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Cop's odd behavior defeats ADA claim

By Michael R. Lied

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Todd Michael began working for Troy, Mich., as a patrol officer in 1987. In 2000, he was diagnosed with a noncancerous brain tumor. Surgeries to remove the tumor in 2000 and 2001 were only partially successful. The city granted Michael paid medical leave for each surgery and returned him to the force once his surgeons cleared him for work.

Beginning in 2007, however, the city learned of odd behavior on Michael's part. Among other things, Michael's then-wife, Jamie, found a box of empty steroid vials — some of which were labeled for veterinary use and all of which belonged to Michael — which she turned over to the city's then-chief of police, Charlie Craft.

Michael demanded the vials be returned, and when Craft refused, Michael embarked on a two-year campaign to get them back. This included secretly recording Craft, suing him in small claims court and attempting to serve Craft with process at a party celebrating Craft's retirement from the department.

In addition, Michael secretly recorded Jamie during their marriage-counseling sessions and during family gatherings and then — on the basis of those recordings — asked the city prosecutor to charge Jamie with perjury.

Meanwhile, the city's new police chief, Gary Mayer, received reports that Michael had accompanied a cocaine dealer to several drug deals. Mayer suspended Michael from active duty pending an investigation.

Michael notified the city that he needed brain surgery for a third time. That surgery took place as scheduled, and Michael's surgeon cleared him for work in July 2009. But the city had its doubts about his fitness — largely based on Michael's behavior. The city told Michael that he needed to pass a psychological evaluation before he returned to work.

The city decided to keep Michael on unpaid leave, both because of the conclusions of two examining doctors and because Michael's behavior tended to confirm the doctors' conclusions.

Michael brought suit under the Americans with Disabilities Act, claiming that the city regarded him as disabled and discriminated against him on that basis.

The U.S. District Court granted summary judgment to the city, holding as a matter of law that Michael was not qualified for the position of patrol officer. Michael appealed.

The ADA defines “qualified individual” as someone who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

A disabled person is not qualified for an employment position, however, if he or she poses a “direct threat” to the health or safety of others which cannot be eliminated by a reasonable accommodation.

As noted by the appeals court, an employer’s determination that a person cannot safely perform his job functions is objectively reasonable when the employer relies upon a medical opinion that is itself objectively reasonable. A medical opinion may conflict with other medical opinions and yet be objectively reasonable.

An employer need not rely on a medical opinion, however, to determine that a person poses a direct threat. Rather, testimonial evidence concerning the employee’s behavior can provide sufficient support for a direct threat finding under the ADA.

In this case, both types of evidence supported the city’s determination. First, the city relied on the opinions of two doctors that Michael could not safely perform the functions of a Troy patrol officer.

Michael responded that there were opposing medical opinions. Michael’s argument was rejected. Reasonable doctors can disagree — as they disagreed here — as to whether a particular employee can safely perform the functions of his job. That is why the law requires only that the employer rely on an “objectively reasonable” opinion, rather than an opinion that is correct.

The appeals court observed that in many cases the question of whether one doctor is right that an employee can safely perform his job functions, or another doctor is right that the employee cannot, will be unknowable.

The second basis for the city’s decision was Michael’s own conduct, which raised grave concerns regarding his judgment.

On the record, it was “eminently reasonable” for the city to be concerned about whether Michael could meet his responsibilities, and it was reasonable for the city to conclude that the risk was too great to run.

The case is *Michael v. City of Troy Police Department, et al.*, 808 F.3d 304 (6th Cir. 2015).

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