



# RIGHTS STUFF

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Human Rights Commission

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## Case Shows How Hard It Can Be To Win A Discrimination Suit

Patricia Lilly worked for the U.S. Postal Service as a part-time letter carrier. In December 2006, she fell while delivering mail and hurt her back. Her doctor scheduled physical therapy appointments for her in January and February of 2007. When she asked her supervisor, Jackie Cole, about taking time off for these appointments, Cole said she believed the documentation for the appointments was forged. She told Lilly that she did not think Lilly's injuries were real. Regardless, Lilly received the therapy as scheduled.

At about this same time, Cole issued Lilly six written disciplinary notices:

- She issued Lilly a letter of warning for failure to follow instructions. Cole's supervisor found the warning to be defective and reduced it to an official job discussion.

- She issued Lilly a letter of warning for being inexcusably absent one day. Her supervisor rescinded it because Lilly had not been scheduled to work on the day in question.

- She suspended Lilly for seven days for failure to follow instructions and for insubordination. Her supervisor rescinded this for procedural reasons.

- She issued Lilly a letter of warning for failure to follow instructions. Her supervisor rescinded it for procedural reasons.

Lilly bid on and requested mail routes with fewer stairs, fewer residences and lower mail volume because of her continuing back pain. Cole twice refused to honor her bids despite the postal service's policy to do so.

When Lilly told Cole she had an appointment with the employee assistance hotline, Cole assigned her to a more difficult and time-consuming route, making her miss the appointment. Cole repeatedly assigned Lilly to routes that she found difficult. When Lilly needed extra time to finish these routes she found difficult, Cole disciplined her for using overtime without authorization. When Lilly told Cole that stairs caused her pain, Cole told Lilly that she was sick of her and didn't like her.

Lilly said that a co-worker threatened her and called her a "bipolar bitch." She complained. The postal service talked to the co-worker, who denied the allegation.

When Lilly requested sick leave to see a doctor, Cole denied it, even though Lilly provided proper documentation. Instead, Lilly had

*(Continued on page 3)*

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## Cancer In Remission Qualifies As Disability

Stephen Hoffman began working for Pharmacare as a service technician in 2006. His duties included supplying patients with home medical devices such as oxygen and wheelchairs.

In the summer of 2007, Pharmacare was purchased by Advanced Healthcare. Hoffman kept his job. His new job description said that "light day travel required and an ability to work in varying locations." He worked from 9 to 5. Both his worksite and his home were in Angola, Indiana.

In November of that year, Hoffman was diagnosed with Stage III renal carcinoma, and his left kidney was removed. He was off work until January. When he returned to work, he had no medical restrictions. He never complained about his job, but he said he did suffer "some fatigue, pain and discomfort, particularly from sitting or driving." He converted his garage to a home office and largely worked out of his home.

When Hoffman returned from a vacation in January 2009, he was told that Advanced Healthcare had acquired a new contract and that all service technicians were required to work overtime. He told his supervisor, "Fine, I want to keep my job, yes." Two days later, his supervisor told Hoffman that with the new contract, he would have to work 70 hours a week and be on call on weekends. This was true for all service technicians, not just him.

The next day, Hoffman brought a letter from his doctor that said "patient may not work more than 8 hours/day, 5 days/week" because of his Stage III renal cancer. His supervisor continued to say that he would have to work 70 hours a week. He told his supervisor that if that was the case, he would probably have to quit. The day after this, he was told he could resign or he could work overtime like everyone else. He refused to resign and said he couldn't work the extra hours. The supervisor told him he would have the proper person write up the letter of termination and give it to him by the end of the day. But later the same day, Advanced decided not to fire Hoffman because he had not done anything that would justify termination. Instead, he could work 40 hours a week, but he would have to work out of the Ft. Wayne office. The commute would add two hours to his work day and was thus unacceptable to him.

At this point, Hoffman said he believed that Advanced Healthcare had terminated him, and he sued.

One question for the Court was whether a person whose cancer was in remission was a "qualified person with a disability" under the ADA Amendments Act of 2008. This was the first time a Court had considered this question since the amendments went into effect. The amendments say that "an impairment that is episodic or in

remission is a disability if it would substantially limit a major life activity when active." Advanced Healthcare said that Congress could not have intended to provide that all cancer survivors qualify as having a disability under the law for the rest of their lives. But given the language of the amendment, the Court found that Hoffman was "a qualified person with a disability."

The second question for the Court was whether Advanced Healthcare offered a reasonable accommodation. Since Hoffman had an office in Angola, and had clients in Angola, the Court said that it seemed "reasonable on its face" that Advanced Healthcare could have allowed him to keep working in Angola. Once he left, other technicians had to handle these clients. The company did not show that this accommodation would have created an undue hardship. It didn't show that the accommodation would have affected other service technicians, or that there were not enough clients in the area to justify this.

