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NEWS REPORT

Country:	Denmark
Title:	Proof of disability
Date:	10 October 2016
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<u>Context</u>	
Issue at stake:	A medical diagnosis is necessary to establish that an employee has a disability at the time of dismissal
Ground of discrimination:	Disability
Source:	The Eastern High Court, Ruling No. B-523-15 delivered on 31 May 2016
Field:	Employment
Applicable law:	Section 2a of the Act on Prohibition of Discrimination in the Labour Market etc.

Content

Case:

The claimant A experienced dizziness and visual disorders after a knee surgery where she had an epidural. The specific reasons for her symptoms were unknown but they caused her to call in sick. After six months of partial sickness absence she was dismissed. The employer argued that she had behaved inappropriately during a meeting dealing with her sickness absence. At the meeting in question, colleagues, representatives from the local municipality as well as her employer had participated.

The claimant argued that she had experienced discrimination because of her disability.

Decision of the Court:

The Court stated that the concept of disability must be interpreted as including a condition caused by an illness medically diagnosed as curable or incurable, if that illness entails a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other employees, and the limitation is a long term one. The Court also stated that for the employer to be under the obligation to establish reasonable accommodation according to Section 2a of the Act on Prohibition of Discrimination in the Labour Market etc. it must be documented that at the time of dismissal, the employee had an illness causing a disability and that the employer knew about this disability.

In this case the Court concluded that even though the claimant's symptoms had been mentioned in several medical records, it had not been proven that the condition of the employee was caused by a medically diagnosed illness. Thus it had not been documented that the employee had a disability at the time of dismissal.

On that basis the employer was acquitted.

Key points of analysis:

The ruling illustrates that for a condition to be considered a disability encompassed by the Act on Prohibition of Discrimination in the Labour Market etc. it is critical that the condition is caused by a medically diagnosed illness. The ruling thus makes it questionable whether discrimination because of perceived disability is illegal according to Danish non-discrimination law.

The ruling also illustrates that the burden of proof rests with the employee. The employee has to prove that the condition is caused by a medically diagnosed illness existing at the time of dismissal.

Internet link source:

The ruling has not been published.