

Impaired Nurse: Disability Discrimination Case Dismissed.

Disability discrimination can take place when an employer takes adverse action against an employee based on a disability the employee is perceived to have.

However, the evidence here is that the nurse's supervisors perceived her not as disabled but under the influence of drugs.

There is no evidence anyone perceived her as having a significant permanent impairment of her ability to perform a major life function, which is the accepted definition of a disability for purposes of disability discrimination law.

The nurse tried to challenge the hospital's drug screening procedures. She claimed she should not have been tested on her day off, the hospital should have allowed a retest, the hospital should not have accessed her own patient records and the hospital should not have fired her given her otherwise good work record.

The hospital's drug screening policy is perfectly legitimate for an employee who shows erratic behavior on the job. A disability discrimination lawsuit is not an open forum to debate its appropriateness.

UNITED STATES DISTRICT COURT
TENNESSEE
August 24, 2016

A charge nurse came to the hospital to attend an in-service training program.

Before leaving the premises she went to visit the unit where she worked. On arrival on the unit she began to feel a tingling sensation down her spine, numbness, anxiety and the sensation that her throat was closing.

A nurse coworker and a physician saw that she did not seem well and suggested she go to the emergency department.

When a hospital employee is seen in the emergency department following a report of erratic behavior at work, hospital policy requires the nursing supervisor be contacted to determine whether a drug screen is needed. In this case the nursing supervisor contacted the senior nursing director who, in turn, contacted the director of human resources. The nursing director actually came to the hospital and spoke with the nurse herself and the coworkers who witnessed her erratic behavior. A drug screen was ordered.

The drug screen came up positive for Butalbital, for which the nurse did not have a prescription. The nurse was terminated.

No Disability Discrimination

The US District Court for the Middle District of Tennessee dismissed the lawsuit the nurse filed against her former employer which alleged she was fired for a disability her employer perceived she had.

The nurse claimed she had sensitivities to certain smells including the chemicals used to strip wax from the hospital's floors, as well as bleach, aerosol scents, kerosene and certain perfumes and deodorants which can trigger headaches, wheezing, sinus inflammation, coughing and a sensation of her throat closing.

However, there was no evidence anyone in a supervisory capacity had any knowledge of this nurse's alleged chemical sensitivities. Nor had she ever had a similar prior reaction when the floors on her unit actually were being stripped.

The nurse also challenged the hospital's drug screening procedure for erratic behavior on the job. The Court said an employee cannot open up a debate about such procedures as a basis for a disability discrimination case. Litts v. Sumner, 2016 WL 4466632 (M.D. Tenn., August 24, 2016).

Extra Work: Court Turns Down Nurse's Retaliation Suit.

An African American nurse was assigned to cover twelve patient rooms on a particular shift.

Nurses at the hospital are usually only given two to five patient rooms to cover, according to the allegations later raised in the nurse's lawsuit.

An employee has legal protection against employer reprisals for exercising the employee's right to file a complaint of discrimination with the Equal Employment Opportunity Commission.

The employee must prove there is a causal connection between the filing of his or her complaint and the employer's action.

UNITED STATES DISTRICT COURT
MICHIGAN
September 8, 2016

The US District Court for the Eastern District of Michigan dismissed the nurse's allegation that she was a victim of employer retaliation.

In February the nurse filed a complaint with the Equal Employment Opportunity Commission. In December of the same year the incident occurred with the allegedly excessive work assignment.

To succeed with a lawsuit for retaliation an employee must show more than that adverse action occurred after a legally protected activity, such as filing a complaint of discrimination. The employee has the burden of proof that his or her protected activity was the motivating factor behind an incident that is alleged to amount to illegal employer retaliation.

The passage of time, as a general rule, tends to negate an inference that adverse action by an employer toward an employee was motivated by an intent to retaliate. Bronson v. Henry Ford, 2016 WL 4701478 (E.D. Mich., September 8, 2016).