IN THE SUPREME COURT OF IOWA

Darrell Jeffrey McClure, Plaintiff-Appellee, v. **Corteva Agriscience LLC,** Defendant-Appellant,	**Supreme Court No. 23-0628** Keokuk County Case No. LACL142507

Appeal from the Iowa District Court in and for Keokuk County
The Honorable Crystal S. Cronk, District Court Judge

Appellant Corteva Agriscience LLC's Application for Further Review of the Court of Appeals' Decision dated July 24, 2024

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QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals err in modifying this Court's recent adoption of the "honest belief rule" as set forth in *Feeback v. Swift Pork Co.*, 988 N.W.2d 340 (Iowa 2023) by: (1) adding "reasonableness" to the analysis; and (2) shifting the burden to the employer to demonstrate the absence of a dispute as to whether management held an honest belief that the employee was guilty of the conduct justifying the discharge?

II. Did the Court of Appeals err in applying the test for comparator evidence set forth in *Feeback* that other employees must be "similarly situated in all relevant respects" and "engaged in the same conduct without any mitigating or distinguishing circumstances," *Feeback*, 988 N.W.2d at 350, where (1) the other employees were involved in a single safety violation and the plaintiff was involved in over 30; and (2) where there was no evidence that age or disability was a motivating factor in those adverse employment actions?

III. Did the Court of Appeals err in finding, contrary to *Probasco v. Iowa Civil Rights Comm'n*, 420 N.W.2d 432 (Iowa 1988), *Hollinrake v. Iowa Law Enforcement Academy*, 452 N.W.2d 598 (Iowa 1990), *Bearshield v. John Morrell & Co.*, 570 N.W.2d 915 (Iowa 1997), and *Vincent v. Four M Paper Corp.*, 589 N.W.2d 55 (Iowa 1999), that a disability discrimination plaintiff had met his burden of showing that he was substantially limited in his ability to work even though there was no evidence that his condition limited him in anything other than his ability to perform a single, particular job?

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STATEMENT SUPPORTING FURTHER REVIEW

The Supreme Court should grant Appellant Corteva Agriscience, LLC's ("Corteva") Application for Further Review Pursuant to Iowa R. App. P. 6.1103(1)(b)(1) because the Ruling of the Iowa Court of Appeals dated July 24, 2024 (the "Appellate Decision"), conflicts with this Court's Iowa Civil Rights Act ("ICRA") precedents. It alters the honest belief and comparator evidence standards set forth in *Feeback* in a manner the Supreme Court did not endorse or intend, and it conflicts with the test set forth in *Probasco* and its progeny for assessing whether someone has a disability for purposes of a discrimination claim. These issues are important because the Supreme Court established these tests in employment discrimination cases to allow for summary judgment to act as the necessary "put up or shut up" moment in a lawsuit when a plaintiff must show what evidence he has that would convince a trier of fact to accept its version of events. *Slaughter v. Des Moines Univ. Coll. Of Osteopathic Med.*, 925 N.W.2d 793 (Iowa 2019) (citation and quotation marks omitted). In particular:

(a) The Appellate Decision modified the "honest belief" rule that this Court adopted in *Feeback* in two important respects.

First, the Court of Appeals added an element to the rule—requiring that employers not only satisfy: (1) an objective standard that the employer held an honest belief that the employee had committed misconduct; *but also* (2) a new subjective standard that requires that the belief was reasonable. In adopting the honest belief rule, this Court endorsed the version as it was formulated in *Pulczinski v.*

Trinity Structural Towers, Inc., 691 F.3d 966 (8th Cir. 2012). That case explicitly considered and rejected the concept of adding a subjective element to the rule, finding that it would cause courts to impermissibly intrude on internal company decision making. *Id.* at 1003-1004.

Second, the Court of Appeals shifted the burden established in *Feeback*. In *Feeback*, this Court stated that it was Plaintiff's burden to establish that the employer did not honestly believe the legitimate reason that it proffered in support of the adverse action. Here, the Court of Appeals stated that the employer could only win summary judgment "if it could demonstrate the absence of a . . . dispute on whether management honestly and reasonably believed" that the Plaintiff committed misconduct. Appellate Decision at 20.

Both changes eviscerate the standards set forth in *Feeback* and weaken the gatekeeping function of summary judgment. In short, virtually no case would satisfy the altered standard set by the Court of Appeals, because as long as a plaintiff alleged that there was a dispute about the reasonableness of the discipline, no employer could demonstrate the absence of such a dispute.

