

Disability Discrimination: No Duty To Accommodate Permanent Medical Restrictions.

After working in the hospital more than a year a licensed practical nurse had to have knee surgery.

When her sick leave, vacation and Family and Medical Leave Act leave were used up she was allowed to return to work in medical records under a hospital program for employees who were able to perform some type of work but had temporary medical restrictions that kept them from resuming their regular jobs.

The clerical job in medical records continued until a progress report from her physician to hospital human resources indicated that the LPN's medical restrictions would be permanent and would prevent her from ever again working as a staff LPN. Then she was placed on lay-off status.

Notices of possibly suitable job openings were emailed to her as they became available, but she did not apply.

The Court of Appeals of Ohio ruled that an employer who voluntarily supplies a temporary accommodation for a temporary medical condition has no obligation to continue such an accommodation on a permanent basis. Feldkamp v. Viau, 2007 WL 4248283 (Ohio App., December 3, 2007).

To have a case of disability discrimination, an employee, although disabled, must be substantially able to perform safely the essential functions of the job in question.

No accommodation was possible which would have allowed a staff LPN with severe pain associated with standing and walking to perform the essential functions of her staff LPN job.

An employer who goes beyond the employer's legal obligations by supplying a temporarily disabled employee with a light-duty assignment compatible with the employee's restrictions is not legally obligated to continue the light-duty assignment on a permanent basis.

The disabled employee can apply for a different, light-duty job, on the same basis as any other applicant.

COURT OF APPEALS OF OHIO
December 3, 2007