

Depression: Nurse Was Disabled, But Not Terminated For Her Disability.

A nurse who had suffered from depression for years was terminated from her job in the hospital's mental health unit after issues were discovered relative to her documentation of a Schedule II drug.

On one particular day shift she did not log in the correct pill count for an order of Schedule II meds from the pharmacy to be kept as stock on the unit and did not document another nurse witnessing her wasting a single dose of the same medication that her patient, she said, had refused.

Recent amendments to the Americans With Disabilities Act make it easier for an individual with depression to prove being disabled.

Even if the impairment is short-lived, episodic, controlled by medication or in remission it can now count as a disability.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
November 10, 2011

The US District Court for the Eastern District of Pennsylvania agreed that her symptoms of not eating, not sleeping, having racing thoughts and just feeling helpless, hopeless and sad qualified as a substantial limitation of a major life activity, the touchstone definition of disability for purposes of disability discrimination law.

However, even if she was disabled by depression, the nurse was terminated because she committed two significant medication errors and did not bring those errors to her supervisor's attention. When they were discovered and she was confronted she was unable to explain how it happened.

The nurse had the burden of proof and could not explain how her depression, and not her medication errors, was the basis for the hospital's decision to terminate her. Murray v. UHS Fairmount, 2011 WL 5449364 (E.D. Pa., November 10, 2011).

Male Nurse: No Discrimination, Case Dismissed.

A male nurse who worked in the hospital's ICU and E.R. was fired after a series of angry outbursts involving use of profanity against co-workers in a patient-care area of the E.R.

After his termination he sued the hospital for gender discrimination.

A minority can prove discrimination by showing that he or she was disciplined more harshly than a non-minority for the same conduct, even if the discipline was in all other respects appropriate for the offense.

UNITED STATES DISTRICT COURT
MICHIGAN
November 1, 2011

The US District Court for the Eastern District of Michigan dismissed his case.

The Court pointed out that the US anti-discrimination laws were originally enacted to protect racial minorities and women from discrimination. Interpretation of the laws has evolved to the point that nowadays a Caucasian is considered a minority in a workplace predominated by minorities and a male is considered a minority in a workplace where co-workers and supervisors are predominately female.

Use of Profanity in the Workplace Was Not the Issue

The nurse claimed he was treated unequally and unfairly by being singled out for disciplinary measures based on his use of profanity, which he claimed was commonplace in his workplace.

The Court, however, said that the real issue was threatening and intimidating behavior which happened to involve use of profanity. Although his co-workers used profane language at times, he was not able to identify any non-minority, that is, a female nurse who was guilty of threatening and intimidating behavior, that sort of behavior being a legitimate, non-discriminatory reason to terminate a nurse. Owczarzak v. St. Mary's, 2011 WL 5184225 (E.D. Mich., November 1, 2011).

African-American Nurses Aide: No Discrimination.

An African-American nurses aide was terminated from her position in a rehab facility after a heated verbal exchange with a resident who complained that she had ignored him and made him wait an extended period of time for assistance to use the bathroom after he turned on his call light.

After her termination the aide sued the facility for racial discrimination.

A minority who sues for racial discrimination has the burden of proof to identify one or more non-minority co-workers who were treated more favorably, that is, disciplined less harshly for the same unacceptable conduct.

The co-workers so identified must have the same job responsibilities as the employee in question.

UNITED STATES DISTRICT COURT
OHIO
October 26, 2011

The US District Court for the Southern District of Ohio dismissed the case. She could not prove she was treated differently on account of her race.

Nurses Were Not Valid Basis for Comparison

In her lawsuit the fired aide raised the issue that two nurses were present at the time of the incident, knew that the man's call light was on and stood by and did basically nothing to see that the patient got to the bathroom in a timely fashion.

However, the Court ruled the nurses were not a valid basis for comparison. Even if they were not reprimanded, let alone not fired, for not helping the man to the bathroom, they were not nurses aides and it was not a priority for them to help patients to the bathroom. Peacock v. Alter-care, 2011 WL 5075831 (S.D. Ohio, October 26, 2011).