

Discrimination: Court Rules Nurse Not Able To Prove His Case.

A male African-American nurse sued his employer, the US Department of Veterans Affairs, for race discrimination.

After reviewing all the evidence, the US District Court for the Eastern District of Illinois ruled he was not able to prove his case.

Failure to Promote

The court noted in general terms that failure to promote a nurse from one level to the next level of professional advancement can be the basis for a discrimination claim.

Bachelor's Degree Requirement

The hospital annually reviews all nurses with bachelor's degrees in nursing working at the Nurse II level for promotion to Nurse III.

However, according to the court, this nurse, working in a chemical dependency unit, had his bachelor's in psychology and did not have a BSN. In a discrimination case, assuming the hospital's policies were not made up after the fact, the court does not debate or evaluate the soundness of the employer's educational policies for nurse competency and advancement.

Exceptions to BSN Requirement

When an employer has a policy of making exceptions to its policies, those exceptions have to be applied on an even-handed basis.

This hospital reviews all non-BSN Nurse II's every three years for promotion to Nurse III. If a Nurse II can show he or she has been performing at the Nurse III level, promotion can occur notwithstanding the lack of a BSN degree.

However, when a nurse sues for discrimination the nurse has the burden of proof to show what instances of higher-level professional practice were performed to justify promotion and that those instances were brought to the supervisor's attention to be documented in the nurse's file for consideration by the promotion panel.

Or, the nurse has to show that a specified non-minority nurse was granted an exception and promoted despite non-documented higher-level performance or with such performance unilaterally documented by a supervisor, to prove discriminatory treatment has occurred. Nunnally v. Principi, 2003 WL 22859806 (N.D. Ill., December 2, 2003).

Latex Allergy: Nurse Must Identify Manufacturer, Or Products-Liability Suit Will Be Thrown Out.

One manufacturer of latex gloves asked to have one nurse's products-liability suit sent back from the multi-district litigation panel to the US District Court for the Western District of Kentucky to consider dismissing the manufacturer from her case.

The court noted there was strong evidence the manufacturer's latex gloves were known to have triggered allergic reactions to latex in a number of persons exposed to the gloves in their workplaces.

However, there is more to a products-liability lawsuit than that, the court pointed out. Without proof that the particular manufacturer's product caused the specific injuries for which a particular nurse is suing for damages, the lawsuit is not viable.

There is evidence that this manufacturer's latex gloves have triggered allergic reactions in many persons.

However, it is fundamental in products-liability cases for the victim to identify the manufacturer's product as the cause of the injury for which damages are sought.

This nurse can only speculate that she was exposed to this particular manufacturer's gloves.

UNITED STATES DISTRICT COURT
KENTUCKY
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This nurse had only worn one brand of gloves, another manufacturer's brand, at the hospital, the only place she had worked as a nurse's aide and then as a registered nurse after finishing nursing school.

This manufacturer's gloves were used in another part of the hospital, the manufacturer conceded.

However, the court accepted the manufacturer's argument it was only speculation that some of its gloves "migrated" to the units where the nurse worked or that airborne contaminants from the gloves over there worked their way into her work environment.

The court gave the nurse's lawyers a ten-week deadline to come up with evidence related to this manufacturer. Collins v. Ansell Inc., 2003 WL 22769266 (W.D. Ky., November 19, 2003).