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United States Court of Appeals
Tenth Circuit

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Christopher M. Wolpert
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PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff - Appellant,

v.

A & A APPLIANCE, INC., d/b/a Appliance Factory Outlet, Inc., d/b/a Appliance Factory Mattress Kingdom,

Defendant - Appellee.

No. 25-1451

Appeal from the United States District Court
for the District of Colorado
(D.C. No. 1:23-CV-02456-DDD-CYC)

Dara S. Smith, Equal Employment Opportunity Commission, Office of General Counsel (Catherine Eschbach, Christopher Lage, Jennifer S. Goldstein, and Gail S. Coleman with her on the briefs), Washington, D.C., for Plaintiff-Appellant.

Janet M. Himmel, Fisher & Phillips LLP (Micah D. Dawson and Julianne C. Lomax, with her on the brief), Denver, Colorado, for Defendant-Appellee.

Before **MATHESON**, **McHUGH**, and **FEDERICO**, Circuit Judges.

McHUGH, Circuit Judge.

Plaintiff-Appellant, the Equal Employment Opportunity Commission ("EEOC"), claims that A&A Appliance, Inc. ("Appliance Factory") violated the

Americans with Disabilities Act ("ADA") by failing to accommodate Karima Javanzad's request for leave and by terminating her on the basis of her disability and in retaliation for requesting a reasonable accommodation. The district court granted summary judgment in Appliance Factory's favor on all claims. Exercising jurisdiction under 28 U.S.C. § 1291, we reverse the district court's grant of summary judgment and remand for further proceedings.

I. BACKGROUND

A. Factual History[1]

Appliance Factory is a Colorado-based retailer that sells appliances, mattresses, and other household products. In February 2019, it hired Ms. Javanzad as a sales associate[2] at its store in Thornton, Colorado. Ms. Javanzad, who Appliance Factory described as "an excellent and productive employee," worked at Appliance Factory until she was terminated on June 10, 2020. App. at 257. The following factual history describes the relevant background leading to Ms. Javanzad's termination.

[1] "Because this case arises from an appeal of summary judgment, we present the . . . factual background in the light most favorable to [the EEOC] as the non-moving party, unless contradicted by the record." *Jarvis v. Liggett*, 179 F.4th 763, 769 n.3 (10th Cir. 2026) (quotation marks omitted).

[2] Appliance Factory sometimes refers to the sales associate position as "sales manager" or "product specialist." App. at 257.

1. March 2020–April 2020: Ms. Javanzad's Initial Leave Request

On March 17, 2020, Ms. Javanzad emailed Appliance Factory's Human Resources Specialist, Sherry Coudayre,[3] informing Ms. Coudayre that she could not return to work until after March 22 because her son was sick with pneumonia. On March 24, however, Ms. Javanzad advised Ms. Coudayre that she had also fallen sick and could not return to work as planned.

When she first advised Ms. Coudayre of her illness, Ms. Javanzad expected to recover within a few days. But her illness continued to worsen, resulting in multiple trips to the emergency room. On March 26, Ms. Javanzad stated she was "really sick" with a cough and shortness of breath. *Id.* at 152. A few days later, Ms. Javanzad told Ms. Coudayre, "I have never been sick in my life like this last week and I'm still suffering. . . . I can't breath[e] and feel like dying." *Id.* at 151. She reported difficulty walking and breathing, as well as chest pain.

Ms. Javanzad told Ms. Coudayre that her doctor suspected she had COVID-19 because she had "all the symptoms," but the hospital did not have tests to confirm this suspicion. *Id.* Ms. Javanzad provided Ms. Coudayre with a note from her primary care provider confirming she had COVID-19 symptoms and advising that Ms. Javanzad stay home from work until ten days from the onset of her symptoms or until after her symptoms resolved.

[3] At the time, Sherry Coudayre's last name was Ewing.

Due to the length of Ms. Javanzad's illness, Ms. Coudayre asked her to complete paperwork requesting leave under the Family and Medical Leave Act ("FMLA"). Ms. Javanzad did so, and Appliance Factory granted her twelve weeks of leave, which was set to expire on June 8, 2020. Ms. Coudayre instructed Ms. Javanzad to check with her biweekly to provide updates on how she was feeling and when she could return to work.

2. April 2020–May 2020: Communications During Ms. Javanzad's Leave

On April 13, 2020, Ms. Javanzad emailed Ms. Coudayre, reporting that she felt "much better" and was ready to return to work. *Id.* at 175. She reported that her COVID-19 symptoms had cleared up, and her primary care physician provided a note confirming Ms. Javanzad could "return to full duty immediately with no restrictions." *Id.* at 177. Ms. Coudayre asked Ms. Javanzad's supervisor to arrange for her return, and Ms. Javanzad expressed her enthusiasm to get back to work.

Three days later, Ms. Javanzad informed Ms. Coudayre that her "body got weak again" but that her doctor advised her this was a normal part of recovering from COVID-19. *Id.* at 276. Because Ms. Javanzad had not yet heard about arrangements for her return to work, she told Ms. Coudayre she "was thinking to wait [one] more week." *Id.* On April 19, Ms. Javanzad emailed Ms. Coudayre again, stating, "I have some bad news. I think I have to stay on FMLA a few more weeks because I can't find daycare due to school closures." *Id.* at 178. Two days later, Ms. Javanzad informed Ms. Coudayre that she could return to work on May 11. Ms. Coudayre

responded, "I have informed the necessary managers that you will be out until May 21st and returning May 22nd." *Id.* at 188.

On May 12, Ms. Javanzad sent another update to Ms. Coudayre. She wrote:

> I'm still not feeling well. Everyday I wake up thinking that I will get back to normal but I am still not well. My stomach has a problem after I encountered the virus. My doctor scheduled an endoscopy next week, maybe they can figure out what's causing the pain. . . . I also want to know how long more do I have on the FMLA and if I used the whole 12 weeks can I extend it?

Id. at 189. Ms. Coudayre replied, "You still have time remaining from the 12 weeks, so let's see what happens with your doctor before we discuss any other steps." *Id.*

3. June 2020: Communications Regarding Ms. Javanzad's Return Date

On the morning of June 1, Ms. Coudayre called and texted Ms. Javanzad, asking Ms. Javanzad to call her back about her FMLA leave. Ms. Javanzad texted Ms. Coudayre that evening and asked if she could talk but Ms. Coudayre did not respond. Later the same evening, Ms. Javanzad emailed Ms. Coudayre to inform her that her gastroenterologist had rescheduled her endoscopy to June 9 because the previous procedure was postponed due to COVID-19 restrictions.

Ms. Javanzad attached a doctor's note to her email. The note was dated May 13, and it stated: "It is my medical opinion that Karima Javanzad should remain out of work until her symptoms have improved and she has the results of her planned procedures." *Id.* at 203. Ms. Javanzad's doctor suspected that she had gastritis. Ms. Javanzad closed her June 1 email by asking Ms. Coudayre about her potential options if her FMLA leave expired and noting she "needed more time." *Id.* at 202.

The next morning, on June 2, Ms. Coudayre responded to Ms. Javanzad's email. Ms. Coudayre stated, "I'm sorry we played phone tag yesterday. I do need to speak with you over the phone, so please call me today." *Id.* She also texted Ms. Javanzad, "I saw your email but need to speak with you on the phone. Please call me today, thanks!" *Id.* at 204. At 11:41 A.M., Ms. Javanzad texted Ms. Coudayre and asked if she was available for a phone call. The evidence, viewed in Ms. Javanzad's favor, indicates that Ms. Javanzad and Ms. Coudayre had a five-minute phone conversation starting at 12:03 P.M.[4]

During the phone call, Ms. Javanzad asked Ms. Coudayre if she could extend her FMLA leave. She explained, "I'm going to have an endoscopy done, and I need more time. I'm not feeling good. I can't breathe. I have difficulty speaking. That's why I'm not able to speak. Can you please give me an answer . . . I want extra time." *Id.* at 230. She also reported that she was having "stomach pain" and that she needed additional time to complete her endoscopy but would return to work after receiving the results. *Id.* at 234. Specifically, she told Ms. Coudayre that she "needed a few weeks." *Id.* at 239. Ms. Javanzad testified that Ms. Coudayre "was quiet" in response and said she needed to talk to her boss. *Id.* at 231.

