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### Employer Failed to Properly Evaluate Medical Evidence of Alleged "Direct Threat" Under ADA

The Ninth Circuit Court of Appeals recently held that an employer could not simply rely on a generalized assessment from its own medical experts in determining whether an employee posed a "direct threat" to himself under the Americans with Disabilities Act. In *Echazabal v. Chevron*, 2003 U.S. App. LEXIS 14670 (9<sup>th</sup> Cir. July 23, 2003), the Court made it clear that the employer must use current medical knowledge and the best available medical information before deciding that an employee poses a direct threat to himself.

Echazabal worked for 20 years as a contractor in a Chevron oil refinery plant. He applied for a specific position in one of Chevron's Coker Units in 1992. During Echazabal's physical examination, a doctor discovered an abnormally high liver enzyme count, and Echazabal was eventually diagnosed with Hepatitis C. After being turned down for this position in 1992, Echazabal applied again in 1995 and was given an offer contingent on Echazabal passing a physical exam. The doctor performing the physical examination concluded that working in the Coker Unit would expose Echazabal to a high level of chemicals, thereby possibly causing even more liver damage.

The Ninth Circuit held that in this case, the employer could not simply rely on the doctor's opinion that working in the Coker Unit would increase Echazabal's risk of chemical exposure and the coinciding risk of increased liver damage. Instead, the Court ruled that the employer must make an individualized assessment with the most recent and best available medical information. There were several reasons Chevron failed to meet this standard with respect to its decision not to hire Echazabal: (1) the physician was unfamiliar with Hepatitis C and liver disease; (2) Chevron failed to take into account Echazabal's own medical experts' opinions, which were given by liver specialists; (3) Chevron could not simply state that it was "common sense" that chemical exposure would pose a direct threat to a person with Hepatitis C; and (4) Chevron failed to consider the fact that Echazabal had worked at the oil refinery for 20 years without a single injury. The Eleventh Circuit in *Lowe v. Alabama Power Co.*, 244 F.3d 1305 (11<sup>th</sup> Cir. 2001), issued a similar ruling in 2001.



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In sum, an employer's good-faith reliance on a physician's generalized assessment likely will not constitute a valid defense under the ADA. Therefore, we recommend that employers demand the most recent and best available medical information and an individualized assessment from the physician, in light of an employee's job duties and work place environment, before deciding that an employee poses a direct threat to himself by continuing to work.



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