UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

NO. 03-3599

GARY L. BRANHAM,	)	**Appeal from the**
	)	**United States District Court**
Plaintiff-Appellant,	)	**Southern District of Indiana**
	)	**Indianapolis Division**
v.	)	**No. IP 01-152-C**
	)	---
JOHN W. SNOW, Secretary, United States Department of Treasury/ Internal Revenue Service,	)	
	)	**Honorable John Daniel Tinder**
Defendant-Appellee.	)	**District Judge**

BRIEF OF DEFENDANT-APPELLEE

SUSAN W. BROOKS
United States Attorney

Jeffrey L. Hunter
Assistant United States Attorney

Attorneys for Defendant-Appellee

Office of the United States Attorney
10 West Market Street, Suite 2100
Indianapolis, Indiana 46204-3048
Telephone: (317) 226-6333

TABLE OF CONTENTS

Page No.

TABLE OF AUTHORITIES

Page No.

Cases:

Statutes:

Rules:

Federal Regulations:

Other Authorities:

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

NO. 03-3599

GARY L. BRANHAM,	)	**Appeal from the**
	)	**United States District Court**
Plaintiff-Appellant,	)	**Southern District of Indiana**
	)	**Indianapolis Division**
v.	)	**No. IP 01-152-C**
	)	_____
JOHN W. SNOW, Secretary,	)	
United States Department	)	
of Treasury/	)	**Honorable John Daniel Tinder**
Internal Revenue Service,[1]	)	**District Judge**
	)	
Defendant-Appellee.	)	

I. JURISDICTIONAL STATEMENT

The appellant's jurisdictional statement is complete and correct.

---

[1] Pursuant to Fed. R. App. P. 43(c)(2), John W. Snow, the current Secretary of the Treasury has been automatically substituted as a party.

II. STATEMENT OF THE ISSUES

A. Whether the judgment of the district court granting the federal defendant's motion for summary judgment on the grounds that Branham is not an individual with a disability as defined in the Rehabilitation Act of 1973, 29 U.S.C. § 705(20)(B) should be affirmed.

B. Whether the decision of the district court granting the federal defendant's motion for summary judgment should be affirmed on other grounds raised below.

III. STATEMENT OF THE CASE

A. Nature Of The Case

Branham filed a complaint under the Rehabilitation Act of 1973 asserting that he was discriminated against when he was not selected as a Criminal Investigator or Special Agent because of a disability, or because he was regarded as having a disability, which medically disqualified him from the position.

B. Course Of The Proceedings

The federal defendant filed a Motion for Summary Judgment on February 14, 2003. Plaintiff filed a Motion for Partial Summary Judgment on February 14, 2003. The parties filed responses to the respective motions on April 21, 2003. The parties filed replies on June 6, 2003. The district court issued an Entry on Defendant's Motion for Summary Judgment and Plaintiff's Cross-Motion for Partial Summary Judgment ("Entry") and entered judgment in favor of the defendant on August 28, 2003.

IV. STATEMENT OF THE FACTS[2]

[2]Branham's Statement of Facts contains multiple assertions not supported by a reference to the page or pages of the record or the

Branham was diagnosed with diabetes in 1991. Motion for Summary Judgment, Exhibit A (hereafter exhibits attached to the Motion will be referred to as "Motion Exhibit"), Branham Deposition (hereafter "Branham Dep.") 64, lines 10-15, Appellee's Supplemental Appendix (hereinafter "S.A.") 5.[3] Branham is a Type I diabetic. Branham Dep. 68, lines 2-7, S.A. 6. He is treated with insulin. Branham Dep. 68, lines 2-11, S.A. 6. He tests his blood

---

appendix where that fact appears. This includes the first seven sentences in the paragraph starting at the bottom of page 1 of Appellant's Brief. In addition, the IRS objects to any consideration of the matters included at Tab 21 and 22 in the Appendix, which contain parts of declarations attached to the Brief Opposing Defendant's Motion for Summary Judgment. Although not reached by the district court, the IRS objected to any consideration of such matters in the Defendant's Reply to Plaintiff Gary L. Branham's Brief Opposing Defendant's Motion for Summary Judgment at 3-5. R. 64. The materials at Tab 21 are materials that were not provided to the IRS during the time when the decisions at issue here were being made. The materials at Tab 22 are part of an opinion offered of a purported expert, who had not been disclosed or identified as an expert during discovery and whose declaration did not set forth facts supporting a determination that he could qualify as an expert.

[3]Only relevant portions of the depositions provided to the district court with the Motion for Summary Judgment, Docket No. 43 are included in the S.A. References to declarations will be by the name of the individual and "Dec." References to depositions will be by the name of the individual and "Dep."

sugar levels four times a day. Branham Dep. 69, lines 9-15, S.A. 6. Branham can work flexible schedules, is able to spend "long, unanticipated hours on the job," is able to travel, and is able to perform a job that "forces him to skip meal occasionally." Complaint, Record Docket Number ("R.") 1. There have been many times when Branham skipped lunch and "many occasions where I have worked late unexpectedly requiring my dinner to be delayed." Motion Exhibit C-20, Branham Dec. 3, lines 11-18. (Included in the Appendix of Appellant at tab 12). There had "been many instances of the course of the past several years that have required me to completely miss or significantly delay meals." Motion Exhibit C-20, Branham Dec. 4, lines 1-3. Branham has "the flexibility to eat whenever my schedule permits." Motion Exhibit C-20, Branham Dec. 2, line 10; Entry at 4.

Branham has no difficulty in caring for himself, feeding himself, walking, or with vision, hearing, performing manual tasks, speaking, breathing, learning or working. Branham Dep. 16, line 19 through 17, line 23, S.A. 2. Branham reports that he has certain dietary restrictions. Branham Dep. 16, lines 4-9, S.A. 2. He

is limited in the kinds and amounts of food that he can eat and the times that he can eat. Branham Dep. 197, lines 11-19, S.A. 9. Other than the dietary restrictions, he has no restrictions on his daily activities. Branham, Dep. 16, lines 4-13, S.A. 2. Branham is able to feed himself, dress himself, and wash himself. Branham Dep.197, line 25 through page 198, line 15, S.A. 9. He has no physical restriction on his activities. Branham Dep. 198, lines 19-21, S.A. 10.