[4] Ms. Coudayre testified that she does not recall speaking to Ms. Javanzad on the phone on June 2, 2020. But Appliance Factory's phone provider's records indicate that Ms. Coudayre and Ms. Javanzad had a five-minute phone call starting at 12:03 P.M., Ms. Javanzad testified that she had a phone call with Ms. Coudayre in late May or early June, and Ms. Coudayre stated in Ms. Javanzad's termination letter that she spoke to Ms. Javanzad on the phone about her FMLA "[o]n or about June 1, 2020." App. at 212.

On June 4 and 5, Ms. Coudayre called and texted Ms. Javanzad, asking again for a return call. Ms. Javanzad did not return Ms. Coudayre's call, but she sent Ms. Coudayre an email on the morning of June 5. She stated, "I saw your missed call and I wasn't able to respond because I have difficulty speaking. It happened yesterday and today again. Please let me know what I need to do and what my options are." *Id.* at 217. Ms. Coudayre did not respond to Ms. Javanzad's email because Ms. Coudayre and other Appliance Factory employees "insist[ed] on having a phone call." *Id.* at 268–69.

On June 8, the day Ms. Javanzad's FMLA leave expired, Ms. Javanzad reached out to Ms. Coudayre again. She stated, "I haven't heard from you regarding my options after FMLA ended. I am sorry I couldn't speak to you over the phone because some days I have difficulty speaking." *Id.* at 210. She then inquired about extending her leave. Specifically, she said, "I was also wondering if I can go on leave of absence since today is the last day for the FMLA. What's the company's policy on that?" *Id.* Ms. Coudayre responded the next day. She reminded Ms. Javanzad that Appliance Factory had expected her to return to work on June 8 and told Ms. Javanzad that the position was still available to her. Ms. Coudayre also stated, "If you are unable to return, I understand if you need to resign at this time. If you choose to resign, you are welcome to give me a call when you are able to return to work and we can discuss having you rejoin our team!" *Id.* Ms. Javanzad did not respond to Ms. Coudayre's email.

4. June 10, 2020: Ms. Javanzad's Termination

On June 10, Appliance Factory sent Ms. Javanzad a termination letter, signed by Ms. Coudayre. The letter stated, in relevant part:

> [Y]our medical condition (*i.e.*, fear of exposure to COVID-19) triggering your FMLA leave commenced March 15, 2020. [Appliance Factory] provided you the requisite 12 weeks FMLA leave and [Appliance Factory] provided you an opportunity to extend that FMLA time for an additional four weeks if the triggering condition for FMLA was extended by your medical provider. You were informed your 12 weeks FMLA leave, unless extended, would expire on June 8, 2020.
>
> On or about June 1, 2020, you and I spoke about your FMLA and its requirement; you acknowledged that you were aware that your FMLA leave would expire June 7th and you would need to return to work . . . [on] June 8th unless your medical provider extended it for COVID-19 related reasons. Shortly thereafter, you requested an extension of FMLA, not for COVID-19 reasons, but for a gastrointestinal disorder unrelated to COVID-19. [Appliance Factory] informed you that since you . . . would have used up your 12 weeks of FMLA by June 7th, [Appliance Factory] could not offer you additional FMLA time for your gastrointestinal disorder and that you would have to report to work June 8th.
>
> . . . .
>
> . . . Since[ ] your FMLA expired on June 7, 2020, [Appliance Factory] made your sales associate position available to you, and you have not returned to work nor contacted [Appliance Factory], [Appliance Factory] has no choice to terminate your employment.

Id. at 212–13.

5. June 2020: Ms. Javanzad's Ultimate Diagnosis and Treatment

The results of Ms. Javanzad's endoscopy confirmed her doctor's prior suspicion that she had mild gastritis, and it "ruled out serious pathology" in Ms. Javanzad's gastrointestinal system. *Id.* at 200. Ms. Javanzad also had follow-up biopsies that confirmed "cellular inflammation consistent with chronic active

gastritis." *Id.* at 263. After receiving these results, Ms. Javanzad's doctor instructed her to take omeprazole twice daily—a medication Ms. Javanzad had previously been taking only intermittently. Once Ms. Javanzad began taking the medication as instructed, her symptoms started to improve. She "got better" within a few weeks. *Id.* at 244.

B. Procedural History

On December 15, 2020, Ms. Javanzad filed a charge of discrimination with the EEOC. After investigating, the EEOC filed a Complaint against Appliance Factory on Ms. Javanzad's behalf, alleging that Appliance Factory violated the ADA by failing reasonably to accommodate Ms. Javanzad's disability and by discharging her on the basis of her disability and in retaliation for requesting an accommodation. Appliance Factory moved for summary judgment, arguing that (1) the EEOC did not produce sufficient evidence that Ms. Javanzad had a qualifying disability; (2) Ms. Javanzad did not provide Appliance Factory with notice of her disability and resulting limitations; and (3) Ms. Javanzad did not request a plausibly reasonable accommodation because she requested "a wholly indeterminate extension of leave." *Id.* at 69–80.

The district court granted summary judgment in Appliance Factory's favor on all claims. First, the district court rejected the EEOC's failure to accommodate claim. It declined to decide whether Ms. Javanzad had a cognizable disability but concluded that the EEOC failed to present evidence that Ms. Javanzad requested a reasonable accommodation because she did not put Appliance Factory on notice of her disability

and because her request for an indefinite leave of absence was not plausibly reasonable. The district court granted summary judgment to Appliance Factory on the EEOC's disparate treatment and retaliation claims "for the same reasons." *Id.* at 143.

The EEOC timely filed a notice of appeal. It argues that the district court erred because a reasonable jury could find that (1) Ms. Javanzad notified Appliance Factory of her disability "when she communicated throughout her leave of absence about her ongoing illness, including her severe gastrointestinal pain, weakness, shortness of breath, and intermittent inability to speak or swallow," and (2) Ms. Javanzad requested a plausibly reasonable accommodation under the ADA by asking for "a few weeks" of additional FMLA leave. *See* Appellant's Br. at 2.

II. STANDARD OF REVIEW

"We review the district court's summary judgment decision de novo, applying the same standards as the district court." *Snyder v. Beam Techs., Inc.*, 147 F.4th 1246, 1253 (10th Cir. 2025) (quotation marks omitted). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine factual dispute requires "more than a mere scintilla of evidence; to avoid summary judgment, the evidence must be such that a reasonable jury could return a verdict for the nonmoving party." *Rocky Mountain Prestress, LLC v. Liberty Mut. Fire Ins. Co.*, 960 F.3d 1255, 1259 (10th Cir. 2020) (quotation marks and brackets omitted).

When reviewing a grant of summary judgment, "we examine the evidence and draw reasonable inferences therefrom in the light most favorable to the non-moving

party." *Snyder*, 147 F.4th at 1253 (quotation marks omitted). But we conduct our de novo review "from the perspective of the district court at the time it made its ruling, ordinarily limiting our review to the materials adequately brought to the attention of the district court by the parties." *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 671 (10th Cir. 1998).

