

Disability Discrimination: Nurse Not Able To Fulfill Essential Job Functions, Lawsuit Dismissed.

More than two years after being promoted to a management-level position a registered nurse was demoted back to a staff nurse position following complaints over her job performance.

In an effort to get her management position back, the nurse got documentation from her physician that she was not able to perform the duties of a staff nurse because of an old wrist injury.

However, because there was now a record of her being unable to fulfill the essential functions of the job description of staff nurse she was involuntarily put on medical leave for a year until she was finally able to retire from her long-term employment with the hospital system.

Not Able To Fulfill Essential Functions Not a Qualified Individual With a Disability

The nurse was precluded from direct patient care by her own doctor's assessment as well as the hospital's examining orthopedist's that she could not lift, restrain or transport patients herself, being unable to lift more than ten pounds or push or pull a gurney or a wheelchair.

Nor was she able to sit or stand for more than twenty minutes at a time.

The court itself does not define the essential functions of a staff nurse's job in making the decision whether a nurse claiming disability is nevertheless able.

The court looks instead to the way the essential functions of the position are defined by the facility and compares that to the objective physical performance data that the physicians have been able to come up with who have either treated or examined the individual in question.

Promotion Is Not Reasonable Accommodation

The Court ruled that promotion to a sedentary management position, asked for not on the basis of merit but instead only as reasonable accommodation to a disability, is inherently unreasonable and the nurse in this case was asking too much in her disability discrimination claim to expect such unduly favorable treatment. **Davis v. New York Health & Hosp. Corp.**, 2011 WL 4526135 (S.D.N.Y., September 29, 2011).

The Americans With Disabilities Act outlaws discrimination against an otherwise qualified individual with a disability.

A disabled person is not otherwise qualified unless he or she, with or without reasonable accommodation, is able to perform the essential functions of the position in question.

In defining what functions are essential for a particular position, the employer's judgment carries considerable weight with the courts.

The hospital system in this case had functional job descriptions for the responsibilities of a head nurse and a staff nurse which included direct patient care both individually and as members of a team, including being able to assist in crisis and emergency situations including codes and CPR and transfers and transport of patients.

The nurse pointed to other nurses whose problems did receive accommodation, one who limped, one with back problems and one with hand injuries. However, it is not clear that these other nurses were valid bases for comparison.

UNITED STATES DISTRICT COURT
NEW YORK
September 29, 2011

Patient Abuse: Aide's Lawsuit For Defamation Dismissed.

A nursing-home nurses aide was reported to her supervisor by a co-worker for alleged abuse of a patient.

The supervisor reported the aide to local law enforcement. The co-worker, the supervisor and others gave statements to law enforcement officials as part of the resulting criminal investigation.

Nursing employees are required by law to report abuse of vulnerable persons to their supervisors.

Nursing facilities are required to report abuse to law enforcement.

For reporting abuse, employees and facilities have legal immunity from civil defamation lawsuits.

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT
October 11, 2011

The US Court of Appeals for the Fourth Circuit did not have to consider whether the abuse allegations were true to dismiss the civil defamation lawsuit that was filed against the nursing facility, the supervisor and the co-worker by the aide.

In general, a person can file a civil lawsuit for defamation against someone who harms the person by making a false statement about them to a third person.

However, abuse reporting is a special situation. Caregivers, their supervisors and their employers are required by law to report suspected abuse of vulnerable individuals under their care by care-giving co-workers, family members and others.

For making these required reports in good faith, caregivers are protected from civil lawsuits. The legal issue is not whether their statements turn out not to be actually true. The only question is whether they acted in good faith. **Blankson-Arkoful v. Sunrise Senior Living**, 2011 WL 4793215 (4th Cir., October 11, 2011).