Branham is currently employed with the Internal Revenue Service as an internal revenue agent. Branham Dep. 8, lines 4-7, S.A. 1. The work he does is work that an accountant or someone with an accounting background could do. Branham Dep. 9, line 25 through 10, line 4; 32, line 24 through 33, line 2, S.A.1. His duties involve conducting examinations of both corporate and individual income tax payers. Branham Dep. 32, lines 12-14, S.A. 3. The work is primarily office work. Branham Dep. 33, lines 14-15, S.A. 3. During his employment as a revenue agent, Branham has had no difficulty in doing his work. Branham Dep. 39, lines 22-25; 198, lines 16-18, S.A. 4.

Branham applied for the position of Special Agent-CID, GS-1811-7. Complaint, R.1, Nature of the Case and paragraph 9.[4] The special agent position is a law enforcement position that requires the employee to carry a weapon. Entry at 8-9. Branham was tentatively selected for the position on March 3, 1999, subject to the satisfactory outcome of the pre-employment checks, including a physical examination. Motion Exhibit C-4, Appendix of Appellant ("Appendix"), tab 7. Branham was given a physical by a medical doctor on March 17, 1999. Defendant's Exhibit 6; Miller Dep. 117, lines 6-11, S.A. 24. Dr. Miller determined that Branham was not medically qualified for hire. Motion Exhibit 10, S.A. 36.

Branham provided a glucose blood sugar log to the doctor. That information revealed that Branham had very high levels of blood sugar on December 16, 17, 18, 19 and 22. Branham Dep. 121-122, S.A. 7-8. The glucose blood sugar log also showed very low levels of blood sugar. Miller Dep. 136, line 24 through 137, line 3, S.A. 25-26. Based upon the factors listed, Dr. Miller determined

---

[4]References to the record will be by Record and Document Number, abbreviated as "R." ; paragraph will be "para."

that Branham could not perform the essential functions of the job of Special Agent-IRS CID with or without accommodation. Motion Exhibit C-10, S.A. 36. Branham was advised of such determination by letter dated June 15, 1999. Motion Exhibit C-11.

Branham requested reconsideration, by letter dated June 18, 1999. Motion Exhibit C-13. By letter dated July 27, 1999, Branham provided certain additional information, including a declaration. Branham asserted that the low readings in his blood sugar levels were a result of the use of an old glucometer. Motion Exhibit C-20, Branham Dec. 6, par. 13. That information had not been previously provided to the IRS. Branham Dep. 118, lines 15-18, S.A. 7.

Dr. Butler reviewed Branham's application. Motion Exhibits C-26 and 27. Dr. Butler concurred with Dr. Miller's conclusion. Motion Exhibit C-26 and 27. Dr. Miller relied upon Dr. Butler's review and determined again that Mr. Branham was not medically qualified. Motion Exhibit 28, S.A. 37; Miller Dep. 78, lines 2 through 13, S.A. 15. The members of the safety committee met on March 22, 2000 and determined that Branham was medically

ineligible for hiring. Motion Exhibit C-36. Branham was advised by letter of June 6, 2000, regarding the decision. Motion Exhibit C-45.

Dr. Miller has been employed as the Director of Federal Law Enforcement Medical Programs/Federal Occupational Health since October 1994. Miller Dep. 26, lines 20-25, S.A. 11. The Law Enforcement Medical Programs department has interagency agreements with many agencies, including the IRS. Miller Dep. 29, lines 14 through 30, lines 14, S.A. 12. The department reviews applicant medical examinations for those agencies. Miller Dep. 30, lines 18-25, S.A. 13. Dr. Miller reviewed the medical records submitted by Branham, Miller Dep. 34, lines 6-8; 115, lines 6-10, S.A. 14, and the medical records from the initial medical examination of Branham. Miller Dep. 115, lines 11-14, S.A. 23. He reviewed the materials as an occupational medicine physician. Miller Dep. 86, line 22 through 87, 5, S.A. 17.

Branham received an assessment on his own merits. Miller Dep. 83, lines 11-13, S.A. 16. Dr. Miller determined that Branham was not medically qualified to perform the essential functions of the

position. Dr. Miller believed that Branham's clinical picture strongly suggested that Branham was unlikely to be reliable at all times or be able to respond at all times. Miller Dep. 203, lines 15 through 25, S.A. 29. This concern included events that would be a mild hypoglycemic event, that could slow reaction time and critical thinking processes and could result in significant risk to the safety of one's self and others. Miller Dep. 204, line 14 through 205, line 5, S.A. 30-31. Dr. Miller had concerns with Branham's ability to conduct lengthy surveillances. Miller Dep. 203, lines 7-10, S.A. 29. Dr. Miller was concerned about risks during third party interviews. Miller Dep. 205, line 6 through 206, line 11, S.A. 31-32. Dr. Miller was also concerned about risks during searches for records, particularly if the activity was surreptitious. Miller Dep. 206, line 22 through 207, line 17, S.A. 32-33. Dr. Miller determined, based upon the information and the instability of Branham's blood glucose, that there was a risk of sudden incapacitation and a safety risk. Miller Dep. 212, lines 11 through 21, S.A. 34.

Dr. Miller's determination of the essential job functions of the special agent position was accomplished by formal job task analysis

and by both direct observation and participation in law enforcement functions. Miller Dep. 226, lines 1-6, S.A. 35.

Dr. Miller opined that persons with insulin-treated diabetes could safely perform in law enforcement positions carrying firearms, if the condition was stable and especially if the person has experience in such employment. Miller Dep. 97, line 21 through 98, line 13, S.A. 19-20. Dr. Miller thought that Branham might qualify for some federal firearms carrying law enforcement jobs. Miller Dep. 102, line 11 through 103, line 5, S.A. 21-22. Dr. Miller believed that persons with mild hypoglycemia could be a direct threat in the special agent position. Miller Dep. 153, line 16 through 154, line 1, S.A. 27-28.

