

# Disability Discrimination: Court Denies Nurse's Claim That Employer Acted On False Perception Of Impairment From Injuries.

A registered nurse was employed at a hospital for twenty-seven years before her termination.

Five years before termination she injured her shoulder and needed surgery. Her physician allowed her to return to work part-time on light duty. The hospital honored the restrictions imposed by her physician by modifying her work responsibilities. The hospital assigned her to new-employee orientation, a part-time position which required minimal, if any, physical activity.

When she was released to return to work full-time with no physical restrictions the hospital assigned her to a computer project. She was told it was not a demotion from patient-care staff work and she continued to receive the same pay.

When the computer project was completed she was offered a part-time staff position on the skilled nursing unit. She was told there were no full-time positions for staff nurses anywhere in the facility.

On the skilled nursing unit she injured her back and was diagnosed with sciatica. She continued working and was put on a twenty-five pound lifting restriction by her physician. She injured her left arm and was diagnosed with lateral epicondylitis. Her lifting restriction was tightened to ten pounds.

Then she had another injury to her upper back and shoulder. When it resolved her lifting restriction was upgraded to thirty-five pounds, then fully eliminated. Her physician released her to work full-time with no restrictions.

However, after returning from a family leave to care for her husband she was told her unit was closing and her job was being eliminated. She was given a temporary position as a registration clerk, at full RN pay. She worked at that position for a short time. She was terminated allegedly for being lazy and not being a team player.

She sued the hospital for disability discrimination.

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***A nurse can pursue a disability discrimination claim against her employer without proving she suffers from an actual disability.***

***The Americans With Disabilities Act (ADA) protects not only disabled employees but also protects employees who are perceived by their employers to have disabilities who are not actually disabled.***

***An individual can succeed with a disability discrimination lawsuit if the individual can satisfy the court that the employer or a potential employer, quoting the Eighth Circuit Court of Appeals, "Entertained misperceptions about the individual and believed either that there was a substantially limiting impairment that the individual actually did not have or believed an actual impairment was limiting when in fact it was not."***

***The ADA is meant to root out archaic attitudes, erroneous perceptions and myths that disadvantage persons with or regarded as having disabilities.***

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA  
September 16, 2002

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## **No Actual Disability**

The hospital argued that temporary back, neck, shoulder and arm injuries that resolve are not disabilities as disability is contemplated by the courts under the ADA. If the employee's condition is not a disability as defined by law, the employee is not eligible to assert a disability discrimination claim.

The US District Court for the Northern District of Iowa agreed with the hospital on that point, citing precedents from the Eighth Circuit Court of Appeals.

## **Employer's Perception of Disability**

However, the nurse raised a more subtle argument for the court to consider.

The US Supreme Court has expanded the ADA to cover discrimination against an individual whose employer takes adverse action based on an unsubstantiated belief as to the existence of a disability or a false perception that limitations stem from a genuine condition, who does not have a disability or who has a disability which does not limit the ability to function in the workplace.

## **Claim of Perceived Disability Dismissed**

The District Court nevertheless dismissed the nurse's claim. The court's logic was that the sequelae of a nurse's temporary back, neck, shoulder and arm injuries that resolve are not disabilities.

For purposes of disability discrimination it is irrelevant whether a nurse's employer is fully up to speed on the current status of a nurse's medical restrictions from back, neck, shoulder and arm injuries, the court said.

It does not matter if an employer acts upon a false perception that a nurse has an existing medical restriction from such an injury, and assigns, reassigns, demotes or refuses to offer work to a nurse following such injuries, because those injuries are not legally recognized disabilities in the first place. ***Simonson v. Trinity Regional Health System***, \_\_ F. Supp. 2d \_\_, 2002 WL 31094775 (N.D. Iowa, September 16, 2002).