Bomb Squad Officer With Hand Tremors Can Be Temporarily Transferred Pending A Medical Exam

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In a common sense ruling, an Arizona federal court has determined that a city was within its rights to temporarily transfer a bomb squad technician pending a medical exam. According to the court's opinion, the transfer occurred after a fellow employee observed the plaintiff was having hand tremors and reported that the plaintiff had dropped some chemicals with which he had been working. The plaintiff, who argued that the spill was a common occurrence and that any hand tremors were not the cause of him dropping the chemical, sued the city after a neurologist cleared him to return to duty. The plaintiff alleged that the city perceived him as disabled and violated the ADA by forcing him to undergo a medical exam. Finding that the requested medical exam was related to the job the officer performed and was consistent with business necessity, the court rejected plaintiff's claims and entered summary judgment in favor of the city.

It may seem obvious that a person who is assigned to diffuse bombs and has hand tremors can be temporarily reassigned and asked to undergo a medical exam. Still it's important to note that the employer in this case benefitted from carefully following protocol. Too often, employers react to a report that an employer may have a physical impairment affecting his work by immediately discharging the worker, transferring him to another job, or asking for a fitness-for-duty examination. The ADA, however, requires the employer to be more thoughtful on how it approaches such a situation.

Carefully following protocol often involves an employer first asking whether

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the employee at issue showed objective signs of impairment, and then determining whether that impairment poses a danger to the employee or others or affects the employee's ability to perform essential functions of the job. Based on those preliminary steps, the next step often requires the employer to assess whether a request for a medical exam makes sense in light of the report of impairment and the job the employee is performing. If the answer to those questions are yes, then the employer can temporarily transfer the employee (or place him or her off work) and direct the employee to undergo a targeted fitness-for-duty exam.

The conscientious employer will not make any permanent job decisions, however, until the results of the fitness-for-duty exam are returned and any follow up questions are asked. Moreover, because the very act of asking an employee to undergo a fitness-for-duty exam violates the ADA if it is not job related and consistent with business necessity, employers may choose to consult with their employment counsel before requesting an exam or otherwise taking an adverse employment action against an employee who exhibits a physical impairment at work.