

# Avoiding ADA Lawsuits While 'Doing the Right Thing'

Intervene early and intervene often. The wisdom of this principle was borne out once again by the recent Supreme Court Opinion, *Chevron U. S. A. Inc., Petitioner v. Mario Echazabal*. Chevron did intervene early and often. This case contrasts nicely to an earlier Supreme Court case, *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*. While both cases involved litigation and court appeals, the Chevron case benefited from clearly documented, direct communication with the worker, while the Toyota case involved a period in which communication broke down as disability concerns (in the employee) increased. In contrast to both cases, it is easy to see that the best cases are those that are resolved apart from litigation, as in a representative instance of a large corporation's dealings with an employee suffering from carpal tunnel syndrome.

No matter the legal defense a corporation may be able to garner, nothing substitutes for vigilance in establishing clear-cut health guidelines for job requirements and carefully managing employees in the event they encounter disabling conditions. Companies that prevent litigation

By Presley Reed, MD

always win, more so than companies that go to court and are exonerated. And, of course, the business losses only increase when the final court decision sides against the employer, a situation that is common but not within the scope of this article. In all disability claims, strategic intervention should be implemented for many reasons – the welfare of the employee, the productivity of the company and the desire to avoid litigation.

## Chevron v. Echazabal

The legal contention of this recent ruling (June 10, 2002) springs from “a regulation of the Equal Employment Opportunity Commission [that] authorizes refusal to hire an individual because his performance on the job would endanger his own health, owing to a disability.” Chevron refused to hire Echazabal on this ground, claiming that because of Echazabal's liver condition, “the job would endanger his own health.” Echazabal, however, preferred to take the risk and took Chevron to court on the grounds that the

Americans with Disabilities Act of 1990 does not permit such a regulation, in as much as it discriminates against those with a “disability.”

Chevron ultimately presented the case to the Supreme Court, which concluded that the ADA does permit such a regulation. Although the final Opinion does not state the matter in these words, Chevron had been put into an impossible situation: Asked at once to protect the health of its employees under OSHA regulations and, at the same time, challenged under the ADA for refusing employment to a high risk candidate.

One element of the case that probably motivated Echazabal and made his case tenable was the fact that he already had worked in the Chevron plant for about 20 years (through an independent contractor). From his point of view, he simply wanted to continue being at risk, but with the increased security and benefits that would come through direct employment under Chevron.

From Chevron's point of view, they were following standard operating procedures by subjecting him to a medical examination before hire. He was examined twice, diagnosed with hepatitis C, and was refused the job on the grounds that the chemical levels could seriously damage his liver and eventually kill him (chemical levels that met OSHA safety levels for healthy individuals). The second time Echazabal was diagnosed, Chevron requested that the independent contractor either remove Echazabal from the Chevron site or find him a position that protected him from contact with the chemicals.

It was that level of vigilance that allowed Chevron to convincingly claim it was working in Echazabal's best medical interests. Far from applying medical diagnoses as an afterthought, Chevron applied them proactively and acted upon them responsibly. The Supreme Court's interest was not, of course, in determining the validity of the medical diagnoses, but in examining the compatibility of the Equal Employment Opportunity Commission (EEOC) regulation with the ADA. However, if Chevron had examined Echazabal reactively instead of proactively, the tenor of their argument would have contrasted negatively with their implied argument that the EEOC regulation is ethically consistent with the ADA.

### **Toyota v. Williams: Inefficient Intervention**

This Supreme Court case, like *Chevron v. Echazabal*, was decided in favor of the employer, although the interactions between Toyota and Williams were not as clear as those between Chevron and Echazabal. While this ruling has established a narrower definition of "disability" in terms of the ADA, it came only after a series of previous settlements and appeals.

This decision (Jan. 8, 2002) limited the breadth of the term "disability" when applied to the ADA. The Supreme Court opinion assured employers that the ADA is applicable only to cases in which one's daily life and work life are severely impaired by a disability, not to cases in which specific job functions extend beyond a worker's physical or

psychological capacity. The ruling determined that, while an individual may be limited in certain abilities, such a limitation does not constitute being disabled in the individual's daily life.

In the case of Emma Williams, it was unanimously acknowledged that she experienced physical conditions that prevented her from performing certain types of work. The in-house medical staff diagnosed her with bilateral carpal tunnel syndrome and bilateral tendonitis, and prescribed modified work conditions. Between 1990 and 1993, she was given modified duties, found them insufficient, filed two legal actions and obtained a settlement for both. She then was given a job that primarily consisted of paint inspection and, for about two years, seemed to find the job amenable.

