

Dystonia: Nurse Not Disabled, No Right To Sue.

An ICU nurse suffered from dystonia for which her physician surgically implanted a brain stimulation device in her head as treatment for chronic pain.

That meant she was not able to work near MRI equipment but was otherwise cleared to return to intensive-care nursing.

When she returned to work she brought with her a note from her physician recommending that she work only in the cardio-thoracic intensive care unit.

The hospital, however, insisted that as an intensive-care float nurse she had to work in other intensive-care settings, which she refused to do. She left and went to work in the ICU at another hospital.

The nurse's only absolute medical restriction was that she could not work around MRI equipment because she has a surgically-implanted deep brain stimulation device in her head.

None of the intensive-care units in this hospital are close to MRI equipment.

UNITED STATES DISTRICT COURT
NEW YORK

September 26, 2011

The US District Court for the Southern District of New York dismissed the disability-discrimination lawsuit the nurse filed against her former employer.

The nurse was not disabled. Inability to work in a particular location while being able to work in the same occupation in other locations is not a disability for purposes of disability-discrimination law.

Secondly, even if the employee has a legitimate disability, a note from a physician recommending the employee work only in the one particular setting that the employee prefers, and not in other settings which do not violate the employee's medical restrictions, is not grounds to expect reasonable accommodation. Serdans v. Presbyterian Hosp., 2011 WL 4443956 (S.D.N.Y., September 26, 2011).

Place-Related Asthma: Court Dismisses Nurse's Disability Discrimination Lawsuit.

The nurse's asthmatic symptoms were triggered only in the main hospital building and nowhere else on the hospital's campus or anywhere else off the hospital's premises.

There was a major impairment when her symptoms were triggered.

Nevertheless, this condition is not a disability as contemplated by the Americans With Disabilities Act.

The nurse's symptoms were transient. Her symptoms lasted no longer than the time spent inside the main hospital building plus a brief period of recovery after leaving the building.

The nurse experienced her symptoms only at this particular workplace and not in any other workplaces or in public places.

The nurse's asthma does not affect any of her daily activities or limit her breathing in any manner or location outside this hospital's main hospital facility.

The nurse stated in her lawsuit that she is not impaired when she is in other facilities and she now works in another healthcare facility without any difficulty related to her asthma.

UNITED STATES DISTRICT COURT
WEST VIRGINIA
September 23, 2011

A nurse quit her job as a hospital staff nurse after her physician determined that her asthma symptoms were triggered by her being in the main hospital building of the hospital facility where she worked and not in other places on the campus or off the hospital's premises.

Nurse Did Not Have a Disability Lawsuit Dismissed

The US District Court for the Southern District of West Virginia pointed out in passing that it was not at all clear that the nurse ever requested reasonable accommodation before quitting her job.

The Court was able to leave that issue aside and still reach a decision in the hospital's favor on the basis that the nurse did not have a disability as contemplated by the Americans With Disability Act.

For legal purposes, if the individual does not have a disability it is not relevant whether the person asked for reasonable accommodation or was given reasonable accommodation by the employer. The court will rule against the individual's right to sue for disability discrimination if the individual did not have a disability.

In general terms, a disability is a physical or mental condition which substantially limits the person's ability to perform a major life activity that a person in the general population is able to perform.

In defining the term disability, the courts have not gone so far as to include conditions which cause symptoms to flare up only at work but not off the job.

Specifically dealing with asthma, the courts have said that an asthmatic condition is not a disability if it only limits the individual from one particular job or a narrow category of jobs, without affecting the individual in other related employment or places of employment or off the job.

An asthmatic condition is an employment disability if it can be triggered by a wide variety of substances on and off the job and thus substantially limits the major life activity of breathing by requiring the individual to avoid a wide variety of everyday activities. Adkins v. Cabell Huntington Hosp., 2011 WL 4458759 (S.D.W.Va., September 23, 2011).