

VERDICTS & SETTLEMENTS

EMPLOYMENT LAW

DISCRIMINATION

Failure to Engage in a Timely, Good Faith Interactive Process

VERDICT: Defense.

CASE/NUMBER: Evelyn Ortega v. Community Hospital of San Bernardino, Dignity Health, and Does 1 through 50, inclusive / BC548153.

COURT/DATE: Los Angeles Superior Central / June 14, 2016.

JUDGE: Hon. Teresa Sanchez-Gordon.

ATTORNEYS: Plaintiff - Reza Mirroknian, Hider Al-Mashat (The Mirroknian Law Firm PC, Sherman Oaks).

Defendant - Yuk K. Law, Crystal Yu (Law, Brandmeyer & Packer LLP, Pasadena).

TECHNICAL EXPERTS: Plaintiff - Timothy Lanning, Ph.D., economics, Santa Ana.

Defendant - Jennie McNulty, CPA, economics, Los Angeles.

FACTS: Plaintiff Evelyn Ortega, 56, was a registered nurse working in the Medical/Surgical Unit of Community Hospital of San Bernardino, which is owned by Dignity Health. On June 15, 2011, plaintiff tripped, fell and broke her left ankle and bruised her left knee while at work providing patient care. She went on workers' compensation leave, and in December 2011, she returned to the hospital's Transitional Work Program while she was placed on sedentary duty by her physician. She worked in the Transitional Work Program until April 2012, when she was placed on leave again. However, she applied for and accepted an offer to work in the Quality Department as a Quality Care Coordinator responsible for abstraction of data for submission to various government agencies. On May 4, 2012, her physician removed the sedentary work restriction. She started the Quality Care Coordinator job on May 7, 2012, and her new job required her to work at a desk. On June 15, 2012, plaintiff was terminated from her Quality Care Coordinator job.

PLAINTIFF'S CONTENTIONS:

Ortega's physician removed the sedentary work restrictions because her supervisor repeatedly told her to get her restrictions removed and come back "full duty" in accordance with the hospital's policy. Plaintiff claimed the hospital set her up by offering her the Quality Coordinator position without telling her that the job had a 90-day probationary period and was not union-represented. Once she started the job, her supervisors were unnecessarily critical of her work performance, assuring that she would be terminated within the 90-day probationary period and she would not be afforded union representation and grievance procedures.

Plaintiff asserted causes of action for failure to engage in the interactive process, failure to provide reasonable accommodation for her physical disability, wrongful termination based on disability discrimination, and retaliation for plaintiff's filing of a workers' compensation claim, taking a protected leave of absence, and request for reasonable accommodation.

DEFENDANT'S CONTENTIONS:

Defendant contended that plaintiff was terminated for her failure to complete the 90-day probationary period due to under-performance. Defendant claimed that plaintiff was given an opportunity to work in the Quality Department in a job that paid about \$88,000/year, which was almost her salary as a registered nurse in the Medical/Surgical Unit. In addition, the Quality Care Coordinator position was a desk job that was not physically demanding for which she was capable of performing despite her prior ankle and knee injuries suffered at work. Plaintiff was informed of the 90-day probationary period and non-union status when she was offered the job. However, plaintiff was not able to fulfill her basic job requirements during the probationary period while being preceptored, as she came to work fatigued due to her other business after work in cosmetic sales, and performing massages and facials.

The defense also alleged that plaintiff failed to mitigate her damages because she did not apply for other hospital jobs since her termination in June 2012, and the only work she has done is part-time nursing in beauty spas and outpatient cosmetic surgery centers.

INJURIES: Plaintiff claimed loss of past and future earnings and health benefits, and emotional distress and mental suffering.

DAMAGES: Plaintiff sought \$1,784,762 in damages, including \$637,192 for past damages, and \$1,147,570 for future damages. In addition to compensatory damages, plaintiff sought punitive damages.

SPECIALS IN EVIDENCE: LOE: \$318,596 Future LOE: \$573,785.

JURY TRIAL: Length, nine days; Poll, 12-0 (as to all four claims); Deliberation, three hours.

SETTLEMENT DISCUSSIONS: Defendants served a CCP 998 offer for \$150,000.

RESULT: Defense verdict.

FILING DATE: June 9, 2014.