III. SUBSTANTIVE LEGAL STANDARD

The ADA makes it unlawful for an employer to "discriminate against a qualified individual on the basis of disability in regard to . . . the hiring, advancement, or discharge of employees." 42 U.S.C. § 12112(a). Disability discrimination under the ADA includes "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer." *Punt v. Kelly Servs.*, 862 F.3d 1040, 1048 (10th Cir. 2017) (quoting 42 U.S.C. § 12112(b)(5)(A) (alterations omitted)).

We apply a modified version of the familiar burden-shifting framework in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), to a failure to accommodate claim under the ADA. *Lincoln v. BNSF Ry. Co.*, 900 F.3d 1166, 1204 (10th Cir. 2018). The first step of this framework requires the employee to show that "(1) she is disabled; (2) she is otherwise qualified; and (3) she requested a plausibly reasonable accommodation." *Punt*, 862 F.3d at 1050 (internal quotation marks omitted). "If the plaintiff makes a showing on all three elements, the burden shifts to

the employer to present evidence either (1) conclusively rebutting one or more elements of plaintiff's prima facie case or (2) establishing an affirmative defense." *Lincoln*, 900 F.3d at 1204 (internal quotation marks omitted).

IV. DISCUSSION

The EEOC argues that the district court erred by concluding that the EEOC failed to establish a prima facie case under the ADA. First, it contends that it presented sufficient evidence for a reasonable jury to conclude that Ms. Javanzad had a qualifying disability. Second, it argues a reasonable jury could conclude that Ms. Javanzad provided Ms. Coudayre with enough information about her ongoing illness to put Appliance Factory on notice that she had a disability. Third, it asserts that a reasonable jury could find that Ms. Javanzad requested a plausibly reasonable accommodation when she asked Ms. Coudayre for additional leave after her FMLA leave expired. Although we decline to decide whether Ms. Javanzad created a genuine factual dispute as to whether she had a cognizable disability,[5] we agree with

[5] The district court declined to decide whether Ms. Javanzad had a qualifying disability. "A disability within the meaning of the ADA is, *inter alia*, 'a physical or mental impairment that substantially limits one or more of the major life activities' of an individual." *Robertson v. Las Animas Cnty. Sheriff's Dep't*, 500 F.3d 1185, 1193–94 (10th Cir. 2007). The question of whether a person is substantially limited by an impairment depends on whether that individual is unable to perform major life activities "that the average person in the general population can perform" or if the individual is "significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to . . . the average person in the general population." *Id.* at 1194 (quotation marks and brackets omitted). Because the district court declined to decide whether Ms. Javanzad had a qualifying disability, it denied as moot the parties' competing motions to exclude expert testimony that related "to the nature of Ms. Javanzad's disability." App. at 144–45. We generally decline to "consider an issue not passed upon below."

the EEOC's second and third arguments and hold that a reasonable jury could find that Ms. Javanzad put Appliance Factory on notice of her disabling condition and that her request for additional leave was a plausibly reasonable accommodation request under the ADA.[6]

A. Notice of Ms. Javanzad's Disability

The EEOC argues that "[a] reasonable jury could find that [Ms.] Javanzad notified Appliance Factory of her disability by telling [Ms.] Coudayre about her physical impairments and the limitations they caused." Appellant's Br. at 25. Appliance Factory, on the other hand, contends that Ms. Javanzad's statements to Ms. Coudayre "reflect[ed] only general health issues of unknown severity or duration." Appellee's Br. at 24. We agree with the EEOC and conclude that a

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Ortega v. Grisham, 148 F.4th 1134, 1155 (10th Cir. 2025) (quoting *Singleton v. Wulff*, 428 U.S. 106, 119 (1976)). Especially given that we lack rulings or analysis on the parties' motions to exclude expert testimony, we see no reason to depart from this general practice here. So, we remand the issue for the district court to consider in the first instance.

[6] We follow the parties' lead in centering our analysis around the EEOC's failure to accommodate claim. We recognize, however, that the EEOC also brought ADA claims alleging disparate treatment and retaliation. The district court granted summary judgment on these claims "for the same reasons" that it granted summary judgment on the EEOC's failure to accommodate claim. App. at 143. Indeed, the EEOC's disparate treatment claim requires that Appliance Factory had notice of Ms. Javanzad's disability. *Edmonds-Radford v. Sw. Airlines Co.*, 17 F.4th 975, 990–91 (10th Cir. 2021) (stating this requirement). And its claim that Appliance Factory retaliated against Ms. Javanzad for requesting a reasonable accommodation requires that she made "an adequate request for an accommodation sufficient to qualify as protected activity." *Foster v. Mountain Coal Co., LLC*, 830 F.3d 1178, 1187 (10th Cir. 2016). Because these claims rise or fall together, it is not necessary to address each separately. But we reject Appliance Factory's argument that the EEOC did not appeal its disparate treatment and retaliation claims.

reasonable jury could find that Ms. Javanzad put Appliance Factory on notice that she had a disability.[7]

1. Legal Standard

A failure to accommodate claim requires that the employer be on notice that the employee had a disability for which she needed accommodation. *See Robertson v. Las Animas Cnty. Sheriff's Dep't*, 500 F.3d 1185, 1196 (10th Cir. 2007); *see also* 42 U.S.C. § 12112(b)(5)(A) (providing that disability discrimination includes failing to reasonably accommodate "the *known* physical or mental limitations of an otherwise qualified individual with a disability" (emphasis added)). Unless the employee's disability is obvious, "the individual must inform [the] employer of the disability before the employer can be held liable under the ADA for failing to provide a reasonable accommodation." *Robertson*, 500 F.3d at 1196. This duty on the employee is "dictated by common sense lest a disabled individual keep [her] disability a secret

[7] We may decide whether Ms. Javanzad provided notice of her gastrointestinal impairment and its impact on her ability to work despite remanding the question of whether Ms. Javanzad was disabled under the ADA to the district court to consider the question in the first instance. *See Smith v. Midland Brake, Inc.*, 180 F.3d 1154, 1173 (10th Cir. 1999) (noting "there [was] no dispute that [the employee] provided notice to [the employer] of his skin condition and how it limited his performance" without discussing whether the employee had a disability under the ADA); *Albert v. Smith's Food & Drug Ctrs., Inc.*, 356 F.3d 1242, 1250–52 (10th Cir. 2004) (focusing on whether the plaintiff's asthmatic condition substantially limited her ability to breathe when determining if the plaintiff had a disability under the ADA, while centering the notice analysis on what the employer knew about how the plaintiff's condition would require her to be accommodated at work); *Hrdlicka v. Gen. Motors, LLC*, 63 F.4th 555, 567–68 (6th Cir. 2023) (analyzing whether an employer had notice of "its obligations under the ADA" based on the plaintiff's communications regarding her symptoms without considering whether the plaintiff was disabled under the ADA's definition).

and sue later for failure to accommodate." *Id.* (quoting *Beck v. Univ. of Wis. Bd. of Regents*, 75 F.3d 1130, 1134 (7th Cir. 1996) (brackets omitted)).

As our sister circuits have recognized, the ADA's notice requirement is a context-specific inquiry. *See Hrdlicka v. Gen. Motors, LLC*, 63 F.4th 555, 567–68 (6th Cir. 2023); *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 313 (3d Cir. 1999). The inquiry turns on whether the employee provided "enough information that, under the circumstances, the employer can be fairly said to know" that the employee has a disability. *Taylor*, 184 F.3d at 313. "Relevant information could include, among other things, a diagnosis, a treatment plan, apparent severe symptoms, and physician-imposed work restrictions." *Hrdlicka*, 63 F.4th at 567 (quoting *Cady v. Remington Arms Co.*, 665 F. App'x 413, 417–18 (6th Cir. 2016) (unpublished)).[8] Accordingly, an employee need not provide the name of the disabling condition or the specific diagnosis to put an employer on notice of the employee's disability. *Taylor*, 184 F. 3d at 314. Nor does the employee need to use the word "disabled." *Hrdlicka*, 63 F.4th at 567.