An endocrinologist has reviewed the materials provided by Branham in connection with his application and concurs with Dr. Miller's interpretation of the data as indicating that the state of control of Branham's diabetes could pose a risk to his safety and reliably carrying out the responsibilities of the special agent position. Motion Exhibit E, Letter Declaration from Joshua Cohen, M.D., at 1 and 6, S.A. 38 and 43. Branham is at increased risk of

hypoglycemia due to the intensive treatment of his diabetes. Cohen Dec. 3, S.A. 40. The records Branham provided document significant long and short term variations in glycemic control including episodes of hyperglycemia and hypoglycemia that could significantly degrade his abilities to function as a special agent, potentially endangering Branham, his colleagues, and the public. Cohen Dec. 4, S.A. 41. Even mild to moderate hypoglycemia may impair critical motor and judgment skills. Cohen Dec. 5, S.A. 42. Between February 18 and February 28, Branham had numerous blood glucose readings below 60 mg/dl. These levels are low enough to be associated with a high risk of cognitive impairment. Cohen Dec. 5, S.A. 42. The records document episodes of hypoglycemia severe enough to impact upon the job responsibilities of a special agent. Cohen Dec. 5, S.A. 42.

Dr. Cohen believes that the lowering of Branham's average blood glucose levels as a result of the addition of ultralente insulin may have increased the risk of Branham's blood glucose falling to clinically significant hypoglycemic levels, as occurred in February 1999. Cohen Dec. 5, S.A. 42. The recurrent hypoglycemia noted in

December 1998 could also have had an impact upon Branham's ability to perform as a special agent. Cohen Dec. 5, S.A. 42. Branham's diabetes was not stable. Branham had significant worsening of his glycemic control during the later part of 1998. Cohen Dec. 6, S.A. 43. The duties required of a special agent included activities that may increase the chances of a severe hypoglycemic event while at work. Cohen Dec. 6, S.A. 43. Dr. Miller appropriately interpreted the data as indicating that in his current state of control Branham's diabetes could pose a risk to his safety and compromised his ability to reliably carry out the responsibilities of a special agent. Cohen Dec. 6, S.A. 43.

V. SUMMARY OF THE ARGUMENT

The district court properly granted summary judgment in favor of the federal defendant (hereinafter "IRS") on the grounds that Branham was not an individual with a disability as defined by the Rehabilitation Act of 1973. The district court properly found that Branham was not substantially limited in a major life activity as a result of his condition nor was he regarded as such. In light of Branham's own admissions in his complaint, declaration, and

deposition testimony, the district court properly found that Branham was not substantially limited in his ability to eat or to care for himself.

Branham's contention that the district court erred when it granted summary judgment in favor of the IRS is not supported by the record and is based upon an incorrect analysis of the relevant case law. Branham mis-characterizes the law regarding motions for summary judgment and the facts in *Lawson v. CSX Transportation, Inc.*, 245 F.3d 916, 923 (7th Cir. 2001). Branham also fails to address relevant case law, including *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002), *Nawrot v. CPC Int'l.*, 277 F.3d 896 (7th Cir. 2002), and *Knapp v. Northwestern Univ.*, 101 F.3d 473 (7th Cir. 1996).

Finally, even if there were a genuine issue of material fact concerning whether plaintiff was an individual with a disability or was so regarded, this court should affirm the decision of the district court on grounds raised below but not reached by the district court. Branham was not a person who was otherwise qualified for the position with or without accommodation.

VI. ARGUMENT

A. The District Court Properly Found that Branham Was Not an Individual With A Disability As He Was Not Substantially Limited In A Major Life Activity Nor Was He Regarded As Having Such A Limitation

1. Standard Of Review

This Court reviews a grant of summary judgment *de novo*. *Patterson v. Avery Dennison Corp.*, 281 F.3d 676, 679 (7th Cir. 2002).

2. Legal Analysis

The district court properly found that summary judgment should be entered in favor of the defendant. The district court properly found that Branham was not a person with a disability as he was not substantially limited in a major life activity nor was he regarded as such. Branham has no difficulty caring for himself, feeding himself, walking, vision, hearing, performing manual tasks, speaking, breathing, learning or working. Branham Dep. 16, line 19 through 17, line 23, S.A. 2. Other than dietary restrictions, he has no restrictions on his daily activities. Branham, Dep. 16, lines 4-13, S.A. 2. Branham is able to feed himself, dress himself, and

wash himself. Branham Dep.197, line 25 through 198, line 15, S.A. 9. He has no physical restriction on his activities. Branham Dep. 198, lines 19-21, S.A. 10. Branham has "the flexibility to eat whenever my schedule permits." Motion Exhibit 20, Branham Dec. 2, line 10, S.A. 37; Entry at 4.

The Rehabilitation Act protects a qualified individual with a disability from discrimination solely because of the person's disability. *Peters v. City of Mauston*, 311 F.3d 835, 843 (7th Cir. 2002). To prevail on a claim of discrimination under the Rehabilitation Act, a plaintiff "must establish that he is : (1) an individual with a disability under the Act, 2) otherwise qualified for the job with or without a reasonable accommodation, and 3) being discriminated against solely because of his handicap." *Crocker v. Runyon*, 207 F.3d 314, 318 (6th Cir. 2000) (citations omitted). The Rehabilitation Act defines an "individual with a disability" as a person who: 1) has a physical or mental impairment that substantially limits one or more major life activities; 2) has a record of such an impairment; or 3) is regarded as having such an impairment by the employer. 29 U.S.C. § 705(20)(B). The Seventh

Circuit looks to the standards applied under the Americans with Disabilities Act, 42 U.S.C. § 1211 *et seq.*, to determine whether a violation of the Rehabilitation Act has occurred in the employment context. *Peters,* 311 F.3d at 842.

a. Individual With A Disability

To show that he is an individual with a disability under the terms of the Act, a plaintiff "must prove that he (i) has a physical . . . impairment which substantially limits one or more of [his] major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. 29 U.S.C. § 706(8)(B)." *Knapp v. Northwestern Univ.*, 101 F.3d 473, 478 (7th Cir. 1996) (the language is now codified at 29 U.S.C. § 705(20)(B)). "In determining whether a particular individual has a disability as defined in the Rehabilitation Act, the regulations promulgated by the Department of Health and Human Services with the oversight and approval of Congress are of significant assistance." *Id.* at 478-79 (footnote omitted). *See also Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 534 U.S. 184, 193-94 (2002). Those regulations define "physical impairment" to mean "any physiological disorder or condition, cosmetic disfigurement, or

anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genitourinary; hemic and lymphatic; skin; and endocrine." 45 C.F.R. § 84.3(j)(2)(i). The regulations define "major life activities" as meaning "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working." 45 C.F.R. § 84.3(j)(2)(ii).

i. First Clause

The determination whether an individual is an "individual with a disability" under the first clause of 29 U.S.C. § 706(8)(B), now § 705(20)(B), of the Rehabilitation Act, requires a three step process. First, there must be a determination if there is a physical impairment. Second, there must be a determination if the life activity upon which the plaintiff relies is a major life activity. Third, there must be a determination whether the impairment substantially limits the major life activity. *Knapp*, 101 F.3d 473, 478-79. *See also Toyota*, 534 U.S. at 194-96 (determination under the ADA); *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (same). The

substantial limitation must be current; a person must "be presently–not potentially or hypothetically–substantially limited in order to demonstrate a disability." *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 482 (1999).

