Disability Discrimination: Employer Not Informed Of Employee's Condition Until After Firing, No Basis For Lawsuit.

The nursing home's activities director's firing over false entries on his time card was the culmination of ongoing problems with tardiness, unexplained disappearances and generally disorganized job performance. Three weeks after being fired, the activities director wrote a letter requesting a medical leave of absence to get treatment for attention deficit disorder, which the nursing home refused. Then he filed charges of disability discrimination and sued.

The Americans With Disabilities Act does not place the burden on the employer to determine why an employee fails to perform satisfactorily. Poor performance may be caused by any number of factors apart from a legally-recognized disability.

UNITED STATES DISTRICT COURT, MINNESOTA, 1996.

The U.S. District Court for Minnesota threw out the suit. An employer is not expected to know that an employee with performance problems has a disability.

Instead, the court ruled, the Americans With Disabilities Act puts the burden squarely on the employee to inform the employer of any disability and the need for accommodation. Offering assistance with planning and organization skills does not mean the employer thinks the employee has a disability. **Lippman vs. Sholom Home, Inc., 945 F. Supp. 188 (D. Minn., 1996).**

Disability Discrimination: Nurse's Erratic Behavior Does Not Require Employer To Look For Disabling Mental Impairment, Court Rules.

Erratic behavior on the job, in and of itself, does not give notice to the employer that the employee is suffering from a disabling mental impairment for which the employer would be required by law to provide reasonable accommodation.

If an employee has been diagnosed with a disabling psychiatric condition, it is up to the employee to inform the employer of the diagnosis and of what steps are indicated to accommodate the disability. Employers are not required by law to deduce solely from an employee's behavior that the employee has a disabling psychiatric condition requiring accommodation.

Having behaved in an erratic manner does not entitle an employee who has been disciplined or terminated to claim disability discrimination on the basis of a perceived mental impairment, absent competent medical evidence of such an impairment having been communicated to the employer.

UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT (IOWA), 1996.

The nurse in this case was under a physician's care for depression, but her nursing supervisors at the hospital where she worked did not know this.

The nurse did obtain a letter from her physician stating that she could not work night shifts, due to fatigue. Based on the letter, her supervisors discontinued scheduling her for night work for a few months, but then became insistent that she make necessary personal arrangements to be available for the night shift.

The nurse became agitated, started voicing veiled death threats toward coworkers, became generally disruptive and insubordinate, and was told to set up counseling appointments through the employee assistance program, or she would be fired.

She refused counseling and was fired. But she kept coming to work. She even showed up for a team meeting on the unit, for no other apparent reason than to cause a disturbance. She was escorted out by security, and additional security staff were posted on her old unit for several weeks in case she might return.

The U.S. Circuit Court of Appeals for the Eighth Circuit (Iowa) threw out the lawsuit this nurse filed against the hospital over her firing. Under the Americans With Disabilities Act, the court ruled, an employee claiming employment discrimination based on a psychiatric condition must show, at a minimum, that competent medical evidence of the condition has been brought to the employer's attention.

An employer is not required under the law to anticipate solely from an employee's erratic behavior that the employee might be suffering from a disabling psychiatric condition for which reasonable accommodation would be required. **Webb vs. Mercy Hospital, 102 F. 3d 958 (8th Cir., 1996).**