On the other hand, "[t]he ADA does not require clairvoyance" on an employer's part. *Smith v. Midland Brake, Inc.*, 180 F.3d 1154, 1171 (10th Cir. 1999) (quoting *Miller v. Nat'l Cas. Co.*, 61 F.3d 627, 630 (8th Cir. 1995)). But once the employee "provide[s] enough information about his or her limitations and desires so

[8] We cite unpublished cases for their persuasive value only and do not treat them as binding authority. *See United States v. Ellis*, 23 F.4th 1228, 1238 n.6 (10th Cir. 2022).

as to suggest at least the possibility that reasonable accommodation may be found," then "both parties have an obligation to proceed in a reasonably interactive manner" to determine if the employee could be reasonably accommodated. *Id.* at 1171–72; *see also E.E.O.C. v. Sears, Roebuck & Co.*, 417 F.3d 789, 804 (7th Cir. 2005) ("Where notice is ambiguous as to the precise nature of the disability or desired accommodation, but it is sufficient to notify the employer that the employee may have a disability that requires accommodation, the employer must ask for clarification.")

2. Analysis

The EEOC has established a genuine factual dispute as to whether Ms. Javanzad put Appliance Factory on notice that she had a disability. We base this conclusion on four categories of evidence: (1) Ms. Javanzad's emails and text messages with Ms. Coudayre regarding her symptoms; (2) the note from Ms. Javanzad's doctor describing her work limitations; (3) the phone call between Ms. Javanzad and Ms. Coudayre on June 2, 2020; and (4) the statement in Ms. Javanzad's termination letter acknowledging her "gastrointestinal disorder." App. at 212. We describe each category in turn; then, we address two categories of evidence that the district court referenced to emphasize that they are either non-dispositive or irrelevant to the inquiry.

a. Emails and Text Messages

Ms. Javanzad's emails and text messages to Ms. Coudayre during her FMLA leave support our conclusion that a reasonable jury could find that Appliance Factory

knew that Ms. Javanzad had a disability. Specifically, a reasonable jury could find that Ms. Javanzad's communications with Ms. Coudayre demonstrate that Appliance Factory knew Ms. Javanzad was suffering from an episodic condition that—when active—substantially impacted her ability to breathe, speak, and eat. *See* 42 U.S.C. § 12102(4)(D) ("An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity *when active*." (emphasis added)).

In March 2020, Ms. Javanzad notified Appliance Factory that she was so sick she felt like she was "dying" and that she had gone to the emergency room four times. App. at 151. Although Ms. Javanzad later reported that she had recovered from her suspected COVID-19 infection, the evidence in the record suggests that her symptoms lingered. In April, she wrote Ms. Coudayre to tell her that her "body got weak again" and that her doctor said this was a "normal" part of "recovering from this illness." *Id.* at 276. Then, in May, Ms. Javanzad told Ms. Coudayre, "I'm *still* not feeling well. Everyday I wake up thinking that I will get back to normal but I am *still* not well." *Id.* at 189 (emphasis added).

Beginning in May 2020, Ms. Javanzad continuously updated Ms. Coudayre regarding the gastrointestinal illness she was experiencing. She informed Ms. Coudayre that her "stomach [had] a problem after . . . encounter[ing] the virus" and that her doctor had scheduled an endoscopy to determine the cause of her stomach issues. *Id.* Multiple times in June, Ms. Javanzad informed Ms. Coudayre that she was having trouble breathing and that "some days" she had difficulty speaking. *Id.* at 210.

Appliance Factory compares these communications to text messages the Sixth Circuit held were insufficient to put an employer on notice that the employee had a disability in *Hrdlicka*. There, the employee had sent text messages that "reference[d] only generalized ailments, such as [the employee's] 'head . . . really hurting,' having a 'fever and other symptoms,' or simply being 'sick.'" *Hrdlicka*, 63 F.4th at 567. These communications were insufficient to notify the employer of a disability because these "symptoms are consistent with many short-term, nondisabling ailments, including a common cold." *Id.* The Sixth Circuit concluded that "[a]lthough these messages might have given [the employer] a general awareness of a health issue, that is not enough." *Id.*

Unlike the employee's communications in *Hrdlicka*, Ms. Javanzad connected her various symptoms together, suggesting she had an ongoing illness, even if some of her symptoms were intermittent and inactive at times.[9] Although Ms. Javanzad was not diagnosed with a chronic condition—gastritis—until she received an endoscopy, Ms. Javanzad informed Ms. Coudayre that she was experiencing a series of connected symptoms and not various isolated ones by stating that she was "still" not feeling well, her body was weak "again," and she could not speak "some days."

[9] The evidence does not fully support the EEOC's statement that Appliance Factory "knew [Ms.] Javanzad endured intermittent flare-ups that were disabling when active" and "severe stomach pain lasting for months at a time, an intermittent struggle to breathe, and a repeated inability to speak or swallow [that] created substantial limitation on at least one major life activity." Appellant's Br. at 39. However, there is evidence from which the jury could find that Ms. Javanzad informed Appliance Factory of her "intermittent" and severe symptoms, including that at times she had difficulty talking and breathing. App. at 33, 230–34.

App. at 189, 210, 276. She also explicitly connected her stomach illness to her previous COVID-19 symptoms, despite her previous statements that she had fully recovered from COVID-19. *Id.* at 189 ("My stomach has a problem after I encountered the virus."). These were not the type of vague, generalized symptoms that the Sixth Circuit examined in *Hrdlicka*. A jury may ultimately not agree with Ms. Javanzad that she sufficiently informed Appliance Factory of her condition or that her communications to Ms. Coudayre adequately connected her various symptoms, but viewing the evidence in her favor, we conclude that these communications were sufficient to apprise Appliance Factory of Ms. Javanzad's disability.

b. Doctor's Note

Ms. Javanzad provided Ms. Coudayre with a note from her doctor in May 2020 that further suggests a reasonable jury could find that Appliance Factory knew Ms. Javanzad had a disabling condition causing her symptoms. In the note, the doctor stated: "It is my medical opinion that [Ms.] Javanzad should remain out of work until her symptoms have improved and she has the results of her [endoscopy]." *Id.* at 203. That Ms. Javanzad's doctor believed she could not return to work until her symptoms resolved cuts against Appliance Factory's argument that it thought Ms. Javanzad was simply "not feeling well." Appellee's Br. at 25.

In similar circumstances, courts have acknowledged that "physician-imposed work restrictions" and "treatment plan[s]" are relevant when evaluating whether an employer is on notice of an employee's disability. *Hrdlicka*, 63 F.4th at 567; *see also*

Cady, 665 F. App'x at 418 (holding that "a jury could find [a plaintiff's] complaints about his back, coupled with [the employer's] knowledge of his surgeries, recent doctor's visit, and MRI results, sufficient to put [the employer] on notice that he was disabled"). Coupled with Ms. Javanzad's communications about her symptoms, a jury could find the doctor's note relevant to Appliance Factory's knowledge that Ms. Javanzad was disabled.

c. Phone Call on June 2, 2020

Ms. Javanzad's five-minute phone conversation with Ms. Coudayre on June 2, 2020, also supports our conclusion that a reasonable jury could find that Appliance Factory was on notice of Ms. Javanzad's disability. Recall that, during the call, Ms. Javanzad told Ms. Coudayre, "I'm going to have an endoscopy done, and I need more time. I'm not feeling good. I can't breathe. I have difficulty speaking. That's why I'm not able to speak." App. at 230. She also reported she was having "stomach pain." *Id.* at 234. Ms. Javanzad told Ms. Coudayre that she needed additional time off work "to get the endoscopy done" and that she could return "a few weeks later." *Id.* at 233. Like the evidence described above, the phone call provides evidence from which the jury could find that Ms. Javanzad's stomach pain and her breathing and speaking issues were severe enough that they amounted to more than general, short-term health complaints, and that Ms. Javanzad provided sufficient notice to Appliance Factory that she had a disability. *Cf. Nilles v. Givaudan Flavors Corp.*, 521 F. App'x 364, 369 (6th Cir. 2013) (unpublished) (holding that an employer's knowledge of an employee's short-term symptoms related to a respiratory infection

and later dizziness and headaches "[did] not necessarily equate to knowledge of his disability" where the employee did not connect the two incidents or mention that he had an underlying condition connected to both short-term illnesses).

