

# Anxiety, Depression: Court Dismisses Nurse's Disability Discrimination Lawsuit.

A charge nurse in the extended care unit at a VA medical center took a leave of absence from her job on her mental health provider's recommendation.

When it was time to return to work she informed her supervisors she had been diagnosed with an adjustment disorder with mixed anxiety and depressed mood.

Based on that diagnosis she requested transfer to another area of the facility. In connection with that request she indicated she was fully capable of working on just about any unit of the facility, except the extended care facility to which her mental health provider did not want her to return.

She was not offered another position. When she did not return after her medical leave had expired she was deemed absent without leave and was terminated.

## Court Dismisses

### Disability Discrimination Lawsuit

The US District Court for the Middle District of North Carolina dismissed the nurse's disability discrimination lawsuit.

There were multiple independent bases for the Court's ruling, each of which could have produced the same result.

### No Proof Employee Had a Disability

The Court accepted the fact the nurse had a legitimate diagnosis from her mental health provider of adjustment disorder with mixed anxiety and depressed mood.

However, the nurse failed to take the next required step of providing evidence that her condition fit the legal definition of a disability. Even when a genuine physical or mental condition can be substantiated, it is not presumed to be a disability under employment discrimination law.

A legal disability is a physical or mental impairment which substantially limits the individual in the performance of a major life activity like seeing, hearing, walking or working.

Applying for other positions on campus where she herself admitted she was fully capable of working strongly militated against the idea the nurse had a disability.

Even a legitimate physical inability to perform one particular job in one's field is not considered a disability for purposes of disability discrimination law.

***In employment disability discrimination law the first question is whether the employee has a disability.***

***In discrimination law a disability can be one of three things:***

***A physical or mental impairment that substantially limits one or more major life activities;***

***A record of having such an impairment; or***

***Being regarded by superiors in the workplace as having such an impairment.***

***An employee with a disability is entitled to ask for and be granted reasonable accommodation from the employer.***

***Reasonable accommodation can include reassignment to a position where the disabled employee is better able to perform the essential functions.***

***However, even with a diagnosis of anxiety or depression, reasonable accommodation does not include the right to be transferred away from coworkers or supervisors with whom the employee is unable to get along or who cause prolonged stress or conflict.***

***A disabled employee has no special right to work in an aggravation-free or stress-free environment.***

UNITED STATES DISTRICT COURT  
NORTH CAROLINA  
December 8, 2016

### Employer Did Not Fail to Offer Reasonable Accommodation

Even if the nurse was disabled, her employer did not have to provide an accommodation that was not reasonable.

Reasonable accommodation usually means some sort of modification of the physical environment or the physical operation of the job so that an employee with a disability can perform the essential functions of the position. An example might be an amplified stethoscope for a nurse with a disabling hearing impairment.

Reasonable accommodation can also include transfer of a disabled employee to a position whose physical environment or physical demands are compatible with the limitations inherent in the employee's disability, so the employee can fulfill the essential functions of the employee's position even with a disability. An example might be a sedentary job for a person with disabling mobility issues.

However, reasonable accommodation does not include the employer having to reassign a disabled employee simply because he or she cannot get along with certain coworkers or supervisors.

Reasonable accommodation did not entitle the nurse to a transfer from the extended care unit even with backup from her mental health provider that she should not go back to work there due to her mental health diagnosis. That would imply a special entitlement for the disabled which the Court deemed unfair.

### Legitimate, Nondiscriminatory Grounds for Firing

The nurse took a leave of absence and then did not return to her position, albeit on the advice of her mental health provider.

The nurse had the right to medical leave, but when the time expired there was nothing wrong with her being deemed absent without leave and terminated.

The Court saw no evidence to counter the employer's position that apparent abandonment of her job was the sole reason for the nurse's termination. She had no right to refuse to return to work unless conditions were met which her employer had no obligation to honor. ***Patterson v. McDonald***, \_\_\_ F.Supp. 3d \_\_\_, 2016 WL 7190718 (M.D.N.C., December 8, 2016).