(b) In analyzing whether comparator evidence is sufficient to overcome summary judgment, *Feeback* stated a plaintiff must prove that he and other employees were similarly situated in all relevant respects. While they need not commit the exact same offense, he must establish that he was treated differently from other employees whose violations were of comparable seriousness. *Feeback*, 988 N.W.2d at 350-51. In this case, Plaintiff was involved in over thirty separate safety violations before he was ultimately discharged. Plaintiff offered as comparators two employees who were each involved in a single safety violation. The Court of Appeals said these were adequate comparators because plaintiff's safety record and discipline are itself a factual dispute. But this would allow any plaintiff to use any employee as a comparator simply by denying the extent or seriousness of the underlying violations. This is in direct conflict with the standard in *Feeback* which required that comparators must be engaged in the same conduct without any mitigating or distinguishing circumstances. *Id.* Moreover, it would again eviscerate the gatekeeping function of summary judgment by allowing plaintiffs to use any evidence as

comparators because the scope or seriousness of a violation are rarely undisputed.

Similarly, in this case, Plaintiff introduced evidence of other older and disabled employees that claim that they suffered adverse employment action as a result of their protected status. But the only support for these allegations were those employees' personal speculation. In *Feeback*, this court found that "unsupported speculation" was insufficient as a matter of law to raise a jury question. *Id.* at 352. The Appellate Decision's acceptance of these allegations was therefore contrary to the standard set forth in *Feeback*.

(c) For nearly forty years, this Court has stated that to establish that an employee-plaintiff is disabled, the plaintiff must come forward with record evidence that he was significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having similar training and skills—not just an inability to perform a single, particular job. *See, e.g., Probasco*, 420 N.W.2d 432, *Hollinrake*, 452 N.W.2d 598, *Bearshield*, 570 N.W.2d 915, and *Vincent*, 589 N.W.2d 55. In this case, Plaintiff put forward no evidence that he was foreclosed from a single job, let alone a class of jobs. The Court of Appeals analysis directly conflicts with this Court's precedents and significantly redefines disabilities for purposes of Iowa's discrimination laws.

BRIEF IN SUPPORT OF REQUEST FOR FURTHER REVIEW

Summary judgment is the "put up or shut up moment in a lawsuit when a [nonmoving] party must show what evidence it has that would convince a trier of fact to accept its version of events." *Slaughter*, 925 N.W.2d 793. Accordingly, in the context of age and disability discrimination lawsuits, this Court has emphasized that summary judgment should weed out "[p]aper cases in order to make way for litigation which does have something to it." *Feeback v. Swift Pork Co.*, 988 N.W.2d 340, 348 (Iowa 2023) (*citing Slaughter* 925 N.W.2d at 808 (quotation marks omitted)).

The Appellate Decision implicates important standards that this Court has established to ensure that summary judgment fulfills this important function. *First,* to survive summary judgment, a plaintiff must establish that the proffered reason for the adverse employment action was a pretext for discriminatory animus. In *Feeback*, this Court adopted the "honest belief rule", explaining that **the employee** "must show that his employer did not honestly believe the legitimate reason that it proffered in support of the adverse action." *Id.* at 349 (citations, brackets, and quotation marks omitted).

The Appellate Decision purports to follow the honest belief rule, but incorrectly states that it requires **the employer** to demonstrate the absence of a dispute that it "reasonably" believed the reason it proffered in support of the

adverse action. This formulation introduces two separate errors into the analysis: (a) it requires both an objective (the employer's belief) and a subjective test (the reasonableness of that belief) where *Feeback* required only the objective portion of the test; and (b) it requires that the employer prove the absence of a dispute where the burden under *Feeback* is entirely on the employee. The first of these errors was explicitly considered, and rejected, in the Eighth Circuit case that *Feeback* cited in adopting the honest belief rule. The second of these errors is directly contrary to *Feeback*'s holding. Allowing both errors to stand would require employers pass a higher bar than this Court intended to obtain summary judgment.

