

FMLA And ADA Claims Put To Bed Where Employer Did Not Know Employee Had Sleep Apnea At The Time Her Employment Was Terminated.

Article By:

Daniel P. Schwarz

Sometimes what you don't know can help you. In *Guzman v. Brown County*, a 911 Dispatcher who was fired after being late repeatedly had her FMLA interference and retaliation claims sent to dreamland by the Seventh Circuit Court of Appeals. The Appeals court held that the moribund claim should stay that way because the Dispatcher could not show that she suffered from sleep apnea at the time of her termination or that the supervisor who made the decision to terminate her employment knew of her claimed history of apnea when he reached that conclusion. The Court also declined to resurrect her ADA claims for the same reasons.

Guzman started working as a dispatcher at the County's 911 call center in 2002. In 2006 she was diagnosed with sleep apnea and treated for it. In 2008 she had gastric bypass surgery, which appeared to alleviate her sleep apnea. Shortly afterwards, she threw away her CPAP machine. In the second half of 2012 and early 2013 she was late for work on four occasions. After the fourth incident Guzman received a written warning that if she were late again, she could be fired.

Guzman was unable to comply and was, within days, late again. Her supervisor decided to fire her. Although she brought a doctor's note to the meeting at which she was terminated, it said only that she "most probably" had sleep apnea and that she "needs to be re-tested and treated." In the Seventh Circuit's view, it was not clear from that note that Guzman even suffered from sleep apnea at the time she was fired. What was clear was that she was not receiving inpatient care for sleep apnea or receiving continuing treatment for it. Consequently, she did not show she had a serious health condition qualifying her for FMLA leave.

The court also put to rest the dispatcher's argument that the County had notice of her FMLA claim at the time of her termination meeting. It was undisputed that the decision to fire had already been made by a supervisor who had no notice of her sleep apnea before the meeting at which she presented the note from her physician. For these reasons the Court declined to breathe life into her FMLA interference or retaliation claim.

Her ADA discrimination and accommodation claims fared no better. The court did not need to reach the question of whether Guzman had a disability because the evidence was uncontroverted that her supervisor did not know that she had sleep apnea prior to deciding to fire her. As a result she could

not prove that she suffered an adverse employment action because she was disabled or because of a requested accommodation.

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