the Connection

HCE

APRIL 2015

What does the U.S. Supreme Court Say?

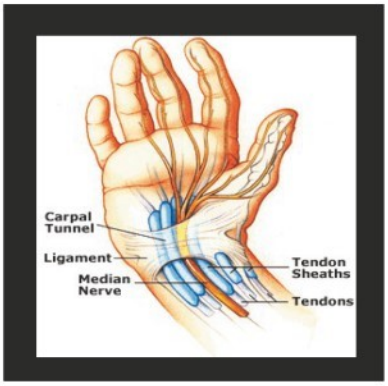
The U. S. Supreme Court is the highest court in the land and is charged with interpreting and upholding the laws passed by the legislators of our Country. It often takes several years, if not a decade or more, for an individual law that is in dispute to reach the U. S. Supreme Court.

In 2001, the U.S. Supreme Court heard, and rendered decisions on, three cases that are of critical importance to employers that are attempting to keep their employees safe, while simultaneously controlling the costs associated with musculoskeletal conditions. While I am NOT an attorney, it is highly likely that I slept in a Holiday Inn Express (or some type of hotel) in the last week or so. On a serious note, HCE has incorporated these three Supreme Court decisions into our products and services since before these decisions were actually rendered. In other words, the clinical and administrative "protocols" related to our functional testing of new hires and existing employees were NOT changed by these decisions, they were only validated at the highest level.

The remainder of this edition of *the Connection* will summarize these three cases and point out how the HCE products and services are supported by them. We will point out the way in which HCE employs each Supreme Court Decision to protect you and your employees. If you would like to know more after review of this newsletter, I would encourage you to contact HCE at info@health-connections.us and request the Summary Article on this subject written by Francis P. Alarez, Attorney at Law. We would be happy to send it to you and to discuss our services as well.

Where is HCE NOW?

HCE is expanding rapidly. We have growing employer/provider relationships or a related presence in the following States: PA, MD, DE, FL, TX, NC, IL, MN, WI, LA, MS, MT, UT, CO and WY. Please contact us directly to inquire about our services in your immediate area. **info@health-connections.us**



What does "Disabled" mean under the Americans With Disability Act? (ADA)

The ADA was a sweeping piece of Federal legislation passed in the early '90s. In 2001, the U.S. Supreme Court heard the case, *Toyota Motor Manufacturing of Kentucky, Inc. v. Williams, 534 U.S. 184 (2002)*, regarding an employee with carpal tunnel syndrome. In short, the employee was terminated for poor attendance, but claimed disability discrimination due to her carpal tunnel and lack of her ability to do two of the four manual tasks assigned to her position at Toyota. Like most cases, the decisions in the lower courts went back and forth, both for and against Toyota.

In January of 2002, the U.S. Supreme Court rendered a unanimous decision in favor of Toyota. The Court's central factor in reaching this decision was their determination that an

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How "Reasonable" do you need to be?

Another concern that any discussion regarding the ADA brings up is the "reasonable accommodations" provision in the law. What is "reasonable" and how much do you need to "accommodate" and employee. First and foremost, this provision only applies IF AND WHEN an employee is deemed to be "disabled" under the ADA. Recall the limitations placed on this issue by *Toyota v Williams* discussed previously.

In a second case decided by the U.S. Supreme Court in 2001, (US Airways, Inc. v. Barnett, No. 00-1250, 535 U.S.—April 29, 2002) the court stated that it was NOT reasonable to require US Airways to violate its seniority system related to job transfer requests in light of Barnett's disability.

While this case DID NOT answer every question we will see on this issue, it did serve to show that there is some "reasonableness" to the "reasonable accommodation" provision in the ADA.

Toyota v. Williams

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employee claiming to be "disabled in the major life activity of performing manual tasks" (required under the ADA) must be "whether the individual is unable to perform the variety of manual tasks central to most people's daily lives AND NOT just those on the job." In other words, an individual must have difficulty or inability in things like attending to personal hygiene, dressing, brushing their teeth, feeding themselves, etc. and NOT just an inability to do specific work related tasks.

While this decision narrowed the relief available under the ADA, it did NOT answer all potential questions one might face in an ADA suit. Things like reasonable accommodation limits, when and how "work" limitations might impact the situation, and how an employer might be required to "evaluate" a person's daily activity limitations, since this is typically a "private" home-based situation.

In the administration of all the HCE functional testing protocols, our Approved Providers are taking comprehensive histories that discuss past medical history as well as any functional limitations an individual might have at work, home or while performing leisure activities. Because of this, the HCE functional exam process may indeed serve as the initiation of any ADA defense efforts you may require. Certainly, the ability to objectively determine an employee's functional abilities will play a vital part, as well. To learn more about this case or discuss the HCE functional testing process, please send your inquiry to info@health-connections.us.

