

Racial Bias: Court Dismisses Nurse's Discrimination Case.

The US Court of Appeals for the Fifth Circuit (Mississippi) has affirmed a case we reported in May 2013. See *Racial Bias: Court Dismisses Nurse's Discrimination Case*, Legal Eagle Eye Newsletter for the Nursing Profession (21)5, May '13 p.4.

A minority nurse employed in a state psychiatric hospital was terminated after an incident involving a physical confrontation with a patient in which she pushed the patient down on a couch.

The incident was witnessed and the facts were corroborated by at least one co-worker and the patient herself.

The facility's policy states that under no circumstances will an employee strike, shove, pinch, engage in sexual acts, neglect or otherwise subject a patient to violent treatment, verbal abuse or exploitation.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
October 17, 2013

The Court of Appeals agreed with the District Court that there was a legitimate non-discriminatory reason for the nurse's termination, physical abuse of a patient.

The Court did agree in principle that disciplining a minority employee more harshly than a non-minority for basically the same offense is discriminatory.

However, the two non-minority co-workers to whom the nurse pointed were not valid bases for comparison. One used profanity with a patient, but that was not as serious as physical abuse. Another allegedly struck a patient, but the nurse herself was the one who wrote the incident report and until now never said anything about the patient actually being struck.

The Court also said it was proper to listen to what the patient had to say even though she was a "mental patient." Deanes v. North Miss. State Hosp., ___ Fed. Appx. ___, 2013 WL 5647126 (5th Cir., October 17, 2013).

Age Bias: Court Dismisses Nurse's Discrimination Case.

After ten years at the hospital an RN's previously positive evaluations began to decline due to numerous incidents with patients and other staff members.

After being written up thirteen times and suspended five times for rudeness, unsympathetic or uncaring attitude and derogatory comments, the nurse was informed she was on the verge of termination. After a fourteenth incident she was terminated and sued for age discrimination.

To prove age discrimination an employee must show that he or she is forty or older, was qualified for the position, was disciplined or terminated and was replaced by a younger employee.

UNITED STATES DISTRICT COURT
DELAWARE
September 30, 2013

The US District Court for the District of Delaware dismissed the nurse's age discrimination case which pointed to three much younger nurse co-workers who were allegedly disciplined less harshly than she.

The Court pointed out that none of the three had the same long history of disciplinary write-ups. None were on the last step of the hospital's progressive discipline which means a warning has been given that one more disciplinary infraction will result in termination, when the others committed the offenses for which they were not fired.

One of the younger nurses was a new-hire who was not to be judged by the more stringent standards applicable to a more experienced, albeit older nurse.

The other two had only one incident each involving patient or family member complaints.

The strong performance reviews the nurse had a decade earlier were no help to her in this case. Ridgeway v. Bayheath, 2013 WL 54355535 (D. Del., September 30, 2013).

Workplace Bullying: Court Declines Nurse's Lawsuit.

After more than twenty-five years in the same job in the hospital's ob/gyn department an RN had a hypertensive crisis while at work and also injured her knee and was placed on light duty.

Her co-workers began making derogatory comments to her and behind her back about her weight and the size of her breasts and mocked her about her high blood pressure. After the hospital's human resources department decided not to take any action in response to the RN's complaints, the hostility toward her increased.

The co-workers circulated a petition asking that she not be made a charge nurse and she was confronted by one of them who told her in a rude and intimidating tone that they were not going to allow her to advance to charge nurse.

The nurse took time off for medical leave and then quit. Then the nurse sued the hospital for interfering with her rights to medical leave under the US Family and Medical Leave Act and her co-workers for on-the-job harassment and intimidation.

The US District Court for the District of Maine was asked by the defendants for a preliminary ruling on the bullying issue. The Court dismissed that part of the case.

According to the Court, the law is beginning to recognize on-the-job bullying by co-workers as valid grounds for a lawsuit against the employer and the co-workers.

However, at this time the state courts in Maine have not handed down a definitive precedent recognizing on-the-job bullying as grounds for a lawsuit.

Normally a Federal court can hear state common law claims along with claims in a Federal court civil lawsuit for violation of a Federal law, but in doing so a Federal court is not permitted to expand the state's common law beyond principles the state's own courts have expressly recognized through their own precedents.

The Court saw itself bound to dismiss the RN's bullying allegations on this technical issue. St. Pierre v. Eastern Maine Med. Ctr., 2013 WL 5503146 (D. Me., September 30, 2013).