

## 8th Cir.: No FMLA Protection for Employee Suffering from Chronic Kidney Disease

By John S. Gannon 4/30/2015

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An employee diagnosed with stage 1 chronic kidney disease was not entitled to protection under the Family and Medical Leave Act (FMLA) because she did not have a “serious health condition” under the law, according to the 8th U.S. Circuit Court of Appeals.

Lucinda Dalton was hired by ManorCare of West Des Moines, a skilled nursing facility, in May 2009. She was promoted to a supervisory position as director of care delivery a year later.

In early 2011, Dalton met with Dr. Robert Leisy, a kidney specialist, who diagnosed her with stage 1 chronic kidney disease. Leisy testified that stage 1 chronic kidney disease is not really a disease because kidney function “is actually normal to above normal at that point.” Rather, the kidneys are working harder than usual. According to Leisy, a patient with stage 1 chronic kidney disease who receives proper care may avoid advancing to the higher stages of kidney disease.

Dalton met with Leisy a month later for a follow-up appointment. Leisy noted improvement in her edema and no “renal etiology.”



Around this time, Dalton was having trouble at work. She was issued a final written warning for violating work rules, including making inappropriate comments that patients could overhear and taking extended lunch breaks. Dalton also met with her supervisor a few weeks later to discuss a number of job tasks she had failed to complete.

The day after that meeting, Dalton called in to work and reported that she had to visit the emergency room for chest pains. She was discharged from the ER later that day without a diagnosis of chest pain. Dalton was terminated a few days later for failure to carry out job responsibilities.

Dalton sued, claiming interference with her FMLA rights. She also claimed her termination was retaliatory because she had sought FMLA leave. The trial court dismissed the case without the need for a trial. The court concluded that Dalton was not protected by the FMLA because she did not have a serious health condition. The court also concluded that Dalton was not retaliated against for using FMLA leave. The 8th Circuit agreed.

Dalton argued that her chronic kidney disease qualified as a chronic serious health condition that was protected under the FMLA. Chronic conditions require periodic visits to a health care provider, a continuation over an extended period of time and episodic rather than continuing periods of incapacity. According to the 8th Circuit, Dalton's condition did not qualify because she was not incapacitated—unable to work—due to her condition. Brief absences to obtain medical diagnoses and treatment did not qualify; instead, these were “short-term conditions” not protected by the FMLA.

Dalton also claimed her chest pain was protected by the FMLA because it necessitated a trip to the emergency room. However, the ER trip did not require an overnight stay in a hospital, and there was nothing to suggest the pain was recurring in nature.

Finally, the 8th Circuit pointed out that even if Dalton did have a serious chronic health condition, she could not make out a claim for FMLA retaliation. Dalton's FMLA requests were not the reasons for her termination. Instead, she was fired for performance deficiencies unrelated to her absences.

*Dalton v. ManorCare of West Des Moines LLC*, 8th Cir., No. 13-3743 (April 7, 2015).

**Professional Pointer:** Employees can establish a serious health condition in many ways; a chronic condition is only one avenue. For example, an overnight stay in the hospital coupled with any period of incapacity—such as an inability to work—will suffice. Even so, this case reminds employers that they must scrutinize an employee's reasons for absences and carefully review any FMLA paperwork before determining whether the employee qualifies for FMLA leave.

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