

Job Stress: Court Says Workers Compensation Is Nurse's Only Legal Option.

A nurse emigrated to the US from India in 1981 and began working at a hospital where the nurses were mostly of Filipino ancestry.

Over the next nineteen years she had a difficult time working in this environment which she felt was discriminatory.

However, to sue for discrimination she would have had to have been treated differently by a managerial or supervisory employee with decision-making authority over the terms and conditions of her employment, based on her Indian national origin.

The nurse did have a long list of grievances against her supervisors which she claimed caused her to have to take disability leave for stress. She sued the hospital for intentional infliction of emotional distress. The California Court of Appeal, in an unpublished opinion, ruled she could not sue, but would be limited to filing a workers compensation claim.

Normal Employment Environment versus

Intentional Harassment

The court pointed out that even a great measure of dissatisfaction with how one is treated by one's supervisors is a normal part of the employment relationship.

Only when there has been an outrageous level of intentional harassment by co-workers or supervisors, meant to cause extreme emotional distress, will the courts disregard the exclusive-remedy provisions of the workers compensation statutes.

The nurse felt she was required to do work which compromised patient safety, was unfairly assigned to the float pool, received negative performance reviews, was accused of laziness, had to work on holidays and through her lunch breaks, was given assignments beyond the scope of her job description, etc. The court ruled these things are not out of the ordinary and are not intentional harassment. **Asileti v. California Hosp. Medical Center, 2004 WL 2293696 (Cal. App., October 13, 2004).**

When hospital management's actions are a normal part of the employment relationship, stress which a nurse experiences as a result must be treated as an occupational disease under the workers comp law.

It would be different if the nurse had been subjected to harassment intended to cause emotional distress.

Under workers comp, the employee is entitled to time loss benefits if the employee is disabled from working and medical benefits for treatment.

When a condition is covered by the workers comp law, the employee is not allowed to sue the employer.

That means the nurse in this case has no right to sue the hospital for general monetary damages for intentional infliction of emotional distress.

Monetary damages for emotional distress are not paid under workers compensation.

Stress is very difficult to prove as an occupational disease unless it is due to factors peculiar to the worker's occupation.

COURT OF APPEAL OF CALIFORNIA
UNPUBLISHED OPINION
October 13, 2004

Carpal Tunnel: Court Sees No Connection To Work In Nursing Home, Aide's Case Dismissed.

A nurses aide filed for workers compensation for her bilateral carpal tunnel syndrome. She sought compensation for time loss and two surgical release procedures.

Her testimony went over the fact her job is very demanding physically, requiring her to lift patients, change patients' linens with the patients in bed, transfer patients to wheelchairs, shower chairs and toilets and she must feed, shave, bathe and groom her patients.

Carpal tunnel syndrome is a very common occupational disease.

It commonly results from repetitive actions of the hands and fingers, e.g., typing, cashier work, moving heavy objects or using vibrating tools.

Although a nurses aide's job is physically demanding, nurses aides do not typically develop carpal tunnel.

COURT OF APPEAL OF LOUISIANA
September 29, 2004

The Court of Appeal of Louisiana pointed out, however, that carpal tunnel is not the sort of ergonomic injury commonly associated with rendering nursing and personal care to patients, noting that her own treating physician had reluctantly admitted the same thing in his testimony. **Welcome v. Martin DePorres Nursing Home, ___ So. 2d ___, 2004 WL 2181442 (La. App., September 29, 2004).**