Back Injury: Nursing Caregiver's Employer's Duty Of Reasonable Accommodation Defined.

The Americans With Disabilities Act defines disability, for purposes of anti-discrimination law, as "a physical or mental impairment that substantially limits one or more of the major life activities of the individual."

According to the U.S. District Court for the Southern District of Indiana, a nursing caregiver whose particular job entails lifting and heavy physical care of patients dependent upon receiving such care will come within the legal definition of a disabled person if the caregiver sustains a back injury leading to documented medical restrictions on lifting, bending, twisting, etc., which prevent the caregiver from being able to care for the heavy-care patients with whom he or she had worked prior to sustaining the back injury.

It is not relevant to the employer's duty to provide reasonable accommodation whether the back injury occurred on or off the job.

If the caregiver has a medical release to return to work after a back injury with specific restrictions on lifting, bending or twisting, the caregiver is considered a qualified individual with a disability. A qualified individual with a disability, by definition, is a person who is entitled to reasonable accommodation from his or her employer to his or her disability.

The court ruled explicitly that when a nursing caregiver returns to work with specific medical restrictions on lifting, bending and twisting, from a back injury, and the employer has light duty work to offer in the employee's unit or in another unit, the employer's legal duty of reasonable accommodation is to offer light duty work for which the employee is qualified and able to perform within his or her medical restrictions, or face a potential lawsuit for disability discrimination. **Leslie vs. St. Vincent New Hope, Inc., 916 F. Supp. 879 (S.D. Ind., 1996).**

When an employee with a back injury has medical restrictions on lifting, bending or twisting and asks for reassignment to a unit where the patients require no lifting or other heavy physical care, and the employee is able to perform non-lifting patient-care duties or unit clerical duties, and the employer refuses to consider the employee for an available light duty assignment, the employee has grounds for a disability discrimination lawsuit for failure to make reasonable accommodation to the employee's disability.

It is not relevant to the employer's duty of reasonable accommodation whether the employee's back injury occurred on or off the job.

There was evidence that other patient-care personnel at this facility, with similar back-injury-related medical restrictions, had been given temporary light duty assignments in their own units or rotated to other units to provide them with light duty work, as a matter of routine practice.

UNITED STATES DISTRICT COURT, INDIANA, 1996.

Human Tissue Graft: Hospital Must Heed Warnings On Packaging And Investigate Source Of Tissue.

A patient contracted Creutzfeldt-Jacob disease from cadaver dura mater material used as a graft in surgery to remove a chole-steatoma. The dura tissue sample had been acquired by the hospital from a German corporation operating in Canada, according to the court.

In an apparent attempt to avoid non-compliance with U.S. FDA regulations, the carton containing the tissue sample had been shipped into the U.S. labeled "For Investigational Use Only," "For Use In Canada Only," and "Laboratory Sample - For Testing Only."

In ruling in favor of the patient in his lawsuit against the hospital, the Appellate Court of Connecticut stated that, under these circumstances, this patient would not be required to present expert testimony in court to establish that the tissue graft should not have been used on him. That question presented no "esoteric or uniquely medical issue" in this case.

The warnings with which the carton containing the tissue had been labeled placed the hospital on notice that the tissue sample could not be considered safe, without the hospital making its own independent inquiries to ascertain that the tissue product itself had been approved by U. S. FDA authorities for use in the U.S., and, if so, whether the particular supplier had been approved by U.S. authorities to supply the product in the U.S.

It was not appropriate, according to the court, for the hospital to assume the product was legal for use in Canada, or that being legal in Canada would render a product or device subject to U.S. FDA regulation acceptable for use in the U.S. **Bourguin vs. Melsungen, 670 A. 2d 1322 (Conn. App., 1996).**