

Chevron U.S.A., Inc. v. Echazabal: Has the Americans with Disabilities Act Become a Toothless Tiger?

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Personnel Management Decisions

On June 10, 2002, the Supreme Court, in a unanimous ruling, held that employers are not required under the Americans with Disabilities Act (ADA) to employ a person with a disability if the job being sought would put that person's own health or safety at risk. *Chevron USA v. Echazabal* (2002) was the third decision¹ in the Court's 2001–2002 term interpreting the ADA, all of which were widely regarded as striking victories for employers. For example, the United States Chamber of Commerce said the *Echazabal* decision was "a major victory for the business community," but the American Association of People with Disabilities decried the decision as showing that the court had "once again demonstrated its fundamental hostility to disability rights in the work place."

Mario Echazabal began working in 1972 in the coker unit of a Chevron oil refinery in California as an independent contractor with various maintenance firms. Twice he applied for a job with Chevron itself but was unsuccessful because he could not pass a required physical examination. Chevron's doctors denied his applications, saying that the toxic solvents and chemicals at the refinery would exacerbate the damage and abnormalities in his liver, which had been caused by Hepatitis C. Chevron first removed Echazabal from his then current position so he would not be exposed to the toxins and later denied him entry to the refinery altogether. Ultimately he was laid off by the contractor in early 1996.

Echazabal filed suit, claiming that Chevron's refusal to hire him violated the ADA by discriminating against him because of a disability, his liver condition. Chevron argued that its decision was justified because working in the refinery posed a direct threat to Echazabal's own health. Although the ADA prohibits discrimination against persons with a disability, Title I permits employers to impose a qualification standard "that an individual not pose a direct threat to the health or safety of *other individuals in the workplace.*" 42 U.S.C. § 12113 (emphasis added). The Equal Employment Opportunity Commission (EEOC) expanded this qualification standard in its implementing regulations for Title I, to provide "that an individual not pose a direct threat to health or safety of *the individual or others* in the workplace." 29 C.F.R. § 1630.15(b)(2) (emphasis added). The regulations define "direct threat" as "a significant risk of substantial harm to the health or safety of the individual or

¹ The other two rulings, *Toyota v. Williams* and *Barnett v. US Airways*, were reviewed in detail by Art Gutman in his "On the Legal Front" column in the April and July, 2002 issues of *TIP*, respectively. Those rulings are noted less extensively in this report.

others that cannot be eliminated or reduced by reasonable accommodation.” The district court agreed with Chevron’s argument that EEOC’s regulations applied and granted summary judgment; Echazabal appealed to the 9th Circuit. The issue there was whether the direct threat defense was available to employers where the threat was only to the employee’s own health or safety but not to others in the workplace. The 9th Circuit held that the defense was not available and reversed the district court’s decision.

In *Echazabal v. Chevron* (2000), the 9th Circuit noted that “Conscious of the history of paternalistic rules that have often excluded disabled persons from the workplace, Congress concluded that disabled persons should be afforded the opportunity to decide for themselves what risks to undertake.” The court concluded that the direct threat clause should be interpreted as written in the ADA, where the plain language of the statute did not include “self-threats” to disabled persons. The court searched for the term “direct threat” in the legislative history of the ADA and, although found it used hundreds of times, “not once is the term accompanied by a reference to threats to the disabled person himself.” The court also cited Sen. Edward Kennedy, who stated during hearings on the ADA that “employers may not deny a person an employment opportunity based on paternalistic concerns regarding the person’s health.” The court also noted that the Supreme Court previously had rejected paternalistic stances in employment practices as sex discrimination that violated Title VII of the Civil Rights Act of 1964. For example, in *Dothard v. Rawlinson* (1977), the Court held that a female applicant could not be denied employment as a prison guard in an all male prison because her small stature posed a threat to her personal safety (although increased threat to overall prison safety might preclude her employment). In *International Union, UAW v. Johnson Controls, Inc.* (1991), the Court held that women could not be excluded from employment in a battery manufacturing plant because possible exposure to lead could threaten their own reproductive health. Although those decisions were in the context of Title VII sex discrimination, the 9th Circuit found the reasoning applicable in the context of ADA as well.

