

Tennessee Employer Gets New Trial to Prove Drug Tests Were Not Medical Examinations or Disability-Related Inquiries

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A Tennessee auto glass manufacturer will get a new trial to prove that drug tests it administered to its employees – including tests for prescription medications — were not “medical examinations” or “disability-related inquiries” under the Americans with Disabilities Act. [*Bates v. Dura Automotive Systems, Inc.*, No. 11-6088 \(6th Cir. August 26, 2014\).](#)

In May 2007, Dura conducted plant-wide drug tests of all employees at its Lawrenceburg, Tennessee facility. The drug tests screened for twelve substances: amphetamines, barbiturates, benzodiazepines, cocaine, Ecstasy, marijuana, methadone, methamphetamines, opiates, oxycodone, phencyclidine, and propoxyphene – some of which appear in prescription medications. If an employee tested positive and produced a valid prescription, the Medical Review Officer changed the final test result from positive to negative. Dura disregarded the MRO’s revisions, opting to prohibit any employee from using “machine-restricted” drugs, *i.e.*, medications that were packaged with warnings about operating machinery. Employees were told to stop using these medications or they would be terminated. Several employees were terminated and filed suit, alleging violations of the **Americans with Disabilities Act**. A jury found for all but one of the plaintiffs and awarded compensatory and punitive damages in excess of \$870,000. Dura moved for judgment as a matter of law or a new trial, among other things. The District Court denied Dura’s motions.

The Sixth Circuit Court of Appeals vacated the District Court’s judgment and remanded for a new trial on the issue of whether Dura’s drug tests constituted medical examinations or disability-related inquiries. The appellate court concluded that a reasonable jury could decide these issues either way. Specifically, the court held that “the evidence shows that Dura abstained from asking plaintiffs about their medical conditions, and only one plaintiff suggested that Dura directly asked her to identify the medications she was taking, albeit with conflicting testimony.” Moreover, the plaintiffs offered no evidence showing how the drug test results revealed information to Dura about plaintiffs’ medical conditions. In the absence of specific evidence connecting the drug test results to specific medical conditions, the court declined to hold that the drug test results constituted medical examinations or disability-related inquiries. The court noted, however, that there were credibility issues to be resolved, given Dura’s insistence that it was not interested in the plaintiffs’ medical conditions, while other evidence showed that some terminated employees provided doctor’s notes stating that their use of prescription medications did not affect their work performance.

At the new trial, the district court will instruct the jury to decide whether the drug tests were medical examinations or disability-related inquiries in accordance with the ADA's statutory definitions, as well as the definitions set forth in the EEOC's *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)* Part B.2 (July 27, 2000) and the EEOC's *Enforcement Guidance: Preemployment Disability-Related Questions & Medical Examinations* (Oct. 10, 1995). In particular, the appellate court emphasized the "test design factor," *i.e.*, whether the test is designed to reveal an impairment or the employee's health. This issue is a fact-sensitive inquiry.

Employers who test for prescription medications should review this case and ensure that their testing protocols are not intended to elicit information about employees' medical conditions.

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