Second, in *Feeback*, this Court also discussed the standard applicable to the use of comparator evidence. Comparator evidence comes in two forms: (a) evidence that other employees not in a protected class were involved in similar conduct but were treated in a disparate manner; and (b) evidence that other employees within the protected class were also victims of discrimination. Given the tenuous reliability and relevance of this type of evidence, this Court has put strict guardrails around its introduction. With respect to the first type of comparator, in *Feeback*, this Court adopted the standard from *Gardner v. Wal-Mart Stores, Inc.*, 2 F.4th 745, 750 (8th Cir. 2021), which stated that "individuals used for comparison must have dealt with the same supervisor, have been subject to the same standards, and engaged in the same conduct without any mitigating or

distinguishing circumstances." In this case, Plaintiff introduced comparator evidence that deviated substantially from the *Feeback* analysis, and the Court of Appeals uncritically credited it.

With respect to the second type of comparator, *Feeback* established that a plaintiff cannot rely on "unsupported speculation" about the reason for their adverse employment consequences. *Id.* at 352. As that is all that was offered here, the Appellate Decision's crediting of those allegations should be subject to further review.

Third, to state a claim for disability discrimination, a plaintiff must establish that he is disabled. Part of that inquiry is a finding that he is substantially limited in a major life activity. *Probasco*, 420 N.W.2d at 434. Here, Plaintiff alleged he was substantially limited in his ability to work. Almost forty years of Supreme Court precedent holds that Plaintiff must come forward with actual evidence that he was limited in his ability to actually find work. *Id.* at 436. Here, the only evidence showed that Plaintiff was able to work his full time job and multiple other jobs, including as an EMT and as a firefighter. The Appellate Decision disregarded this evidence, and instead simply assumed that plaintiff was disabled. That is not the standard.

I. BACKGROUND

A. Factual Background

Corteva processes, packages, and ships corn and soybeans used in the agricultural industry. Plaintiff worked as a production technician at Corteva's Hedrick, Iowa facility. Plaintiff operated a forklift to make loads, collect product from the assembly line, and engage in loading dock activities involving trucks and trailers. Corteva assigns its operators, like Plaintiff, to work different shifts depending on the season. *Id.* at 11.

During his tenure at Corteva, Plaintiff amassed a lengthy record of safety-related violations which include, but are not limited to:

(1) Firing a loaded gun on the job;

(2) Standing on a stack of pallets 10-12 feet off the ground without proper fall protection;

(3) Sleeping at work;

(4) Moving a stack of boxes four-high in violation of workplace conduct expectations on two separate occasions;

(5) Using a cellular device on the warehouse floor;

(6) Using a forklift to move two stacks of boxes side-by-side;

(7) Failing to stay more than three feet away from a running forklift;

(8) Entering a semi-trailer at a loading dock without first ensuring that the truck was secured in the dock;

(9) Registering an impact on his forklift on more than 23 separate occasions including:

a. An impact so violent that it dented the forklift; and

b. A near-miss impact that registered at 6.2 Gs of force.

Id. at 15-26.

After considering these and other safety violations, Corteva management discharged Plaintiff from his at-will employment. *Id.* at 26.

Plaintiff's lawsuit alleged age discrimination, disability discrimination, hostile work environment, and retaliation. The District Court dismissed all of Plaintiff's claims, and the Appellate Decision upheld the dismissal of the hostile work environment and retaliation claims. Appellate Decision at 24.

With respect to his disability discrimination claim, Appellant claims that he experienced two heart attacks during the span of time that Corteva employed him. Corteva Brief at 12. After his first heart attack, Plaintiff submitted a request for an accommodation to avoid working consecutive night shifts, which Corteva at all times granted. *Id.* at 12-14. In 2017, due to a new staffing plan, management asked Plaintiff if his doctor could clarify his restrictions. *Id.* Plaintiff submitted new notes from his doctor, which provided different parameters for his requested

accommodation. Notwithstanding any confusion regarding how these restrictions aligned with Corteva's various work shifts, it is undisputed that Corteva never failed to accommodate Plaintiff. *Id.* Notably, at the same time, Plaintiff also worked as an EMT for Davis County Hospital and as a firefighter for the City of Bloomfield. In those jobs, Plaintiff worked evening and overnight shifts, seemingly flouting and contradicting his Corteva work restrictions. *Id.*

Because Plaintiff did not have any direct evidence of discrimination, he relied on comparator evidence. *First*, he identified two employees who he claimed were involved in some of his safety violations who were outside his protected class but were treated more favorably. But as the District Court pointed out, these employees had an overall history of safe performance. Ruling on Defendant's Motion for Summary Judgment ("Ruling") at 13-14. Plaintiff also did not have evidence that the workers were younger than Plaintiff and/or not disabled. Corteva Brief at 42.