Appliance Factory contends that the EEOC cannot rely on the June 2 phone call to establish Appliance Factory's notice of Ms. Javanzad's disability for two reasons: (1) the EEOC did not argue to the district court that the phone call was relevant to Appliance Factory's notice of Ms. Javanzad's disability; and (2) the EEOC's argument that a phone call occurred on June 2 conflicts with the allegations in its Complaint. We disagree.

First, the EEOC cited evidence of the June 2 phone call in its response to Appliance Factory's motion for summary judgment. And it directly relied on that evidence in its section of the response brief arguing that Appliance Factory had notice of Ms. Javanzad's disability. Thus, the EEOC both cited the phone call and explained its significance to the notice inquiry; it is not a situation in which the district court would have had "to go beyond the referenced portions of [the] materials" and "comb the record." *See Adler*, 144 F.3d at 672.

Second, we decline to construe the EEOC's Complaint as a concession that no phone call occurred on June 2. To bar the EEOC from relying on the phone call, Appliance Factory must show that the Complaint contains a judicial admission—that is, an "express waiver made by [the EEOC] conceding for the purposes of the trial the truth of some alleged fact." *United States v. Gallegos*, 111 F.4th 1068, 1076 (10th Cir. 2024) (quoting *Std. Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013) (ellipses

omitted)). The Complaint does not contain the type of "formal, deliberate declaration[]" rising to the level of a judicial admission. *U.S. Energy Corp. v. Nukem, Inc.*, 400 F.3d 822, 833 n.4 (10th Cir. 2005). In the Complaint, the EEOC alleged that Ms. Coudayre reached out to Ms. Javanzad on June 1, 2020, asking Ms. Javanzad to call her regarding Ms. Javanzad's FMLA leave. The Complaint then alleges that Ms. Javanzad emailed Ms. Coudayre on June 2, asking what options she had regarding extending her leave once her twelve weeks of FMLA leave expired. Immediately after those allegations, the Complaint states: "After [Ms. Coudayre] and [Ms.] Javanzad were unable to connect via telephone, [Ms.] Javanzad sent an email to [Ms. Coudayre] on June 5, 2020. In the email[,] [Ms.] Javanzad explained that she was having difficulty speaking and could not talk on the telephone." App. at 33.

Appliance Factory contends that this statement admits that no phone call occurred. True, the allegation could mean that Ms. Javanzad and Ms. Coudayre did not connect over the phone until after June 5, 2020, meaning they did not talk over the phone on June 2. But the allegation—contained in its own paragraph—could also refer only to Ms. Javanzad and Ms. Coudayre's communications *on June 5*. This is especially plausible given the Complaint's detailed allegations of several communications over a period of just a few days. Because the allegations at issue are subject to more than one interpretation, at least one of which is consistent with the possibility of a June 2 phone call, the Complaint is not an "express waiver" of the

argument that Ms. Javanzad and Ms. Coudayre talked over the phone on June 2.[10] *Gallegos*, 111 F.4th at 1076. As a result, we may consider it as additional support that a reasonable jury could find that Appliance Factory knew that Ms. Javanzad had a disability when it declined to grant her a leave of absence after her FMLA leave expired.

d. Termination Letter

Finally, Appliance Factory's termination letter to Ms. Javanzad could allow a reasonable jury to find that it was on notice that Ms. Javanzad had a disability. In the letter, Appliance Factory acknowledged that Ms. Javanzad "requested an extension of FMLA . . . for a gastrointestinal disorder" and informed her that it could not "offer . . . additional FMLA time for [her] gastrointestinal disorder." App. at 212. Along with the evidence referenced above, Appliance Factory's express recognition that Ms. Javanzad had a "disorder" could support a jury determination that Appliance Factory indeed knew Ms. Javanzad had an ongoing disability and was not simply feeling unwell.

e. District Court's Reasoning

Having established that a reasonable jury could find that Appliance Factory was on notice of Ms. Javanzad's disability, we pause to clarify that two categories of

[10] Nor is there anything in the Complaint to suggest that Ms. Javanzad intended to reject the evidence discovered during litigation confirming through phone records a call on that date.

evidence the district court referenced in its notice analysis are either non-dispositive or irrelevant to the inquiry.

First, we emphasize that an employee need not provide her employer with a formal diagnosis or even the name of a disabling condition for an employer to know that the employee has a disability under the ADA. *See Hrdlicka*, 63 F.4th at 568 ("[A] diagnosis is not necessary for an ADA claim to succeed . . . ."); *Taylor*, 184 F.3d at 314 (explaining that an employer need not know the "specific name of [the employee's] condition" to have notice of the employee's disability). Recall that the district court held that Appliance Factory could not "have been on notice of a disability that required accommodation under the ADA." App. at 141. In so holding, the district court explained that it was "not clear if Ms. Javanzad's disability was COVID-19, vocal cord paralysis, or gastritis." *Id.* (citations omitted). Thus, it concluded that Appliance Factory lacked notice, in part, because Ms. Javanzad did not have "a formal diagnosis until after she was terminated." *Id.* It is not clear whether the district court considered this fact dispositive of Appliance Factory's knowledge regarding Ms. Javanzad's disability. However, we agree with our sister circuits that the inquiry turns on whether the employer "know[s] enough information about the employee's condition to conclude that [she] is disabled," rather than whether the employee provided the employer with a formal diagnosis. *Hrdlicka*, 63 F.4th at 567 (quoting *Cady*, 665 F. App'x at 417–18).

Second, the district court referenced evidence that Ms. Javanzad claimed she was not disabled in an application for unemployment benefits that she submitted

while she was on FMLA leave. The district court cited this evidence as support that Ms. Javanzad made inconsistent statements regarding the limitations of her conditions. Again, it is not clear whether the district court's conclusion that Appliance Factory lacked knowledge of Ms. Javanzad's disability turned on this evidence. But no matter what weight it was given, this evidence was improperly considered at this stage of the litigation. First, there is conflicting evidence as to whether Ms. Javanzad considered the word "disability" in the benefits application to carry its legal meaning under the ADA. *See* App. at 245 (testifying that she thought "disability" meant "a person in a wheelchair or a blind person"); *Cleveland v. Pol'y Mgmt. Sys. Corp.*, 526 U.S. 795, 805–07 (1999) (noting that a plaintiff's sworn statement in an application for benefits stating the plaintiff is not disabled is not necessarily inconsistent with a claim the plaintiff is disabled under the ADA because the definitions may differ). In addition, to the extent that this evidence was relevant to Ms. Javanzad's credibility, such determinations are inappropriate at the summary judgment stage. *Helvie v. Jenkins*, 66 F.4th 1227, 1235 (10th Cir. 2023). Finally, there is no evidence that Appliance Factory knew Ms. Javanzad denied having a disability when she applied for unemployment benefits, so the evidence cannot show that Appliance Factory lacked notice of Ms. Javanzad's disability at the time it denied her request for additional leave and terminated her.