Finally, the 9th Circuit took note that three other circuits had found that the direct threat defense did include threats to oneself. Those judicial precedents were rejected, however. Neither *EEOC v. Amego* (1997) nor *LaChance v. Duffy’s Draft House* (1998) had discussed the EEOC regulations or the statutory language of ADA. The decision in *Moses v. American Nonwovens* (1996) was also rejected, because that court did not explain its holding, and supported the self-threat concept only in dicta.²

² Interestingly, one of the judges on the panel, who had joined in the original opinion, later amended the decision, adding his dissenting opinion. On apparent second thought, the judge agreed with the argument put forth by Chevron that Echazabal was not qualified for the job. “[H]ow can we claim he can perform the essential functions...when...those functions may kill him[?]” He also found that it would be an undue hardship to require Chevron knowingly to endanger an employee.

Writing for the unanimous Court, Justice Souter marched through the 9th Circuit's decision, finding all of its reasoning without merit. Addressing the argument that "threat to self" was excluded because it was not explicitly mentioned³ in the text of the ADA, Justice Souter reasoned that the language "threat to others" only was intended as "an example of legitimate qualifications that are 'job-related and consistent with business necessity.'" Consequently, "job-related and consistent with business necessity" were "spacious defensive categories" that gave the EEOC "a good deal of discretion in setting the limits of permissible qualification standards." Further, it seemed apparent to Justice Souter that the language used demonstrated that "Congress appears to have made a deliberate choice to omit [threats to self] as a signal of the affirmative defense's scope."

Justice Souter also noted that the Rehabilitation Act of 1973, a precursor to the ADA, also said nothing about threats to self. EEOC regulations implementing the Rehabilitation Act, however, excepted coverage where employment might result in threats to self. Justice Souter rejected the argument that the later inclusion only of threats to others in the ADA indicated that Congress had made a "deliberate omission of the Rehabilitation Act regulation's tandem term of threat-to-self, with intent to exclude it." Agencies other than the EEOC had interpreted the Rehabilitation Act, he observed, and had not included threats to self, with the result that there was no "clear, standard pairing of threats to self and others." Consequently, any argument as to Congress's intent had to fail.

Finally, Justice Souter reasoned that there was no stopping point to the argument that a negative implication was intended by Congress as to whose safety should be considered when Congress specified threats to others but not to self. "[C]ould it possibly have meant that an employer could not defend a refusal to hire when a worker's disability would threaten others outside the workplace? If Typhoid Mary had come under the ADA, would a meat packer have been defenseless if Mary had sued after being turned away?"⁴

The legislative history and prior decisions decrying paternalism only were addressed briefly in a footnote. Comments in the history that "paternalistic concerns for the disabled person's own safety [should not] be used to disqualify an otherwise qualified applicant" were taken only to "express the more pointed concern that such justifications are usually pretextual." Prior decisions were "beside the point, as they, like Title VII generally, were concerned with paternalistic judgments based on the broad category of gender,

³ A well known canon of statutory interpretation is *expressio unius exclusio alterius*, "expressing one item of [an] associated group or series excludes another left unmentioned." See *United States v. Vonn*, 535 U.S. ___ (2002). Justice Souter found that the relevant phrases in the ADA did not express any established series of items.

⁴ This analogy fails to recognize that packing meat likely would not endanger Typhoid Mary, but that Mary would endanger others, both within as well as outside of the workplace.

while the EEOC has required that judgments based on the direct threat provision be made on the basis of individualized risk.”

Has the Tiger Had Its Fangs Extracted, or Does It Have Only a Bad Toothache?

The decision in *Echazabal* came as a surprise to many. Mario Echazabal was expected to prevail, for several reasons (most of them nonwinning positions put forward by the 9th Circuit). That self-threat was not mentioned in the statute seemed especially persuasive. The more-conservative members of the Court (especially Justice Antonin Scalia) view the Court’s role as applying rules derived from the exact words used in the statute. The legislative history seemed persuasive as well, but the same more conservative members generally are less likely to look to the legislative history of any statute: Regardless of the arguments, declarations, and compromises, it’s the final result that counts. In addition, the current Supreme Court is not notable for its willingness to defer to regulatory agencies (especially, some would say, to the EEOC). The willingness to embrace EEOC’s position exempting coverage of the ADA to persons who pose a threat to themselves seemed surprising in view of Justice O’Connor’s remarks in *Sutton*, that “No agency has been delegated the authority to interpret the term ‘disability’ in the ADA. [Although the EEOC’s regulations are not needed for a decision in this case] the Court has no occasion to consider what they are due, *if any*.” (Emphasis added.) Finally, the prior decisions of the Court rejecting paternalism did not seem to rely upon specific application of Title VII only to gender discrimination.

