

VERDICTS AND SETTLEMENTS

EMPLOYMENT LAW

DISABILITY DISCRIMINATION

Failure to Accommodate

VERDICT: \$2,597,088.

CASE/NUMBER: Dwight D. Green v.
State of California / RCV060816.

COURT/DATE: San Bernardino Superi-
or, Rancho Cucamonga / May 30, 2003.

JUDGE: Hon. Ernest G. Williams.

ATTORNEYS: Plaintiff - David H.
Greenberg (The Law Offices of David
H. Greenberg, Beverly Hills).

Defendant - Michelle Logan-Stern
(Department of Justice, Los Angeles).

FACTS: The plaintiff worked for the
State of California for 25 years. He
was employed as a stationary engi-
neer for the Department of Correc-
tions since 1989. He contracted
Hepatitis C in 1990. He filed for
workers' compensation in 1997,
claiming that the Hepatitis C was job
related.

In 1999, his treating doctor put him
on medication and restricted him to
light work. His supervisor from 1994-
1997 testified that he was a good
worker. In 1999, the plaintiff injured
his back and was off work for eight
months. He returned on July 3, 2000,
and from July 3-17, he worked full
duty except for time off for physical
therapy for his back on seven of the
10 working days.

On July 20, he went to see the return
to work coordinator to ask for time off
to see his doctor for Hepatitis C
because he was fatigued. The return
to work coordinator told him that he
had been restricted to light duty, that
he should not have been returned to
work full duty without a release from
his doctor, and that he could not
return to his full duties as a stationary
engineer without being cleared by a

doctor. The plaintiff admitted that
was impossible because the Hepatitis
C was a permanent condition which
would periodically cause fatigue. At
first, the plaintiff agreed to go on dis-
ability retirement, then he changed his
mind because he wanted to work.

In August 2001, the plaintiff finally
did file for disability retirement. At
plaintiff's request, the State had also
filed for him. The plaintiff tried to
rescind his retirement the following
month, however, it was too late and
he was put on disability retirement on
September 2001. He attempted to mit-
igate his damages by working for a
temporary agency.

PLAINTIFF CONTENTIONS: The
plaintiff contended that he was not
accommodated by giving him time off
to see his doctor on July 20. The
plaintiff further contended that he was
able to perform the essential functions
of his job, having done them since
1990, with minimal time off because
of his Hepatitis C and that he had
worked for two weeks after he
returned to work.

DEFENDANT CONTENTIONS: The
defendant contended that plaintiff
could not perform the essential func-
tions of his position while restricted
to light work and that there was no
reasonable accommodation which
would enable him to supervise
inmates and repair heavy equipment
while under a light work restriction.

JURY TRIAL: Length, eight days; poll,
12-0; deliberation, two hours.

OTHER INFORMATION: The plaintiff
will be filing a motion for attorney
fees which will put the total verdict
over \$3 million.