

HUDSON

HUDSON COUNTY

EMPLOYMENT

Retaliation — Disability — Workers' Compensation

Worker said firm fired her after failing to accommodate injury

VERDICT **\$60,000**

CASE Diane Paras v. St. George Warehouse,
No. HUD-L-6311-07

COURT Hudson County Superior Court, NJ

JUDGE Barry P. Sarkisian

DATE 10/27/2009

PLAINTIFF

ATTORNEY(S) Paula M. Dillon, Krumholz Dillon, P.A.,
Jersey City, NJ

DEFENSE

ATTORNEY(S) John A. Craner, Craner, Satkin & Scheer,
P.A., Scotch Plains, NJ

FACTS & ALLEGATIONS On Oct. 11, 2007, plaintiff Diane Paras, 38, was terminated from her job as a file clerk at St. George Warehouse in Kearny. She had worked there since November 2006 with an unblemished employment record and was training to be a customer service representative.

On Oct. 1, 2007, Paras injured her foot and ankle while at work. She was treated by her employer's workers' compensation doctors, who placed her on light-duty restrictions. The employer allegedly paid little regard to the restriction placed on Paras by its own workers' compensation medical providers and made no accommodation for her to lessen the strain on her foot and ankle during the course of her work. Paras was short in stature and had to frequently stand on her toes to reach the location of documents she was filing. She asked to be afforded breaks and even suggested that she be moved into the customer relations position she was training for so as to alleviate the strain on her injury. The employer's response, as testified to, was "We don't give a f---, just go back and do your work."

On Saturday, Oct. 6, 2007, Paras went to see her own personal physician about her foot and ankle and was given a note to stay out of work for a short period to allow her foot to recuperate. When the employer was informed of this the following Monday, Paras was directed to go to the employer's workers' compensation doctors for evaluation on Wednesday, which she did, being cleared to return to work that day. She reported to work the following day and was advised that she was being terminated. There was some confusion and discrepancy about whether Paras was expected to report to work immediately following the Wednesday medical evaluation or on Thursday. There was no dispute, as testified to by a St. George Warehouse

co-worker, that Paras was questioned about her need to have physical therapy in her termination meeting and a defense employee testified at trial that "none of this would have happened if she hadn't injured herself."

Paras sued St. George Warehouse for disability discrimination under the New Jersey Law Against Discrimination (NJLAD) and the pertinent workers' compensation statutes that make it unlawful for an employer to retaliate against an employee who seeks treatment or asserts claims for a work-related injury.

The defense maintained that plaintiff was not such a good employee and "was just not working out" and the company had the right to terminate her, which it chose to do. She was therefore terminated, the defense maintained, for cause as opposed to her availing herself of compensation benefits or being discriminated against on account of her disability.

The defense also contended that the type of injury plaintiff had did not constitute a "disability" under the NJLAD.

INJURIES/DAMAGES *emotional distress*

Plaintiff sought lost wages on account of her termination and compensation for her emotional distress.

No specific medical evidence was advanced in support of the emotional distress claim.

RESULT The jury determined that plaintiff had proven by a preponderance of the evidence her claims under NJLAD and the prohibition against retaliation in the workers' compensation law. The jury awarded Paras \$60,000.

DIANE PARAS \$30,000 past lost earnings
\$10,000 future lost earnings
\$20,000 emotional distress
\$60,000

DEMAND \$75,000
OFFER none

TRIAL DETAILS Trial Length: 7 days
Trial Deliberations: 1 hour

POST-TRIAL Plaintiff is entitled by statute to an award of attorney fees and that application was pending at the time of publication.

The defense is appealing the verdict.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. No comment on the article was received from defense counsel.

—Jon Steiger