

MS: Physician Had Cleared Nurse To Work, Court Sees Disability Discrimination.

A nurse with seven years experience working in public health was promoted to supervisor when she finished her masters degree, then to assistant director of the county program two years later, then to director of patient care services a year after that. Within the county public health program she was second in command overall.

Three years later she began to experience symptoms which led her neurologist to diagnose multiple sclerosis. After two years battling her condition she resigned.

Two years later, with her condition in remission, her neurologist cleared her to work in an administrative capacity.

She applied for the then-vacant position of director but was turned down based on her former director's statements she felt she, "Was not up to the job." A nurse without a master's degree and with minimal administrative experience was hired.

A year later she was hired as director of public health in another county.

Court Sees Disability Discrimination

The US District Court for the Northern District of New York pointed out that a person who is presently fully qualified for a position, even with no reasonable accommodation required, can be a victim of disability discrimination.

History of Disability

Erroneous Belief as to Disability

A person with a history of a disability or a person who is erroneously believed to be disabled, regardless of the origin of the erroneous belief, who is treated in a discriminatory manner based on his or her history or based on an erroneous belief, is, by definition, a disabled person under the definition of disability contained in the Americans With Disabilities Act.

Hiring a less qualified person, or, as in this case, an unqualified person, in the disabled person's stead is strong evidence of illegal discriminatory intent, the court pointed out. **Cusworth v. County of Herkimer, 2006 WL 1800130 (N.D.N.Y., June 28, 2006).**

The Americans With Disabilities Act outlaws discrimination against a qualified individual with a disability.

A qualified individual with a disability is an individual with a disability who can, with or without reasonable accommodation, perform the essential functions of the employment position he or she holds or desires.

A disability is:

Having a physical or mental impairment which substantially limits a major life activity; or

Having a record of such an impairment; or

Being regarded by the employer as having such an impairment.

The nurse in this case had been cleared by her neurologist to return to work in an administrative position. Her MS was in remission. She did not have an impairment at that time.

For purposes of disability discrimination, the employer's knowledge of her history and the employer's belief, albeit false, that she was disabled, fit the legal definition of a disability.

UNITED STATES DISTRICT COURT
NEW YORK
June 28, 2006