



Office of
Legal Counsel

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

August 31, 2005

Dear :

I am responding to your letter of July 21, 2005, requesting that we review the questions your employer submitted to your physician after you experienced a seizure at work. You also ask us to address your employer's requirement that you provide a medical release from your physician if you experience a seizure while working. Finally, you raise a question regarding your employer's response to your request for alternative transportation from your workplace to a construction site while you are prohibited from driving due to recent seizures.

This letter does not constitute an official opinion of the U.S. Equal Employment Opportunity Commission (EEOC). Nor does this letter constitute legal advice to you or a determination as to whether your employer violated the Americans with Disabilities Act (ADA). This letter only offers technical assistance regarding issues you have raised concerning your rights and responsibilities under the ADA. An assessment of any ADA issue requires a case-by-case analysis based on the specific facts of a particular situation. Thus, the answers below are based on the information you provided. Different or additional facts could change these answers.

Employer's right to make disability-related inquiries

You state that you have been in your present job, Project Manager in the Department of Architecture, Engineering & Construction, for almost six years, and were diagnosed with a seizure disorder in March 2002. You experienced two tonic-clonic seizures at work, the most recent on Feb. 16, 2005. (You do not note when the first seizure occurred.) In response to this seizure, which apparently resulted in your being taken to the hospital, your employer requested in a Memorandum dated April 19, 2005, that your doctor answer a list of 14 questions concerning your ability to perform your job duties and whether any "restrictions and/or supports" may be required.

Under the ADA, an employer may seek "disability-related" information from an employee if the inquiry is "job-related and consistent with business necessity."¹ A "disability-related inquiry" is "a question (or series of questions) that is likely to elicit information about a disability."² Clearly,

¹ 42 U.S.C. § 12112(d)(4)(A); 29 C.F.R. § 1630.14(c).

² Question 1 in EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act [hereinafter "Disability-Related Inquiries"], available at www.eeoc.gov/policy/docs/guidance-inquiries.html.

the April 19 Memorandum contains a series of questions seeking information about your seizure disorder and thus it would be considered a "disability-related inquiry."

Under the ADA, such inquiries (and medical examinations) are "job-related and consistent with business necessity" when an employer "has a reasonable belief, based on objective evidence, that: (1) an employee's ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a "direct threat" due to a medical condition."³ This means that an employer may seek medical information from an employee's doctor when it has objective reasons to believe that a medical condition may interfere with the employee's performance of his/her essential job duties, or that the employee's medical condition may put the employee or others at risk of suffering serious harm. The purpose of this standard is to require that employers have legitimate reasons for seeking medical information while ensuring their ability to obtain relevant information necessary to make informed employment decisions.

Based on the information you provided, it appears your employer was entitled to seek disability-related information after you experienced a seizure while at work. One way an employer may justify its need to seek medical information is when it observes symptoms indicating that the employee has a medical condition that may impair his/her ability to perform essential functions or may pose a "direct threat." Clearly, your employer witnessed your February seizure, a seizure that apparently resulted in loss of consciousness. The materials you provided include documentation that suggests you requested "support" from a co-worker at the onset of the February 16 seizure. It also appears that your employer may not have known about your seizure disorder prior to the February seizure or that any information the employer may have had was limited. You state your work "frequently requires" that you visit construction sites as part of the performance of your duties, and your job description emphasizes that you must be able to work in "hazardous or irritating environments, confined spaces and [under] adverse conditions as a result of construction." Given your job duties, the environment in which you must work, and the circumstances surrounding the February seizure, an employer could reasonably believe that a seizure might impair your ability to work and that there might be certain hazards in that worksite that could create a significant risk of substantial harm to you or others if a seizure occurred. It appears that most of your employer's 14 questions to your doctor were permissible because they focus on the effect of your medical condition and its symptoms on your ability to perform your job responsibilities and to work in a construction site.

