

# PUBLICATION

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## Federal Court of Appeals Rules That a Trucking Company May Terminate an Employee Who Poses a Safety Risk

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In March 2007, a federal court of appeals ruled in favor of an employer sued by the Equal Employment Opportunity Commission for terminating an employee diagnosed with neurocardiogenic syncope. In *EEOC v. Schneider National, Inc.*, the EEOC sued Schneider National, Inc., the nation's largest truck company, for terminating Jerome Hoefner, an employee who had been diagnosed with neurocardiogenic syncope. Neurocardiogenic syncope is a disorder of the nervous system that potentially produces a sudden and unexpected drop in blood pressure that reduces the amount of blood reaching the brain, causing the victim to faint. Possible triggers that may cause these fainting episodes include prolonged standing or upright sitting, stress, prolonged exposure to heat, hunger, nausea or vomiting and dehydration. The disorder can be treated with medication and does not prevent an individual from satisfying the safety standards required by the Federal Motor Carrier Safety Act. Although Hoefner had recently been recognized for driving one million miles without incident, he fainted and was subsequently diagnosed with neurocardiogenic syncope. Because Schneider's policy prohibited employing individuals with this disorder as truck drivers, Hoefner was terminated.

Schneider adopted the policy prohibiting the employment of individuals suffering from neurocardiogenic syncope after the death of another employee, Michael Kupsy, whom Schneider hired shortly after he was diagnosed. Kupsy was killed when the Schneider truck he was driving veered off a bridge. Schneider was advised that it appeared that Kupsy may have "fallen asleep at the wheel." In an attempt to prevent this from occurring again, Schneider decided to prohibit the employment of individuals suffering from this disorder as truck drivers. Although Hoefner was able to secure employment with another trucking company, the EEOC brought suit on his behalf, claiming that Schneider's termination of Hoefner violated the Americans with Disabilities Act. The lower court granted Schneider's motion for summary judgment and the EEOC appealed.

In affirming the ruling of the lower court, the Court considered two issues: 1) whether the employer's decision to terminate or take some other adverse employment action against the employee was motivated by a mistaken belief that the condition precludes him from engaging in some activity; and 2) whether the activity that the employer mistakenly believes the employee to be disabled from engaging in is a "major life activity." The Court found that there was nothing to suggest that Schneider had a mistaken understanding of neurocardiogenic syncope. The Court believed that Schneider was "simply unwilling to risk a repetition ... of the Kupsy calamity."

The Court concluded that Schneider was entitled to determine how much risk is too great for it to be willing to take. Citing *Sutton v. United Air Lines, Inc.*, the Court stated that an employer is free to decide that physical characteristics or medical conditions that do not rise to the level of an impairment ... are preferable to others, just as it is free to decide that some limiting, but not substantially limiting, impairments make individuals less than ideally suited for a job. In addressing the second issue, the Court found that there was no evidence that Schneider considered neurocardiogenic syncope to impair any "life activity" other than driving a truck for Schneider. The EEOC asserted that work was a "major life activity" under the ADA, but the Court rejected that argument, concluding that even if work was a "major life activity" the claimant would be required to show an inability to work in a broad range of jobs, rather than a specific job. The court found that the EEOC failed to meet this requirement. Accordingly, the Court ruled that Schneider's actions did not violate the Americans with Disabilities Act and affirmed the ruling of the lower court.

This case was heard before the Seventh Circuit of the United States Court of Appeals. The Seventh Circuit has federal court appellate jurisdiction for the states of Indiana, Illinois and Wisconsin.