

Diabetic Nurse: Court Links Nurse's Termination To Incompetence, Disability Discrimination Case Dismissed.

A hospital staff nurse who was an insulin-dependent diabetic suffered a hypoglycemic episode at work.

Following that episode and because of that episode she was no longer allowed to work as an on-call nurse in the cardiac special procedures area, an assignment for which the hospital paid a significant shift premium compared to general staff work.

The nurse was assigned as a telephone triage nurse for the hospital's cardiology outpatients, a position it was believed would not be affected by her diabetes. Her role was to take calls from cardiac patients on anti-coagulant therapy.

A patient phoned with an INR at the top end of the target range. The nurse called the physician and believed she received instructions from the physician for the patient to increase the scheduled daily coumadin dosages. The order was actually to decrease the coumadin.

According to the US District Court for the Western District of Wisconsin, a competent nurse would know that the medication dosage should be decreased under these circumstances and would question or at least clarify an order the nurse interpreted as calling for an increase.

No Disability Discrimination

The court ruled the hospital committed no disability discrimination placing the nurse on involuntary medical leave for her diabetes, a more charitable alternative to outright termination for incompetence.

First, there was no direct proof the decision to terminate her actually had anything to do with her diabetes.

Second, an episode of incompetence which directly threatened a patient's safety is grounds to terminate any nurse and would overcome any insinuation the employer was motivated by discriminatory intent, in the court's judgment. **Takle v. Univ. of Wisc. Hosp., 2005 WL 2056294 (W.D. Wisc., August 25, 2005).**

To sue for disability discrimination, an employee must prove all of the following:

That he or she is disabled, or perceived by the employer to be disabled;

That the employer was aware of the disability;

That the employee was qualified for the position;

That the employee was terminated or faced other adverse consequences because of the disability.

Even if all of these factors seem to be present, the employer can come back with proof of a legitimate, non-discriminatory reason for the action taken against the employee.

The tack most commonly taken by employers is to point to employee incompetence that seriously threatened the employer's mission and purpose.

The employee still has one last chance, to come back and expose the employer's stated rationale as a pretext, that is, as a dishonest explanation meant to cover up a discriminatory motive.

UNITED STATES DISTRICT COURT
WISCONSIN
August 25, 2005