

Disability Discrimination: Court Rules Nurse Unable To Wear Protective Gear Has No Grounds For Claim.

The court ruled that a nurse whose medical condition makes her unable to wear necessary personal protective equipment does not come within the definition of being disabled, for purposes of Federal disability discrimination laws.

According to the U.S. District Court in Colorado, to satisfy the general definition of disability discrimination in employment under the Americans With Disabilities Act, the victim must establish: (1) That he or she is a disabled person within the meaning of the Act; (2) That he or she is qualified for the job in question, that is, with or without reasonable accommodation, he or she is able to perform the essential functions of the job; and (3) That the employer has failed to hire or promote the person, or has discharged the person, or has taken other adverse employment action, because of the person's legally-recognized disability.

The Americans With Disabilities Act defines the term disability as "a physical or mental impairment that substantially limits one or more of the major activities of life, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working."

The courts have already ruled, the court noted, that the inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working. Since the nurse in this case could wear a lead apron for four and one-half hours, and had no restrictions keeping her from taking other nursing positions with her employer or elsewhere, which were offered to her by her employer and refused, the court was unwilling to find it appropriate for her to have filed a disability discrimination suit. **Mowat-Chesney vs. Children's Hospital**, 917 F. Supp. 746 (D. Colo., 1996).

A nurse working as a scrub nurse in the cardiac cath lab was required to wear a lead apron during cardiac catheterization procedures.

An incident occurred in the cath lab in which the nurse was not able to promptly carry out a direction from the physician, five and one-half hours into a procedure, because the motor function in her right hand faltered temporarily.

Her physician determined the weight of the lead apron caused this by aggravating the residual effects of neck injuries the nurse had sustained in a motor vehicle accident. He wrote a letter restricting the nurse from wearing the lead apron for longer than four and one-half hours at a time.

The nursing supervisor offered her several other nursing positions at the hospital, which comported with the physical restrictions her physician had imposed. None of these was a day shift position, so the nurse quit, and filed suit for disability discrimination. The court dismissed her suit.

UNITED STATES DISTRICT COURT,
COLORADO, 1996.

IV Line For General Surgical Anesthesia Not Always Required, Court Rules.

Every time a patient was to receive general anesthesia for surgery, hospital policies stated that an adequate intravenous line should be present to administer necessary fluids and medications, in a recent case decided by the Court of Appeal of Louisiana.

A nineteen-month-old patient was brought in for what was expected to be a simple, routine procedure to incise the tympanic membranes to remove middle ear fluid and to install drainage tubes, to remove the adenoids and to clear the maxillary sinuses by needle puncture.

The parents met with the circulating nurse before the procedure. She reviewed the surgical consent form with them, told them the child would be placed under general anesthesia and explained there were certain generic risks associated with general surgical anesthesia. The nurse also received a negative response to her inquiry whether any member of the child's family was known to have experienced an adverse reaction to surgical anesthesia.

In the operating room, after the child was asleep, the physician attempted unsuccessfully to insert a standard pediatric IV line at four different sites. Because the procedure was expected to be quite brief and to involve minimal blood loss, the physician then elected to proceed without an IV in place.

The child went into cardiac arrest during the procedure. The arrest could not be reversed for nearly twenty-five minutes, because no IV line was already open, and it took that long to finally get one started, in the jugular vein.

Although hospital policy on its face required an IV line for any general anesthesia, the court ruled it was really the physician's call whether an IV was needed, and it refused to fault the physician, the circulating nurse or the hospital in this case. **Roberts vs. Cox**, 669 So. 2d 633 (La. App., 1996).