

Employee Medical Exams: For All the Right Reasons

James v. Goodyear Tire & Rubber Co.

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The Sixth Circuit Court of Appeals holds that a plaintiff-employee's claim of disability discrimination (based on the defendant-company's requirement that he take a functional capacity evaluation) cannot withstand summary judgment, as valid safety reasons supported the required test, it was not an adverse employment action and did not prove discrimination.

On December 3, 2009, in the case of *James v. Goodyear Tire & Rubber Co.*, 2009 FED App. 0766N (6th Cir. 2009), the United States Court of Appeals for the Sixth Circuit - which governs Kentucky, Michigan, Ohio, and Tennessee - upheld the District Court's decision granting summary judgment in favor of the defendant-employer. The case offers rationale that would support an employer's request that an employee submit to an exam to ensure safety considerations. Further, this case gives guidance in the uncertain realm of workplace circumstances that potentially trigger the Americans with Disabilities Act (ADA).

By way of background, a court's analysis in a disability discrimination lawsuit generally tracks the following pattern:

1. An employee must first show that he can establish a *prima facie* case of discrimination. To establish a *prima facie* case of disability discrimination, when there is not direct evidence of discrimination, a plaintiff must show that: 1) he is an individual with a disability; 2) he is otherwise qualified to perform the job requirements, with or without reasonable accommodation; 3) he suffered an adverse employment action; and 4) a nexus exists between the adverse employment action and his disability.
2. Once the plaintiff establishes a *prima facie* case, the burden shifts to the employer to offer a nondiscriminatory reason for the adverse employment action.
3. If the employer satisfies this burden, the plaintiff must introduce evidence from which a reasonable jury could conclude that the proffered explanation is actually a pretext for unlawful discrimination. An employee generally demonstrates pretext by showing that the employer's proffered reason (a) has no basis in fact, (b) was not the actual reason for the adverse action, or (c) is insufficient to explain the employer's actions.

On motions for summary judgment, an employer's ability to prevail frequently depends on Plaintiff not being able to establish his *prima facie* case. In *James*, the District Court found that the employee had not shown that he suffered an adverse employment action, defined as a "materially adverse change in the terms or conditions of ... employment because of [the] employer's conduct."

At the time of the lawsuit, Plaintiff Paul James had worked at the Goodyear Tire and Rubber Co. (Goodyear) tire manufacturing plant since 1987. James worked for Goodyear as a banbury operator, which required him

to use physical strength and dexterity. In addition, the work environment at the plant was industrial and very hot. Within the first five years at Goodyear, doctors diagnosed James with progressive multiple sclerosis (MS). Still, he performed his job without problems for approximately 10 years. By the fall of 2003, however, James's MS symptoms had worsened noticeably.

Other Goodyear employees alerted management of concerns for James' safety because of his progressively worsening MS symptoms. The other employees reported that James held onto machinery when he walked up and down stairs, that co-workers had to help him perform tasks and one employee expressed a concern that he did not think James could maneuver out of the way of passing forklifts. Both Goodyear and the union at the plant observed James working with "extreme difficulty" and expressed concerns for his and others' safety. In his deposition, James conceded that his MS medications made him feel weak and that he experienced problems with gait, balance, and spasticity in his legs. James also conceded that his left-foot drag progressively had worsened and that sitting for long periods as well as working around heat had started to bother him.

Initially, union representatives met with James to discuss the safety concerns. They told him that Goodyear would require him to take a functional capacity evaluation (FCE) to determine whether his physical abilities permitted him to continue in his then-current position (or possibly another position), with or without accommodation. The union representatives explained to James that if he failed the FCE, he would probably be terminated by Goodyear.

As an alternative to taking to the FCE, the union advised James that instead he could retire for medical reasons and receive temporary disability benefits. This option would guarantee James continuing income. Ultimately, James accepted the medical retirement, leaving his employment with Goodyear.

In the lawsuit, James complained of the unlawfulness of the allegedly false choice and of being singled out for testing based on his disability. He insisted that, despite the conditions he conceded he suffered, he could still complete his job duties, citing an acknowledgement by Goodyear that he consistently met performance expectations and that Goodyear never disciplined him for safety issues. James' brought his claim under the ADA, which prior to 2008 prohibited discrimination by a covered entity against "a qualified individual with a disability because of the disability of such an individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment."

The District Court granted summary judgment to Goodyear, finding that James failed to establish that Goodyear's insistence upon an FCE amounted to an adverse employment action, a prerequisite to a successful ADA claim. The Sixth Circuit Court of Appeals agreed.

The Court acknowledged that in *Burlington Northern & Sante Fe Railway Company v. White*, 548 U.S. 53, 126 S. Ct. 2405 (2006), the Supreme Court drew a distinction between retaliation and general discrimination claims, holding that general discrimination statutes define adverse action more narrowly. The Court ruled that this narrower adverse-action definition for general discrimination claims does not include an employer's valid demand for a medical examination. In turn, the Court found that Goodyear's FCE demand was job-related and consisted with business necessity. Under the ADA, the exam's scope must remain appropriately narrow, and the employer must hold a valid rationale for demanding it.

Here, as James did not actually undergo the FCE, there was no evidence to raise a genuine issue of material fact regarding the exam's scope. However, the Court ruled that because Goodyear required the test for valid safety reasons, it was not an adverse action nor did it prove discrimination. The Court stated:

In compliance with the ADA, Goodyear required James to undergo testing to assess the potential for harm and the imminence of such harm. The limited, agreed-upon facts regarding James' mobility, coupled with reports of forklift accidents, provided Goodyear with evidence sufficient for a reasonable person to doubt whether James could perform his job without creating a direct safety threat.

The Court found that the ADA allows an employer to make such assessments to consider: (1) the duration of the risk; (2) the nature and severity of potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm.

The key points to take away from this case, as noted above, are as follows:

1. Employers must continue to take note of how employees' conditions can pose safety issues in the workplace. If an employer becomes aware, through any means, of safety concerns posed by an employee, the employer should immediately investigate the situation and take appropriate action. This establishes that the employer generally views safety of prime importance and, can preclude a plaintiff-employee from a pretext argument that action was not taken by the employer upon notice of the safety issue.
2. Employers must make specific fact-intensive inquiries before requesting an exam of an employee. Each situation should be evaluated to determine the exact nature of an employee's disability and the possible safety threats posed. Such background information will provide an employer with the proper foundation for requesting the exam, as well as the opportunity to undercut an employee's attempt at establishing a prima facie case for discrimination under the ADA.

Had Goodyear not been able to specify the other employees' complaints regarding safety issues and its prompt action, it might not have been able to set forth its valid rationale to request the exam. Further, as Goodyear asked for the FCE for articulated narrow purposes, the request remained within the allowed employer requested medical examinations under the ADA, as acknowledged by the Court.