Second, Plaintiff identified a series of random complaints by other employees to argue that because Corteva discriminated against *them*, it necessarily discriminated against *him*. But beyond the unsupported speculation of these other employees, they provided no evidence that age or disability were a motivating factor in their adverse employment decisions. Ruling at 14 ("[t]estimony from

individuals that they felt discriminated against without supporting evidence is not the sort of competent evidence to defeat a motion for summary judgment.").

B. Disposition of the District Court and Court of Appeals

On January 11, 2023, Corteva filed its motion for summary judgment. On March 29, 2023, Judge Cronk granted summary judgment in favor of Corteva.

The decision, which was issued just days before this Court decided *Feeback*, properly pointed out the weaknesses in Plaintiff's case, including that:

(1) Plaintiff violated Corteva polices on multiple occasions. Ruling at 12-13. While the District Court did not analyze this under the honest belief rule (because that rule had not yet been adopted by this Court), the standard the District Court applied was more favorable to the Plaintiff because it required Corteva to prove that the Plaintiff had actually violated policies, not that Corteva honestly believed he had violated them.

(2) Plaintiff had the burden of establishing pretext consistent with *Feeback*. Ruling at 8.

(3) Plaintiff's citation to two allegedly younger/non-disabled employees was unavailing because they were not comparable—they had clean disciplinary records and Plaintiff failed to prove they were either younger or not disabled. Ruling at 13-14.

(4) Plaintiff's citation to other employees who felt that they had been discriminated against was also unavailing because there was no support beyond their say-so that they had actually been subjected to discrimination. Ruling at 14.

(5) Consistent with the requirements in *Probasco*, there was "no evidence that Plaintiff's [alleged disability] was generally debilitating or would otherwise affect him in any job he might hold." Ruling at 9-10.

For these reasons, along with others not relevant to this Petition, the District Court dismissed Plaintiff's claims. Plaintiff appealed.

On July 24, 2024, Judge Buller issued the Appellate Decision which affirmed the District Court's order in part, reversed it in part, and remanded the case for trial. Corteva now seeks further review of the Appellate Decision's reversal of summary judgment on Plaintiff's age and disability discrimination claims.

II. ARGUMENT

A. The Ruling Conflicts with *Feeback* Honest Belief Rule

Feeback adopted the honest belief rule with respect to the pretext analysis of an age or disability discrimination analysis. Under the honest belief rule, a plaintiff "must show that his employer did not honestly believe the legitimate reason that it proffered in support of the adverse action." *Feeback*, 988 N.W.2d at 349-50 (brackets removed) (quoting *McCullough v. Univ. of Ark. For Med. Scis.*, 559 F.3d 855, 861-62 (8th Cir. 2009)).

In direct contradiction to this formulation, the Appellate Decision: (a) adds a new factor to the analysis based on a case from the D.C. Circuit—requiring both that there be an honest belief (as set forth in *Feeback*) and that the belief be subjectively reasonable (which was not a part of the *Feeback* test); and (b) transfers the burden to the employer to prove there is no dispute that management

honestly *and reasonably* believed the reason for the adverse action. The Appellate Decision applies its analysis by stating that Plaintiff's safety history is disputed, and therefore Corteva may not have had a reasonable belief that Plaintiff was a safety risk. Appellate Decision at 20. The Appellate Decision explains that the dispute bears on whether Corteva's conclusions were "objectively false" which is "linked" to the reasonableness of its beliefs. *Id.* These changes to the honest belief rule distort the standard in a way that this Court did not intend.

With respect to the addition "reasonableness," this approach was already explicitly considered and rejected by the Eighth Circuit case that *Feeback* cited in adopting the honest belief rule. *Pulczinski*, 691 F.3d 996, explained that "[a] showing that the employer made a mistaken and unreasonable determination that an employee violated company rules does not prove that the employer was motivated by a known disability. Even if the business decision was ill-considered or unreasonable, provided that the decisionmaker honestly believed the nondiscriminatory reason he gave for the action, pretext does not exist." *Id.* at 1003.

