

Disability Discrimination: Nurse Was Offered Reasonable Accommodation, Court Says.

A staff nurse fractured her knee while off the job and had to take medical leave. Her difficult recovery was complicated by pre-existing age-related osteoarthritis in the injured knee.

Her treating physician ruled her unable to return to her job as a hospital staff nurse. That is, her injury-related medical restrictions kept her from being able to do all the walking necessary for that job. Her physician went into the necessary detail how her restrictions met the legal definition of a disability in the Americans With Disabilities Act. The US Court of Appeals for the Sixth Circuit accepted what her physician had to say.

Reasonable Accommodation Was Offered, Refused

The hospital offered the nurse an office position in patient referral/scheduling with pay and benefits comparable to staff nursing. The nurse turned that down.

The nurse applied for and was rejected for two separate vacancies in quality assurance and a nurse case manager position. The grounds were that other applicants were more qualified.

The court dismissed the nurse's case against the hospital because the nurse was offered and refused reasonable accommodation. There was no direct evidence of any intent to discriminate against her.

In its written opinion the court went through all the legal basics that apply to nurses' disability discrimination cases.

Definition of Disability

A disability is a physical or mental impairment that significantly limits a major life activity and prevents the individual from being able to do a broad class of jobs in the workforce.

An impairment that only keeps the individual from doing one particular job or one class of jobs is not a disability.

Walking is a major life activity. Being unable to walk long distances or to be on one's feet a significant part of the workday restricts the disabled individual in a major life activity and restricts the individual from doing a broad class of jobs.

Management can discuss and weigh an employee's request for reasonable accommodation without being accused of disability discrimination.

When an employee requests a different position as reasonable accommodation the employer has to verify the employee's limitations are compatible with the legitimate physical demands of the position.

It is a legitimate question whether a nurse with trouble walking can do a particular job. The decision-makers may have to ask to find out how much walking is really necessary to do the job satisfactorily.

As long as no intent to discriminate is expressed, there is no problem with such communications.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
January 9, 2004

Qualified Individual With A Disability

To be entitled to reasonable accommodation a disabled individual must be a qualified individual with a disability, that is, someone with a disability who will be able to do a particular job with reasonable accommodation.

Request for Reasonable Accommodation

The employee has the obligation to come forward and ask for reasonable accommodation. The employee must inform the employer about the disability, restrictions, limitations and what sort of accommodation the employee wants.

Employers must express a general sense of openness to requests for reasonable accommodation but may not ask any employee or applicant to disclose the existence of a disability if the person does not want to reveal that information.

Reasonable Accommodation Must Be Reasonable

Reasonable accommodation in this case meant offering the nurse in question a suitable hospital position consistent with her disabling medical restrictions.

As a general rule an employer is not required to give an employee a position for which the employee is not qualified or waive legitimate requirements, displace other employees or violate other employees' rights based on seniority or their own qualifications, just to make an accommodation available to a disabled employee.

An employer does not have to create a new position for a disabled employee or train an employee for a position for which the employee was not qualified before asking for reasonable accommodation.

A position offered as reasonable accommodation must be as comparable as the employer is able to offer relative to the employee's prior position in terms of pay, benefits and status. There is no requirement to promote a disabled employee to a better position just to fulfill reasonable accommodation.

In this case the staff nurse could not claim discrimination over not being offered the nurse case manager job, which was considered a promotion. The hospital was also vindicated in legitimately seeing two other applicants as more qualified for the quality review positions.

An employee does not have to be offered the position the employee wants, only a position that is comparable in terms of pay, benefits, responsibility

An employee does not have to accept any position offered. However, by turning down a legitimate reasonable accommodation the employee forfeits the right to sue for disability discrimination. Hedrick v. Western Reserve Care System, ___ F.3d ___, 2004 WL 43163 (6th Cir., January 9, 2004).