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UNPREDICTABLE SEIZURES – MAMMOGRAPHY TECH WAS A "DIRECT THREAT" AND "NOT QUALIFIED"

The ADA requires employers to attempt to reasonably accommodate qualified individuals with a disability. But what about a Certified Mammography Technician who suffered 14 epileptic seizures on the job in a two year period?

In this case a federal court held that this hospital employee was not qualified and also presented a direct threat to herself and to others because of the unpredictable nature of her disability. This employee over a period of several years suffered epileptic seizures – sometimes losing consciousness, falling and hitting her head. In the two years before filing her ADA lawsuit she suffered 14 episodes. One of the last episodes involved a patient who had just begun the compression portion of the mammogram when the employee suffered another seizure fell to the floor unconscious. Naturally the patient was in distress and complained to the hospital so that "no one else having a mammo will have to go through what I just went through."

ATTEMPTS TO ACCOMMODATE

The hospital tried to be accommodating. It attempted to eliminate environmental causes of the seizures. It placed the Tech on administrative leave, transferred her to temporary non-patient care positions and granted intermittent FMLA leave. Indeed, later when the Tech claimed to have her condition under control she was offered her previous position. But without explanation the Tech rejected that offer. She was then let go. Angry, she filed suit claiming that she had been discriminated against because of her disability and that the hospital failed to reasonably accommodate her.

BUT I CAN PERFORM ALL ESSENTIAL FUNCTIONS *EXCEPT …*
THEN YOU'RE NOT QUALIFIED

The Tech argued that she was totally able to perform all the essential functions of her job ***except*** when she was having a seizure and that the accommodation that she required was intermittent leave to recover from each episode. The court didn't buy her argument that intermittent leave after an episode was a reasonable accommodation. Rather, the court determined that based on the Tech's own admission – that she could perform all essential functions "***except***" . . . – she was not "qualified" for the position. The court reasoned that because her position involved direct patient care where lives and patient safety were at stake there was no reasonable accommodation that could allow her to work without posing a direct threat to herself or others. The court made the point that accommodating seizures depends on the nature of the job and the possibility of severe consequences. To illustrate that point the court distinguished the consequences of a shoe salesman suffering from unpredictable seizures – "customers left without shoes for a brief period" and patients in the care of a hospital employee – "who if compromised can leave the patients in dire straits."

The bottom line for employers is that sometimes accommodating unpredictable seizures can allow the employee to perform the essential functions of the job - like the shoe salesman. But it will depend on the job and the nature of the risk. It will always pay to explore all the potential accommodations through the "Good Faith Interactive Process" before making a final decision.

Reference: *Olsen v. Capital Region Medical Center, (W.D. Mo., No. 10-4221, April 12, 2012)*

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