B. Request for Reasonable Accommodation

Next, the EEOC contends that the district court erred in granting summary judgment in Appliance Factory's favor because "[a] reasonable jury could find that

[Ms.] Javanzad adequately requested a reasonable accommodation." Appellant's Br. at 41. According to the EEOC, this is because Ms. Javanzad's request for additional leave was connected to her ongoing health issues and because Ms. Javanzad's request for a few weeks of leave was plausibly reasonable under the ADA. Appliance Factory disagrees, arguing that Ms. Javanzad's "communications about leave were sparse and vague" and that Ms. Javanzad "did not make a clear request for accommodation based on a disability." Appellee's Br. at 31, 33. Although this is a closer question, we again agree with the EEOC and conclude that a reasonable jury could find that Ms. Javanzad requested a plausibly reasonable accommodation when she asked for additional leave after her FMLA leave expired.

1. Legal Standard

Under the ADA, an employer has the duty to provide an employee reasonable accommodations only after the employee has made an adequate accommodation request. *E.E.O.C. v. C.R. England, Inc.*, 644 F.3d 1028, 1049 (10th Cir. 2011). The request need not "be in writing, be made by the employee, or formally invoke the magic words 'reasonable accommodation,'" but it "nonetheless must make clear that the employee wants assistance for his or her disability." *Id.* (quoting *Taylor*, 184 F.3d at 313). This means that the request must inform the employer that the requested accommodation is connected to the employee's disability. *See id.* at 1050 (concluding that the employee's accommodation claim failed because his request for "home time" did not put the employer on notice that his request for time off was related to his illness); *see also Dinse v. Carlisle Foodservice Prods. Inc.*, 541 F. App'x 885, 892

(10th Cir. 2013) (unpublished) (holding that an employee's accommodation claim failed because the employee did not connect his request for a company laptop to work from home to his disability and instead "made clear that the laptop request was entirely unrelated to the difficulties his disability created").

A failure to accommodate claim also requires that the plaintiff's requested accommodation be "plausibly reasonable on its face." *Punt*, 862 F.3d at 1050. A request for leave may be reasonable if it "allow[s] an employee sufficient time to recover from an injury or illness such that the employee can perform the essential functions of the job (i.e., attend work) in the future." *Cisneros v. Wilson*, 226 F.3d 1113, 1129 (10th Cir. 2000). To be reasonable, however, the employee's request for leave must "inform the employer of the 'expected duration of the impairment'" and not just "the duration of the leave request." *Punt*, 862 F.3d at 1051 (quotation marks omitted). "Without an expected duration of an impairment, an employer cannot determine whether an employee will be able to perform the essential functions of the job in the near future and therefore whether the leave request is a 'reasonable' accommodation." *Id.* (quotation marks omitted). Although a request for indefinite leave is not a reasonable accommodation, *Cisneros*, 226 F.3d at 1129, "we do not construe the duration requirement so narrowly" as to require "a definite end-date of [an employee's] impairment," particularly in cases involving a "chronic impairment." *Herrmann v. Salt Lake City Corp.*, 21 F.4th 666, 677 (10th Cir. 2021).

2. Analysis

Appliance Factory contends that the EEOC failed to provide evidence that Ms. Javanzad's request for leave was tied to her disability and that Ms. Javanzad's request for leave was unreasonable on its face because she did not provide an expected duration of impairment. Our analysis proceeds in two steps. First, we conclude that a reasonable jury could find that Ms. Javanzad's request for leave was sufficiently tied to her disability. Second, we hold that a reasonable jury could find that Ms. Javanzad provided Ms. Coudayre with an anticipated duration of her impairment—specifically "a few weeks" post-endoscopy. App. at 228.

a. Request Tied to Disability

Appliance Factory contends that Ms. Javanzad "did not make a clear request for accommodation based on a disability." Appellee's Br. at 33. It argues that Ms. Javanzad's communications with Ms. Coudayre regarding her leave and the available options once she exhausted her time under the FMLA "did not specify she needed accommodation for stomach pain or even for additional testing or even because she was not feeling well in general." *Id.* While a jury might reach this conclusion, we believe the EEOC produced enough evidence to create a factual issue as to whether her request for an accommodation was tied to her disability.

Four categories of evidence support our conclusion: (1) Ms. Javanzad's emails to Ms. Coudayre; (2) Ms. Javanzad's doctor's note to Ms. Coudayre; (3) the phone call on June 2; and (4) Appliance Factory's termination letter to Ms. Coudayre. First, Ms. Coudayre connected her disability to her request for additional leave and to her

COVID-19 symptoms that led to her initial grant of FMLA leave in her email exchanges with Ms. Coudayre. In May 2020, Ms. Javanzad informed Ms. Coudayre that she was having stomach issues and had a scheduled endoscopy. She also indicated that her stomach illness was connected to her COVID-19 symptoms by indicating she "still" was not feeling well and that her "stomach ha[d] a problem after [she] encountered the virus." App. at 189. After describing her illness, Ms. Javanzad asked, "I also want to know how long more do I have on the FMLA and if I used the whole 12 weeks can I extend it?" *Id.* at 189. Second, Ms. Javanzad sent Ms. Coudayre a note from her doctor that linked her need for time off to her stomach illness: Her doctor recommended that Ms. Javanzad remain on leave "until her symptoms have improved and she has the results of her planned procedures," referring to the scheduled endoscopy. *Id.* at 203. In the same email to which Ms. Javanzad attached the doctor's note, she asked again, "[I]f the FMLA is over and I needed more time, what[] [are] my options?" *Id.* at 202.

Third, Ms. Javanzad connected her symptoms to her request for leave again in the phone call on June 2. She told Ms. Coudayre that she "needed extra time" because of her "stomach pain," "difficulty speaking," and "difficulty breathing." *Id.* at 233–34. And she informed Ms. Coudayre that she could return to work once she received her endoscopy results, again connecting her stomach illness to her leave request. Fourth, Appliance Factory's termination letter to Ms. Javanzad supports that it knew her request for leave was connected to her disability. Ms. Coudayre wrote in that letter, "[Y]ou requested an extension of FMLA . . . for a gastrointestinal

disorder." *Id.* at 212. A reasonable jury could conclude that Ms. Javanzad's request for leave, communications about her illness, and references to her endoscopy and her expectation that she would recover within a few weeks of the procedure show that she tied her request to her disability. *See C.R. England*, 644 F.3d at 1050 ("In some circumstances, an employee's reference to the need to see a physician may constitute significant proof that the employee was seeking a reasonable accommodation, especially when combined with an actual request for time off and some reference to the employee's disability."); *cf. Edmonds-Radford*, 17 F.4th at 992–93 (holding that an employee's request for additional training was not a request for an accommodation based on her disability because she did not notify any decisionmakers that she had a disability or that her interest in additional training had any connection to a disability).

b. Anticipated Duration of Impairment

Appliance Factory next argues that Ms. Javanzad's accommodation request was not plausibly reasonable on its face because she did not specify the anticipated duration of her impairment. It asserts that the connection between Ms. Javanzad's leave request and her endoscopy results is insufficient to notify Appliance Factory of the expected duration of impairment because "[t]here was no way [Ms.] Javanzad or her doctors could have known whether the endoscopy would reveal a serious condition, in which case [Ms.] Javanzad might never be able to return to work, or if it would reveal a less serious condition that might resolve within some other, as-yet unknown period of time." Appellee's Br. at 36. Again acknowledging that this is a close question, we conclude that a reasonable jury could find that Ms. Javanzad's

request sufficiently notified Appliance Factory of the expected duration of impairment because she told Ms. Coudayre she "might need a few weeks" after her endoscopy before she could return to work. App. at 228.

