Fitness-for-Duty Evaluation Does Not Violate ADA

Franklin Owusu-Ansah was hired as an employee at the Coca-Cola call center in Dunwoody, Georgia in 1999. He was promoted three times by Coca-Cola and by 2005 was working in a supervisory position. In late 2007, however, Owusu-Ansah allegedly made threats against other employees and was placed on paid administrative leave by his employer. Before he was allowed to return to work, Coca-Cola required Owusu-Ansah to have a psychological and psychiatric evaluation as part of a fitness-for-duty assessment. He was cleared to return to work in April 2008. He thereafter filed suit, claiming that the mandatory fitness-for-duty evaluation violated his rights under the Americans with Disabilities Act (ADA).

The United States District Court for the Northern District of Georgia granted the employer's motion for summary judgment, and Owusu-Snsah appealed to the Eleventh Circuit Court of Appeals. In an important ruling, the Eleventh Circuit affirmed the District Court's dismissal of the lawsuit. *Owusu-Ansah v. The Coca-Cola Company*, 715 F.3rd 1306 (11th Cir. 2013).

Section 12112(d)(4)(A) of the ADA states that an employer

> "shall not require a medical examination . . . [nor] make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be *job-related and consistent with business necessity*." (emphasis added).

As a threshold matter, the Eleventh Circuit held that § 12112 was applicable here even though the employee had not been proven to have a disability as defined by the ADA. The Court then held that, under the facts in this case, the fitness-for-duty evaluation was both job-related and consistent with business necessity. The evaluation was "job-related" because an "employee's ability to handle reasonably necessary stress and work reasonably well with others are essential functions of any position." 715 F. 3rd at 1312 (quoting another appellate court cision). In a situation where questions about the mental health of an employee are job-related and reflect a concern for the safety of other employees, the employer may require that the employee undergo a psychological examination designed to determine his ability to work. Similarly, the Court held that the evaluation was also "consistent with business necessity," because an employer can lawfully require a psychiatric or psychological fitness-for-duty evaluation under § 12112(d)(4)(A) if it has information suggesting that an employee is unstable and may pose a danger to others.

In an interesting side observation, the Court noted that the federal agency charged with ADA enforcement, the Equal Employment Opportunity Commission (EEOC), had issued written guidance placing very stringent requirements on employers who were considering a fitness-for-duty medical or psychological evaluation. Regarding the matter of effect of such "guidance," the Eleventh Circuit observed that, "An agency guidance document is entitled to respect only to the extent that it has the 'power to persuade.'" 715 F.3d at 1313. In this instance, the Court concluded that Coca-Cola had the right to require the return-to-duty evaluation even under the more stringent EEOC requirements.

In jurisdictions encompassed by the Eleventh Circuit (such as Alabama), the *Owusu-Ansah* case provides helpful clarification regarding the ability of employers to require an employee to undergo a mental or psychological fitness-for-work evaluation. When an employee has objective evidence based on an employee's conduct raising reasonable safety or performance concerns, the employer may remove the employee from the workplace and condition his/her return on the obtaining of such an evaluation satisfactorily addressing those concerns.