However, certain questions may be problematic because an "employer is entitled only to the information necessary to determine whether the employee can do the essential functions of the job or work without posing a direct threat."⁴ Questions that focus primarily on the nature and

³ Question 5 in "Disability-Related Inquiries." A "direct threat" means an employer has objective evidence that a disability poses a significant risk of substantial harm to the employee or others. Thus, under the ADA, if an employer has legitimate reasons to suspect that a direct threat *might* exist, then it may obtain the objective evidence necessary to prove if its suspicion is correct.

⁴ Question 13 in "Disability-Related Inquiries."

adequacy of treatment rather than the ability to perform your job duties safely and effectively would not appear to be permitted.

Requirement that you provide a medical release after future workplace seizures

A requirement to provide a medical release is, in essence, a requirement to undergo a medical examination that would permit a doctor to determine if such a release was appropriate. While an employer may require an employee to undergo a medical examination or answer disability-related questions when that person seeks to return to work following leave for a medical condition, it may do so only if it has a reasonable belief that the employee's present ability to perform essential functions might be impaired or that a direct threat might exist due to the medical condition.⁵ Having received detailed answers from your doctor about the nature of your seizures and your ability to perform your job safely and effectively following a seizure, your employer does not appear to have objective evidence to support a blanket requirement that you provide a medical release after each seizure.

Your doctor, in his response to your employer's letter (which included a job description that emphasized the ability to work in "hazardous or irritating environments, confined spaces and adverse conditions created as a result of construction"), noted that most of your seizures are "simple partial seizures with arm involvement which, on two occasions, have progressed to tonic-clonic seizures." He states that you can return to work immediately following simple partial seizures because they require no recovery time since there are no after-effects. While your doctor warns that there might be "significant post-ictal confusion following [the] less frequent episodes [involving] loss of consciousness," it appears the confusion is transient and you can resume work as soon as it dissipates. Your doctor opines that you are able to judge your limitations following a convulsive event. He does not indicate that you need to go home following a seizure. And your doctor specifically rules out the need for any medical tests following a seizure or the need for additional monitoring of your condition.

In response to your employer's inquiry about work restrictions, your doctor notes two limitations: 1) the employer must ensure that there are physical barriers (walls, rails, etc.) to minimize the risk of a fall if you must work at heights over 10 feet, and (2) you cannot drive until you receive clearance from the Department of Motor Vehicles. Your doctor concludes that you are capable of performing your job duties safely with these restrictions.

Finally, your doctor states that he does "not feel that it is necessary for [you] to report each of [your] seizure events" to him given the "infrequent nature of [your] secondary generalized/convulsive episodes." He bases this conclusion on your compliance with your medication schedule, your routine office visits to check medication levels in your system, and his belief in your ability to judge any limitations you may experience following a tonic-clonic seizure.

⁵ Question 17 in "Disability-Related Inquiries."

In a memorandum, your employer acknowledges your doctor's conclusion but states that if "an event occurs on the job" you must provide a medical release from your physician "upon [your] return back to work." As an initial matter, it is unclear what your employer means by "an event." Is it simple partial seizures, tonic-clonic seizures, or both? Furthermore, the employer's memorandum implies that you would always need to leave the workplace after a seizure, yet your doctor's letter states that you can return to work immediately after a simple partial seizure. Your doctor's letter does not address whether you would need to take leave after a tonic-clonic seizure (and if so, how much leave), or whether a brief recovery time at the workplace would suffice. You do not state how soon you returned to work after being taken to the hospital following the February seizure. Thus, it is unclear precisely under what circumstances your employer is requiring that you bring a medical release.

Based on the information you provided, however, it does not appear that your employer has sufficient reason to require a medical release each time you experience a seizure. Your employer's requirement to provide a medical release would seem to contradict your doctor's assessment that he does not need to examine you or even learn about every seizure you may experience. An employer cannot impose such a requirement based only on the fact that an employee has experienced, and may again experience, seizures in the workplace, even tonic-clonic seizures. (I note that your doctor is a neurologist who has been treating you for approximately three years and is director of an Adult Epilepsy Clinic.)

