

Disability Discrimination: Drug Rehab, Hearing Disability Were Not The Reason Employee Was Fired.

The Superior Court of New Jersey, Appellate Division, ruled that a hospital employee's disability discrimination case should be dismissed. The evidence was not there to support the case.

Successfully Rehabilitated Drug Abuser

State and Federal anti-discrimination laws include in the definition of a qualified individual with a disability a person who is participating in a supervised rehabilitation program or has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use.

Employers are allowed to verify by drug testing that an employee who claims to be successfully rehabilitated from illegal drug use actually is no longer using drugs.

Employee Assistance Program Strict Confidentiality

The court accepted the hospital's claim that the employee's supervisors had no knowledge the employee in question had gone through drug rehab, as it was the hospital's unwavering policy to keep employee assistance matters strictly confidential even within the hospital.

If the decision-makers who fired the employee did not know of her drug-related disability, they could not have made their decision on that basis.

Reasonable Accommodation

The employee had bilateral hearing aids and apparently could hear normally with them. She requested a special stethoscope. Her supervisors agreed to supply it as a reasonable accommodation, but had never heard of such a device and did not know where to purchase it.

The court faulted the employee for not following through at that point and identifying the device and finding a supplier as she was asked. **Bosshard v. Hackensack University Medical Center**, 783 A. 2d 731 (N.J. Super., 2001).

A hospital employee was fired for altering a medical record shortly after she reported back to work after attending drug rehab.

She also requested the hospital get her a special stethoscope to take blood pressures and perform vascular sufficiency tests. She was told to locate a supplier and the hospital would buy it for her, but she never followed through.

If there is more than one explanation why an employee was disciplined or fired, the employee has to put forward some evidence the employee's disability or disabilities were the reason.

The hospital's strict policy was that employee assistance, who got her into drug rehab, did not share information with supervisors. There was no proof this employee's supervisors knew she was in rehab rather than on vacation.

She was having other difficulties with her job unrelated to her hearing deficit that questioned her competence and compromised patients' safety.

SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION, 2001.

Pregnancy Discrimination: Court Finds Other Reason For Firing.

The nurse's supervisor said changing her schedule while she was pregnant and giving her maternity leave with full benefits was costing the hospital money, but the supervisor worked with her because it was hospital policy to accommodate a nurse's requests for maternity leave.

The nurse replaced a Salem sump with a feeding tube, then charted a non-existent verbal order and was fired. She sued for pregnancy discrimination. The US Circuit Court of Appeals for the Fifth Circuit ruled in favor of the hospital.

The nurse took maternity leave three times in three years.

The nurse performed a procedure that was not ordered and which the physician did not want done, then falsified the chart.

By comparison, another nurse had done the same procedure without an order, was never pregnant and was not fired.

The other nurse did not falsify the chart.

UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT, 2001.

Discrimination has to be proved by showing a non-pregnant employee, similar in all respects, was treated more favorably. Another nurse who did the same thing did not try to cover herself with a phony chart entry. She was not similar in all respects. There was insufficient proof of discrimination, the court ruled. **Wallace v. Methodist Hospital System**, 271 F. 3d 212 (5th Cir., 2001).