

Discrimination: Nurse Did Not Prove Non-Minority Was Similar In All Relevant Respects.

A minority advanced practice nurse practitioner was one of two advanced practice nurse practitioners working at the hospital. The other was a non-minority.

The minority nurse practitioner had a stroke that went undiagnosed until she started having lapses in her mental functioning.

She took almost a month off and weeks later had to leave work again to be hospitalized. She never let the hospital know when she would be able to return and never provided documentation from her physician that she was fit to return.

She was terminated during her absence on the grounds that multiple episodes of altered mental status that impaired her cognitive functioning raised significant concerns for patient safety.

Her lawsuit against the hospital for race discrimination pointed to the non-minority advanced practice nurse practitioner who had been diagnosed with multiple sclerosis but never was subjected to any disciplinary action from the hospital.

No Discrimination

Minority Nurse's Case Dismissed

The US District Court for the Middle District of Tennessee ruled the minority nurse's co-worker was not a valid basis of comparison.

The hospital was not aware of the non-minority nurse's condition because she never missed work because of it and had no history of lapses in her job performance or disciplinary write-ups.

The minority nurse practitioner, on the other hand, had a condition which raised serious questions about her ability to do her job, for which she was required to miss substantial periods of time without a prediction when she could return to work and for which she never requested, and therefore was never denied, any form of reasonable accommodation.

The lapses in the minority nurse's cognitive functioning, the Court believed, were a legitimate non-discriminatory reason to terminate her employment in direct patient care. **Grimes v. Middle Tenn. Hosp.**, 2013 WL 6497962 (M.D. Tenn., December 11, 2013).

One method a minority employee can use to prove discrimination is to show that he or she was treated differently than a non-minority employee who was similar in all respects.

To be considered similar in all relevant respects the individual or individuals with whom the minority employee wants to be compared must have dealt with the same supervisor, have been subject to the same standards and have engaged in the same conduct without differentiating or mitigating circumstances in their conduct or their employer's treatment of it.

The minority who suffered consequences and the non-minority who did not must have engaged in acts of comparable seriousness for the non-minority's dissimilar treatment to be considered evidence of discrimination in a human rights lawsuit.

The hospital had a legitimate non-discriminatory reason to treat the minority differently than the non-minority. Both had medical issues but the non-minority's job was not affected.

UNITED STATES DISTRICT COURT
TENNESSEE
December 11, 2013

Racial Bias: Court Turns Down Tech's Lawsuit.

A minority operating room technician left her job at the hospital after almost ten years and filed a lawsuit for race discrimination in the form of an allegedly racially hostile work environment which she claimed forced her to quit.

The US District Court for the Western District of Pennsylvania looked carefully at the incidents of alleged harassment claimed in the lawsuit.

The Court ruled that all but one of the incidents were not serious enough to create a racially hostile work environment.

One of the incidents, however, did rise to the level of illegal harassment. However, as the Court explained, it was harassment of the tech by someone who was not in a supervisory capacity over her.

The hospital itself did take prompt and appropriate remedial action through the actions of management-level individuals in authority when they learned of the problem, which meant the hospital itself was not responsible for what happened and was entitled to dismissal of the tech's lawsuit.

Incidents Which Were Not Serious Enough for a Lawsuit

The tech overheard a co-worker on the phone say that she was not so-and-so's "N-word," meaning that the person referred to had no right to treat her disrespectfully.

The Court pointed out that the "N-word" is highly charged racially and any use of it in the workplace is likely to become legally problematic. However, in this case it was not said to the tech or said about the tech or meant to be overheard by her at all. Under the circumstances it did not give the tech grounds for a lawsuit.

Another incident was an argument between the tech and a non-minority anesthesiologist who wanted the volume on the radio turned up so that the music could be heard over the sound of suctioning. According to the Court, this incident involved no overt, covert or implicit racial overtones and so it also was not grounds to claim a racially hostile work environment.

The tech also alleged in general terms she was treated disrespectfully by others, but, again, without any racial innuendo.

Continued on next page.