

## Discrimination: Nurse Applied For Social Security Disability Benefits.

A perioperative nurse sustained a number of work-related injuries to her knee, neck and back for which she spent significant amounts of time off work on worker's compensation.

She also began having problems with getting to work on time. Matters came to a head when she arrived several hours late without calling in. She said she was having physical problems related to her old injuries. Eventually she was terminated.

Shortly after her termination the nurse applied for Social Security disability benefits, claiming her last day on the job at the hospital as the date she became disabled. Social Security accepted her claim and began paying benefits.

The nurse also sued her former employer for disability discrimination.

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**A former employee who says in a Social Security disability application that he or she is unable to work has a big problem suing for disability discrimination claiming to be a person who is able to work despite a disability.**

UNITED STATES DISTRICT COURT  
MINNESOTA  
July 8, 2014

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The US District Court for the District of Minnesota accepted the fact the nurse had a disability, but ruled she was not a qualified individual with a disability as she herself basically admitted she was unable to do her job in the surgical department.

The Court rejected the argument the nurse was unable to do her job only because her employer refused to grant reasonable accommodation.

It would not be a reasonable accommodation for a surgical nurse to be given the freedom to come to work only when she felt able. **Distefano v. Essentia Health**, 2014 WL 3101324 (D. Minn., July 8, 2014).

## Impaired Nurse: Disability Discrimination Case Dismissed.

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**The nurse's impairment on the night in question was not caused by the Tegretol she often took without side effects which usually controlled her otherwise disabling trigeminal neuralgia.**

**On the night in question the nurse, either at home before her shift or later on the job, took a combination of Tegretol, Ativan and tramadol, each of which alone can cause dizziness, sedation and somnolence according to the Physician's Desk Reference.**

**Her misconduct was not caused by her disability but by her ill-advised and dangerous decision to take these three drugs all at the same time.**

**The nurse's failure to follow the facility's established protocols for distribution and documentation of narcotics was not caused by impairment from taking her patients' narcotics, but by taking her own prescribed medications.**

**She honestly had no idea what happened to the missing narcotics.**

**She herself admitted she was impaired at work and in no condition to care for her patients.**

**She was not qualified to perform her job as a nurse.**

UNITED STATES DISTRICT COURT  
OHIO  
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Several months before accepting her position in a long-term rehab facility a registered nurse was diagnosed with trigeminal neuralgia.

Her condition makes her prone to intense flare-ups of pain in her lips, eyes, nose, scalp, forehead, gums, cheek and chin on one side of her face.

The nurse was accustomed to taking Tegretol for a flare-up which usually resolved her symptoms within twenty minutes. The nurse also had prescriptions from her doctor for Ativan and tramadol.

The state pharmacy board had ordered an audit of narcotics at the facility after a practice of nurses' late charting of their narcotics was discovered. The nurse was not implicated in the audit. However, the audit did heighten the facility's overall level of alertness as to possible medication tampering and diversion.

### **Nurse Found Impaired on the Job**

Her charge nurse found the nurse unsteady on her feet, incoherent and disoriented. The charge nurse insisted on a medication count before letting her go home. The count turned up discrepancies with several narcotics, including tramadol.

The nurse was required to take a drug test the next day which was negative except as to tramadol, for which she had a physician's prescription.

The nurse was terminated.

### **Court Dismisses**

#### **Disability Discrimination Lawsuit**

The evidence related the nurse's impairment on the job to a combination of medications taken together which she had before only taken alone, medications which were legitimately prescribed by her physician for a medical condition which was a legitimate legal disability.

There was evidence of substandard charting of narcotics but no proof the nurse diverted those narcotics for her own use.

The US District Court for the Southern District of Ohio ruled that the nurse's impairment on the job caused by the combination of medications was an issue her employer was not required to tolerate, even if she had prescriptions for the medications because of a legitimate disability. **Sper v. Judson Care Ctr.**, \_\_\_ F. Supp. 2d \_\_\_, 2014 WL 3108067 (S.D. Ohio, July 8, 2014).