

Sleep Apnea: Nurse's Disability Discrimination Case Dismissed.

To prove a case of disability discrimination an employee or former employee must be able to show that:

He or she has a disability as disability is defined for purposes of the Americans With Disabilities Act (ADA);

He or she can perform the essential functions of the job with or without reasonable accommodation; and

He or she was treated adversely as a result of discrimination based on the disability.

A person qualifies as disabled under the ADA if he or she:

Has a physical or mental impairment that substantially limits one or more major life activities;

Has a record of such an impairment; or

Is regarded by his or her superiors as having such an impairment.

Sleep apnea can be a disability, but in this case it is not.

The nurse had problems getting himself going on time in the morning but had no trouble doing his job as a nurse once he came on duty. He did not get help until six months after he suspected he had sleep apnea, and the CPAP machine took care of it completely.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
March 2, 2011

The US Court of Appeals for the Third Circuit has upheld a ruling of the US District Court for the Eastern District of Pennsylvania we reported in March, 2010. The Court of Appeals had its own analysis and rationale for the result.

See *Sleep Apnea: Court Finds No Disability Discrimination*, Legal Eagle Eye Newsletter for the Nursing Profession, (18) 3, Mar. '10 p. 5.

Sleep Apnea Can Be a Disability

A 2002 Federal court case ruled that sleep apnea can be a true disability. The secretarial employee in that case had significant problems sleeping well at night and thus fell asleep frequently on the job during the day. A CPAP machine, tonsil surgery, oral meds and pure-oxygen therapy did not help her condition.

This Nurse's Condition Not As Severe

In the nurse's case, on the other hand, he never had difficulty performing his expected workload as a registered nurse and, once he started using it, his sleep problems were eliminated by the CPAP machine. His performance deficits were persistent tardiness for his 6:30 a.m. shift and fatigue which he claimed was behind a verbal lashing-out at a co-worker after which he said he would resign if he ever had to work with that same nurse again.

The nurse did not seek a medical evaluation and help for his sleep problem until six months after he first began to suspect he had sleep apnea when he woke up short of breath gasping for air.

In sum, the Court of Appeals concluded the evidence fell short of proving the existence of a disability, that is, there was not a significant impairment of a major life activity in the nurse's case.

There was also no evidence the nurse's supervisors subjectively perceived him to have a disability. A false subjective perception of a disability can be grounds for a disability discrimination case even if the employee in question does not actually have a disability.

An employee's supervisors simply being aware of an impairment does not imply they have taken that impairment into account in their dealings with the employee. ***Keyes v. Catholic Charities*, 2011 WL 713640 (3rd Cir., March 2, 2011).**