

1-1-2002

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Publication Information

Ralph C. Anzivino, Can an Employer Reject an Applicant Because the Workplace Would Threaten His Health?, 2001-02 Term Preview U.S. Sup. Ct. Cas. 274 (2002). © 2002 American Bar Association. This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

Repository Citation

Anzivino, Ralph C., "Can an Employer Reject an Applicant Because the Workplace Would Threaten His Health?" (2002). *Faculty Publications*. Paper 421.

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Case at a Glance

The Americans with Disabilities Act permits an employer to refuse to hire someone who poses a "direct threat" to the health or safety of others in the workplace. The Supreme Court will decide whether the direct-threat defense allows an employer to reject an applicant because he or she, while posing no threat to others, presents a direct threat to his or her own health or safety.

Can an Employer Reject an Applicant Because the Workplace Would Threaten His Health?

by *Ralph C. Anzivino*

PREVIEW of United States Supreme Court Cases, pages 274-278. © 2002 American Bar Association.

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Editor's Note: The respondent's brief in this case was not available by *PREVIEW*'s deadline.

ISSUE

Does the Americans with Disabilities Act permit an employer to refuse employment to a person who it determines, on the basis of the reasonable, individualized, and objective conclusions of physicians, would face a substantial risk of significant harm or death in carrying out the essential functions of the job?

FACTS

Mario Echazabal worked at Chevron's El Segundo, Calif., refinery from 1972 to 1975 and 1979 to 1996. He was employed by independent contractors throughout that time. His most recent employer was Irwin Industries Inc. As an Irwin employee, he worked throughout the refinery as a laborer, helper, and pipe fitter.

In 1992, Echazabal applied to work directly for Chevron in the coker

unit and was offered the job contingent on a satisfactory medical examination. Chevron's regional physician, Dr. Philip Baily, conducted that examination.

After a blood test showed that Echazabal had significantly elevated liver enzymes, Baily concluded that Echazabal had an uncorrectable liver abnormality and should avoid exposure to toxic chemicals that would exacerbate his liver problems. In 1993, Baily's successor, Dr. Kenneth McGill, agreed with that assessment.

On that basis, Chevron rescinded its offer of employment to Echazabal, who continued to work at the refinery for Irwin. Chevron's doctors advised Echazabal to follow up with his own physicians, who subsequently confirmed that Echazabal had "abnormal liver function." Echazabal's doctor diagnosed him with chronic active Hepatitis C and treated his condition with the drug Interferon.

*CHEVRON U.S.A., INC. v.
ECHAZABAL*
DOCKET NO. 00-1406

ARGUMENT DATE:
FEBRUARY 27, 2002
FROM: THE NINTH CIRCUIT

Chronic active Hepatitis C is a progressive disorder that can lead to cirrhosis, liver failure, and death.

In late 1995, Echazabal again applied to Chevron for a position as plant helper in the coker unit. Chevron's official job description outlined the duties and physical demands of that job, including the requirement that the applicant be able to work in an environment containing hydrocarbons, solvents, and other chemicals. Chevron again offered Echazabal the job contingent upon his passing a medical examination.

In conducting the examination, McGill reviewed the results of the eight blood tests performed on Echazabal. All the tests showed that Echazabal had significantly elevated levels of multiple liver enzymes. McGill concluded from those tests and the prior diagnosis of chronic active Hepatitis C that Echazabal's liver had already suffered significant damage, resulting in a greatly decreased capacity to process toxins.

In the doctor's opinion, continued exposure to liver toxins would seriously degrade Echazabal's liver function. McGill understood from Chevron's job description and his own knowledge of the coker unit that Echazabal would be exposed to hepatotoxic chemicals and solvents as a plant helper.

The doctor concluded that even small exposure to those substances over a long period could pose a health hazard to Echazabal. A single event of large exposure — such as a ruptured pipe, a relief valve popping, a fire or an explosion — could by itself cause death. Furthermore, Echazabal's impaired liver would be less able to detoxify exposure to chemicals that are not specifically liver toxic, which would also carry

the risk of serious injury or death, McGill said.

Echazabal's personal physician, Dr. Zelman Weingarten, wrote Chevron on Jan. 10, 1996, that Echazabal's chronic active Hepatitis C had been treated for extended periods with Interferon without remedying the problem, but that Echazabal was not contagious and could return to his usual duties at work. Because the letter did not address the advisability of Echazabal's being exposed to liver-toxic chemicals, McGill called Weingarten. Weingarten told McGill that Echazabal should not be exposed to hepatotoxins and later confirmed this opinion in writing.

Chevron's medical director, Dr. T.L. Bridge, agreed with McGill's assessment that Echazabal could not safely work in the plant helper position. McGill then informed Chevron's human-resource manager, William Saner, that, if Echazabal were hired, his work should be limited so that he not be exposed to solvents or other liver-toxic chemicals. Saner determined that such exposure is a necessary and inseparable part of the plant helper position and accordingly withdrew the conditional job offer to Echazabal.

