

U.S. Supreme Court Upholds "Threat-to-Self" Defense Under the *Americans with Disabilities Act*.

By Paul D. Myrick and Randall Scott Hetrick

Does the *Americans With Disabilities Act* allow an employer to "screen out" a disabled individual if a particular job threatens the individual's health or safety, even if the individual wants to ignore that risk?

In *Chevron USA, Inc. v. Echazabal*, a unanimous United States Supreme Court recently said "yes." The Court upheld EEOC regulations that authorized an employer's refusal to hire or assign a disabled individual to a particular job when an "individualized assessment" shows that the job would endanger the individual's health or safety. 29 C.F.R. §§1630.15(b)(2); 1630.2(r).

Mario Echazabal has hepatitis C, an incurable, chronic liver disease. Chevron twice refused to hire him for an oil refinery job. Each time he applied, company doctors concluded from a medical evaluation that exposure to solvents and chemicals on the job could further damage his liver and potentially kill him. Despite the risk, Echazabal persisted and, when Chevron still refused to allow him to perform the job, he sued for disability discrimination. Citing the EEOC's regulations, the federal trial court agreed that the job posed a direct threat to Echazabal's health, and granted summary judgment for Chevron.

But a federal appeals court later vacated that judgment on grounds that the EEOC regulations ignored the "plain meaning" of the ADA's text, which refers only to "qualifications standards" that screen out disabled individuals who "pose a direct threat to the health or safety of other individuals in the workplace." 42 U.S.C. §§12112-113. The appeals court also favorably cited the ADA's legislative history, including ADA co-sponsor Ted Kennedy's statement that "employers may not deny a person employment based on paternalistic concerns," as well the Supreme Court's previous decision in *Autoworkers v. Johnson Controls, Inc.*, 499 U.S. 187 (1991), which rejected "paternalistic employment policies" that excluded many women from particular jobs.

The Supreme Court reversed. The Court held that Congress aimed only at employers who "refused to give an even break to classes of disabled employees while claiming to act for their own good in reliance on untested and pretextual stereotypes." The Court similarly said that its *Autoworkers* decision was "beside the point," because that case struck down "paternalistic judgments based on the broad category of gender." In contrast, the EEOC regulations state that the "threat-to-self" defense must be based on a "reasonable medical judgment that relies on the most cur-

rent medical knowledge and/or the best available objective evidence," and on an expressly "individualized assessment of the individual's present ability to safely perform the essential functions of the job." 29 C.F.R. §1630.2(r).

Thus, the Court upheld the EEOC regulations as a reasonable interpretation of the ADA, because the regulations merely carry the qualifications standards defense "one step further," while not allowing the kind of impermissible workplace paternalism that the ADA was meant to bar. The Court observed that the EEOC regulations reasonably resolve the potential tension between the ADA and laws such as the *Occupational Safety & Health Act* that require the employer to protect employees from workplace harms. See 29 U.S.C. §654(a)(1) (employer must maintain workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm").

Echazabal's case typifies the dilemma often confronted by employers in considering an injury or illness prone worker with a disability for a particular job. The Court's decision does not mean, however, that an employer will avoid liability simply because it acts in good faith on the advice of a company doctor. The "threat-to-self" defense relies upon a careful application of the EEOC regulations to the particular circumstances. If the most current medical knowledge and/or the best available objective evidence would not support a reasonable medical judgment that the worker poses a risk to herself, then the employer will be liable for refusing to hire or taking other adverse action. Employers should continue to exercise caution when dealing with these issues.

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