

Positive Urine Cocaine Screen: Nurse's License Suspension Upheld By Court.

Because her initial R.N. license application listed a felony conviction for delivery of a controlled substance, a nurse's license was approved by the state board only on a probationary basis, one of the conditions of probation being unannounced urine drug screens.

The Supreme Court of Appeals of West Virginia upheld suspension of the nurse's probationary license a positive drug screen without proof of actual drug use or on-the-job performance impairment.

A urine cocaine screen can be attacked as invalid if an irregularity can be shown in the chain of custody of the urine sample.

Taking certain medications can lead to false-positive urine cocaine screens. However, support for or rebuttal against the possibility of a false-positive requires expert testimony from a toxicologist.

SUPREME COURT OF APPEALS,
WEST VIRGINIA, 1996.

Although it did not prove a problem in this case, the court noted in passing that it is critically important to maintain documented proof of a direct and unbroken chain of custody of a urine drug sample, from the person being screened giving the sample to the laboratory technician performing the test with no chance for tampering or adulteration of the sample, and without any possibility for one person's sample to be mislabeled as another's, to avoid the results being invalidated after the fact by a court. ***Stewart vs. West Virginia Board of Examiners for Registered Professional Nurses***, 475 S.E. 2d 478 (W.Va., 1996).

Chemically-Dependent Employee: Active Drug Abuse No Basis For Disability Discrimination Claim.

A person who is actively engaging in the illegal use of drugs or who is actively alcoholic at the time of employment, or application for employment, is not a qualified individual with a disability.

Not being a qualified individual with a disability, as defined by law, a person engaging in substance abuse is not protected by the Americans With Disabilities Act from adverse employment action, and can be disciplined, fired or not hired in the first place, because of current substance abuse.

A person who has successfully participated in a supervised rehabilitation program, and who no longer engages in substance abuse, is a qualified individual with a disability, and may not be subjected to employment discrimination on the basis of past drug- or alcohol-related behavior.

For a job which requires dependability and reliability, employers can make pre-employment inquiries about drug- and alcohol-related problems.

UNITED STATES DISTRICT COURT,
MISSISSIPPI, 1996.

Employers are entitled under the law to hold all employees to the same standards of conduct and performance, including employees who are engaging in illegal drug use or who are actively alcoholic.

The Americans With Disabilities Act (AWDA) does not require employers to give any special concessions to employees whose poor job performance, absenteeism, negligence and other sub-standard behaviors are the result of their substance abuse, according to a recent ruling handed down by the U.S. District Court for the Southern District of Mississippi. The court upheld the firing of an infectious disease specialist from his position with the state department of health over on-going problems stemming from unresolved addiction to crack cocaine.

The fired employee had completed a thirty-day inpatient drug rehab program. He claimed on that basis he was protected from job bias for his addiction, as the AWDA protects successfully rehabilitated substance abusers by defining them as disabled individuals under the law who cannot be discriminated against.

After graduating from an inpatient treatment program, however, this employee resumed active crack cocaine abuse and returned to his old habits of poor job performance. He had nominally completed a drug rehab program, but as a relapsed active drug abuser he was not considered a qualified individual with a disability and had no right to put forth a claim of disability discrimination over his termination.

The policy behind the AWDA is to eradicate, not to enable, drug and alcohol abuse in the workplace, especially among workers like healthcare professionals whose impairments would "thrust upon the public an unnecessary peril," the court ruled. ***Thomas vs. Mississippi Department of Health***, 934 F. Supp. 768 (S.D. Miss., 1996).