Subsequently, Chevron sent a letter to Irwin asking that Irwin remove Echazabal from the refinery or place him in a position that eliminates his exposure to solvents or chemicals.

Irwin consulted Dr. Charles Tang. After reviewing Echazabal's test results, Tang said Echazabal's markedly elevated liver enzymes showed that chronic destruction of his liver was occurring and that there was a high probability that his illness would be severely worsened by exposure to even trace amounts of hepatotoxins. After exposure, Tang explained, some people have died of massive hepatic failure in a

few hours. Accordingly, Tang concluded that Echazabal should not be in the refinery if he could be exposed to hepatotoxins. Irwin then laid off Echazabal.

Echazabal sued Chevron in state court, alleging that the company's withdrawal of its 1995 employment offer violated the Americans with Disabilities Act, the Rehabilitation Act, and California's Fair Employment and Housing Act. He also alleged that Chevron intentionally interfered with his contractual relations with Irwin. Echazabal sought punitive as well as actual damages for each claim.

After Chevron removed the action to federal court, the district court granted summary judgment to the company on all of Echazabal's claims. For purposes of the summary judgment motion, Chevron did not dispute that Echazabal had a "disability" within the meaning of the ADA.

The district court held that under the ADA an employer may refuse to hire a person for a job that would pose a direct threat to his or her health. The court concluded that Chevron's employment decision rested on a reasonable medical judgment that Echazabal's employment as a plant helper would pose a serious risk to him. The district court denied summary judgment to Irwin on Echazabal's similar discrimination claims but certified its rulings in favor of Chevron for immediate appeal.

On appeal, a divided panel of the Ninth U.S. Circuit Court of Appeals reversed. The court held that an employer's "direct threat" defense under the ADA does not apply when a job applicant's condition, such as Echazabal's liver disease, poses a threat to his or her own health or

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safety. The law, however, does allow employers to reject job applicants whose condition would present a direct threat to the welfare of others, the court said. *Echazabal v. Chevron USA, Inc.*, 226 F.3d 1063 (9th Cir. 2000).

The majority also rejected Chevron's argument that Echazabal was not "qualified" to perform the "essential functions" of the plant helper job because of the risks the job posed to him.

Contrary to the Ninth Circuit's holding, the Eleventh U.S. Circuit Court of Appeals has concluded that the ADA's direct-threat defense does apply to the disabled individual himself. *Moses v. American Non Wovens, Inc.* 97 F.3d 446 (11th Cir. 1996).

Chevron then petitioned for a writ of certiorari, which the Supreme Court granted.

CASE ANALYSIS

Title I of the ADA prohibits an employer from discriminating against a qualified individual with a disability because of the disability of such individual. A "qualified individual with a disability" is a person with a disability "who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." In determining what functions of a job are essential, the ADA provides that consideration shall be given to the employer's judgment. The employer's preparation of a written description of the job shall be considered evidence of the essential functions of the job.

Discrimination prohibited by the ADA includes using qualification standards that screen out or tend to screen out people with disabilities, unless the standard is shown to be

job-related for the position in question and is consistent with business necessity. Accordingly, the act specifies that it is a defense to a charge of discrimination that qualification standards that screen out people with disabilities are job related and consistent with business necessity. Further, the ADA specifies that an employer may impose as a "qualification standard" a requirement that an individual not pose a "direct threat" to the health or safety of other individuals in the workplace.

The ADA makes no mention, however, of the health or safety of the applicants themselves.

Shortly after the ADA was adopted, the U.S. Equal Employment Opportunity Commission promulgated regulations regarding when a qualification standard is job related and consistent with business necessity. The EEOC stated that the term "qualification standard" may include a requirement that an individual shall not pose a direct threat to others in the workplace—or to himself.

Specifically, EEOC defined "direct threat" to mean "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation." This definition is broader than the ADA language, which refers to risks to others but not to selves.

Chevron argues that the EEOC's direct-threat regulation is entitled to deference because it is not at odds with the unambiguously expressed intent of Congress.

Congress, in the ADA, commanded the EEOC to issue regulations to carry out the law's Title I employment provisions, Chevron says. Exercising that express authority, the EEOC promulgated regulations

that validly interpret Title I to authorize an employer to screen out individuals who, in carrying out the essential functions of the job, would pose a significant risk of serious harm to their own health or safety, Chevron argues.

A requirement that the individual be able to perform the essential functions of the particular job without risking serious injury or death is obviously job related. Safety and efficiency are legitimate employment goals. *New York City Transit Authority v. Beazer*, 440 U.S. 568 (1979).

According to Chevron, a legal duty to hire employees whose health would be compromised simply by doing the job, and who may even die as a result, would not only place employers in a moral dilemma but could cause serious practical harm. Such individuals typically would not be able to perform the job on an ongoing and reliable basis. Employers would then bear the costs and disruption of filling the gap left by sick or deceased employees, using temporary workers, overtime, or new workers who require training.

