

AIDS patients excluded from handicapped statute

By JENNIFER BLACKWELL
Staff Writer

An N.C. statute prohibiting discrimination against the handicapped in the workplace does not include people who test positive for the AIDS virus, the state supreme court ruled last Wednesday.

The decision rejected the suit brought by Scott Burgess, a short-order cook who was fired from the Your House Restaurant in Raleigh in 1987 after testing HIV-positive. Burgess charged that this violated the 1985 state Handicapped Persons Protection Act.

The central issue facing the judges in their decision was whether a person who is infected with HIV but has not displayed any symptoms of the disease is entitled to protection under this act, wrote Associate Justice Louis Meyer in the opinion of the court.

The court ruled that Burgess failed to show that infection with HIV enabled him to qualify as a "handicapped person" under the act for two reasons. One was the act's definition of a handicapped person, a person who has a physical or mental impairment which limits one or more "major life activities." Unlike the federal statute, the N.C. act did not include "working" as a "major life activity."

Meyer said Burgess did not prove that his disease impaired a major life activity under the terms specified in the act, which include functions such as walking, seeing, hearing, caring for oneself and performing manual tasks.

Meyer also wrote that communicable diseases themselves do not constitute a handicap. The act's language and legislative history prove that the General Assembly "affirmatively chose not to

include persons infected with the HIV virus within the scope of the Handicapped Persons Act."

To support its contention that the 1985 act did not include persons infected with the HIV virus, the court relied on a law passed by the General Assembly last year which specifically addresses AIDS discrimination.

The new law prohibits discrimination against infected employees, although it does not prohibit employers from denying employment to an applicant testing positive for the AIDS virus. The law exempts restaurants until July 1991.

Meyer wrote that these recent amendments proved that persons with communicable diseases were not covered under the Handicapped Persons Protection Act. "They deal with a subject that was not intended to be covered in

the earlier legislation."

Lynn Fontana, Burgess' attorney, said she was very disappointed with the decision.

"The court went beyond what it needed to do to decide the case in favor of the employer," she said. The justices could have held that the act did not apply because the legislature amended the Communicable Diseases Act last year.

"They (the justices) could have just said that and left it alone," instead of including the statement that working did not constitute a major life activity.

She added that this issue would probably be addressed again in the General Assembly in order to make the act clearer. "The AIDS battle is not over with yet."

David Jones, a volunteer lobbyist for the AIDS Services Project, said the decision had serious repercussions for

the entire disabled community.

The decision does not mean that people with communicable diseases are any less protected by the state, he said, but it is important since the court ruled that working was not a major life function.

He said he was sure that the omission of the term "working" in the N.C. statute was deliberate, since this activity is covered under the federal law.

"It could have a chilling effect," on people with communicable diseases who are seeking employment, he said.

A ruling in Burgess' favor would have only put a stop to pre-employment testing, since the 1989 law now protects people with communicable diseases from being fired. If he had won, the ruling "would not have had that much additional protection," he said.

Jones said he doubted that more employers would begin using pre-

employment tests as a result of the decision.

Jill Duval, the executive director of AIDS Services Project in Durham, said the ruling might make people with the HIV virus afraid to apply for jobs because the decision "sends a message to the infected that their court system won't protect them."

Duval said the omission of "working" from the definition of major life activity created a problem since many with communicable diseases who wanted to work would not be able to.

"(The decision) is another example when North Carolina is again behind the times in dealing with this disease." Since the act is in direct conflict with federal law in the exclusion of working, it shows that North Carolina is "out of step," she said.

"This could be a case where fear still overrides reason."

Hearing

the grievance process, he added.

Edwards' grievance moved to Step 4 in September 1988, but the hearing did not begin until November 1989.

Burleson also said that since 1986 there were no blacks holding professional positions in the employee relations office, which hears grievance hearings at the Step 2 level.

Edwards said after the hearing that working for the police department during her grievance has been very difficult and that she was very happy that the hearing was over.

"It's not easy working for the University. Retaliation sets in my department. I feel like any little reason they could get to fire me they would. They shut me out all these years. I'm a threat to them."

Edwards also said she was pleased that many of the demands which she

made in her original grievance had already been met.

In her grievance, Edwards requested that:

- the department hire more black females. Edwards was the first black female ever to be hired by the department. Since her grievance began, a second black female has been hired.

- more black officers be promoted to positions of rank. Since Edwards filed her grievance, two black officers have been promoted to positions of rank, putting the total number of blacks with rank at four.

- the entire UNC grievance process be revamped. Chancellor Paul Hardin recently appointed a committee to review the grievance process.

- administrators acknowledge that the 1987 reorganization was unfair.
- administrators replace those in

department management positions who had shown favoritism during the 1987 reorganization. Edwards said this has been accomplished through the reassignment of former Public Safety Director Robert Sherman and Mauer's scheduled retirement.

Edwards also said she wanted compensation for being a "14-year token" in the department. She mentioned that the compensation might come in the form of a promotion, the awarding of back pay or a general monetary award.

"Whatever the judge (Nesnow) thinks I deserve is OK with me."

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Faculty

sports, but that most UNC athletes become regular citizens.

"When they leave the University, they should be able to look back at the University and say 'I'm very proud of this, not because I played basketball or football, but because of something I got in terms of direction and in terms of an education.'"

Other recommendations approved by the council included:

- exit questionnaires or interviews including coach evaluation whenever a student-athlete leaves an academic

program, whether for graduation or for other reasons;

- a proposal to the Southern Association of Colleges and Schools to include a review of graduation rates and grades of student-athletes in their studies of its members;

- housing student-athletes so that they live among non-athletes;

- and greater access for non-athletes to Koury Natatorium and access for non-athletes to training tables for a fee.

In his statement at the beginning of

the meeting, Hardin said the Atlantic Coast Conference (ACC) was widely respected by coaches in other conferences for athletic and academic quality.

Hardin said within the last nine days, two schools had either called or written him asking if the ACC might expand in the future so their institution could be included.

"The letters said this question is made out of the respect of the academic aspiration of the Atlantic Coast Conference and the standard of athletics displayed," Hardin said.

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