Stress/Disability Discrimination: Nurse's Case Dismissed.

A recent case from the US District Court for the Southern District of New York illustrates how difficult it can be for a nurse to succeed with a disability discrimination lawsuit against an employer or former employer.

Job Stress

Difficulty Working With Supervisor

Job stress as a general rule does not fall under the legal definition of a disability as contemplated by the US Americans With Disabilities Act and the accompanying regulations of the Equal Employment Opportunity Commission. The same is true for difficulty working with a particular supervisor or co-worker, assuming there is no harassment going on, which is a separate issue.

The legal rationale is twofold. First, to be disabled a person must be unable to perform a broad class of jobs in the workforce. Inability to work as a nurse on one particular unit, even to work as a nurse at all, is not a disability if other options are open. Second, even if the person has a disability the person must be able to do the job in question, with or without reasonable accommodation.

The nurse in this case filed suit claiming she had a stress-related irritable bowel syndrome which completely prevented her from working for a particular supervisor, and requested reasonably accommodation by being allowed to work elsewhere.

The court disallowed her claim. First, the nurse admitted her stress-related illness did not prevent her from doing a broad class of jobs, only one particular job with one particular supervisor.

Second, being unable to work for a particular supervisor is not a disability, so there is no obligation to provide reasonably accommodation by transferring the employee. If the employee is unable to work for a particular supervisor without suffering a debilitating stress-related medical condition, the employee is not qualified for the position, the court reasoned. **Benjamin v. N.Y.C. Dept. of Health, 2003 WL 22883622 (S.D. N.Y., December 8, 2003).**

To sue for disability discrimination, a nurse, like any other person, must be able to prove he or she suffers from a physical or mental impairment that substantially limits the nurse in one or more major life activities, or that he or she has a record of such an impairment, or that he or she is regarded by the employer as one who has such an impairment.

To be substantially limited in the major life activity of working, a person must be significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes compared to the average person.

The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

Even if a nurse has a condition that meets the legal definition of disability as contained in the Americans With Disabilities Act, the nurse must be able to demonstrate that he or she is qualified to perform the essential functions of the position in question, with or without reasonable accommodation.

UNITED STATES DISTRICT COURT
NEW YORK
December 8, 2003

Voyeurism: Court Gives Nursing Home Residents A Reasonable Expectation Of Privacy.

The Court of Appeals of Washington, in an unpublished opinion, has ruled that all areas on the premises of a nursing home, including the dining area, are not public places, but are private places essentially equivalent to a resident's home.

Therefore, it is proper for a nursing home to have a policy to prohibit residents from being photographed without their consent and to prohibit residents incapable of granting consent from being photographed altogether, and to report violators to law enforcement.

It is a violation of the criminal voyeurism statute to photograph a nursing home resident for lascivious purposes who does not or who is not capable of consenting. **State v. Larson, 2003 WL 22766043 (Wash. App., November 24, 2003).**

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