In connection with working, "[i]t is well established than an inability to perform a particular job for a particular employer is not sufficient to establish a handicap; the impairment must substantially limit employment generally." *Byrne v. Bd. of Educ., Sch. of West Allis-West Milwaukee*, 979 F.2d 560, 565 (7th Cir. 1992). In connection with employment, the Supreme Court has declined to rule on the question of whether working is a major life activity. *Toyota,* 534 U.S. at 200. However, in discussing a limitation on working, the Supreme Court has stated that: "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." *Sutton,* 527 U.S. at 492. "When the major life activity under consideration is that of working, the statutory phrase 'substantially limits' requires, at a minimum, that plaintiffs allege they are unable to work in a broad class of jobs." *Id.* at 491.

In *Weiler v. Household Fin. Corp.*, 101 F.3d 519, 525 (7th Cir. 1996), it was concluded that an impairment that interfered with an individual's ability to do a particular job, but did not significantly decrease that individual's ability to obtain satisfactory employment otherwise, was not substantially limiting within the meaning of the statute. In its decision, the court stated: "As this court has stated before, 'an inability to perform a particular job for a particular employer is not sufficient to establish a substantial limitation on the ability to work; rather, the impairment must substantially limit employment generally." *Id.* at 523 (*citing Byrne v Bd. of Educ., Sch. of West-Allis, West Milwaukee*, 979 F.2d 560, 565 (7th Cir. 1992)). *See also Baulos v. Roadway Express,* 139 F.3d 1147, 1151-52 (7th Cir. 1998); *Knapp*, 101 F.3d at 480-81. "It is clear, however, that an employer does not regard a person as disabled simply by finding that the person cannot perform a particular job." *Peters,* 311 F.3d at 843. Further, in *Knapp*, after noting that "[n]ot every impairment that affects an individual's major life activities is a substantially limiting impairment", the court noted: "[i]t is well established that an inability to perform a particular job for a particular employer is

not sufficient to establish a handicap [in regard to working]." *Knapp*, 101 F.3d at 481 *quoting Byrne*. The holding in *Daley v. Koch*, 892 F.2d 212, 215 (2d Cir. 1989) was characterized as "being declared unsuitable for particular position of police officer not substantial limitation of major life activity." *Knapp*, 101 F.3d at 481.

The Ninth Circuit has interpreted the *Daley* holding as follows: "*Daley* stands for the proposition that 'unsuitability to be a police officer is not a substantial imitation on working.'" *Papadopoulos v. Modesto Police Dep't.*, 31 F. Supp. 2d 1209, 1221 (E.D. Cal. 1998). The *Papadopoulos* court analyzed the Ninth Circuit's citation to *Daley* as "a strong signal that, even if defendant regarded plaintiffs as being unable to perform the job of police officer with any police department anywhere, that would still be insufficient to establish that they perceived plaintiffs as being unable to work in the law enforcement field *generally*." *Id.* at 1221 (emphasis in original).

ii. Third Clause

Branham has also asserted a claim under the third clause of 29 U.S.C. § 705(20)(B), the "regarded as" clause. Complaint, para. 27, R. 1 (includes working). Under that clause, "a plaintiff may prove he is disabled by showing that either: 1) the employer mistakenly believes the employee has a physical impairment that substantially limits a major life activity; or 2) the employer mistakenly believes that an actual, non-limiting impairment substantially limits a major life activity." *Peters*, 311 F.3d at 843. In connection with claims arising under the ADA, a plaintiff must show that the defendant believes the plaintiff is "substantially limited" in a "major life activity." *Mack v. Great Dane Trailers*, 308 F.3d 776, 780 (7th Cir. 2002). The analysis set out in the *Toyota* case, regarding "the concepts of 'substantially limits' and 'major life activity' are the same as in "regarded as" cases. *Id.* at 781. Further, "[i]t is clear . . . that an employer does not regard a person as disabled simply by finding that the person cannot perform a particular job. *Byrne v. Bd. Of Educ., Sch. Of West Allis-West Milwaukee,* 979 F.2d 560, 560 (7th Cir. 1992)." *Peters*, 311 F.3d at 843.

3. The decision Of The District Court Should Be Affirmed

The district court properly granted summary judgment in favor of the IRS. There is no dispute that Branham suffers from a physical impairment. However, the district court properly found that Branham's physical impairment did not substantially limit a major life activity and that the IRS did not believe that Branham had a limiting physical impairment. Thus, entry of summary judgment was appropriate. Branham's allegations of error should be rejected.

a. Branham's Argument Is Based Upon An Incorrect Statement of The Summary Judgment Standard

Branham asserts that the decision of the district court was in error "in light of the summary judgment standard that requires all inferences to be constructed in favor of the non-movant." Appellant's Brief at 4.[5] Branham later asserts that the district court

[5]Branham cites *Metropolitan Life Ins. Co. v. Johnson*, 297 F.3d 558, 561-62 (7th Cir. 2002) as support for this proposition. While there is one sentence in that case that would appear to support his

was required "to *disregard* the IRS's evidence and draw all inferences in Branham's favor when considering the IRS's Motion" (emphasis in original). Appellant's Brief at 11. *See also* Appellant's Brief at 15 ("including drawing all inferences in Branham's favor") and at 9-10 n.7.[6] Branham's argument here is based upon an incorrect statement of the law. The district court's duty in connection with motions for summary judgment is set out in Fed. Rule Civ. P. 56(c), which states in part: "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavit, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Branham's contention that the district court should have

---

assertion, the next sentence of the discussion in that case states ". . . we review the record . . . drawing all reasonable inferences from those facts." *Id*. at 562.