In 1996, this inspection job was broadened to include rubbing oil onto each car's paint surface to highlight possible flaws. Williams found the tasks impossible. At this point, the Supreme Court judgment suggests that the *employer-employee relationship broke down*, followed by confusion about which party was primarily responsible for a loss of communication. Toyota perceived that Williams was ignoring her employer by missing work; Williams thought that Toyota was ignoring her by not modifying her work. She stopped working in December 1996, was terminated by letter in January 1997, and began a series of legal actions.

The relationship breakdown between employer and employee is suggested by the court record that "the parties dis-

agree about what happened next," and it touches a common theme in case management: When documentation is most needed for future determinations, it is most difficult to obtain. At the time this breakdown occurred between Toyota and Williams, there may have been an opportunity for mediation that may have precluded the next seven years of litigation. We cannot know that, but we can pinpoint that phase as a critical one that may have determined the course of the future. By the time the Supreme Court reviewed the case, the communication breakdown was history and what counted was the appropriateness of the suit to the protection offered by the ADA.

The Court ruled that someone may be disabled from performing a specific job, but not disabled according to the ADA. This legal distinction reminds us how easily the meaning of important terms may shift in our usage. The Social Security Disability Fund has its own definition of disability. Group disability insurance plan language may have another. If someone designates him or herself as disabled, the overriding question must be "In relation to what?" The inherent vagaries of these definitions make it even more important for employers to communicate with precision.

### **Dave: Successful Case Management**

Inevitably, disability claims will arise. The employer's response, however, can complicate or help resolve the situation.

Good case management intervention

resolved the following disability case instead of allowing its potential for delays and litigation to take root. In this example, the employer had contracted a third-party case management company who assigned the case to Nurse Case Manager (Nurse CM). Dave, like Emma Williams, also suffered from carpal tunnel syndrome and was plagued with severe physical pain and ambivalence toward his workplace.

The sequence of events is as follows:

- June 6, 2000: Dave informed the Nurse CM that he had pain extending from his back to his shoulders, as well as tingling in his fingers on both hands.
- June 7: He had an exam scheduled and planned on being back at work June 11, contingent on the results of the exam. In addition to his physical problems, he doubted the goodwill of the company and the company doubted Dave's commitment to his work.
- June 8: During this week, the Nurse CM contacted Dave's HR department, his attending physician, and Dave again.
- June 11: Dave was not back at work.
- June 14: Another exam confirmed carpal tunnel syndrome. In this case, the employee was ambivalent toward the workplace, but responsive to phone calls from the Nurse CM.
- June 15: Dave, clearly troubled, responded and worked closely with the Nurse CM to avoid unnecessary delays.
- June 19: Under the Nurse CM's influence, Dave moved up his next medical exam (originally June 25).


- June 7 through Aug. 31: Physician's recommended disability duration.
- June 21: The Nurse CM intervened because there was insufficient medical documentation from Dave's treating physician to support and authorize a disability absence for this extended period of time to make the recommendation to his employer. Therefore, she approved a recovery period through July 5, and requested more clinical information.
- June 29: Surgery provides needed information, and the disability leave was extended through Aug. 9 to accommodate recovery from the surgical procedure and return to work.

Although this could have been a troublesome case, active case management produced a positive outcome for the employer and employee. The employee felt "heard," while the Nurse CM remained objective, consistently applied the benefit, and requested corroborative evidence to justify the physician's recommended disability period. Case management intervention reduced the absence duration by 22 days.

This case shows that successful case management should involve the following three ingredients:

- Frequent communication
- Good documentation
- An inclusive approach that blends together medical expertise with objectivity, employer policy and employee education.

Vigilance cannot be sacrificed to anyone's convenience because each party (including the employee and the physician) has eccentricities, because dis-

abilities, such as carpal tunnel syndrome, can have highly varied effects on individuals, and because the loss in morale that logically accompanies a disability can further obstruct communication. Early and frequent intervention will reduce the likelihood of unnecessary loss, whether that loss registers in the loss of an individual's dignity, the company's bottom line or litigation costs. 

---

#### ABOUT THE AUTHOR

**Dr. Presley Reed** is editor-in-chief of *The Medical Disability Advisor: Workplace Guidelines for Disability Duration (MDA)*. He can be contacted at 303/247-1860 or [presley@rgl.net](mailto:presley@rgl.net).

Contents © 2002 WorldatWork. The content is licensed for use by purchasers solely for their own use and not for resale or redistribution. No part of this article may be reproduced, excerpted or redistributed in any form without express written permission of WorldatWork and appropriate attribution. Reach WorldatWork at 480/922-2020; [customerrelations@worldatwork.org](mailto:customerrelations@worldatwork.org)