The court further explained that to hold otherwise would invite courts to intrude on internal company decision making processes. *Id.* at 1003-4. This reasoning is consistent with this Court's admonition that "[e]mployment discrimination laws grant us no power to sit as super-personnel departments

reviewing the wisdom or fairness of the business judgments made by employers, *except* to the extent that those judgments involve intentional discrimination." *Feeback*, 988 N.W.2d at 350 (quoting *Vroegh v. Iowa Dep't of Corr.*, 972 N.W.2d 686, 695 (Iowa 2022) (emphasis in original)).

The alleged falsity of Corteva's conclusions[1] is also not relevant for an honest belief rule analysis. As *Pulczinski* explains, "[i]f an employer, in explaining a termination, says it believed that the employee violated company rules, then proof that the employee never violated company rules does not show that the employer's explanation was false. That proof shows only that the employer's belief was mistaken. To prove that the employer's explanation was false, the employee must show that the employer did not truly believe that the employee violated company rules." *Puczinski*, 691 F.3d at 1003.

In addition to the danger of injecting courts into oversight of a company's human resources department, the addition of a reasonableness component to the honest belief rule weakens the gatekeeping function of summary judgment. There are few discrimination cases where there is not some dispute about the reasonableness of the employer's actions. Adopting Judge Buller's analysis would allow plaintiffs to avoid dismissal simply by alleging that the company's discipline

[1] Corteva does not concede that its conclusions are false. Indeed, there was photographic evidence of one of Plaintiff's forklift collisions. *See* Corteva Brief at 21-22.

was unreasonable. *Feeback* is a perfect example of that very principle. In that case, the employer claimed that it discharged Feeback for sending a profanity-laden text message to his supervisor. Feeback, in turn, claimed that he sent the message by mistake and therefore his employer's belief about the intent of the message was incorrect. This Court declined to entertain that debate, and it should not allow other courts to do so by allowing the Appellate Decision to stand.

The Appellate Decision introduces a second error into the honest belief analysis by requiring the employer to establish that there is "the absence of a . . . dispute" about whether management honestly and reasonably believed the reason for the adverse employment decision. This improperly shifts the burden on the pretext prong of the discrimination analysis. Under the modified *McDonnell Douglas* burden-shifting framework established by this Court: (1) the employee carries the initial burden of establishing a *prima facie* case of discrimination; (2) the employer then has the burden of articulating a legitimate, nondiscriminatory reason for its action; and then (3) the burden shifts back to the employee to demonstrate the employer's proffered reason is pretextual. *Feeback*, 988 N.W.2d at 347-48. The Ruling would add a shift by requiring at the third stage that the employer demonstrate that there is an absence of a dispute about management's belief regarding its proffered nondiscriminatory reason. In fact, this Court specifically stated in *Feeback* that it was Feeback's burden to "show that [his]

employer did not honestly believe the legitimate reason that it proffered in support of the adverse action." *Id.* at 350.

This change would further erode the gatekeeping function of summary judgment where it is the **non-movant's** duty to "show what evidence it has that would convince a trier of fact to accept its version of events." *Slaughter*, 925 N.W.2d 793.

Because the Appellate Decision conflicts with *Feeback*'s adoption of the honest belief rule, and because it would erode the important goal of weeding out non-meritorious cases at the summary judgment phase, this Court should grant further review.

B. As Established in *Feeback,* An Employee with One Safety Infraction Cannot Be Used as Comparator Evidence for an Employee with Over Thirty

Under the analysis set forth in *Feeback*, to rebut an honest belief rule defense, a plaintiff must establish that the belief was not honestly held. *Feeback,* 988 N.W.2d at 350 ("Feeback must show that his employer did not honestly believe the legitimate reason that it proffered in support of the adverse action.") (cleaned up). He could do this by establishing that the stated reason was a mere pretext for discriminatory animus. A "common approach to show pretext is to introduce evidence that the employer treated similarly situated employees in a disparate manner." *Id.* To use this comparator evidence, however, one must meet a

"rigorous" test. *Id*. "[I]ndividuals used for comparison must have dealt with the same supervisor, have been subject to the same standards, and engaged in the same conduct without any mitigating or distinguishing circumstances." *Id*. While a plaintiff need not show that the other employees committed "the exact same offense," he must establish that he "was treated differently than other employees whose violations were of *comparable seriousness.*" *Id*. (emphasis in original, quotation marks and citation removed) (citing *Lynn v. Deaconess Med. Ctr.-W. Campus*, 160 F.3d 484 (8th Cir. 1988)).