Our decision in *Herrmann* helps guide our analysis. *See* 21 F.4th 674–78. There, the employee's disability was post-traumatic stress disorder, "stemming from a nearly decade-long abusive marriage." *Id.* at 670. The employee, an in-court clerk, had to be present in the courtroom during certain domestic violence cases. *Id.* These cases "frequently triggered her anxiety, causing severe migraines that could last for several days at a time and resulting in a significant downturn in her productivity." *Id.* The employee's social worker submitted a request for leave on her behalf. *Id.* at 670–72. The social worker indicated that "the probable duration of [the employee's] elevated PTSD symptoms was three to six months," and he expected that the employee "could likely return to work after treatment." *Id.* at 671. The employer declined to grant the employee additional leave as an accommodation request beyond what was available under the FMLA. *Id.*

In analyzing the employee's failure to accommodate claim, we provided some guidance on how cases involving ongoing or intermittent illnesses or disabilities should be analyzed:

> In chronic impairment cases, ongoing exchanges between employers and employees are likely to start with discussion of FMLA leave and morph into discussion of ADA accommodations. It is also likely that an estimate of when symptoms will subside and allow return to work is the best an employee or medical provider can offer, given that chronic conditions can last a lifetime. Moreover, an employee on leave due to a chronic condition may have limited ability to respond to an employer, and an employer will have to consider

> multiple communications from the employee and the employee's medical providers together when determining whether a request for leave is unreasonable or indefinite.

Id. at 677. The employer in *Herrmann* argued that the employee "only provided evidence of the duration of her leave request, not the duration of her impairment." *Id.* We rejected this argument, emphasizing that "we do not construe the duration requirement so narrowly, and certainly would not do so in chronic impairment cases like this one." *Id.* The evidence that the employee's condition was expected to last for three to six months and that her doctor expected she could return to work after eight weeks of treatment "informed [her employer] of the expected end-date of [the employee's] current bout of PTSD symptoms and the date she would likely be able to return to work." *Id.*

On the other hand, we have repeatedly held that a request for leave did not require a reasonable accommodation under the ADA when the expected duration of impairment was open-ended or unknown. For example, in *Cisneros*, we concluded that a request for leave was not a plausibly reasonable accommodation because the employee presented no evidence of the duration of impairment, and the employee's doctors specifically indicated that it was "uncertain" when she could return to work and that the duration of her illnesses was "unknown." 226 F.3d at 1130. The only evidence of the duration of the impairment was the plaintiff's "own affidavit . . . in which she state[d] that she expected to recover" by a specific date, which was insufficient "to create a triable issue of fact," especially given that the plaintiff's belief conflicted with her doctors' predictions. *Id.* at 1130–31. In another case, *Punt*,

we held that the plaintiff's request for one week off, accompanied by a vague request for "whichever other additional times she needed to take off for tests, appointments, 'times of radiation,' and other cancer-related reasons" was not plausibly reasonable because the request did not inform the employer of the expected duration of the employee's impairment. 862 F.3d at 1051. The request was unreasonable because it did not suggest to the employer whether the plaintiff would be able to "report to work consistently," which was "a necessary part of her job," at any time "in the near future." *Id.* And in *Freeman v. City of Cheyenne*, No. 23-8022, 2024 WL 464069, at *6 (10th Cir. 2024) (unpublished), we held that an employee's request to extend her twelve weeks of FMLA leave was unreasonable because the employee's therapist "provided only a diagnosis, not an expected duration," and the mere request for additional leave "shed[ ] no light on the expected duration of [the plaintiff's] impairment beyond" the original twelve weeks.

While these two categories of cases guide the reasonable accommodation analysis, the ultimate "determination of whether a requested accommodation is reasonable must be made on the facts of each case taking into consideration the particular individual's disability and employment position." *Punt*, 862 F.3d at 1050.

Here, although our prior cases do not cleanly resolve whether Ms. Javanzad's request for leave was reasonable, the evidence is more similar to that in *Herrmann* than the cases in which we have found an employee's request for leave to be indefinite or unclear as to the duration of impairment. Ms. Javanzad told Ms. Coudayre during their phone call that she needed time off until her endoscopy

but that "a few weeks later," she would "be able to go back to work" because the results would allow her doctor to "figure out what's causing the pain" and determine "the proper treatment." App. at 228, 233. Ms. Javanzad also submitted a doctor's note that recommended she stay home "until her symptoms have improved and she has the results of her planned procedures." *Id.* at 203. In other words, Ms. Javanzad communicated not only that she needed to stay home until her doctor determined the source of her illness, but she expected her symptoms to resolve within a few weeks of the endoscopy results that would allow her doctor to determine how to best treat her symptoms. Based on this evidence, a reasonable jury could conclude that Ms. Javanzad informed Appliance Factory that the anticipated duration of impairment was a few weeks after she received her endoscopy results once her doctor determined the cause of her stomach pain and began to treat it. In other words, Ms. Javanzad offered "an estimate of when [her] symptoms [would] subside and allow [her to] return to work," which we have acknowledged is often "the best an employee . . . can offer" in situations involving chronic impairments. *Herrmann*, 21 F.4th at 677.

True, Ms. Javanzad's endoscopy could have revealed a more serious condition that would have required her to take more leave than she initially anticipated, or her post-endoscopy treatment could have proved ineffective. But there is no evidence in the record suggesting that Ms. Javanzad or her doctor expected her impairment to last longer than a few weeks after the endoscopy. For example, in *Aubrey v. Koppes*, 975 F.3d 995, 1010–11 (10th Cir. 2020), an employee asked for additional leave to see a

neurologist. The employer argued this request was indefinite, because even if it allowed the employee additional time to see a neurologist, "there was no telling what he would say about her continuing limitations." *Id.* at 1011. We rejected this argument because it contradicted the evidence in the record; the employee's medical providers had indicated the employee could "return to work in approximately six months," so the employee's request "for additional time to see her neurologist was not open-ended." *Id.* Here, although Ms. Javanzad's doctor had not indicated how long Ms. Javanzad's impairment would last, the record reveals that, prior to the endoscopy, Ms. Javanzad's doctor suspected she had gastritis, the endoscopy confirmed this diagnosis, and Ms. Javanzad's symptoms improved after "a few weeks" of treatment, as expected. App. at 244. Although Ms. Javanzad did not communicate to Ms. Coudayre that her doctor suspected she had mild gastritis, these facts resemble the ones in *Aubrey* because there is no evidence in the record suggesting that Ms. Javanzad's doctor expected her endoscopy results to reveal a condition requiring more than a few weeks of treatment.

The facts in this case are also distinguishable from *Cisneros*, where we noted that the plaintiff's "own belief" of her expected recovery date was "not sufficient to create a triable issue of fact." 226 F.3d at 1130–31. In *Cisneros*, the plaintiff attempted to create a jury question as to whether her request for leave indicated an expected duration of impairment by pointing to her own affidavit in which she stated her belief that she could have returned to work by a certain date. *Id.* The plaintiff's own conclusory statement that she could have returned to work by a certain date was

insufficient to establish that her employer knew the duration of her impairment. *Id.* Further, the plaintiff's belief was "inconsistent with the evidence from her own doctors," which indicated that the duration of her impairment was "uncertain" and "unknown." *Id.*

Here, the evidence—while not extensive—supports that Ms. Javanzad communicated to her employer that she expected her current bout of symptoms to resolve enough for her to return to work within a few weeks of her endoscopy. When asked in a deposition how she knew she needed two weeks of leave when she was talking to Ms. Coudayre on the phone, Ms. Javanzad responded that this time frame was based on her understanding that she could go back to work after speaking to her doctor "to get the endoscopy done" and "figur[ing] out the proper treatment." App. at 228. She stated in her deposition that at that time she was not sure exactly "how much time [she] needed" because she had not yet had the endoscopy procedure, but she still communicated an anticipated duration of impairment—"[p]robably a few weeks." *Id.* at 229. Nor was there any conflicting evidence from Ms. Javanzad's doctor that would contradict this prediction. *Cf. Cisneros*, 226 F.3d at 1123. Thus, we conclude that Ms. Javanzad's statement that she could return to work a few weeks after her endoscopy once her doctor determined a course of treatment, coupled with her doctor's note stating she could return to work once her symptoms resolved *and* she received her endoscopy results, are sufficient to create a jury issue on whether Ms. Javanzad requested a reasonable accommodation.

