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Under Fed. R. Civ. P. 56, summary judgment is proper when: (1) no genuine issues to any material fact remains to be litigated and the moving party is entitled to judgment as a matter of law. The court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence. *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554- 555 (1990); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986); *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 696, n.6 (1962). Credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge. *Anderson.*, 477 U.S. at 255. Thus, although the court should review the record as a whole, the Supreme Court noted, it should disregard all evidence favorable to the moving party that the jury is not required to believe. *Id*.

Mr. Brown can prove a case of disability discrimination under the Americans with Disabilities Act in that: (1) Defendant regarded him as disabled; (2) he is otherwise qualified for the job; and (3) he suffered an adverse employment action due to his disability. *Pena v. City of Flushing*, 651 F. App'x 415, 419 (6th Cir. 2016). Once Mr. Brown establishes his *prima facie* case, the burden then shifts to the Defendant to offer a legitimate explanation for its actions. *Manzer v. Diamond Shamrock Chems. Co.*, 29 F.3d 1078, 1084 (6th Cir. 1994). If the defendant is able to set forth a non-discriminatory reason, Mr. Brown must introduce evidence showing that the Defendant's proffered explanation is pretextual. *Id*.

An individual is "regarded as" disabled if an employer "mistakenly believes that an employee has a physical impairment that substantially limits one or more major life activities or . . . mistakenly believes that an actual, nonlimiting impairment substantially limits one or more of an employee's major life activities." *Daugherty v. Sajar Plastics, Inc.*, 544 F.3d 696, 704 (6th Cir.

2008) “The regarded-as-disabled prong of the ADA ‘protects employees who are perfectly able to perform a job, but are rejected because of the myths, fears and stereotypes associated with disabilities.’” *Id*. at 703. Once an employee has been hired, the Americans with Disabilities Act prohibits an employer from "requir[ing] a medical examination" or making "inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity." 42 U.S.C. § 12112(d)(4)(A) (2008). Medical exams are permitted periodically throughout employment when there are symptoms showing which might necessitate an exam. Jarod S. Gonzalez, *A Matter of Life and Death - Why the ADA Permits Mandatory Periodic Medical Examinations of "Remote-Location" Employees*, 66 La. L. Rev. 681, 696 (2006); *see also* Chai Feldblum, *Medical Examinations and Inquiries under the Americans with Disabilities Act: A View From the Inside*, 64 Temp. L. Rev. 521, 537 (1991) ("After a conditional job offer has been made, the ADA allows the employer to require all forms of medical examinations and to make all types of inquiries of job applicants. There is no 'job-validation' requirement for these examinations or inquiries.") Although the statute clearly permits medical examinations and inquiries, "an employer's discretion to order employees to undergo examinations is hardly unbounded." *Sullivan v. River Valley Sch. Dist.*, 197 F.3d 804, 811 (6th Cir. 1999). In the post-hiring context, "demands for examinations can only be made where shown to be 'job-related and consistent with business necessity.'" *Id; see also* Gary Phelan & Janet Bond Arterton, Disability Discrimination in the Workplace § 6:1 (2003). For further background on experiences and challenges encountered by employers, employees, and job seekers in testing, see the testimony from the Commission’s meeting on testing. See EEOC, *Employment Tests and Selection Procedures* (Sept. 23, 2010) *available at*: http://eeoc.gov/eeoc/meetings/archive/5-16-

07/index.html. The forced leave of absence and medical examination was neither job-related nor consistent with business necessity.