

Back Condition: Nurse Not Entitled To Preference In Transfer.

The US District Court for the District of North Dakota agreed for the record that the nurse had a genuine disability which kept her from working in direct patient care.

She had been transferred to quality review because of her disability but then hers and others' quality review positions were eliminated. She sued for disability discrimination because she was not given the telephone triage position she wanted.

A disabled employee is entitled to reasonable accommodation.

Reasonable accommodation can mean transferring the employee to an available vacant position.

It is not reasonable to expect an employer to violate a union contract by giving preference to a disabled employee rather than following the open-bid procedure that was written into the contract to protect other employees' rights.

UNITED STATES DISTRICT COURT,
NORTH DAKOTA, 2001.

The court ruled the telephone triage position was not a vacant available position as the phrase is used in disability discrimination regulations because it had to be opened to other employees to bid pursuant to the union contract.

Disabled employees asking for reasonable accommodation do not have preference over other employees who also have rights, the court pointed out. Joelson v. Dept. of Veterans Affairs, 177 F. Supp. 2d 967 (D.N.D., 2001).

Anxiety Attacks: Court Dismisses Nurse's Disability Discrimination Claim.

To sue for disability discrimination an employee must have a physical or mental impairment that substantially limits one or more of the employee's major life activities.

The full extent of the legal definition of disability was not spelled out by Congress and it must be decided by the courts on a case-by-case basis.

Mental illness is considered a disability only under limited circumstances. For example, an employee diagnosed with major depression and taking anti-depressants is considered to have a disability.

However, a temporary condition is not generally thought of as a disability.

The nurse had two major anxiety attacks, one a few months and one two years earlier. She was treated and she returned to work. This does not fit the definition of a disability.

Even so, a disabled person would have to be otherwise qualified for the job despite the disability.

Someone who threatens violence is not qualified to work as a nurse.

UNITED STATES DISTRICT COURT,
PUERTO RICO, 2001.

A hospital staff nurse was written up for failing to revise the unit's medication list, which was one of her duties.

The US District Court for the District of Puerto Rico noted there already was friction between the staff nurse and her supervisor. The staff nurse was a qualified clinical nurse specialist. She declined that position which would have required her to move her family and took a staff nurse position which meant being supervised by someone less qualified than herself.

Threats of Violence

The nurse told a co-worker she was thinking of buying a gun and shooting her supervisor. She went to the clinical director of the facility and confessed she was so angry she wanted to assault her supervisor.

The nurse was sent home. Then she was transferred to a facility in another city. She filed a grievance. The grievance went to arbitration. The arbitrator overturned the transfer order but imposed a seven-day suspension. The nurse sued for disability discrimination. The court threw out her lawsuit.

Anxiety Attacks Not A Disability

The nurse had had two previous episodes involving angry outbursts toward co-workers. After each episode she saw a psychiatrist, took prescribed medications and went to monthly therapy sessions. The last therapy session from the second episode was a few months earlier and she had stopped taking her medications.

The court ruled that a temporary mental illness that resolves is not a disability. Because the nurse's anxiety disorder and/or depression was not a disability it was not relevant whether the nurse's present conduct was related to her illness.

Second, the court pointed out that threats of violence, even if caused by a genuine psychiatric illness, are not appropriate for a nurse. That meant she was not qualified for her job as a nurse even if she had a true legal disability, and she had no right to sue. Mendez v. West, 117 F. Supp. 2d 121 (D. Puerto Rico, 2001).