

Drug Dependence, Last Chance Agreement: Court Lets Discrimination Case Go Ahead.

A hospital employee was taking Adderall and Klonopin for attention deficit / hyperactivity disorder (ADHD).

He also suffered from a methamphetamine addiction that was getting out of control. After a spate of attendance problems on the job he asked for and was granted Family and Medical Leave Act leave for substance abuse treatment.

While off work and then when it was time to return to work the hospital required a last chance agreement.

The last chance agreement mandated strict abstinence from substance abuse and required urine drug screens on short notice at the hospital's discretion.

He was terminated after he did not show up promptly for a drug screen. He actually did show up, several days later, which was not as quickly after being notified as stipulated in his last chance agreement with the hospital.

An even bigger problem for the hospital's employee assistance counselor was the Adderall detected in his system. No other substances were found.

Last Chance Agreement

Silent As to Resumption of Adderall Use

The US District Court for the Eastern District of Pennsylvania denied the hospital a summary judgment of dismissal of the former employee's disability discrimination lawsuit.

The major legal hurdle for the hospital is the fact the last chance agreement was completely silent whether the employee could or could not resume the Adderall with a physician's prescription that he had been taking for his ADHD.

That left open a reasonable inference that he was a successfully rehabilitated substance abuser who was no longer using drugs illegally, one criterion for being considered a disabled person.

For his substance abuse treatment he had agreed not to use any drugs, substances or medications whatsoever. But that agreement was between him and his substance abuse treatment provider and was not part of the last chance agreement with the hospital. **Lott v. Hospital**, 2020 WL 6131165 (E.D. Penna., October 19, 2020).

The legal definition of disability for employment discrimination includes parameters related to substance abuse and dependence.

An employee is considered disabled and is protected by the disability discrimination laws who has successfully completed a supervised rehabilitation program and is no longer engaged in the illegal use of drugs, or has otherwise been rehabilitated and is no longer using illegal drugs.

An employee is protected by law who is participating in a supervised rehabilitation program and is no longer using illegal drugs.

Protection also extends to an employee who is regarded as using illegal drugs who is not doing so.

An employee is not protected by the disability discrimination laws who is currently using illegal drugs, or who has used illegal drugs recently enough to indicate that the employee is currently still actively engaged in illegal drug usage.

The statute and regulations are vague as to an exact length of sobriety needed to be considered no longer actively using.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
October 19, 2020

Data Breach: Only Speculation As To Damages, Court Dismisses Case.

While training on the hospital's computer system a new employee took six personal cell phone photos of a patient's records containing personal information from the patient's hospitalization five months earlier, and the photos were accidentally posted to the employee's Facebook account.

When the hospital discovered the breach weeks later a letter was sent to the patient.

The hospital soon received a letter back from the patient's attorney demanding a settlement. The hospital ignored the demand and the patient sued.

It is only speculation that the former patient suffered any harm as a result of the social media posting of some hospital records.

UNITED STATES DISTRICT COURT
CALIFORNIA
October 21, 2020

The US District Court for the Central District of California dismissed the case.

The former patient sought compensation for increased fear of identity theft, embarrassment, generalized anxiety, a possible need to retain credit repair services and decreased value of personal data.

The Court ruled the former patient had no actual evidence of a credible, immediate and real threat of identity theft. Her case rested only on vague speculation that that could happen to her.

Her legal paperwork referred to other cases of individuals who could prove actual harm from identity theft related to data breaches. However, she had no proof how the same thing had happened or was actually going to happen to her.

There was also no actual evidence how and why credit monitoring would be necessary, or how much time and money would actually have to be expended for that purpose. **Holly v. Hospital**, 2020 WL 6161457 (C.D. Cal., October 21, 2020).