

Carpal Tunnel Syndrome: Court Turns Down Nurse's Disability Discrimination Claim.

The assistant director of nursing in a nursing home began to have trouble doing her job because of carpal tunnel syndrome. Her job required a substantial amount of handwriting to prepare and revise the comprehensive care plans necessary for each resident of the facility.

She never returned after having to leave work and go to the E.R. for a rapid heartbeat which was diagnosed as an anxiety attack. She was placed on medical leave for twelve weeks and then fired when she did not return after her leave expired.

After being fired she sued her former employer for disability discrimination related to her carpal tunnel syndrome. The US District Court for the Eastern District of Arkansas dismissed her case.

Reasonable Accommodation

Does Not Include Medical Procedures

The Court ruled that the US Americans With Disabilities Act does not require an employer, under the rubric of reasonable accommodation, to pay for medical procedures such as carpal-tunnel decompression surgery which a disabled employee requests in order to be able to do his or her job.

In fact, the nurse eventually did obtain a ruling from the Arkansas Worker's Compensation Commission that her carpal tunnel was an occupational condition and the nursing home had to pay for her surgery, but that did not change the outcome of her Federal disability discrimination case.

Reasonable Accommodation

Employee Must Communicate a Request Participate in Communication Process

The former assistant nursing director also claimed that her employer turned down her request to purchase a computer software program to streamline the process of care plan development and revision and thereby reduce the need for so much handwritten documentation.

On the face of it that would appear to be a reasonable accommodation well suited to meet this disabled employees needs, but the Court still saw a major problem which did not work in favor of the nurse's case.

Reasonable accommodation pertains to physical changes in the work environment or to changes in the way things are customarily done, changes which will enable an individual with a disability to enjoy equal employment opportunity compared with non-disabled individuals.

The nurse's request that her employer pay for her carpal-tunnel decompression surgery under worker's comp is beyond the scope of reasonable accommodation required by the US Americans With Disabilities Act.

UNITED STATES DISTRICT COURT
ARKANSAS
March 1, 2012

The nurse did ask for the new software, but not as reasonable accommodation to her disability. She reportedly only mentioned the software to management as something she believed her employer the Veterans Home needed to have to keep up with standards set by the US Veterans Administration.

Whether that was true was not relevant. She did not mention her disability or ask for reasonable accommodation.

The Americans With Disabilities Act requires a disabled individual to initiate the communication process by informing the employer that he or she has a specified disability, by asking for a specific accommodation for the disability and by remaining involved in what the law refers to as the interactive communication process once the gears have been set in motion. ***Compton v. Veterans Home***, 2012 WL 692896 (E.D. Ark., March 1, 2012).

Discrimination: Employer Can Verify Employee's Credentials.

The US District Court for the Southern District of New York ruled the nursing home committed no discrimination.

The facility refused to allow a minority CNA who was sent to the facility on a temporary basis by a nursing agency to participate in employee orientation or start work.

The facility insisted she first had to produce a copy of her current CNA certification and photo identification to verify that she was not the same person as someone with a similar name who had been fired from the facility just two days before.

There also was no discrimination committed when the CNA was told to leave the premises or when she was threatened the police would be called if she did not. ***Reid v. Hebrew Home***, 2012 WL 698135 (S.D.N.Y., March 5, 2012).

Choking Death: No Expert Report, Case Dismissed.

After his father's death the son sued the nursing home alleging that his father was negligently left unsupervised while eating and choked to death on his food.

The Court of Appeals of Texas dismissed the case.

The Court ruled that assessing a nursing home resident's needs and providing care and supervision are professional healthcare services, even if it is something as simple and straightforward as sitting with a patient while eating to make sure he does not eat too fast or put too much in his mouth before swallowing and to help him or call for help if he begins to choke.

A lawsuit alleging deviation from the standard of care in the rendering of professional healthcare services in Texas as in most US jurisdictions requires an expert opinion, which the son did not have, to back up the case or the suit must be dismissed. ***Martinez v. Coronado Nursing Ctr.***, 2012 WL 760801 (Tex. App., March 8, 2012).