The case is Hoffman v. Carefirst of Ft. Wayne, Inc., d/b/a Advanced Healthcare, 2010 WL 3522573 (N.D. IN 2010). If you have questions about your rights and responsibilities under the ADA or the ADAAA, please contact the BHRC. ♦



## Discrimination Case (continued from page 1)

to see the doctor on her day off instead of resting as she usually did on her day off.

In June, 2007, Lilly hurt her back at work again. She applied for Family Medical Leave. Her application was granted, but because of a computer error, a letter went out saying her request was denied. Eventually, this error was noticed and corrected.

Lilly sued, alleging sex discrimination, disability discrimination and retaliation. She lost.

She lost her retaliation lawsuit for two reasons. One, the incidents she called retaliation all happened before she filed her complaints with the Equal Employment

Opportunity Commission and thus could not be retaliation for having filed a complaint. Two, the Court said that the actions she considered to be retaliation were not "materially adverse." The various write-ups and suspensions that Cole issued were all modified or rescinded. There was not enough evidence for the Court to conclude that the route changes were materially adverse actions.

The Court said that the denial of her FMLA request was corrected, and thus the initial denial did not hurt her.

The Court said that the other incidents Lilly complained of - Cole saying she thought Lilly's medical documents were fake,

that she did not like Lilly and that she wanted to "break" Lilly - were "petty slights" and thus not actionable. The Court said that "the isolated nature of these spats shows that they cannot be 'severe and pervasive' as required for a hostile work environment."

And the Court said that Lilly did not show she had a "disability" as that term is defined by law. She did not show that the limitations from her impairment are permanent or long-term. The record showed that her condition is mitigated, if not corrected, by treatment.

The case is Lilly v. Potter, Postmaster General, 2010 WL 4791490 (N.D. Ill 2010). ♦

## Schools Must Protect Students With Disabilities From Bullying

In recent years, there's been a lot of publicity about students who are bullied or harassed at school on the basis of their sexual orientation or perceived sexual orientation. Schools have been held liable for not taking appropriate action to stop the mistreatment.

Recently, the U.S. Department of Education's Office for Civil Rights sent a letter to schools reminding them that they also must take action when students with disabilities are harassed or bullied because of their disability.

According to the OCR's fact sheet, student-on-student harass-

ment and bullying can lead to lowered academic achievement, anxiety, loss of confidence, absenteeism, feelings of alienation, self-harm and suicidal thinking.

The OCR says that once a school knows of, or reasonably should know of, possible harassment, "it must take reasonable and appropriate action to investigate or otherwise determine what occurred. If harassment has occurred, a school must take prompt and effective steps to reasonably prevent its recurrence. These duties are a school's responsibility even if the misconduct also is covered by an anti-

bullying policy and regardless of whether the student makes a complaint, asks the school to take action, or identifies the harassment as a form of discrimination."

Schools wanting more information may visit the department's website, <http://wdcrobolop01.ed.gov/CFAPPS/OCR/contactus.cfm>.

People wanting information about filing a complaint may call OCR's customer service team, 800-421-3481. ♦



## **City Accepting Nominations For “Be More” Volunteer Awards**

City of Bloomington Mayor Mark Kruzan announced that nominations are now being accepted for the “Be More Awards,” the community volunteer awards sponsored by the City of Bloomington Volunteer Network.

The recognitions, which are co-sponsored by the Community Foundation of Bloomington and Monroe County, the IU Credit Union, the United Way of Monroe County and WTIU Public Television, honor local volunteers for outstanding community ser-

vice. Nominations may be submitted by family members, members of the general public or community agencies. Ten awards of \$500 each will be granted in a variety of categories, including group/family, arts and culture, board member, college student, youth, education/literacy, environmental/animal welfare and lifetime of service, plus two awards in the general category.

Nominations forms are available now at the Volunteer Network, Suite 260 of City Hall, 401 N.

Morton Street and online at [www.bloomington.in.gov/bemore](http://www.bloomington.in.gov/bemore) or via mail by contacting Bet Savich, Director of the City's Volunteer Network, at 349-3472 or [volunteer@bloomington.in.gov](mailto:volunteer@bloomington.in.gov).

Nominations will be accepted until 5 p.m. on Tuesday, February 1, 2011. The Be More Awards Ceremony will take place on Tuesday, April 5, from 7 to 8 p.m. at the Buskirk-Chumley Theater. The event is free and open to the public.

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