[6]Branham's contention that all inferences have to be drawn in favor of the non-moving party might have appeared to be a scrivener's error in light of his quotations at 7 of his Brief of language acknowledging that "all reasonable inferences in favor of the non-moving party" must be drawn; however, the possibility is belied by the repetition of Branham's assertion in four separate places in the Appellant's Brief.

"disregarded" the evidence presented by the IRS is directly contrary to the language of Rule 56. In addition, Branham's assertion that all inferences must be drawn in Branham's favor is clearly in error, for only *reasonable* inferences in favor of the non-moving party need be made. *Omosegbon v. Wells*, 335 F.3d 668, 677 (7th Cir. 2003); *Felce v. Fiedler*, 974 F.2d 1484, 1488 (7th Cir. 1992). In any event, Branham fails to identify what inferences he asserts should have been drawn differently such that summary judgment should not have been entered.

Branham also asserts that the district court drew improper inferences, Appellant's Brief at 4, or "drew inferences in favor of the IRS and adopted the IRS' [sic] 'spin' on Branham's medical readings." Appellant's Brief at 11. Branham may be referring to footnote 12 in the district court's Entry. Branham's characterization appears to be based upon a misreading of the district court's footnote. At this point in the district court's Entry, the district court is discussing the motion for summary judgment filed by the IRS based upon the IRS's contention that Branham was not an individual with a disability as defined in the Act (specifically

that Branham was not substantially limited in a major life activity). In opposition to such motion, Branham contended in Plaintiff Gary L. Branham's Brief Opposing Defendant's Motion for Summary Judgment ("Branham's Brief") that he was disabled. "Branham asserts that he is disabled because he suffers from insulin-treated diabetes mellitus." Branham's Brief at 18, R. 52. *See also* Branham's Brief at 18-21, R. 52. Branham also contended in his complaint that he was discriminated against because of a disability. He asserted that his diabetes was a disability "as it is a physical impairment of the digestive and endocrine systems." Complaint, para. 15, R. 1. Branham alleged that his Type 1 diabetes substantially limits his major life activities of eating, being able to properly metabolize food, and being able to care for himself. Complaint, para. 19., R. 1. As the IRS had filed a motion for summary judgment asserting that Branham was not substantially limited and Branham was opposing that motion, the district court correctly noted in footnote 12 that "[d]rawing all reasonable inferences in favor of the non-movant, the court will assume that the values recorded in February of 1999 genuinely reflect the

Plaintiff's blood glucose levels at that time and were not the result of a faulty glucometer." Entry at 19 n.12, R. 68. This inference is most in favor of the non-movant in connection with the issue addressed by the district court. It is the inference that offers the most support for Branham's contention at that time that he was a person with a disability.

b. The District Court Correctly Found That There Were No Genuine Issues of Material Fact In Dispute

The district court correctly found that there were no material facts that were in dispute. The district court noted, "[t]he dispute in this case has less to do with contested versions of the facts than the effects of undisputed facts." Entry at 2. The district court's discussion of the facts is set out at pages 3-6 of the Entry.

Branham contends that there are material facts in dispute. However, Branham never clearly articulates what are the material facts that he contends are in dispute. Branham includes additional matters in his Statement of Facts, but the matters do not show that there is a genuine dispute of material facts. Branham asserts that there is "a dispute between the parties as to the actual control by

Branham over his diabetes, as well as the effects of his diabetes and its strict treatment regimen on the major life activities and taking care of himself." Appellant's Brief at 11. However, his contention is without merit and is based upon an incorrect analysis of the relevant law.

Although Branham asserts that there was "a dispute between the parties as to the actual control by Branham over his diabetes, as well as the effects of his diabetes and its strict treatment regimen on the major life activities of eating and taking care of himself," Appellant's Brief at 11, the contention does not withstand scrutiny. The district court found that Branham suffered from Type I insulin-treated diabetes, that he must test his blood glucose levels four times a day, that he has dietary restrictions having to do with the kinds and amounts of food he can ingest, and that he can defer meals. Entry at 3-4. The district court acknowledged that Branham manages a burdensome treatment regiment, that he "testified that this regime nonetheless allows him considerable freedom in his schedules and activities," and that he had stated that he had "'the flexibility to eat whenever my schedule permits.'"

Entry at 15. The facts that Branham presents at pages 13-15 of his Brief do not contradict anything the district court referenced in its decision; the matters purportedly showing a dispute involving a genuine issue of material fact are merely Branham's elaborations on the facts found by the district court. Thus, Branham has not shown that there was a dispute about any fact, much less any material fact, that would have prevented the entry of summary judgment in favor of the IRS.

Plaintiff's contention is largely that, because he has diabetes, he is substantially limited in a major life activity. His contention is not supported by the facts before the district. In Count I of his complaint Branham alleges he was discriminated against because of his disability. He asserts that his diabetes is a disability "as it is a physical impairment of the digestive and endocrine systems." Complaint, para. 15, R. 1. Branham alleged that his Type 1 diabetes substantially limits his major life activities of eating, being able to properly metabolize food, and being able to care for himself. Complaint, para. 19, R. 1. However, in his complaint, Branham also asserted that he works flexible schedules, was able to spend

"long, unanticipated hours on the job," and that his current job involved travel and "forces him to skip meal occasionally." Complaint, para. 8, R. 1. In a Declaration of Gary L. Branham submitted in connection with his request for reconsideration, Branham asserted that there were many times when he skipped lunch and "many occasions where I have worked late unexpectedly requiring my dinner to be delayed." Motion Exhibit C-20, Branham Dec. 3, lines 11-18. He also asserted that there had "been many instances of the course of the past several years that have required me to completely miss or significantly delay meals." Motion Exhibit C-20, Branham Dec. 4, lines 1-3. In his deposition, Branham admitted that he had no difficulty in caring for himself, feeding himself, walking, vision, hearing, performing manual tasks, speaking, breathing, learning or working. Branham Dep. 16, line 19 through 17, line 23, S.A. 2. While Branham contended that he is substantially limited in his major life activity of eating, being able to properly metabolize food, and being able to properly care for himself, the substantial limitation alleged by Branham involves limits on the kinds and amounts of food that he can eat. Branham

Dep. 197, lines 11-14, S.A. 9. He also alleges limitations on the times that he can eat. Branham Dep. 197, lines 15-17, S.A. 9. However, Branham has "the flexibility to eat whenever my schedule permits." Exhibit 20, Branham Dec. 2, line 10; Entry at 4. Branham is able to feed himself, dress himself, and wash himself. Branham Dep. 197, line 25 through 198, line 15, S.A. 9-10. He is able to do the job he currently has. Branham Dep. 198, lines 16-18, S.A. 10. He has no physical restriction on his activities. Branham Dep. 198, lines 19-21, S.A. 10. In light of the admissions Branham has made regarding his condition, the district court did not error when it found that Branham was not substantially limited by his physical impairment.

