

Failed Drug Screen: Court Dismisses Minority Nurse's Racial Discrimination Lawsuit.

A minority nurse took oxycodone at home in the a.m. for pain in her legs before reporting to work at the hospital.

Shortly after coming on duty she became dizzy and nauseated. She told the other nurses she needed help as she sat down on the floor. They could see she was somewhat stuporous. She was taken to the hospital's E.R. in a wheelchair.

After returning to her unit from the E.R. she was still dizzy, unsteady and shaking. The charge nurse sent her to the hospital lab for a blood draw for a drug screen. It was positive for oxycodone.

Almost a month later, after the hospital lab results were confirmed by a forensic laboratory, the nurse was sent a letter requiring her to verify that she had a then-current prescription for the oxycodone which was found in her system.

The nurse had told her charge nurse that morning that the hydrocodone she had taken was prescribed for her by her dentist after a tooth extraction three years earlier.

When she was informed that it was oxycodone found in her system the story was that the pills had been prescribed for her adult daughter.

No Racial Discrimination

The US District Court for the Western District of Oklahoma dismissed the racial discrimination lawsuit the nurse filed against the hospital over her termination.

The Court validated the hospital's substance abuse policy which, among other things, forbids an employee's use of a controlled substance without a valid prescription.

One condition of employment at the hospital was that employees must refrain from illegal drug use on or off the job. The definition of illegal drug includes any drug which is not legally obtained, any drug which was legally obtained by a person other than the employee or a drug which is being used in a manner or purpose other than as prescribed for the employee.

The hospital had the right to have a policy requiring any employee to undergo alcohol or drug testing if the hospital had reasonable suspicion that the employee was under the influence or had used substances contrary to the hospital's policy.

Title VII of the US Civil Rights Act makes it unlawful for an employer to discharge any individual because of the individual's race, color, sex or national origin.

To prove a prima facie case of racial discrimination the terminated employee must show that:

- 1. He or she is a minority;***
- 2. He or she was qualified for the job;***
- 3. Despite his or her qualifications, the employee was terminated; and***
- 4. The employee was terminated under circumstances which give rise to an inference of unlawful discrimination.***

Even if all four elements are ostensibly present, the employer can still defend the lawsuit successfully by showing a legitimate, non-discriminatory rationale for the action taken against the minority employee.

Testing positive for a prescription medication for which she did not have a current authorized prescription is the reason why this employee was initially suspended on the day she tested positive and the same reason she was finally terminated after all the relevant facts were verified.

UNITED STATES DISTRICT COURT
OKLAHOMA
March 31, 2011

Reasonable suspicion of substance use means physical symptoms or other manifestations of being under the influence, including abnormal conduct or erratic behavior.

The Court was satisfied from careful review of the evidence that her supervisor had reasonable suspicion to send the nurse to the hospital's lab for a blood draw. The sample was properly labeled and stored in the hospital's lab and transmitted to the forensic laboratory in the correct manner to preserve the legal chain of custody. There was no reasonable doubt that the sample tested at the forensic laboratory was hers.

The nurse admitted at least three times that she took pills which were a controlled substance and did not have a valid prescription at the time she took them which allowed her to take them for pain in her legs. It was not relevant that she believed that admitting that to the board of nursing would help rather than hurt her on the issue of keeping her license.

Non-Minority Nurses Were Not Fired No Basis For Comparison

Several non-minority nurses at the hospital were not fired after testing positive for alcohol or controlled substances on the job, a fact the nurse in this case brought up in her defense.

A minority employee can claim discrimination for being disciplined on the job more harshly than a non-minority employee for the same offense, even if the punishment nevertheless fits the crime for the offense committed. That is the general rule, the Court pointed out.

In this case, however, all of the non-minority employees pointed out for comparison were nurses who admitted to substance-abuse problems and submitted to supervised rehab programs before returning to work at the hospital.

The nurse herself never admitted to a substance-abuse problem and never entered rehab. According to the Court, that meant the non-minority employees she pointed out who were allowed to keep their jobs after they violated the hospital's substance-abuse policy were not a valid basis for comparison. ***Burton v. Midwest Reg. Med. Ctr.***, 2011 WL 1300892 (W.D. Okla., March 31, 2011).