

Hearing Disability: Circulating Nurse's Case To Go Forward.

A disabled employee can come under the protection of the disability discrimination laws either by having a disability or by being perceived by his or her superiors as having a disability.

Whether a disabled employee is a qualified individual with a disability is determined by the employee's job performance with, not without, the benefit of auxiliary aids like hearing aids to improve hearing or medication to control a medical condition.

Reasonable accommodation to an employee's disability can take many forms.

A disabled employee can be reassigned to a position where the disability does not affect the employee's ability to perform, but reassignment cannot be used to limit, segregate or otherwise discriminate against an employee with a disability by forcing a reassignment to an undesirable position.

A disabled employee who will benefit from reassignment should be reassigned where possible to a position that is equivalent in terms of pay and status, if the person is qualified for the position and such a position is available.

UNITED STATES DISTRICT COURT
MISSISSIPPI
July 15, 2014

An RN had been in the surgical department four years as a circulating nurse despite his hearing impairment.

His congenital hearing loss was 80% in one ear and 45% in the other, for which he had been wearing bilateral hearing aids for many years.

The only reasonable accommodation he ever requested was that the radio be turned down in the operating room so he could better distinguish voices. Although that request was supposed to be honored, it routinely was not.

The nurse's difficulties came to a head when an orthopedic surgeon asked for the surgical coordinator to come to the room and remove him from a case. The reason given to the nurse was that the surgeon did not like to have to tell him anything twice.

The nurse was placed on paid administrative leave. A few days later he came back and was allowed to do menial non-nursing tasks like stocking supplies.

Several weeks before the incident, four years into his surgical career, his performance rating was 9 out of 10.

A week after the incident he was placed on a performance action plan to improve in the areas of positioning of patients, prepping the orthopedic operating room and learning the orthopedic instruments and supplies. Soon he was removed from the surgical department altogether.

He applied for other positions in the hospital for which he was qualified but was turned down. He did decline to apply for some nursing jobs which, unlike the surgery department, called for weekend work.

He finally ended up in a clinic nursing position which paid about \$6 per hour less than what he was making circulating in the operating room.

The US District Court for the Southern District of Mississippi denied the hospital's request for a summary judgment.

The most telling evidence was that the nurse's disability was at worst an annoyance to one surgeon which did not affect patient safety, his request for reasonable accommodation was being ignored and he was treated differently solely because of certain persons' animosity toward him as a disabled person. Wheat v. Rush Health, 2014 WL 3259798 (S.D. Miss., July 15, 2014).

Disruptive Behavior: License Revocation Upheld.

A nurse was the object of multiple complaints from co-workers and patients. Some staff refused to work with her and patients felt insecure about the care they were receiving.

One incident finally resulted in termination and a report to the Board of Nursing which resulted in revocation of her license.

The nurse yelled at a unit secretary, put her hands on the secretary's shoulders, shook the secretary, pushed her into a chair and then pushed the chair across the nurse's station while telling the secretary to input certain data into the computer.

This was not the first time she had yelled at a co-worker but apparently was the first episode involving assaultive physical contact.

A nurse's license is recognized by the courts as a Constitutionally protected property interest.

A nurse's license cannot be suspended or revoked without due process of law, that is, only on the basis of legally valid evidence and only after a fair and impartial hearing.

COURT OF APPEAL OF LOUISIANA
August 5, 2014

The Court of Appeal of Louisiana explained at length that a nurse's Constitutional rights are violated if the nurse's license is taken away without the protection of due process of law.

The Court ruled that this nurse's employer and the Board conducted thorough investigations which involved obtaining statements from eyewitnesses to the unprofessional behavior of which the nurse was accused. The nurse was given a fair hearing with the opportunity to call her own and to cross-examine the witnesses against her, before the Board ruled against her. Holmes v. State Board, __ So. 3d __, 2014 WL 3843952 (La. App., August 5, 2014).