Disability Discrimination: Court Turns Down Nurse's Claim

A surgical scrub nurse sustained an on-the-job injury to her left hand and was given six months medical leave.

When she did not report back to the hospital's human relations department at the end of the six months she was deemed to have resigned and was terminated from hospital employment.

The nurse sued the hospital for disability discrimination. Her lawsuit said that her hand injury prevented her from returning to her job as a scrub nurse in the operating room but that she was qualified for other positions in the O.R. such as circulating nurse and for other nursing positions in the hospital. She claimed the hospital did not make reasonable accommodation to her disability. The Court of Appeal of California, in an unpublished opinion, dismissed her case.

Was She Disabled?

The first question in a disability discrimination case is whether the employee or former employee has a disability as disability is defined by law. If the employee is not disabled the employee cannot sue for disability discrimination.

A person who can work, who can do many jobs in a certain field but not one particular job in that field, is not disabled under disability discrimination law.

Reasonable Accommodation

Even if the employee has become genuinely disabled it is the employee's responsibility to initiate a request for reasonable accommodation. The employee must offer a report from the employee's healthcare provider detailing the employee's medical restrictions, the medical basis for the restrictions and the parameters of what the employee still can do.

It is not the employer's responsibility to seek out employees who do not return from medical leave and to try to find out why and what sort of accommodation they may require. An employer can go ahead and terminate an employee who stays out beyond a medical leave without contacting the employer with an explanation, the court said **Sarosdy v. Columbia/HCA Healthcare Corp., 2003 WL 21791358 (Cal. App., August 4, 2003).**

It is the employee's responsibility to request an appropriate accommodation when it becomes clear to the employee that he or she is unlikely to be able to return to his or her former duties.

It is the employee's responsibility to understand his or her own physical and mental condition well enough to present the employer at the earliest opportunity with a concise list of restrictions which must be met to accommodate the employee.

It is the employee's responsibility to get a statement from the employee's healthcare provider as to the nature, extent and medical reasons for the employee's restrictions.

An employer is permitted to set a deadline, or the collective bargaining agreement can set a deadline for an employee to report back from medical leave, after which the employee will be considered to have voluntarily resigned. If the employee has become disabled and needs accommodation to return to work the employee has to come forward with that information.

COURT OF APPEAL OF CALIFORNIA
UNPUBLISHED OPINION
August 4, 2003

Shared Computed Drive: Court Denies Nurse Manager's Defamation Suit.

An operating room scheduler found a memo on the hospital's shared computer memory drive in which the chief nursing officer made accusations of unprofessionalism about the surgical nurse manager and did not recommend her for promotion. The scheduler copied the file to a disc and it was widely circulated within the hospital.

The nurse manager sued and obtained a $1.5 million jury verdict. The Court of Appeals of Texas threw out the verdict.

To be defamatory a statement must be false and must subject a person to public hatred, contempt or ridicule or impeach the person's honesty, integrity or virtue.

Opinions are not statements of fact and are not considered defamatory.

On top of that, the authorship of the computer file cannot be proven conclusively.

COURT OF APPEALS OF TEXAS
July 10, 2003

Accusations of un-professionalism are statements of opinion; statements of opinion are not defamatory. There is a legal privilege for supervisors to share their opinions about those whom they supervise.

On top of that, the court did not believe the amateurish computer experts the nurse manager's lawyers hired had the expertise to determine definitely who first created the computer file. **Columbia Valley Reg. Med. Ctr. v. Bannert, __ S.W. 3d __, 2003 WL 21543156 (Tex. App., July 10, 2003).**