

Nurse Cannot Stand, Walk Long Periods: Court Discusses Reasonable Accommodation.

A hospital staff nurse suffered from a progressively worsening problem with the plantar fascia in his feet. Unsuccessful corrective surgery eventually left him medically restricted from standing or walking more than fifteen minutes at a time.

As his condition was deteriorating, but before he was significantly disabled, he started to explore his options for getting off his feet. His hiring manager offered to create a “telephone triage” position for him, but he turned it down because it would pay less than staff nursing.

When he could no longer work as a staff nurse he asked about one of the new “telephone advice” positions which the hospital had created in the interim, but they turned him down because the new job description formulated by human resources required prior telephone interactive experience with patients.

The US District Court for the District of Oregon is still sorting through the issues and has not made a judgment whether disability discrimination occurred.

Employers Must Engage In Interactive Communication Process With Employees Who Become Disabled

The court’s discussion focused on the legal concept referred to as the interactive process. It means that employers have the legal obligation to reach out and to communicate as openly and fully as possible with employees who have come forward and asked for help to accommodate their disability-related needs.

This nurse was just told to go online, look at the hospital’s job postings and apply for something he thought was suitable.

The court, however, said the hospital had an obligation to reach out and work with him to iron out what was really going with “telephone triage” versus “telephone advice” to see if there was a job he could do. Thornton v. Providence Health System-Oregon, 2005 WL 3303944 (D. Or., December 5, 2005).

Failure to offer reasonable accommodation is disability discrimination for which an employee can sue.

The court looks at the US Equal Employment Opportunity Commission (EEOC) Guidelines in evaluating a nurse’s employer’s efforts toward reasonable accommodation.

The EEOC Guidelines are available on the Internet at <http://www.eeoc.gov/policy/docs/accommodation.html>.

The relevant points for this case are:

1. An employer is not required to create a new position for an employee who becomes disabled.

2. An employer is not required to give a position to a disabled employee for which the employee is not qualified.

3. An employer is not required to train a disabled employee for a position for which the employee is not qualified.

4. An employer is required to give a disabled employee preference over outside applicants for a position for which the employee is qualified.

UNITED STATES DISTRICT COURT
OREGON
December 5, 2005