Even if you need to take leave following a tonic-clonic seizure (e.g., a few hours or one day), that fact alone would not suffice to require a medical release. The employer must also consider the information your doctor provided on these seizures and your condition after one occurs. The answers provided by your doctor do not seem to support a reasonable belief that leave lasting a few hours (or even one day) until any confusion from a tonic-clonic seizure dissipates would affect your ability to perform your job duties safely and effectively.

Your employer's request for a medical release might be valid under the ADA if there was additional information to support a reasonable belief that you might not be able to perform your essential job duties or you might put yourself at significant risk of substantial harm. For example, a medical release might be justified if you experienced an increase in the number of tonic-clonic seizures or if the nature of the seizures changed. A medical release also might be appropriate if you suffered an injury as a result of a seizure, or if your employer had reason to believe that you were not compliant with your medication regimen.

Request for reasonable accommodation

The ADA requires employers to provide reasonable accommodation to the known physical or mental limitations of an employee's disability.⁶ Clearly, your employer knows about your driving restriction because your doctor's letter to the employer indicated you cannot drive at this time due to your seizure disorder. You state that as a result of this limitation, you asked the

⁶ See 42 U.S.C. § 12112(b)(5)(A); 29 C.F.R. §1630.9

employer for assistance in getting from your office to the construction site. The employer's apparent response was to note the availability of a shuttle service, but you state this service requires a minimum of one week's advance notice. You claim this service would not work given the nature of your job, which may require that you go to a construction site on short notice.

When an employee informs an employer, either directly or through a third party, that s/he has a medical condition requiring a change at work, then the employee has requested "reasonable accommodation."⁷ After receiving a request, an employer should enter into an "interactive process," a discussion with the employee, in which the employer may explore: (1) whether the medical condition is a "disability" as defined by the ADA, (2) the nature of the workplace limitation(s), (3) why the requested accommodation is needed, and (4) alternative solutions that would address the limitation(s) and enable the employee to perform his/her job duties without imposing an "undue hardship" on the employer.

An employer may suggest an alternative accommodation. An employee should carefully consider whether the alternative would allow him/her to perform the job, even if the employer's accommodation is not the employee's preferred solution. It is also important for an employee to explain to the employer why its alternative accommodation is ineffective, *e.g.*, why it would not enable the person to perform his/her job functions. While the employer is under no obligation to provide the accommodation preferred by the employee, the ADA does require the employer to provide an effective accommodation that enables the individual to perform the essential job duties, absent undue hardship.

While the shuttle addresses your current limitation in driving, it must also permit you to perform your job duties effectively. Your job description makes clear that you must visit construction sites. Therefore, the shuttle service must enable you to get to those sites in a timely manner consistent with your job responsibilities. You indicate that your job requires you to respond to a phone call requesting your immediate presence at a construction site. Assuming both that the shuttle service requires advance notice and that this requirement is in conflict with the nature of your work responsibilities, then you must make sure you explain to your employer why the shuttle service is an ineffective solution. Similarly, if an employer believes that an employee's proposed accommodation would be ineffective or would cause undue hardship, it should explain that to the employee. If there are certain situations in which you could make advance reservations on the shuttle, you should do so. But, you should suggest, and your employer should consider, other alternatives to address situations requiring that you immediately go to a construction site, such as having the employer pay for you to use a taxi.

⁷ See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, available at www.eeoc.gov/policy/docs/accommodation.html. Many of the principles discussed in this section of the letter – a request for reasonable accommodation; the interactive process; provision of an effective accommodation, though not necessarily the employee's choice – are discussed at greater length in this Guidance.

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I hope this information is helpful. Again, all responses are based on the information you have provided in your letter. Any additional information about your medical condition, your job responsibilities, and the working environment could affect the answers to any of the questions you raised.

I have enclosed copies of the EEOC Guidances on Disability-Related Inquiries and Medical Examinations of Employees and Reasonable Accommodation, as well as a Fact Sheet on how the ADA applies to individuals with epilepsy and seizure disorders. I would be happy to talk further with you and the employer, if you wish. I can be reached at 202-663-4676.

Sincerely,

Sharon Rennert
Senior Attorney Advisor

Enclosures