Branham ignores the evidence relied upon by the district court in determining that he was not substantially limited by his physical impairment, apparently based upon his faulty assertion that the district court had to "disregard the IRS's evidence." Appellant's Brief at 11. The district court was not required to ignore the facts presented by the IRS. Thus, the decision of the district court should be affirmed.

c. The District Court Properly Analyzed The Relevant Law; Branham Has Incorrectly Analyzed Or Failed To Address Relevant Cases

The district court correctly applied the relevant law. Branham asserts that the district court misinterpreted the *Sutton* decision[7] and "erroneously disregarded this Court's holdings."[8] Branham's analysis of the case law is in error and is no basis for a reversal of the ruling of the district court.

The district court, relying in part upon *Nawrot*, 277 F.3d at 904, noted that "[a]n individualized examination into the actual impact of the Plaintiff's diabetes is unavoidable." Entry at 14. The district court also found that based upon *Sutton*, the evaluation of whether an impairment constitutes a disability must be considered "only as corrected or mitigated by any measures (such as

---

[7]Branham's Issue C. Appellant's Brief at 18-21.

[8]Branham's Issue B. Appellant's Brief at 15-18. Although Branham cited to *Nawrot* and *Lawson* at page 9 of his Brief, the discussion of this issue only involves *Lawson*.

medication) taken by a plaintiff." Entry at 14. Branham contends that based upon *Lawson* and *Sutton,* Branham is substantially limited or at least there is a jury issue. Appellant Brief at 19. However, upon examination, Branham's contention is in error.

The contention underlying Branham's argument is that he was substantially limited in a major life activity as a result of his condition. However, that contention is not supported by the analysis set out in *Sutton, Lawson,* and *Nawrot* in light of the facts in this case. In *Sutton*, 527 U.S. at 483, the Supreme Court stated: "For instance, under this view, courts would almost certainly find all diabetics to be disabled, because *if they failed to monitor their blood sugar levels and administer insulin*, they would almost certainly be substantially limited in one or more major life activities." (emphasis added). This language was discussed in *Lawson* as follows: "*Sutton* indicated that '[a] diabetic whose illness does not impair his or her daily activities,' *after utilizing medical remedies such as insulin*, should not be considered disabled." *Lawson*, 245 F.3d at 925 (emphasis added). In addition, in *Toyota,* the Supreme Court noted that the term "'[S]ubstantially' in

'substantially limited' suggests 'considerable' or 'to a large degree.'" *Toyota*, 534 U.S. at 196. The Supreme Court went on to note "[t]hat these terms need to be interpreted strictly to create a demanding standard for qualifying as disabled . . . ." *Id.* at 197.

In *Nawrot,* which is more recent than *Lawson*, it was noted that:

> in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 119 S. Ct. 2139, 144 L. Ed.2d 450(1999), the Supreme Court stated, in answering the third question, that individuals whose impairment "'might,' 'could,' or 'would' be substantially limiting if mitigating measures were not taken," but "is corrected by medication or other measures" cannot be considered disabled under the statues. 527 U.S. at 482-83, 119 S.Ct. 2139. In other words, in applying the statue to specific impairments, courts may consider only the limitations of an individual that persist after taking into account mitigation measures (*e.g.*, medication) and the negative side effects of the measures used to mitigate the impairment . . . .

Nawrot, 277 F.3d at 904. It was specifically noted that a "diabetic status, *per se*, is not sufficient to qualify as a disability under the ADA." *Id.* Additionally "In *Moore v. J.B. Hunt Transport, Inc.*, *supra*, we reiterated that '[s]ome impairments may be disabling for particular individuals but not others, depending upon the stage of the disease or disorder, the presence of other impairments that

combine to make the impairment disabling or any number of other factors.' *Id.* at 952 (*quoting Homeyer v. Stanley Tulchin Assocs., Inc.*, 91 F.3d 959, 962 (7th Cir. 1996))." *Nawrot*, 277 F.3d at 904.

Branham asserts that the district court "erroneous disregarded this Court's holdings." Appellant's Brief at 15. The sole case Branham discuses is *Lawson*. Appellant's Brief at 15-18. The core of Branham's argument is that "[t]he parallels between Mr. Lawson and Mr. Branham are numerous and undeniable." Appellant' Brief at 16. However, Branham's contention is factually incorrect; it also ignores the analysis in the *Lawson* case of *Sutton*: "*Sutton* indicated that '[a] diabetic whose illness does not impair his or her daily activities,' *after utilizing medical remedies such as insulin*, should not be considered disabled." *Lawson*, 245 F.3d at 925 (emphasis added).

The district court properly rejected Branham's reliance on *Lawson*[9] and properly found that "the overall clinical picture presented by the Plaintiff is appreciably superior to the one presented by Lawson, and does not merit a similar outcome." Entry

[9]Entry at 15-19.

at 18. Likewise, in the district court's analysis of *Nawrot,*[10] the district court properly found that "[a]s with *Lawson*, the Plaintiff is in considerably better shape than his counterpart in *Nawrot* . . . ." Entry at 19.

