

Epilepsy: Court Dismisses Aide's Disability Case.

In her pre-employment interview at a skilled nursing facility a nurses aide volunteered that she was taking medication for epilepsy.

However, she did not disclose the fact that she had experienced a grand mal seizure on the job at her previous employer, a nursing home, and was then terminated over concerns for patient safety.

The skilled nursing facility hired her at her interview. Two months later she had a grand mal seizure on the job while monitoring a patient one-on-one.

After being hospitalized for her seizure the aide provided her employer with a return-to-work letter from her physician.

The physician stated she was fit to return to work, provided she avoided activities where loss of consciousness could create a risk of harm to herself or others such as driving, operating machinery or working in high places.

Based on the physician's letter the skilled nursing facility elected to terminate the aide's employment. She later claimed she requested a transfer to housekeeping or the laundry. The facility stated that even if such a request was actually made, there were no such positions open at the time.

Court Turns Down

Disability Discrimination Lawsuit

The United States District Court for the Northern District of Ohio ruled there was no question the aide had a disability and was terminated for her disability.

However, a disabled individual is not a qualified individual with a disability who has rights under the anti-discrimination laws if he or she poses a direct threat to the health or safety of others which cannot be eliminated by a reasonable accommodation, the Court pointed out.

Other US courts have already ruled that a direct-care nursing employee who experiences loss of consciousness on the job poses a direct threat to patient safety.

The risk of a seizure for this aide was unpredictable with no warning symptoms and the chance of recurrence was high. It could happen at a critical moment like while moving or assisting a patient, leading to a high risk of patient injury from a fall. **Baskerville v. Pleasant Lake**, 2015 WL 4112504 (N.D. Ohio, July 7, 2015).

The decision to terminate the aide's employment was based on the serious safety threat to the facility's elderly patients posed by her risk of a seizure, made evident by her having had a seizure while working on the job.

There is no question the aide's epilepsy is a disability or that her disability was the reason for her termination.

However, she is not a qualified individual with a disability who can perform the essential functions of her job with or without reasonable accommodation.

A disabled individual is not qualified for a specific job if he or she poses a direct threat to the health or safety of others which cannot be eliminated by a reasonable accommodation.

To decide if a direct threat exists the court must consider the duration of the risk, the nature and severity of the potential harm, the likelihood the harm will occur and the imminence of the potential harm.

A slightly increased risk of harm is not considered a direct threat.

Only a high probability of substantial harm is considered a direct threat.

UNITED STATES DISTRICT COURT
OHIO
July 7, 2015

Disability Discrimination: No Interactive Communication.

A nursing home employee requested and was given twelve weeks of unpaid Family and Medical Leave Act leave on account of chronic back pain which prevented her from working.

At the end of twelve weeks she handed in a form filled out by her physician stating that she was still unable to work for at least another month.

Management at the nursing home unilaterally decided her condition was most likely permanent and terminated her employment.

The former employee sued her former employer for disability discrimination.

The employer has the responsibility to initiate an interactive communication process with a disabled employee to see if reasonable accommodation is possible.

UNITED STATES DISTRICT COURT
WISCONSIN
June 24, 2015

The US District Court for the Eastern District of Wisconsin ruled it was not clear whether this individual's disability, her chronic back pain, made her completely unable to work ever again and thus not a qualified individual with a disability.

No Interactive Communication Process

What was clear was that her employer failed to initiate an interactive communication process with her to determine if a reasonable accommodation was possible that would allow her to return to work.

That is, additional time off from work as prescribed by her physician may or may not have eventually resulted in her being able to return to work.

Time off for recuperation is one form of accommodation an employer must consider as a possible reasonable accommodation that is within a disabled employee's legal rights under the anti-discrimination laws. **Cross v. Golden Living**, 2015 WL 3887161 (E.D. Wisc., June 24, 2015).