



EMPLOYMENT

Disability — Retaliation — Disability Discrimination

Clerk was fired while on medical leave

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VERDICT
of the WEEK

Employment

Clerk fired while on
medical leaveVerdict **\$353,680**Actual **\$929,403***Garcia v. Electrical Industry
Service Bureau, Inc.*

San Francisco Co., Calif., Super. Ct.

Plaintiff's Attorneys Richard J. Vaznaugh,
Law Office of Richard Vaznaugh,
San Francisco; Virginia Villegas,
Talamantes/Villegas/Carrera, LLP,
San Francisco**Defense Attorneys** Scott DeNardo and
William J. Flynn, Neyhart Anderson Flynn &
Grosboll, San Francisco

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VERDICT **\$353,680**
ACTUAL **\$929,403****CASE** Tania Garcia v. Electrical Industry Service Bureau, Inc.,
No. CGC-06-454840
COURT Superior Court of San Francisco County, San Francisco, CA
JUDGE Ernest Goldsmith
DATE 10/31/2007**PLAINTIFF**
ATTORNEY(S) Richard J. Vaznaugh, Law Office of Richard Vaznaugh,
San Francisco, CA
Virginia Villegas, Talamantes/Villegas/Carrera, LLP,
San Francisco, CA**DEFENSE**
ATTORNEY(S) Scott DeNardo, Neyhart Anderson Flynn and Grosboll,
San Francisco, CA
William J. Flynn, Neyhart Anderson Flynn and Grosboll,
San Francisco, CA**FACTS & ALLEGATIONS** On Jan. 24, 2005, plaintiff Tania Garcia, 28, was fired from her job at the Electrical Industry Service Bureau, Inc. in San Francisco. Garcia had worked for EISB for four years as a data entry clerk. She became disabled and went on medical leave beginning on Oct. 26, 2004.

Since childhood, Garcia had suffered from eczema, a chronic skin condition. In late 2004, the condition "flared," resulting in cracked and bleeding skin on her hands and scalp, forcing her out of work. Her medical providers at Kaiser certified that she was disabled from work until Feb. 11, 2005, and EISB placed her on an unpaid medical leave.

After the 90th day of her leave, EISB fired Garcia via a termination letter sent to her home. The letter stated that her "disability" period had exceeded 90 days, which was the company limit per the terms of a collective bargaining agreement with Garcia's union. Garcia wasn't given advance warning that she

would be fired if she failed to return to work on the 90th day of her leave. At the time of her termination, she claimed, she expected to return to her job in 18 days.

Garcia made efforts to be reinstated to her position with the help of her union, but EISB refused to take the matter to arbitration. The company was insistent regarding its 90-day limit.

Garcia sued EISB for disability discrimination, retaliation, failure to prevent discrimination, failure to accommodate and failure to engage in the interactive process. Her counsel argued that under California law, employees with medical problems are entitled to protection for their disabilities. California employers of five or more people are required to accommodate disabled employees if reasonably possible. Under California law, a finite leave of absence that allows an employee to recuperate and heal is a reasonable accommodation.

An authority in psoriasis and eczema testified that the medical leave recommended by Garcia's medical providers was appropriate for her condition.

EISB contended that Garcia never requested an accommodation. The company asserted that it had negotiated the 90-day policy with Garcia's union and that she failed to see a physician, which caused reasonable doubts as to whether she truly suffered from a disabling condition.

INJURIES/DAMAGES Garcia claimed \$159,000 in lost wages. She also sought noneconomic damages.

A dermatology expert for the defense claimed that it was unlikely that Garcia's condition was disabling.

RESULT The jury returned a verdict in favor of Garcia, awarding her \$353,680.46.

Following the trial, the plaintiff's attorney said, "This is a great vindication for Ms. Garcia, and one that she has been fighting for almost three years. In our state, employees who need accommodations for their medical problems should get those unless it would be a serious burden on the company. The benefit to everybody of keeping people in the jobs they do well, far outweighs the inconvenience of making low-cost adjustments, like giving an employee a couple more weeks of unpaid leave."

TANIA GARCIA \$153,680 past lost earnings
 \$200,000 noneconomic damages
 \$353,680

OFFER CCP 998 \$50,000

TRIAL DETAILS Trial Length: 10 days
 Trial Deliberations: 6 hours
 Jury Vote: Unanimous on liability; 11-1
 on damage amount.

**PLAINTIFF
 EXPERT(S)** **John Koo, M.D.**, dermatology,
 San Francisco, CA
 Jan Duffy, management practices,
 San Francisco, CA

**DEFENSE
 EXPERT(S)** **Todd Anhalt, M.D.**, dermatology,
 Stanford, CA

POST-TRIAL The Court ordered that Plaintiff recover \$534,114 in attorneys fees and \$41,609 in costs from Defendant EISB. The Court denied motions for JNOV and New Trial.

EDITOR'S NOTE This report is based on information that was provided by the plaintiff's and defense counsel.

—Brian Carreira