Lawson had extensive medical problems associated with his diabetes. *Lawson*, 245 F.3d at 918-19.[11] In *Lawson*, a Dr. Paul Skierczynski discussed Lawson's condition and "predicted" that Lawson "not been able to properly control his blood sugar levels for several years . . . and his medical condition will continue to deteriorate over time as a direct consequence of his diabetes." *Id.* at 925.[12] In this case, Dr. Paul Skierczynski, Branham's treating physician, stated that Branham's diabetes was under "very stable control without complications." Motion Exhibit 27, letter dated

---

[10]Entry at 18-19. Branham does not address *Nawrot* in connection with his assertion that the district court erroneously disregarded cases.

[11]The multiple health problems suffered by Lawson form the factual background for the discussion of Lawson's condition quoted by Branham in his Brief at 16-18. However, the facts here are considerably different as was discussed in the Entry at 15-18.

[12]In light of the facts set out in *Lawson*, Branham's assertion that the parallels between Lawson and Branham are numerous and undeniable, Appellant's Brief at 16, is not tenable.

April 6, 1999, from Skierczynski to Miller, page 077. Likewise, as the district court discussed, Nawrot suffered from unpredictable hypoglycemic episodes, resulting in a significant impairment in his ability to think coherently and his ability to function. He had lost consciousness. His diabetes was progressively worsening and he had complications from his diabetes. Entry at 18, discussing *Nawrot* at 905.

None of the extra factors present in *Lawson* and *Nawrot* are present here. In his complaint, Branham asserted that he works flexible schedules, was able to spend "long, unanticipated hours on the job," and that his current job involved travel and "forces him to skip meals occasionally." Complaint, para. 8, R. 1. In Branham's declaration submitted in connection with his request for reconsideration, he asserted that there were many times when he skipped lunch and "many occasions where I have worked late unexpectedly requiring my dinner to be delayed." Motion Exhibit C-20, Branham Dec. 3, lines 11-18, S.A. 38. He also asserted that there had "been many instances of the course of the past several years that have required me to completely miss or significantly

delay meals." Motion C-20, Branham Dec. 4, lines 1-3, S.A. 39. Branham admitted he has "the flexibility to eat whenever my schedule permits." Motion Exhibit C-20, Branham Dec. 2, line 10, S.A. 37; Entry at 4. In his deposition, Branham admitted that he had no difficulty in caring for himself,[13] feeding himself, walking, vision, hearing, performing manual tasks, speaking, breathing, learning or working. Branham Dep. 16, line 19 through 17, line 23, S.A. 2. Branham is able to do the job he currently has. Branham Dep. 198, lines 16-18, S.A. 10. He has no physical restriction on his activities. Branham Dep. 198, lines 19-21, S.A. 10.[14] In light of the different status of Branham's diabetes, and in light of the discussion in *Lawson* that "*Sutton* indicated that '[a] diabetic whose illness does not impair his or her daily activities,' *after utilizing*

---

[13]Thus, Branham's deposition testimony directly contradicts the argument in the Brief of Appellant that Branham is substantially limited in his ability to care for himself.

[14]Although not articulated, Branham may be asserting that the concerns expressed by Dr. Miller (and though not noted by Branham, Dr. Butler and Dr. Cohen) regarding his condition create a genuine issue of material fact. Appellant's Brief, at 19. However, Branham's contention is without merit; those concerns merely establish that Branham had a physical impairment; they do not establish that Branham is an individual with a disability under the statute.

medical remedies such as insulin, should not be considered disabled"[15] the decision of the district court should be affirmed.

d. The District Court Correctly Found That Branham Was Not Regarded As Having A Physical Impairment That Substantially Limits A Major Life Activity

The district court properly found that summary judgment should be entered in favor of the IRS on the issue whether Branham was regarded as a person with a disability under the third clause of 29 U.S.C. § 705(20)(B) of the Rehabilitation Act. Entry of summary judgment on such issue was appropriate because, if Branham was not a person with a disability because he was not substantially limited in a major life activity, he could not mistakenly believed to have such an impairment. The district court properly found that the determination that had been made "pertained wholly to the Plaintiff's ability to perform a federal law enforcement job." Entry at 22. The district court noted that nothing was said or implied about Branham's "ability to engage in such basic tasks as eating and caring for himself." Entry at 22-23.

---

[15] *Lawson*, 245 F.3d at 925 (emphasis added).

The third clause of 29 U.S.C. § 705(20)(b) states "a plaintiff may prove he is disabled by showing that either: 1) the employer mistakenly believes the employee has a physical impairment that substantially limits a major life activity; or 2) the employer mistakenly believes that an actual, non-limiting impairment substantially limits a major life activity." *Peters*, 311 F.3d at 843. In connection with claims arising under the ADA, a plaintiff must show that the defendant believes the plaintiff is "substantially limited" in a "major life activity." *Mack,* 308 F.3d at 780. The analysis set out in the *Toyota* case, regarding "the concepts of 'substantially limits' and 'major life activity' are the same as in "regarded as" cases. *Id.* at 781. Further, "[i]t is clear . . . that an employer does not regard a person as disabled simply by finding that the person cannot perform a particular job. *Byrne v. Bd. Of Educ., Sch. Of West Allis-West Milwaukee,* 979 F.2d 560, 560 (7th Cir. 1992)." *Peters*, 311 F.3d at 843.

There is no dispute that Branham has a physical impairment; however, the evidence is that Branham's physical impairment did not substantially limit a major life activity and that the agency did

not believe that Branham had such a limiting physical impairment. The agency determined that Branham was not medically qualified for the position for which he applied. Motion Exhibit C-28; S.A. 37. Branham also was not regarded as disabled under the second prong of the test, which requires a mistaken belief that an actual, non-limiting impairment substantially limits a major life activity. Branham was not so regarded for the same reasons that he was not regarded as disabled. The determination made was that Branham was not medically qualified for the position of Special Agent-CID. In light of such determination, and for the reasons discussed above, Branham does not fall within the second prong of the test. "So if the condition that is the subject of the employer's belief is not substantially limiting, and the employer does not believe that it is, then there is no violation of the ADA under the "regarded as" prong of the statute." *Mack,* 308 F.3d at 782.