Job-related illnesses or deaths also lower employee morale, which leads to reduced productivity. Adverse publicity is another risk for businesses forced to hire workers who would be in danger on the job. A newspaper headline reading "Employee Dies of Chemical Poisoning" would be highly injurious to a company's reputation among customers and undermine employee relations and morale.

Also of great concern to Chevron is the risk that employing a disabled person who will be harmed on the job will result in state administrative, tort, or criminal actions. An employer who violates state worker

safety laws risks criminal sanctions, including fines and imprisonment.

The Ninth Circuit violated the most basic principles governing judicial review of agency action when it refused to defer to the EEOC's regulation on the direct-threat defense, the company says.

By requiring employers knowingly to endanger workers, the Ninth Circuit's decision imposes an unconscionable moral burden on employers. Given the plethora of significant adverse effects that businesses suffer as a result of workplace illness, injury, or death, the EEOC's interpretation of the direct-threat defense, which avoids placing workers in jobs that would destroy their health, is undoubtedly correct.

Chevron further maintains that nothing in the ADA prohibits the EEOC from recognizing personal safety as a valid job-qualification standard. In addition, congressional committee reports on the ADA show that Congress intended that the safety of the employee himself would continue to be a valid employment consideration, as it was under a prior disability rights law, the Rehabilitation Act.

Chevron argues that it satisfied the direct-threat defense in this case. The company says its written job requirements specified that plant helpers must be able to withstand exposure to hydrocarbons, solvents, and other liver-toxic chemicals. Chevron physicians experienced in industrial medicine, as well as Echazabal's own doctor, said his liver disease would be exacerbated by exposure to hepatotoxins and that he could be killed by a leak. The company says it was entitled to rely on the reasonable conclusions of these physicians.

Finally, Chevron argues that Echazabal did not prove that he was a "qualified individual" entitled to the protection of the ADA. A "qualified individual" is defined as one who can perform the essential functions of the job. A person who will be made sick or be killed performing a job cannot perform that job on a continuing basis, the company says.

Echazabal counters that the ADA's direct-threat defense is clear. By specifying only threats to "other individuals in the workplace," the statute makes it clear that threats to the disabled person himself are not included within the scope of the defense, he says.

The obvious reading of the direct-threat defense as not including threats to oneself is also supported by the definitional section of Title I, which states that "the term 'direct threat' means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodations," Echazabal maintains. The fact that the statute consistently defines the direct-threat defense to include only threats to others eliminates any possibility that Congress committed a drafting error when it omitted from the defense threats to the disabled individual himself, he adds.

The ADA's legislative history also supports the conclusion that the direct-threat provision does not include threats to oneself, he says. The term "direct threat" is used hundreds of times throughout the ADA's legislative history—in the final conference report, the various committee reports and hearings, and the floor debate. In nearly every instance in which the term appears, it is accompanied by a reference to the threat to "others" or to "other individuals in the workplace." Not once is the term accompanied by a

reference to threats to the disabled person himself, Echazabal argues.

He further asserts that Congress's decision not to include threats to one's own health or safety in the "direct-threat" defense is consistent with the principles that underlie the ADA.

Echazabal maintains that the ADA was designed in part to prohibit discrimination against individuals with disabilities that takes the form of paternalism. This goal is codified in the act itself. In the "Findings" section of the ADA, Congress concluded that "overprotective rules and policies" are one form of discrimination confronting individuals with disabilities.

Courts have interpreted federal job discrimination statutes, such as Title VII of the 1964 Civil Rights Act, to prohibit paternalistic employment policies. For example, in *Dothard v. Rawlinson*, 433 U.S. 321 (1991), the Supreme Court stated that "the argument that a particular job is too dangerous for women may appropriately be met by the rejoinder that it is the purpose of Title VII to allow the individual woman to make that choice for herself." Given Congress's decision in Title VII to let individuals decide for themselves whether to put their own health and safety at risk, Echazabal reasons that it should come as no surprise that it would enact legislation allowing the same freedom of choice to disabled individuals.

SIGNIFICANCE

When Congress enacted the ADA in 1990, it was responding to a climate in which the disabled were relegated to second-class citizen status. The disabled often could not access the places and services that able-bodied individuals routinely enjoyed.

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One of the primary focuses of Congress was in the area of employment. Title I of the ADA was aimed at requiring employers to provide reasonable accommodations to their disabled workers so that these individuals could fully participate in the economic life of the nation.

Title I of the ADA prohibits an employer from discriminating against a qualified individual with a disability because of the disability of such individual. Employers are prohibited from using standards that disqualify a person with a disability unless they are job related and consistent with business necessity.

The ADA permits employers to disqualify an individual from a job when his or her disability would pose a "direct threat" to the health or safety of other people in the workplace. But the EEOC, which enforces the ADA's job-discrimination provisions, broadly defines this statutory defense as allowing employers to also disqualify individuals whose disability poses a direct threat to their own health or safety.

Both employers and disabled Americans need clarification on the correct standard to be applied in future employment situations.

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