Failure of Return-to-Work Process Is Not Failure to Accommodate



An injured OR nurse and hospital couldn’t agree on a return-to-work plan. The nurse sued for disability discrimination and failure to accommodate but the Newfoundland Human Rights Commission dismissed the complaint. It was very “unfortunate” that the hospital couldn’t find the nurse what she deemed a suitable position. But it did try. It offered her 3 possible positions for a gradual return, all of which she rejected. She also refused to undergo a functional capacity evaluation that would have helped the hospital get a better read of what jobs she was capable of doing. By resigning her position rather than accepting any of the offered return-to-work plans, she also derailed the accommodations process by eliminating her “call back” status [*Benson v Central Health Authority*, 2021 CanLII 86245 (NL HRC), September 13, 2021].