The full impact of *Echazabal* needs to be evaluated in conjunction with the two other decisions reached in the just completed term of the Court, as well as the trio of decisions announced by the Court in its 1999–2000 term. The decisions in 1999, *Albertsons v. Kirkingburg*, *Murphy v. United Parcel Service*, and *Sutton v. United Airlines*, although differing in the details, all stood for the proposition that the severity of an impairment, and therefore whether the impairment constituted a disability, needed to be evaluated looking at the degree of severity after it had been mitigated, that is, subjected to correction or treatment.⁵ In *Albertsons*, an amblyopic truck driver was found not to be disabled because he used monocular visual cues to compensate for his impairment. In *Murphy*, a mechanic with high blood pressure was found not to be disabled because he could maintain his blood pressure at normal levels with medication. And in *Sutton*, twin visually impaired female airline pilots were found not to be disabled since their vision was correctable to better than 20/200 with corrective lenses.

⁵ Note that in these cases the Court did not defer to EEOC regulations, which directed that the severity should be evaluated in its unmitigated state.

For many commentators, the more important remark in *Sutton* (although dicta) was Justice O'Connor's observation that "there may be some conceptual difficulty in defining 'major life activities' to include work." That observation perhaps forecast the later holding in *Toyota v. Williams* (2002) that even a substantial limitation in performing manual tasks (in that case, carpal tunnel syndrome), only associated with a specific job, was not enough to constitute a disability. Justice O'Connor commented that "When addressing the major life activity of performing manual tasks the central inquiry must be whether the claimant is unable to perform a variety of tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with her specific job." Although it is correct to state that the Court did not rule on whether working is a major life activity in either *Sutton* or *Williams*, it seems clear that only a showing that a particular job cannot be performed is insufficient for a plaintiff to prevail.

The outcome from *US Airways Inc. v. Barnett* (2002) seems mixed: In *Barnett*, the Court rejected the positions of both employer and employee. Barnett had been denied an accommodation for his back injury because US Airways had a seniority system, though not one that had been collectively bargained. In a 5-4 decision that produced five opinions, writing for the Court, Justice Breyer held that:

[T]he seniority system will prevail in the run of cases. [Showing] that a requested accommodation conflicts with the rules of a seniority system is ordinarily to show that accommodation is not "reasonable." Hence, such a showing will entitle the employer/defendant to summary judgment on the question—unless there is more.

Thus, it still would be possible for an ADA plaintiff to show that "special circumstances" warranted that a seniority system be superseded, depending "on the particular facts." Experts on both sides have claimed at least a partial victory. On the one hand, if an employer has a consistently applied seniority system, the employer likely could expect to prevail. On the other hand, seniority systems do not impose a per se rule that automatically trumps a request for reasonable accommodation.

On balance, it would seem that it has become significantly more difficult for individuals to establish that they are disabled under the ADA as now interpreted by the courts. From its beginning, there has been skepticism about Congress's statement in the ADA that 43 million or more Americans had at least one mental or physical disability. Even if that estimate were true in 1990 when the ADA was passed, the definition of disability has been limited, especially by the subsequent decisions of *Sutton* and *Williams*. In addition, the courts have clarified that the impact of any impairment must be long-term or permanent, and evaluated in its mitigated state. Although some advocates for the disabled may feel that a door of opportunity is being shut, a more rea-

sonable view might be that the courts have clarified a poorly written statute, which will lead to a reduction of cases that never should have been brought, and will ultimately result in better protection for those truly intended to be covered by the ADA.

References

- Albertsons, Inc. v. Kirkingburg, 527 U.S. 555 (1999).
Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.
Chevron U.S.A., Inc. v. Echazabal, 536 U.S.____(2002).
Dothard v. Rawlinson, 433 U.S. 321 (1977).
Echazabal v. Chevron U.S.A., Inc., 226 F.3d 1063 (9th Cir. 2000).
EEOC v. Amego, Inc., 110 F.3d 135 (1st Cir. 1997).
International Union, UAW v. Johnson Controls, Inc., 499 U.S. 187 (1991).
LaChance v. Duffy's Draft House, Inc., 146 F.3d 832 (11th Cir. 1998).
Moses v. American Nonwovens, Inc., 97 F.3d 446 (5th Cir. 1996).
Murphy v. United Parcel Service, 527 U.S. 516 (1999).
Sutton v. United Airlines, 527 U.S. 471 (1999).
Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184 (2002).
United States v. Vonn, 535 U.S.____(2002).
US Airways, Inc. v. Barnett, 535 U.S.____(2002).