THE ROLE OF ANONYMOUS COMPLAINTS IN THE WORKPLACE IN ORDERING PSYCHOLOGICAL FITNESS-FOR-DUTY EXAMINATIONS

By Kevin J. O'Connor*

A newly published decision from New Jersey's intermediate level appellate court answers a question of first impression in New Jersey: under what circumstances should an employer order a psychological fitness-for-duty examination for an employee based upon a co-worker's complaints or suspicions?

Yesterday, in *In the Matter of Paul Williams et al.*, the Court considered the issue of whether an employer's order that an employee undergo a psychological examination to determine his continued fitness for duty was reasonably justified under the Americans with Disabilities Act (ADA), 42 U.S.C.A. §§ 12101- 12213, where the employer relied exclusively on an anonymous letter from a co-worker. The employer ordered the examination after receiving a letter from an anonymous source complaining of the employee's disruptive behavior. The employer failed to take any action to investigate the allegation and waited over eight months to require the evaluation. When the employee refused to undergo the examination on ground that the request violated the ADA, the employer terminated him from employment. The Civil Service Commission upheld the termination.

The Court in *Matter of Williams* engaged in a comprehensive review of applicable law and guidelines, including the express language of the ADA and the EEOC's regulations and interpretative Enforcement Guidance, and concluded that the termination was improper. The Court explained that a determination of whether to require a fitness-for-duty examination must be predicated on objectively reasonable evidence of legitimate concerns by the employer. The Court concluded that "an employer may only require an employee to undergo a psychological fitness-for-duty examination when the employer has a reasonable belief, either through direct observation or through reliable information from credible sources, that the employee's perceived mental state will either affect his or her ability to perform essential job functions or that the employee poses a direct threat." (Slip Op., at 18).

Basing such a decision on an anonymous letter by co-workers, alone, was simply not reasonable. More was required, such as an investigation of the complaints, and such efforts were required to be documented. The employer's failure to do so was a violation of the ADA.

Here's a link to the decision, which has been approved for publication as precedential.

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