

## *JURY VERDICT RAISES ADA CONCERNS FOR TRUCKING COMPANIES*

A recent jury verdict from the United States District Court for the Eastern District of Pennsylvania may have significant implications for how trucking companies deal with employees who request special accommodations under the Americans with Disabilities Act (ADA). In *Taylor v. USF-Red Star Express*, No. 03-2216, 2005 U.S. Dist. LEXIS 3600 (E.D. Pa. March 8, 2005), plaintiff, a truck driver and dock worker, suffered two seizure-like incidents, allegedly caused by his use of Creatine as a nutritional supplement.

Under the company's collective bargaining agreement, Taylor, a 12-year employee, had the choice to bid on driving assignments or dock work. Recognizing that he could not drive a truck until the cause of his seizures was determined, plaintiff bid on dock work.

In response, Red Star placed plaintiff on leave and would not let him return until he received a doctor's certification that it was safe for him to return to work. Plaintiff contended that the certifications were unnecessary and retaliatory. Red Star contended the certifications were necessary to assure that plaintiff would not have a seizure while driving. Red Star also allegedly told the plaintiff that he was not qualified for any other positions within the company.

During the 20 months that plaintiff was not allowed to return to work, plaintiff alleged that Red Star ignored mounting medical evidence that Creatine caused his seizures. Since plaintiff stopped taking Creatine, he argued that he should have been allowed to return to work. He also disputed Red Star's contention that he was not qualified for any other positions in the company.

Plaintiff brought claims against Red Star under the ADA. A jury found in favor of plaintiff and awarded \$159,000 for lost wages, pension benefits and compensatory damages. In addition, the Court awarded more than \$283,000 in attorneys fees and costs to plaintiff's lawyers. See *Taylor v. USF-Red Star Express*, No. 03-2216, 2005 U.S. Dist. LEXIS 3599 (E.D. Pa. March 8, 2005).

In post-trial motions, Red Star argued that the jury verdict was against the weight of the evidence because plaintiff was not disabled under the ADA. Therefore, he was not entitled to any special accommodations. Red Star also asserted that plaintiff was employed to drive 80,000-pound tractor-trailers and 8,000-pound forklifts and that if plaintiff suffered a seizure while working, the results could be disastrous.

The Court, however, denied Red Star's motions stating that it was reasonable for the jury to conclude that Red Star had violated the ADA. Judge Newcomer found that Red Star, by sending the plaintiff home and forbidding him to work because of its fear that he could have a seizure, while at the same time, arguing that it did not perceive Taylor to be disabled for purposes of the ADA, was disingenuous. Thus, the Court held that the jury acted reasonably in accepting the plaintiff's argument that he was falsely perceived as disabled and that Red Star refused to permit him to return to work for 20 months on the basis of those misperceptions. Plaintiff argued, and the jury accepted, that Red Star's manager misclassified the plaintiff as an epileptic who was seizure prone and subject to sudden and unpredictable losses of consciousness even though not one doctor ever told Red Star that Mr. Taylor had epilepsy.

The Court's ruling potentially places trucking companies in between the proverbial Scylla and Carybdis. On the one hand, trucking companies want to be able to limit their potential liability by ensuring that drivers who have suffered a serious illness are physically fit to return to work and operate tractor trailers. On the other hand, if they are overzealous in their procedures they run the risk of being held liable under the ADA.

Trucking companies should closely examine the medical records from its drivers who are trying to return to work after suffering a serious illness. Particular attention should be given to any medical condition which indicates that an employee's illness was due to an unusual event which was not likely to reoccur. It is also important for trucking companies to explore alternative employment options for the disabled employee. If alternative employment cannot be found, then trucking companies should carefully document what efforts were undertaken to try and find a different position within the company and also establish why a different position was not available. Finally, if litigation does occur, trucking carriers need to be careful not to argue that the employee does not qualify as being disabled under the ADA while at the same argue that due to the employee's physical condition a doctor's certification is necessary before he or she could be permitted to return to work.

Jay Barry Harris, Esquire  
Jason T. LaRocco, Esquire  
FINEMAN KREKSTEIN & HARRIS