



## **Doctor Loses ADA Claim**

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A Maryland hospital did not violate the Americans with Disabilities Act (ADA) when it terminated a resident doctor for failure to provide competent medical care with efficiency and reasonable autonomy. The resident, who was diagnosed with a possible Attention Deficit Disorder, was frequently behind schedule, ordered the wrong medications for patients, and failed to check up on a patient after their vital signs changed.

Frank Shin, M.D. sued the University of Maryland Medical System Corporation (UMMSC) alleging it terminated his residency in violation of the ADA. Prior to beginning his residency, Shin graduated from Boston University School of Medicine receiving academic accolades and honors. Citing his initial internship evaluation scores, Shin claimed he was able to perform all essential functions of the job if reasonable accommodations had been made.

On March 11, 2010, the U.S. Court of Appeals in Richmond affirmed a Baltimore federal judge's decision rejecting Shin's arguments, finding he was unable to perform the essential functions of his job with or without reasonable accommodation. In order to prevail on his ADA claim, Shin was required to establish he was qualified to perform the essential functions of his job with reasonable accommodation and he was disabled. The court determined Shin could not perform the essential functions of his job with or without reasonable accommodation. Shin's case was dismissed without a finding as to whether he satisfied the disability requirement necessary to establish an ADA claim.

Although Shin scored "eight" out of a maximum of "nine" in overall competency on his first residency evaluation, his scores began dropping within a month of his residency. He received "three" on multiple occasions, reflecting "failure" in his performance. One physician's evaluation noted Shin's "examination technique was so poor that he might miss something obvious." His poor judgment forced other physicians to stay late and step in to prevent critical errors.



Shin argued he would have been able to perform the essential functions of his job with a reduction in the number of patient assignments, additional time to prepare for presentations in the night float time, and by inclusion of a nurse practitioner during his on-call period. His arguments were rejected. The court found UMMSC made efforts to reasonably accommodate and correct Shin's discrepancies. These included allowing Shin to be heavily shadowed by other residents and not allowing him to take a clinic, which would violate the 80-hour weekly restriction imposed by the Accreditation Council for Graduate Medical Education.

Although the ADA provides that reasonable accommodation may include job restructuring, modified work schedules and reassignment to other positions, it does not require an employee to be assigned to permanent light duty. Nor does it require the employer to hire an additional employee to perform the essential functions of a job assigned to another employee.

The ADA prohibits discrimination due to a disability and the failure to make reasonable accommodations for employees known to have a disability. Under the ADA, "disability" is defined as: (1) a physical or mental impairment that substantially limits one or more of the major life activities of an individual; (2) a record of such impairment; or (3) being regarded as having such an impairment. The ADA Amendments Act provides disability is construed to have broad coverage.

This case emphasizes the importance of providers establishing and documenting the essential functions of a job position and making reasonable accommodations where possible for employees who have a disability.

*Shin v. Univ. of Maryland Med. Sys. Corp.*, No. 09-1126, 2010 U.S. App. LEXIS 5177 (4th Cir. Mar. 11, 2010).

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