Plaintiff asserts that the decision of the district court was in error, in part, because he contends that the court should have "disregarded" Dr. Miller's statement Branham could medically qualify for another law enforcement position. Appellant's Brief at

22. However, Branham advances no authority for the contention. The decision of the district court should be affirmed.

B. The Decision Of the District Court Can Be Affirmed On Any Basis Argued Below

In the event that the court finds that the district court improperly entered judgment in favor of the IRS, this court can affirm the decision of the district court on any basis identified in the record that was argued below. *Peters,* 311 F.3d at 842; *Payne v. Churchich*, 161 F.3d 1030, 1038 (7th Cir. 1998). The IRS argued below that even if Branham had been disabled or had been regarded as disabled, the IRS was entitled to summary judgment, as Branham was not a person who was otherwise qualified with or without accommodation. Memorandum of Law in support of Motion for Summary Judgment 24-31 at 12, R. 44. Branham has the burden of showing that he is qualified. *Bay v. Cassens Transp. Co.*, 212 F.3d 969, 973 (7th Cir. 2000). Branham cannot establish that he can perform the essential functions of the job with or without a reasonable accommodation, which is the second step in the determination. *Id.* In light of the medical records presented by Branham to the IRS, Branham was not qualified for the position

due to the reasons set out in the medical review forms and the documents upon which such review was based. Motion Exhibits C-10, C-11, and C-28. Dr. Miller made his determination of the essential functions of the position based upon formal job task analysis and by both direct observation and participation in law enforcement functions. Miller Dep. 226, lines 1-6, S.A. 34. The IRS could properly rely upon those matters in connection with a determination of the essential functions of a position, as can the court. *Basith v. Cook County*, 241 F.3d 919, 927 (7th Cir. 2001).

The position Branham applied for was a position that required irregular work hours, response to unanticipated requests and appropriate reaction to an emergency or crisis. These requirements are clearly essential functions of the job. The fact that a function happens infrequently "does not preclude it from being an essential function of the job." *Peters*, 311 F.3d at 845. Employers can refuse to hire an individual because of an inability to do a job, even if the inability is due to handicap. *Gillen v. Fallon Ambulance Serv., Inc.*, 283 F.3d 11, 28-29 (1st Cir. 2002). An employer may base an employment decision on an employee's actual limitations, even if

those limitations result from a disability. *Matthews v. Commonwealth Edison Co.*, 128 F.3d 1194, 1196 (7th Cir. 1997). An employer may reasonably rely upon a doctor's opinion. *Bay,* 212 F.3d at 976 n.3 (involved DOT certification for truck driver). "Even if the medical opinion turns out to be demonstrably flawed, the [defendant's] reasonable reliance upon them is not discriminatory. So long as the [defendant] relied on those opinions in good faith in determining that Crocker could not do the job, the failure to hire him was justified." *Crocker,* 207 F.3d at 319. Here, both reviewing doctors determined that Branham was not qualified and a danger to himself or others, based upon the materials Branham himself provided. Dr. Cohen, an endocrinologist, has concurred with that assessment.

Finally, in determining if a person is qualified, the employer can consider if the individual is a risk to himself or others. "[T]he place of the court in such cases is to make sure that the decision-maker has reasonably considered and relied upon sufficient evidence specific to the individual and the potential injury, not to determine on its own which evidence it believes is more persuasive."

Knapp, 101 F.3d at 484. Dr. Miller made an individualized assessment. Miller Dep. 83, lines 11-13, S.A. 16. For the reasons set out in the Memorandum, R. 44, Branham was a risk to himself or others.

C. Response to Amicus Brief

The Amicus Brief fails to address what impact Branham's diabetes has upon him after treatment. The Amicus Brief asserts that there are "many significant questions of fact regarding why and how Gary Branham's major life activities of eating and caring for himself are substantially limited by his insulin-treated diabetes." Amicus Brief at 15. However, the assertion is not supported by any reference to the record before the Court. Further, the case primarily relied upon, *Fraser v. Goodale*, 342 F.3d 1032 (9th Cir. 2003), does not support a reversal of the district court's decision. Fraser was a brittle diabetic, whose blood sugar levels were "very difficult to control because her glucose levels tend to swing fairly quickly high or low." *Id.* at 1034. This is not the case with Branham. In light of the differing factual situations, the district court correctly found that there were no genuine issues of material fact in connection with the specific facts regarding Branham. Thus, the Amicus Brief advances no reason that would support a reversal of the district court's decision.

VII. CONCLUSION

For the reasons stated above, the judgment of the district court should be affirmed.

Respectfully submitted,

SUSAN W. BROOKS
United States Attorney

By: _____
Jeffrey L. Hunter
Assistant United States Attorney

VIII. CERTIFICATE OF SERVICE

This is to certify that I have served two copies of the foregoing BRIEF OF DEFENDANT-APPELLEE, and one copy of the BRIEF OF DEFENDANT-APPELLEE on a computer disk using Adobe Acrobat word-processing, upon the plaintiff-appellee herein, by U.S. mail to the following counsels of record on the _____ day of April, 2004.

Michael A. Greene
Rosenthal & Greene, P.C.
1001 S.W. Fifth Ave., Suite 1907
Portland, Oregon 97204

John W. Griffin, Jr.
Houston, Marek & Griffin, LLP
1200 Main Place, Suite 301
Victoria, Texas 77902

Elizabeth G. Russell
Krieg DeVault, LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204

_____
Jeffrey L. Hunter
Assistant United States Attorney

Office of the United States Attorney
10 West Market Street, Suite 2100
Indianapolis, Indiana 46204-3048
Telephone: (317) 226-6333

IX. CIRCUIT RULE 31(e)(1) CERTIFICATION

Undersigned counsel hereby certifies that the material contained in the supplemental appendix is not available electronically.

_____
Jeffrey L. Hunter
Assistant United States Attorney

X. CERTIFICATE OF COMPLIANCE IN ACCORDANCE WITH FED. R. APP. P. 32(a)(7)(C)

The foregoing BRIEF OF DEFENDANT-APPELLEE complies with the time volume limitation required under Fed. R. App. P. 32(a)(7)(B)(i) in that there are no more than 14,000 words or 1,300 lines of text using monospaced type in the brief, typed in the brief, that there are 9,811 words typed in WordPerfect 9.0 word-processing this _____ day of April, 2004.

Respectfully submitted,

SUSAN W. BROOKS
United States Attorney

By: _____
Jeffrey L. Hunter
Assistant United States Attorney

XI. SUPPLEMENTAL APPENDIX

Page No.

Document: