement form: "I, . . . E. Daniel Brown, hereby apply for disability retirement . . . on behalf of [Beaves]." Chief Brown indicated on the form he believed Beaves suffered from an "ordinary" disability." The application is not limited to retirement from a particular job—it is an application for disability retirement from the department. I believe submission of the application is demonstrative of a perception Beaves should be retired from the department, which would necessarily encompass a broad class of jobs.

A court should view the record in the light most favorable to the nonmoving party. *Frontier Leasing Corp. v. Links Eng'g, L.L.C.*, 781 N.W.2d 772, 775 (Iowa 2010). In determining whether there is a genuine issue of material fact, the court affords the nonmoving party every legitimate inference the record

will bear. *Kern v. Palmer Coll. of Chiropractic*, 757 N.W.2d 651, 657 (Iowa 2008). Under the 'regarded as' prong of the ICRA, membership in the protected class becomes a question of intent that is rarely susceptible to resolution at the summary judgment stage. *See Ross v. Campbell Soup Co.*, 237 F.3d 701, 706 (6th Cir. 2001). I do not believe this is one of those "rare cases" that can be resolved by summary judgment. I believe a genuine issue of material fact was generated as to whether or not the City regarded Beaves as "disabled" within the meaning of the ICRA. Therefore, I would reverse the district court's grant of summary judgment in favor of the City and I would remand for further proceedings.