Supreme Court Upholds "Direct Threat to Self" Defense to ADA Claims
June 10, 2002

On June 10, 2002, the U.S. Supreme Court unanimously reversed a decision of the Court of Appeals for the Ninth Circuit and ruled that employers may assert a "direct threat to self" defense to claims under the Americans with Disabilities Act ("ADA"). *Chevron U.S.A. v. Echazabal*, No. 00-1406, 535 U.S. ___ (June 10, 2002). *Echazabal* affirms that employers who refuse to place an employee in a position that poses a direct threat to the employee's own health and safety does not violate the ADA.

The plaintiff, Mario Echazabal, worked for a maintenance contractor at a Chevron refinery from 1972 to 1996, performing a variety of jobs. Echazabal twice applied for positions with Chevron, which agreed to hire him provided he passed a company physical. Echazabal's first physical in 1992 disclosed liver damage from Hepatitis C that would be exacerbated by exposure to the chemicals within the refinery, and Chevron withdrew its offer of employment. However, Echazabal continued to work at the refinery for the contractor. In 1995, Echazabal again applied for a permanent position with Chevron but was still unable to pass the physical. Chevron again refused to hire him and asked the contractor to reassign him to a position without exposure to chemicals and solvents, or to remove him from the refinery altogether. The contractor laid Echazabal off in 1996 and Echazabal filed suit against the contractor and Chevron.

In the district court, Echazabal claimed that Chevron and the maintenance contractor violated the ADA by refusing to allow him to continue to work at the refinery because of a disability, his liver condition. Chevron argued that it was entitled to rely on the ADA's provision allowing employers to set qualification standards, which may include a requirement "that an individual . . . not pose a direct threat to the health or safety of other individuals in the workplace." 42 U.S.C. § 12113. The district court granted summary judgment for Chevron on all claims and stayed the action against the contractor pending appeal.

The Ninth Circuit reversed the district court, holding that Chevron's refusal to hire an employee with a disability on the ground that the employee would pose a danger to *his own* health and safety (as opposed to the health and safety of *others*) was exactly the type of paternalistic employment policy that the ADA sought to eliminate. See Ninth Circuit Court of Appeals Narrowly Construes ADA's "Direct Threat" Defense (May, 2000). The court reasoned that, by its plain terms, the ADA does not permit employers to refuse to hire an employee based on a direct threat to the employee's own health or safety and that, because of the clarity of the statutory language, the Equal Employment Opportunity Commission's regulations to the contrary are not entitled to deference. The court also rejected Chevron's position that an employee who could not perform the duties of his position without posing a threat to his own safety...
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could not perform an essential function of the position and was therefore not "otherwise qualified" for the job.

The Supreme Court reversed the Ninth Circuit, finding that nothing in the language of the ADA precludes a "direct threat to self" defense and ruling that the EEOC's regulations recognizing the defense were entitled to deference. Justice Souter, writing for the Court, stated that: "The EEOC was certainly acting within the reasonable zone when it saw a difference between rejecting workplace paternalism and ignoring specific and documented risks to the employee himself, even if the employee would take his chances for the sake of getting a job." The Court noted that rules precluding employees from particular jobs based on "indirect threats" of "insignificant harm" would not pass muster under the direct threat defense. But the Court refused to speculate on how much of a showing of harm would be required for an employer to qualify for the "direct threat to self" defense.

This decision is significant for two reasons. First, it is now clear that employers are not required to hire employees for positions that would pose a direct threat to the employee's own health and safety, regardless of whether the employee would also pose a threat to the health and safety of other individuals in the workplace. Thus, employers no longer need to choose between workplace safety and ADA compliance. Second, coming on the heels of the recent decision in U.S. Airways, Inc. v. Barnett, 00-1250, 122 S. Ct. 1516 (April 29, 2002), the Echazabal decision highlights the Supreme Court's ongoing struggle to harmonize the broad provisions of the ADA with the realities of the workplace, and is the latest in a series of decisions in favor of employers under the statute. See Supreme Court Rules that the ADA Does Not Trump Employers' Seniority Systems (April 2002).