

FEHA	A \$539,584	For the plaintiff: Karl Gerber	Arbitration Forum	Bookmark
		For the defendant: Robert D. Donaldson Harry A. Zinn	Arbitrator Nancy J. Warren	

RESULT DATE: 'Sept. ' 12, 2008

Gwen Myles v. Blue Cross of California, The Wellpoint Companies Inc., Anthem Alliance Health Insurance Co. Blue Cross Blue Shield, a Business entity, form, unknown (1220035953) 08-JV_1581

FURTHER DESCRIPTION: Disability Discrimination, Wrongful Termination

ARBITRATION: \$539,584

ATTORNEY Claimant - Karl Gerber (The Employment Lawyers Group, Sherman Oaks).
Respondent - Robert D. Donaldson, Harry A. Zinn (Bate, Peterson, Deacon, Zinn & Young, LLP, Los Angeles).

FACTS: Beginning in 1998, Blue Cross of California (Blue Cross) employed plaintiff Gwen Myles. In 2006, she was promoted to Customer Care Representative Lead. VVhile working, her high heel snagged in a hole in the carpet, causing her to injure her ankle. She reported the accident via Workers' Compensation forms, received treatment from a doctor selected by the company, including physical therapy, and went back to work.

In 2006, Myles visited another doctor who concluded that she was temporarily disabled, after which Myles requested a leave of absence. A company disability case manager requested information from the second doctor regarding whether Myles could perform the essential functions of her job. The case manager subsequently determined that Myles was not entitled to leave and claimed that when Myles did not provide additional information to support her leave request or return to work, she was fired based on job abandonment.

Myles' own doctor submitted medical documentation containing contradictory information. On one hand, he indicated Myles was unable to work, but he also stated that Myles could not walk, stand or life. The parties disagreed as to whether these were essential job duties.

Myles settled her worker s compensation claim in 2007 and began searching for employment. She sued Blue Cross for disability discrimination under the FEHA, wrongful termination in violation of public policy, and intentional infliction of emotional distress.

CONTENTIONS: PLAINITFF'S CONTENTIONS: Myles argued that she sustained a physical injury, which limited her major life activities and caused an adverse working environment, as she was terminated. Myles further contended that the defense offered no evidence that Myles could not hold her job open. In addition, Myles argued that Blue Cross failed to engage in the interactive process with Myles to establish whether reasonable accommodations could possibly be made. In arguing wrongful termination, Myles contended that Blue Cross violated Labor Code section 132a by denying her a leave of absence.

DEFENDANTS' CONTENTIONS: Blue Cross argued that the plaintiffs customer service job was sedentary such that she could resume employment. It also asserted that it engaged in the interactive process when its case manager requested further information from Myles' second doctor. Moreover, it contended that its polices were not discriminatory in that Myles was afforded more compensation from workers' compensation benefits than she would have received under short-term disability for a non-work-related injury.

SETTLEMENT DISCUSSIONS: According to respondents' counsel, plaintiff stated that she made an offer of \$500,000 preceding mediation. Blue Cross stated that there was no such offer, but merely an indication of a settlement range. During mediation before Justice Steven Stone of JAMS, plaintiffs only demand was \$1,250,000. Blue Cross responded with a \$20,000 offer and plaintiff refused any further negotiation.

According to claimant's counsel, defendant offered \$20,000 believing that plaintiff had initially offered \$1,150,000. Plaintiff never refused to make another offer.

RESULT: The arbitrator found for plaintiff on an actual disability discrimination theory and found that Blue Cross violated section 132a by not affording plaintiff the same leave rights it afforded to non-industrially injured employees. Blue Cross was required to compensate Myles \$83,937 in back pay and benefits, \$180,000 in future pay and benefits, and \$50,000 for emotional distress. Plaintiff requested between \$327,000 and \$400,000 in attorneys' fees and costs plus a lodestar multiplier. The arbitrator denied the multiplier and awarded \$225,647.35 in professional fees and costs. The total amount awarded was \$539,584.35.