The "Individual Assessment" Edict!

In all three of the cases summarized here, the Court discussed the need to look at each case with an "individual assessment" mentality. It is imperative to understand the job's precise physical requirements, as well as, the employee's exact functional abilities and limitations. A clinical diagnosis is insufficient! For instance, "All carpal tunnel cases are not created equal!"

Risky Business!

Being in business is a RISK from the moment the lights go on in the morning until they go off at night. As a matter of fact, the RISK of being in business is a 24/7/365 proposition! Smart business people are always looking for ways to decrease their RISK.

The last Supreme Court case we will summarize has to do with more of an EEOC issue, "direct threat." It has been well established for many years that an employee that is a "direct threat" to the safety and well-being of his fellow employees or the general public is a RISK that every employer is legally protected from. For example, a "blind" person applying for a forklift driver position! It is within the employers right NOT to hire this person or even terminate them from this position if they become blind after being hired.

But what about the person that is NOT a "direct threat" to others, but is a "direct threat" to his own safety or well-being? Does the employer have the RIGHT to protect the employee from themselves?

Health Connections Enterprises' position is YES! You not only have the RIGHT, but you have an OBLIGATION to protect these employees from themselves. Even when they want to ignore the "direct threat."

The U. S. Supreme Court agreed with the HCE's position in the 2001 case.

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Monthly tip for RISK reduction success!

It is critical to ensure that your supervisors, managers, safety personnel, adjusters, insurance brokers and legal counsel are all on the same page related to the issues addressed in this newsletter. You should review all your policies to ensure that you are taking full advantage of the Supreme Court decisions and that you are not excepting unnecessary RISKS in your workplace!

"Direct Threat" to Self? From page 2

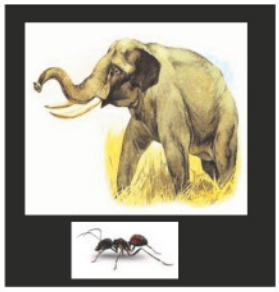
Chevron USA, Inc. v. Echazabal, (No. 00-1406, 536 U. S.—June 10, 2002). In this case, Echazabal had worked for a Chevron contractor for over twenty years. He had been inside a Chevron chemical plant most of the days that he worked.

Echazabal was refused employment with Chevron in 1992 and again in 1995, because they believed the position would be a serious threat to his life. Echazabal had Hepatitis C, a liver disease, and could be life threatening if he was exposed to the solvents and chemicals in the particular unit he was applying for. This case went back and forth in the lower courts before reaching the U. S. Supreme Court.

While the ADA clearly addresses the issue where a "disabled" person poses a "direct threat to the health and safety of other individuals in the workplace," it is silent on the issue of "direct threat" to self. Chevron pointed to the EEOC's position on the issue of "direct threat" as taking the issue one step further, and "allowing an employer to screen out a potential worker with a disability not only for risks that he would pose to others in the workplace, but for risks on the job to his own health or safety..." The Court went on to warn employers that the threat-to-self analysis, however, should not be based on generalizations of perceived threats, but rather on individualized risk assessments, which is the heart and soul of the ADA:

> "The direct threat defense must be based on a reasonable medical judgment that relies on the most current medical knowledge and/or the best available objective evidence, and upon an expressly individualized assessment of the individual's present ability to safely perform the essential functions of the job..."

Health Connections Enterprises utilizes only highly qualified physical or occupational therapists that have undergone our clinical and administrative training program to perform the individualized assessments considered in the ADA. The three main areas that these HCE Approved Providers screen for "direct threat" to self or others would be in the medial history, the comprehensive clinical exam and in the functional testing of the applicant's ability to safely perform the essential job functions. For more details about this case or the HCE testing protocols, please email us at info@health-connections.us.



Large or Small

We Serve Them All

Even though the employers referenced throughout this edition of *the Connections* are all very large companies, HCE has specific delivery methods for employers of all sizes. Large employers (over 200 employees at a single site) may chose to engage HCE in a very comprehensive manner, which might include several of our prevention programs and even a full service onsite intervention presence.

Some Large employers and most of our smaller employer clients may chose to take advantage of our Basic Membership Program and our Technology based "M-TEC" program. This allows these employers to have access to the HCE expertise when needed and at various levels consistent with the needs at the time.

In either case, HCE will work to find local healthcare providers that can assist both of us in our quest to control your musculoskeletal costs and keep your employees safe and productive. For more information about our services, contact us at info@health-connections.us.