Plaintiff has not met that test. As the Appellate Decision noted, Plaintiff alleged that "two younger, nondisabled employees who were doing the same job as him and committed some of the same infractions . . . were not disciplined or fired." The word "some" in that sentence is performing a heavy lift.[2] In fact, each employee committed **one** of the infractions that Plaintiff committed. In total, Plaintiff committed over **thirty separate infractions**. The District Court noted this was reason to disqualify them as comparators in addition to other relevant differences that the Appellate Decision fails to address. *See* Ruling at 13-14 (discussing differences in supervision and safety record). On its face, then, these employees were not accused of violations of "comparable seriousness" to Plaintiff.

[2] The Appellate Decision also fails to account for the fact that there is no record evidence that the two employees were either younger than Plaintiff or not disabled.

The Appellate Decision attempts to wave away these differences by asserting that the other infractions are disputed by Plaintiff. But such is always the case—plaintiffs will always deny having committed policy violations or will dispute their seriousness—and indeed this was the case in *Feeback*. In that case, the Court analyzed the comparators not based off of the employee's version of what occurred (a mis-sent text message), but rather based off of the proffered reason for the termination (the text containing profanity). *Feeback*, 988 N.W.2d at 349 (discounting Feeback's "mistake theory") and 350-51 (discussing whether other conduct compared to what the company believed Feeback had done).

A plaintiff could also establish pretext by establishing that other employees in the same protected class also experienced discrimination. Plaintiff attempted to do that here by introducing evidence of other employees who had a mélange of complaints. *Feeback* addressed this type of evidence as well, stating that it could not defeat summary judgment because it was "unsupported speculation." *Feeback*, 988 N.W.2d at 352. Such is the case here, as the District Court properly noted. *See* Ruling at 14.

The Appellate Decision thus conflicts with the reasoning of *Feeback* and therefore further review should be granted to clarify the standards for comparator evidence to be considered at the summary judgment stage.

C. As Established in Forty Years of Supreme Court Precedent, An Alleged Substantial Limitation in an Ability to Work Must Be Supported By Actual Evidence That the Employee Was Limited in His Ability to Find Work

To state a claim for disability discrimination, it is axiomatic that a plaintiff needs to establish that he is disabled. "A substantial disability meaningfully restricts 'one or more major life activities,' including 'caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.'" Appellate Decision at 13 (quoting Iowa Admin Code r. 161-8.26(1), (3)). Plaintiff argued he suffered two heart attacks, which limited his ability to work consecutive night shifts.[3]

Plaintiff admitted that his alleged disability did not impact his ability to walk, see, hear, speak, or learn. Instead, Plaintiff argued only that his prior heart attacks limited his ability to work.

When faced with a claim involving a limitation on the ability to work, courts look to record evidence to determine whether the plaintiff was limited in his ability to work based on his local employment environment. As this Court explained in *Probasco*, 420 N.W.2d 432, "[t]he degree to which an impairment substantially limits an individual's employment potential must be determined with reference to a

[3] The Appellate Decision characterized Plaintiff's limitation as "working daytime hours." Appellate Decision at 13. That is not correct. Although unclear, Plaintiff's restriction appeared to be limited to not working *consecutive* or multiple night shifts. Appellate Decision at 9.

number of factors: the number and type of jobs from which the impaired individual is disqualified, the geographical area to which the individual has reasonable access, and the individual's job training, experience and expectations."

This commonsense proposition—that to establish he was limited in his ability to work, a plaintiff must prove: (1) what jobs he has reasonable physical and practical access to; and (2) what jobs he is restricted from performing based on his alleged disability—has been established in numerous cases in the nearly forty years since *Probasco* was decided. For example, in *Hollinrake*, 452 N.W.2d 598, this Court found that visual acuity was not a disability where the plaintiff was "not limited to any geographical area" and was "not limited in any significant way from obtaining other satisfactory employment." Later, in *Bearshield*, 570 N.W.2d at 922, this Court found that plaintiff established she was disabled because she was able to establish: (a) she had training limited to manual labor like production line work; but (b) she was excluded from that class of jobs based on her arthritis. In *Vincent*, 589 N.W.2d at 61, this Court found that a plaintiff who was given a prescription that caused drowsiness and could affect balance was nevertheless not disabled because he could obtain other satisfactory employment as long as it did not require driving a vehicle or working around dangerous machinery. Explicitly, this Court stated that a plaintiff could not prove that he was disabled because he "failed to present substantial evidence that his impairment precluded him from

performing a class of jobs or a broad range of jobs in various classes as required to establish the existence of a substantial limitation on his ability to work." *Id.* at 62.

