

Nurse's Disability Discrimination Claims May Proceed to Trial, New Jersey Supreme Court Rules

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A registered nurse employed by a New Jersey health care system for approximately 10 years may proceed to a jury trial with her disability and perceived disability claims under the New Jersey Law Against Discrimination, the Supreme Court of New Jersey has ruled. *Grande v. Saint Clare's Health Sys.*, 2017 N.J. LEXIS 746 (July 12, 2017). Summary judgment is not appropriate in this case because significant questions of fact exist, the Court found.

Background

Maryanne Grande, a registered nurse since 1985, was employed by Saint Clare's Health System from 2000 to 2010, when she was terminated.

For most of her employment at Saint Clare's, she was assigned to care for patients recovering from strokes and who may not have been able move on their own. The hospital contended that one of Grande's essential job functions included "frequently" lifting 50 pounds from waist to chest.

Beginning in 2007 and continuing through her termination, Grande suffered a series of job-related injuries from repositioning patients. The injuries caused her to take time off (totaling more than 12 months over the three-year period) to recuperate. She also worked on light duty only for approximately two months.

Following Grande's last injury, her doctor cleared her to resume to work without restrictions. The hospital, however, required her to undergo a functional capacity examination ("FCE") before returning to work.

The FCE determined that Grande had permanent lifting restrictions and could not transfer patients without assistance. At the time, Grande's physician concurred with the FCE findings. As a result, the hospital terminated Grande's employment because her physical limitations would prevent her from performing the essential functions of her job.

About one month after her termination, Grande was cleared by her doctor to return to work without restrictions. The hospital, however, did not rehire her. Grande filed suit against Saint Clare's for unlawful discrimination under the Law Against Discrimination.

In 2013, the trial court granted Saint Clare's motion for summary judgment and dismissed Grande's suit. It found that Grande "failed to articulate whether she was performing (or was able to perform) her job at a level that met the employer's legitimate expectations."

A divided Appellate Division (2-1), in 2015, reversed the dismissal of Grande's case, ruling that genuine issues of material fact required a jury trial.

Supreme Court Ruling

The New Jersey Supreme Court affirmed the majority Appellate Division ruling. The Court held that "[a]n issue of fact exists as to whether [the plaintiff's] periods of absence from work were sufficiently 'chronic and excessive' to preclude her from demonstrating that she was actually performing the job from which she was terminated."

The Court also concluded that there were disputes as to whether the lifting standards identified in the FCE actually were the standards applicable to her position, and whether the report established that she could not perform her job either with or without an accommodation. Indeed, the Court noted that the

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record was not developed as to whether a reasonable accommodation would have permitted Grande to perform the essential functions of her job.

The Court also noted the hospital failed to provide objective evidence Grande was unable to perform her job without posing a risk of harm to herself or others. It held that an employer relying upon this defense must show it based its decision on “factual or scientifically validated evidence.” Here, the Court found Grande’s three prior injuries, which resulted in her missing more than 12 months of work, were insufficient to support the defense. The FCE, the Court observed, was silent as to whether Grande was at risk of injuring herself or others if she continued to perform her job, and the hospital failed to present any expert testimony on the issue.

Lessons

Grande offers important lessons for employers. First, employers should ensure that the essential job duties listed on a job description accurately reflect the duties actually performed by employees in the position.

Second, before terminating an employee you believe is at risk for injuring himself or others, make sure the decision is based on an objective standard and supported by factual or scientifically validated evidence. Employers should consider consulting with experienced employment counsel before terminating an employee who might be considered disabled.

Please contact a Jackson Lewis attorney to discuss this case and your specific organizational needs.

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