

## Court Finds Employer's ADA Direct Threat Evidence Insufficient

September 6, 2013 | [Employee Health Issues, Employment Discrimination, Currents - Employment Law](#)



**Mark S. Kittaka**  
Partner

On Aug. 30, 2013, a federal district court in Wisconsin denied the employer's motion for summary judgment in a case where the plaintiff asserted a ADA claim for discriminatory discharge. ([EEOC v. Rexnord Industries, LLC](#)). This was despite the fact that the employer asserted that the employee's seizure disorder made her a "direct threat" to the safety of herself and those around her.

Even under the expansive scope of the ADA Amendments Act, an individual is not a "qualified" individual with a disability if she presents a "direct threat" to her own health and safety or that of others. However, in order to establish this defense, the employer must rely 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." *Chevron U.S.A., Inc. v. Echazabal*, 536 U.S. 73 (2002).

In this case, the plaintiff was diagnosed with an active seizure disorder. She had numerous seizures at work, some of which required calling an ambulance to take her for emergency treatment. She also complained of blackouts and vomiting. Ultimately, the employer obtained a written opinion from a physician that her active seizure disorder posed a direct safety risk to herself and others and that she should not return to work until her medical condition was stabilized. The employee was then fired the next day. Despite having this medical documentation, the court was not convinced. The EEOC provided expert testimony challenging the diagnosis of the company's doctor based on improper methodology. They challenged whether the employer relied upon the "most current medical knowledge and/or the best available objective evidence." Because of the conflicting expert testimony, the court denied the employer's motion for summary judgment and left it up to the jury to decide at trial.

As shown by the court's decision, an employer has a daunting task if it intends to rely upon the "direct threat" defense to justify terminations. The "most current knowledge" and "best available objective evidence" standards seem to be almost unattainable by a normal "company doctor" doing a fitness for duty evaluation. Employers should use caution in relying on this defense based on the heightened evidentiary standard.

### RELATED PRACTICE AREAS

Affirmative Action/OFCCP Compliance  
Arbitration and Grievances  
Disability, Leave and Medical Issues  
EEO Compliance  
Labor and Employment  
Workers' Compensation  
Workplace Culture 2.0

### RELATED TOPICS

ADA