

EMPLOYMENT LAW

Wrongful Termination

FEHA

VERDICT: \$132,000.

CASE/NUMBER: Lisa A. Grant v. St. Jude Medical Center / 792506.

COURT/DATE: Orange Superior / Aug. 20, 1999.

JUDGE: Commr. Eleanor M. Palk, Dept. 5.

ATTORNEYS: Plaintiff - Jack H. Anthony (Law Offices of Jack H. Anthony, Santa Ana).

Defendant - Richard E. Madory (Madory, Zell & Pleiss, Tustin).

TECHNICAL EXPERTS: Plaintiff - Sinclair E. Hugh, human resources, Irvine.

Defendant - Sharon McKay, human resources, Anaheim.

MEDICAL EXPERTS: Plaintiff - Thomas Ela, M.D., neurologist, Brea; Jerry Von Talge, Ph.D., psychologist, Newport Beach.

FACTS: Plaintiff Lisa A. Grant was employed as a filing clerk in the radiology department of defendant St. Jude Medical Center from October 1995 until January 1998. During the first year of her employment, the plaintiff's performance was evaluated as being exemplary.

In January 1997, when defendant Gerritsen failed to address a problem of X-ray films being misfiled, the plaintiff reported the problem to Gerritsen's supervisor, Joe Simon. Simon told Gerritsen that plaintiff had reported the misfiling problem and that plaintiff had reported also that Gerritsen failed to address the problem when asked to do so.

Gerritsen's previous positive perception of plaintiff's performance was immediately reversed after this incident. Within days of

On July 1, 1997, Gerritsen spoke to plaintiff about tardiness. On August 8, the plaintiff was counseled in writing regarding excessive tardiness even though she had been given permission by her supervisor to arrive at work late, both to avoid the co-worker and when plaintiff was experiencing headaches.

On November 12, the plaintiff was given a written formal counseling regarding tardiness and absences. On November 17, the plaintiff was given a termination warning with a 10 percent downgrade in pay after she was absent for three days with an episode of migraine headaches, confirmed with a note from plaintiff's neurologist.

The plaintiff was told that any further absences or tardiness of more than 10 minutes in the next six months would result in termination of her employment. When plaintiff inquired whether she was eligible for medical leave based on her migraine headache condition, she was told that she was not eligible for any such leave. When plaintiff requested the accommodation of a transfer, it was denied.

On Jan. 7, 1998, the plaintiff experienced a migraine headache and asked Gerritsen for permission to leave work early. Gerritsen gave her permission. On the morning of January 8, the plaintiff was still suffering from the same migraine headache and reported late to work only after first notifying her supervisor of the reason for the tardiness. On the same day, the plaintiff's employment was terminated.

The plaintiff brought this action against the defendant based on discrimination, harassment and retaliation in violation of the Fair Employment and Housing Act, termination in violation of public policy, violation of the California Family Rights Act and defamation.

plaintiff's report to Simon, Gerritsen reprimanded plaintiff for how she had reported an incident of absence three weeks earlier. In February 1997, the plaintiff complained to Gerritsen that she was being sexually harassed by a male co-worker.

Although Gerritsen did report the complaint of harassment to human resources. She allegedly told human resources that she thought plaintiff was openly flirtatious and not credible.

Human resources interviewed the male co-worker. After this interview, human resources determined that plaintiff's complaint was without merit and that no harassment had taken place. The plaintiff informed Gerritsen that she was afraid of what the co-worker might do.

The plaintiff requested permission to arrive at work late to avoid the co-worker whose shift sometimes ended as plaintiff's began. Gerritsen gave plaintiff permission to arrive at work late. This permission was never withdrawn.

On March 10, 1997, the plaintiff was counseled verbally regarding excessive tardiness even though she had expressly been given permission by her supervisor to arrive at work late. In the spring of 1997, the plaintiff began experiencing migraine headaches. The neurologist diagnosed plaintiff as suffering from a migraine headache disorder.

On at least two occasions, the neurologist wrote notes to St. Jude advising it that absences of plaintiff from work were caused by her migraine headache disorder. Gerritsen claimed she did not remember receiving the notes.