Plaintiff in this case did not provide any such record evidence contrary to this long-standing precedent and the Iowa Rules of Civil Procedure, which state that the non-moving party may not rest upon the mere allegations in the pleadings and instead "must set forth specific facts showing that there is a genuine issue [of material fact] for trial." Iowa R. Civ. P. 1.981(3), (5).

The District Court followed this precedent, stating "[t]here is no evidence that Plaintiff's condition was generally debilitating or would otherwise affect him in any job he might hold . . . Plaintiff was not disqualified from doing his assigned job or any other similar job." Ruling at 9-10. Indeed, the record establishes that, far from being limited in finding employment, Plaintiff was more than capable of finding work. At the same time Plaintiff claimed he was disabled, he was working full time at Corteva and at least two other jobs, some of which required nighttime work.[4]

[4] The Appellate Decision misconstrues Corteva's argument in this regard, stating that Plaintiff's other employment was used to cast doubt on the credibility of his alleged restrictions. While a natural inference from this other employment is that Plaintiff was not as restricted as he now claims, more to the point it shows he was not actually limited in his ability to find employment. Corteva Brief at 34 (noting that Plaintiff working multiple other jobs showed his ability to work was far from substantially limited).

The Appellate Decision disregards this entirely. Instead, it analyzed Plaintiff's alleged limitation solely by analyzing his ability to work the night shift at Corteva. Appellate Decision at 13-15. That is not the proper analysis. An impairment that interferes with an individual's ability to do a particular job but does not significantly decrease that individual's ability to obtain satisfactory employment otherwise is not substantially limiting within our statute. *Bearshield*, 570 N.W.2d at 920.

Once again, the Appellate Decision conflicts with this Court's precedent in a way that dilutes the gatekeeping function of summary judgment and undermines the purpose of disability discrimination legislation. A plaintiff will nearly always be able to allege that a purported disability impacts his ability to do certain work. But such an easy test would "debase [the] high purpose" of the ICRA "if the statutory protections available to those truly handicapped could be claimed by anyone whose disability was minor and whose relative severity of impairment was widely shared. Indeed, the very concept of an impairment implies a characteristic that . . . poses for the particular individual a more general disadvantage in his or her search for satisfactory employment." *Probasco* at 436.

Further review will allow this Court an opportunity to ensure that the ICRA's purpose can be protected while at the same time weeding out unmeritorious claims prior to wasting judicial resources on a trial.

CONCLUSION

For the reasons stated, this Court should grant further review, reverse the Court of Appeals, and reinstate the District Court's judgment in favor of Corteva.

Dated: August 13, 2024.

Respectfully submitted,

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CERTIFICATE OF FILING

The undersigned hereby certifies that on the 13th day of August, 2024, she filed Appellant Corteva Agriscience LLC's Application for Further Review of the Court of Appeals' Decision dated July 24, 2024, with the Clerk of the Supreme Court via EDMS, in accordance with Iowa R. App. P. 6.701(2) and Iowa Ct. R. 16.1221(1).

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CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2024, I electronically filed the foregoing Appellant Corteva Agriscience LLC's Application for Further Review of the Court of Appeals' Decision dated July 24, 2024, with the Clerk of the Court by using the Iowa Electronic Document Management System. Because that system will send a notice of electronic filing to the counsel shown below, this constitutes service of the document for purposes of the Iowa Court Rules in compliance with Rule 16.317(1)(a).

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION AND TYPEFACE AND TYPE-STYLE REQUIREMENTS

The undersigned certifies this 13th day of August, 2024, that this Application complies with:

1. The type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because, according to the word count software used to prepare Appellant Corteva Agriscience LLC's Application for Further Review of the Court of Appeals' Decision dated July 24, 2024, it contains 5,191 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1); and

2. The typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because Appellant Corteva Agriscience LLC's Application for Further Review of the Court of Appeals' Decision dated July 24, 2024, has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 MSO word processing software in 14-point Times New Roman font.

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