

Court Finds an Employee's Seizures Posed a “Direct Threat” Under the ADA

In a recent decision from the U.S. Court of Appeals for the Seventh Circuit, the court explained how an employer should evaluate whether a disabled person under the Americans with Disabilities Act (ADA) would pose a “direct threat” to others.

Background

Russell Pontinen, the plaintiff, suffered from a seizure disorder that caused three or four seizures in his lifetime. He started taking medication to control the seizures, but later stopped against his doctor's advice.

Shortly afterwards, he applied for a job at U.S. Steel's Midwest plant as a Utility Person. U.S. Steel made Pontinen a conditional job offer, but he was required to pass a medical exam to ensure he was eligible to perform the required work. An exam by a third-party medical professional, with information supplied by Pontinen's personal doctor, disclosed Pontinen's history of seizures and that he was no longer on medication. Based on this information, the medical professional assigned restrictions to Pontinen, such as refraining from operating machinery and from climbing. Upon review of his restrictions, U.S. Steel concluded that Pontinen could not perform the job safely even with an accommodation and rescinded its employment offer. Pontinen sued under the ADA alleging disability discrimination.

Direct Threat Doctrine

In any ADA claim, it is the employee's burden of proof to show he was a qualified individual with a disability. But an employer may assert a defense that the employee would pose a “direct threat” to his own safety or to the safety of others in the workplace even with an accommodation. It is the employer's burden to demonstrate that a “direct threat” exists and that its qualification standards for a particular job are necessary to prevent it.

A “direct threat” is a significant risk of substantial harm that cannot be eliminated or reduced by reasonable accommodation. An employer must make this assessment on a case-by-case basis, informed by reasonable and current medical knowledge. The assessment must also consider (1) the duration of the risk; (2) the

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nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm.

No Discrimination

Applying this doctrine to Pontinen, the Seventh Circuit affirmed the lower court in finding that U.S. Steel did not discriminate because it had shown Pontinen's seizures would present a "direct threat" to others. Importantly, the court found that because Pontinen had stopped taking medication against his doctor's advice, his seizures were uncontrolled, rendering the duration of the risk they caused indefinite.

Further, the nature and severity of the potential harm could be disastrous because the job required use of heavy machinery and hazardous materials, and Pontinen's seizures often caused him to lose consciousness. All these factors would likely result in serious harm or injury if he was working with heavy machinery and hazardous materials when an episode struck.

Finally, the court explained that although the total number of seizures over Pontinen's lifetime was small, he had two in the two months before beginning medication and none while on his medication. His decision to stop medication meant that the risk increased significantly.

Employers must be wary when relying on the "direct threat" defense to deny an accommodation—the burden is on them to prove that a threat exists. As such, employers should carefully review all the medical evidence and information before taking any adverse employment action. This case may have had a different outcome if Pontinen's seizures were controlled by medication, his doctor *approved* him stopping the medication or U.S. Steel did not consider all medical evidence before rescinding its job offer.

If you have any questions about the ADA or reasonable accommodations please contact [Rob Driscoll](#), [Matt DeLange](#) or your Reinhart attorney.

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