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NEWS REPORT

Country: Denmark
Title: Board of Equal Treatment: Definition of disability (long term limitation)
Date: 22 July 2015
Expert: Pia Justesen

Context

Issue at stake: A doctor's view on the duration of an illness is very important when establishing whether an illness constitutes a disability
Ground of discrimination: Disability
Source: National equality body: Board of Equal Treatment Decision No. 39/2015 of 25 March 2015
Field: Employment
Applicable law: Section 1, 2 and 7a of the Act on the Prohibition of Discrimination in the Labour Market etc.

Content

Case: A was a fulltime machine operator in a factory. He was diagnosed with podagra (gout) and had two short periods of sickness absence. Four months after A got his diagnosis he was dismissed. The employer referred to his sickness absence as the reason for the dismissal. A complained to the Board claiming that he had been discriminated against on account of his disability. In a memorandum A's doctor had described that in the future A should expect attacks of podagra that would cause impairments. The doctor wrote that it was impossible to say how often such attacks would occur. He also wrote that it was impossible to say whether the illness would be a short term one or lifelong.

Decision of the Court: The Board referred to the definition of disability in CJEU C-335/2011 (Ring) and C-377/2011 (Skouboe Werge) and stated that A's podagra had caused a significant impairment, which in interaction with various types of working tasks had hindered his full and effective participation in the working life on an equal basis with other employees. The Board, however, also stated that it had not been possible for A's doctor to inform of the duration of the impairment, including the frequency of attacks and the duration of the illness, and whether the illness was a short term one or lifelong.

On that basis the Board concluded that A's illness did not constitute a disability encompassed by the Act on the Prohibition of Discrimination in the Labour Market etc. and thus did not decide in favour of A.

Key points of analysis: The decision illustrates that the opinion from a doctor that an illness cannot be certain to be a long term one or lifelong will prompt the Board to conclude that the illness does not constitute a disability.

Internet link source:

<http://ligebehandlingsnævnet.dk/naevnsdatabase/afgoerelse.aspx?aid=1609&type=Afgoerelse>.