

Latex Allergy: US Court Says Nurse Not Disabled From Gainful Employment, Not Entitled To Long-Term Disability Benefits.

A registered nurse worked as infection control/employee health nurse at a rehab hospital.

She went to see a board-certified allergist/immunologist who diagnosed her with a Class IV allergy to latex, based on a radioallergosorbent test (RAST).

Six months after the diagnosis was made the nurse was suspended and then terminated by her employer for poor work performance.

The nurse attributed her work deficiency that led to her termination to her latex allergy.

Shortly before her termination the nurse applied for disability benefits under the disability policy the employer provided as a fringe benefit for its nurses.

The policy provided up to twelve months of short-term benefits if the insurance company determined the employee was disabled from performing the material and substantial duties of the employee's regular occupation.

After twelve months the employee would receive long-term disability benefits if unable to perform the duties of any gainful occupation for which the employee was reasonably fitted by education, training or experience.

Latex Allergy Established Short-Term Benefits Paid

The nurse supported her application for disability benefits with written statements from seven physicians establishing that she had a severe latex allergy. Exposure to latex could result in a potentially life-threatening allergic reaction.

The insurance company paid disability benefits for twelve months, some of it retroactive, because the nurse could not work in her regular occupation as an infection control/employee health nurse in an acute-care setting.

However, the insurance company insisted on an independent medical examination before it would consider payment of long-term disability benefits.

A Federal law, the Employee Retirement Income Security Act (ERISA), gives a person the right to sue in Federal court who is denied benefits provided under an insurance plan received as a fringe benefit of employment.

If a benefit administrator turns down a benefit application it is subject to review in Federal court.

The Federal court will uphold the plan administrator's decision unless the administrator has been guilty of an abuse of discretion in reaching its decision.

The court looks only at the integrity of the decision-making process and does not review the evidence independently.

The disability insurance company had the nurse seen by a board-certified immunologist. He said she could be gainfully employed in a latex-free work environment.

The disability insurance company hired a vocational analyst who stated she had skills that were transferable to a latex-free environment.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
October 2, 2002

Latex Allergy Questioned Long-Term Benefits Denied

During the independent medical examination at a physician's office there was no reaction to latex. The nurse insisted beforehand and understood that the exam was to be conducted in a latex-free environment. However, there were no latex-free examination rooms. The physician did obtain a pair of vinyl gloves to use during the exam.

Even though he observed no reaction to latex present in the environment the independent medical examiner did conduct a RAST test which did indicate a Class IV IgE reaction to latex.

He also noted the nurse had a history of multiple food allergies and a history of mild asthma that, he said, could account for certain allergic episodes.

The nurse, he believed, was capable of working in a latex-free environment such working at home or in an office where latex products were not present.

Standards For Judicial Review

The US Court of Appeals for the Eighth Circuit noted in these situations the court does not review the evidence independently to reach its own decision.

The court looks only at the integrity of the insurance company's decision-making process to see if the insurance company committed an abuse of discretion in denying benefits.

In this case the insurance company had to choose between two board-certified experts who agreed the nurse had a significant latex allergy. There was no abuse of discretion, the court stated, in refusing to accept the nurse's treating physicians' opinions about her non-suitability for employment in a latex-free environment.

The insurance company had an opinion from a vocational analyst, the court pointed out, that she had skills that were transferable to a latex-free office environment. ***Smith v. UNUM Life Insurance Company of America***, __ F. 3d __, 2002 WL 31174916 (8th Cir., October 2, 2002).