V. CONCLUSION

For the foregoing reasons, we REVERSE the district court's grant of summary judgment to Appliance Factory and REMAND for further proceedings consistent with this opinion.

25-1451, *EEOC v. A & A Appliance*
MATHESON, Circuit Judge, concurring in part and dissenting in part.

Although a close question, I agree with the majority that a reasonable jury could find that Ms. Javanzad notified Appliance Factory of a disability and sufficiently tied her leave request to a disability. But I do not think a reasonable jury could find that she provided Appliance Factory a plausibly reasonable expected duration of impairment, so I respectfully dissent on that issue.

Under the ADA, a reasonable accommodation leave request must "inform the employer of the expected duration of the impairment," not just "the duration of the leave request." *Punt v. Kelly Servs.*, 862 F.3d 1040, 1051 (10th Cir. 2017) (quotations omitted). "Without an expected duration of an impairment, an employer cannot determine whether an employee will be able to perform the essential functions of the job in the near future and therefore whether the leave request is a reasonable accommodation." *Id.* (quotations omitted).

Ms. Javanzad's May 12 email to Ms. Coudayre said, "My doctor scheduled an endoscopy next week, maybe they can figure out what's causing the pain." Aplt. App. at 189. Her June 1 email to Appliance Factory said her endoscopy would happen on June 9. *Id.* at 202. She attached a doctor's note, dated May 13, stating Ms. "Javanzad should remain out of work until her symptoms have improved and she has the results of her

planned procedures." *Id.* at 65, 84, 203, 258.[1] During the June 2 phone call, Ms. Javanzad told Ms. Coudayre that she "might need a few weeks" after the endoscopy and could return to work in "[p]robably a few weeks." *Id.* at 228-29. Because the endoscopy had not occurred and the nature of any impairment thus had not been confirmed, these statements were speculative and amounted to vague references to leave. They did not reasonably notify Appliance Factory of an expected duration of an impairment.[2]

Our decision in *Cisneros v. Wilson*, 226 F.3d 1113 (10th Cir. 2000), is instructive. There, the employer was aware that her doctors said the duration of her illnesses was "uncertain" and "unknown." *Id.* at 1130. We held that this information did not provide an expected duration of impairment. *Id.* at 1130-31.[3]

Appliance Factory was aware that (1) Ms. Javanzad thought she "might need a few weeks" and could return to work in "[p]robably a few weeks" after the endoscopy, Aplt.

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[1] As the doctor acknowledged at her deposition, this note excused Ms. Javanzad from work but did not provide any information about her symptoms. Aplt. App. at 191, 201.

[2] Beyond these communications, the emails in the record show Ms. Coudayre was trying to work with Ms. Javanzad on how best to navigate her medical needs, her son's illness, and daycare closures. *Id.* at 149-53, 55-58, 176, 178, 188-89.

[3] In response to the defendant's summary judgment motion, Ms. Cisneros submitted an affidavit stating: "I believe I would have returned to work in January 1997 if the Department employees had not begun to harass me." *Cisneros*, 226 F.3d at 1130. The *Cisneros* opinion does not indicate that she communicated this belief to her employer, and it agreed with the district court that "her own belief is not sufficient to create a triable issue of fact." *Id.* at 1130-31.

App. at 228-29, and (2) her doctor noted she "should remain out of work until her symptoms have improved and she has the results of her planned procedures," *id.* at 203.[4] "Might" and "probably" connote uncertainty,[5] leaving Appliance Factory with no more notice than the employer in *Cisneros* on expected duration of impairment.

This case is closer to *Cisneros* than to *Herrmann v. Salt Lake City Corp.*, 21 F.4th 666 (10th Cir. 2021), and *Aubrey v. Koppes*, 975 F.3d 995 (10th Cir. 2020). In *Herrmann*, when the plaintiff's two-month FMLA leave period began, her clinical social worker told her employer that her elevated PTSD symptoms would last three to six months. 21 F.4th at 671. When her FMLA leave expired, her employer approved a one-month extension. *Id.* After that month, the plaintiff asked for 17 more days. *Id.* The employer said no and fired her. *Id.* at 672-73. We concluded the 17-day request was "not indefinite" and therefore "plausibly reasonable" because it fell within the social worker's notice to the employer that the plaintiff's symptoms would last three to six months. *Id.* at 677-78.

In *Aubrey*, the plaintiff's doctors notified her employer in January, February, and March that her neurological condition would keep her from work for approximately six months, or until August 1. 975 F.3d at 1001. In April, after her FMLA leave expired, she

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[4] The doctor's note at most gave Appliance Factory an unspecified duration of leave, not a duration of impairment. The majority acknowledges that the doctor "had not indicated how long Ms. Javanzad's impairment would last." Maj. Op. at 35.

[5] Might refers to "hypothetical, counterfactual, or remotely possible situations." *Might, The American Heritage Dictionary of the English Language* (5th ed. 2022) https://ahdictionary.com/word/search.html?q=might [https://perma.cc/CZF8-UD73] (last visited Oct. 23, 2026).

met with her employer and requested a leave extension to May to obtain a return-to-work certification at her next neurology appointment. *Id.* at 1002. The employer denied her request and fired her. *Id.* at 1003. We concluded the extension request was "not open-ended" because it fell within her doctors' estimate of a six-month duration of impairment. *Id.* at 1011.

Unlike the employers in those cases, Appliance Factory received no notice of how long Ms. Javanzad's symptoms may last. Nor could Ms. Javanzad or the doctor provide one because her endoscopy was not scheduled until June 9. She later testified at her deposition that she "wasn't sure how . . . much time [she] needed" because she "didn't have the endoscopy done" when she talked with Ms. Coudayre on June 2. Aplt. App. at 229. When asked, "So you—at that time, you didn't know how long you needed," she answered, "I didn't know." *Id.*

The majority concludes that "Ms. Javanzad communicated not only that she needed to stay home until her doctor determined the source of her illness, but she expected her symptoms to resolve within a few weeks." Maj. Op. at 34. But without the endoscopy results, Ms. Javanzad and the doctor had no basis to estimate when her symptoms would resolve, and neither did Appliance Factory. We have declined to divine durations of impairment without more. *See Cisneros*, 226 F.3d at 1130 (explaining that "[p]laintiff's own belief is not sufficient to create a triable issue of fact.").

The majority also states that "although Ms. Javanzad's doctor had not indicated how long Ms. Javanzad's impairment would last, the record reveals that, prior to the endoscopy, Ms. Javanzad's doctor suspected she had gastritis." Maj. Op. at 35. But as

the majority acknowledges, Appliance Factory was not made aware of the doctor's suspicions. *See* Maj. Op. at 36. Only Ms. Javanzad told Appliance Factory she suspected a gastrointestinal issue, describing a "stomach . . . problem after [she] encountered the virus" in her May 12 email. Aplt. App. at 189, 202, 212, 258, 275. Appliance Factory could not reasonably have surmised an expected duration of impairment. *See Kelly v. Town of Abingdon*, 90 F.4th 158, 167 (4th Cir. 2024) (explaining that "[t]he adequacy of a request depends on how a reasonable employer would view the employee's communication in the surrounding circumstances").

For the foregoing reasons, I respectfully dissent on the reasonable-accommodation-request issue.