

## DEPARTMENT OF VETERANS AFFAIRS NURSE FIRED, LAWSUIT ALLEGES DISCRIMINATION AND RETALIATION



A registered nurse for the Department of Veterans Affairs was fired for poor performance. She alleged that her termination was due to her disability, her race, her gender and her national origin. She took her argument to court. The woman was given a “temporary appointment” in 2003. She could not have a permanent position because she wasn’t a U.S. citizen, but her appointment was extended each year. She first worked as a staff nurse at a Denver, CO facility, where she suffered wrist and back injuries and was placed on light duty because of lifting restrictions. In 2007, after a fourth injury, she was moved to charge nurse. In that position, she complained that the staff didn’t listen to her. Nurses and supervisors informed her superiors that she seemed “overwhelmed” as charge nurse. One supervisor said that she often helped the woman with “basic decisions” and handled disputes between her and the staff. Less than a month as charge nurse, she requested reassignment. She was sent to Lakewood, CO, the only clinic with a position to accommodate her restrictions. She was reassigned again, based on her requests, in March 2008. The charge nurse at an Aurora facility noted problems during orientation – the woman had trouble prioritizing patients’ calls and had allowed a patient to leave before an EKG could be reviewed. Based on feedback from supervisors and her subpar performance at the previous clinics, the nurse was fired. She filed an EEOC (Equal Employment Opportunity Commission) complaint, alleging retaliation and discrimination based on race, gender, national origin and disability. Her lawsuit, naming the Secretary of Veterans Affairs in his official capacity, initially asserted that she was disabled due to her injuries as well as severe depression. She also alleged a hostile work environment, and, regarding retaliation, claimed that she’d been fired for prior EEOC complaints. The district court granted summary judgment favoring the defendant, and all claims were dismissed. On appeal, the hostile work environment and severe depression claims were both abandoned. She attempted to prove that her supervisors regarded her as having a physical impairment that substantially limited her abilities. She noted the light duty work, but that only showed that her lifting and sitting restrictions were properly recognized. Her previous complaints with the EEOC were unclear – she claimed she’d filed a complaint in early 2008, but the opposing party disputed this. Regardless, she couldn’t show that her supervisor was aware of such a complaint. The EEOC manager had allegedly told the woman that she’d discussed it with the supervisor, but that assertion was inadmissible hearsay. She focused her discrimination claim on her national origin. She pointed out that the Aurora charge nurse had mentioned her accent (the plaintiff is Asian). But she didn’t argue that the statement was derogatory, her own expert said she was “somewhat hard to understand,” and the charge nurse had no say in the decision to fire her. She further argued that she was terminated shortly before she became a U.S. citizen to subvert a newfound status of permanent employee – but this is assuming that she would “automatically” be moved to a permanent position. As all of her arguments in the appeals court had failed, the judgment in favor of the defendant was affirmed.