

Uneven Discipline: Court Sees Possible Racial Discrimination.

A fifty-nine year-old African American woman with an arthritic condition was terminated from her position as a psychiatric assistant following an episode of inappropriate acting-out by adolescent psychiatric patients under her care.

Her job was basically to serve as a sitter for a designated patient assigned to her who required constant observation to prevent self-harm from acting out.

The incident that led to her termination occurred when she volunteered for an overtime shift in the adolescent psychiatric unit where she normally did not work.

She did not intervene or report to the nurses when her designated patient went along with other adolescent patients playing around kissing and pulling down each others' pants, all of which was caught on the unit's surveillance cameras.

The minority employee alleged in her lawsuit that two non-minority coworkers who witnessed the same incident of patients' inappropriate sexual horseplay did not intervene or report it to the nurses.

The coworkers were not fired or even disciplined.

UNITED STATES DISTRICT COURT
ALABAMA
June 8, 2015

The US District Court for the Northern District of Alabama believed that the psychiatric assistant's failure to take action was a significant dereliction of duty for which she could be terminated.

However, the fact that two non-minority coworkers guilty of the same dereliction of duty during the same incident experienced no adverse consequences was grounds for the fired minority employee to sue for race discrimination. The Court found no evidence of age or disability discrimination. ***Freeman v. Board***, 2015 WL 3604197 (N.D. Ala., June 8, 2015).

Narcotics Diversion: Fired Nurse Not Entitled To Protection As A Whistleblower.

The LPN pointed out that she was treated differently than her supervisor, both of whom were accused of misconduct involving drugs.

The director of nursing fired the LPN for diversion.

As to her supervisor whom the LPN accused of drug use, the director merely said she would handle the problem in her own way, which did not include firing the supervisor.

When a whistleblower is accused of misconduct and treated more harshly than another employee also accused of misconduct who is not a whistleblower, a court can see that as evidence of a retaliatory motive against the whistleblower

However, the LPN and her supervisor were not in the same situation for purposes of this analysis.

Drug diversion poses a more serious threat to patient safety. Not only is a care worker impaired, but there is also a potential for interference with patients being properly medicated.

Drug diversion is also easier to establish and prove. Inconsistencies in documentation are evidence that will stand up in court.

UNITED STATES COURT OF APPEALS
FIRST CIRCUIT
June 10, 2015

An LPN who worked in a nursing home began reporting to the director of nursing that her immediate supervisor seemed to be under the influence of drugs while on duty.

At the same time the LPN's coworkers began reporting to the director that the LPN herself might be diverting narcotics.

Evidence of Narcotics Diversion

A coworker reported that the LPN had documented an oxycodone dose for a patient who had not been in pain for quite some time. The LPN was also documenting oxycodone for another patient whom other nurses were not medicating prn for pain. When questioned, both patients said they never got their pain medication.

Further evidence included documentation by the LPN of pain medication for a resident who had already been discharged, medication documentation that clearly was backdated by a day or two and absent or illegibly scribbled second signatures documenting the LPN's wasting of narcotics.

The LPN was fired for suspected diversion of narcotics.

She was also reported to the State Board of Nursing and admitted to the Board she was guilty of substandard documentation of narcotics.

Then she turned around and sued her former employer for violation of her legal rights as a whistleblower, having become a whistleblower, she claimed, by reporting her supervisor to the director of nursing for being under the influence while on duty.

Whistleblower Lawsuit Dismissed

The US Court of Appeals for the First Circuit (Maine) ruled that reporting her nursing supervisor for being under the influence on duty did qualify the LPN as a whistleblower, and she was fired by her employer at a point in time after she raised that allegation with the director of nursing.

However, the Court found insufficient proof that whistle-blowing was the reason for the LPN's termination. The evidence was highly compelling as to the LPN's narcotics diversion or at least as to wholly substandard documentation of her narcotics. ***Murray v. Kindred***, ___ F. 3d ___, 2015 WL 3609907 (1st Cir., June 10, 2015).