



## Leckelt v. Board of Commissioners

909 F.2d 820 (1990)

**Country:** United States

**Region:** Americas

**Year:** 1990

**Court:** 5th Circuit Court of Appeal

**Health Topics:** Health information, HIV/AIDS, Infectious diseases

**Human Rights:** Freedom from discrimination, Right to favorable working conditions, Right to privacy

### Facts

Appellant Leckelt, a licensed practical nurse, was discharged by his hospital employer when he refused to provide the hospital with his HIV antibody test results. In his capacity as a nurse, Leckelt performed a number of functions, including administering medication orally and by injection, and working in the intensive care unit and the emergency room.

The hospital requested Leckelt's test result after discovering that he was homosexual and was the roommate of a patient believed to have AIDS. Leckelt informed the hospital that he had already been tested for HIV, due to his own concerns he had a cyst and draining lesion at the time but had not yet obtained the results. The hospital terminated Leckelt's employment when he failed to submit the results as directed.

Leckelt brought suit claiming violation of Â§504 of the federal Rehabilitation Act of 1973, which prohibited a federally funded program from discriminating against an otherwise qualified handicapped individual solely because of the individual's handicap. He also claimed violations of the Equal Protection guarantee under the Fourteenth Amendment, and the Right to be free from unreasonable search and seizure under the Fourth Amendment. The District Court decided in favour of the hospital and an appeal followed.

### Decision and Reasoning

The court held that the hospital's actions did not constitute a violation of Â§504 of the Rehabilitation Act. The court determined that the Appellant had failed to prove the second and third elements of the Â§504 claim. It reasoned as follows:

Under the first element, the court assumed that seropositivity to HIV antibodies was an "impairment" under Â§504 for the purposes of the appeal.

Under the second element, the court determined that Appellant was not discriminated against "solely" because of this perceived handicap. The court noted that he was also terminated for failure to comply with legitimate hospital policies, which were aimed at reporting communicable disease exposure. It stated that the hospital's suspicions were reasonable given there was "adequate evidence . . . that Leckelt had been exposed to HIV." The court noted Leckelt's refusal to comply with the request for test results, his medical condition, apparent homosexuality, and long-term relationship with an HIV-infected patient.

Third, the court held that Appellant was not "otherwise qualified" for the position, within the meaning of the Act because his duties involved potential opportunities for HIV transmission. Knowing his HIV status was thus necessary to determine if additional precautions were required. The court reasoned that even if the probability of a health care worker transmitting HIV to a patient was extremely low and it could be further minimized through the use of universal precautions the potential harm from HIV infection was grave.

The court also held that the hospital's actions did not constitute a violation of the Equal Protection Clause of the Fourteenth Amendment. It held that the hospital employer had "a substantial and compelling interest in enforcing [] infection control policies," and that there was "a reasonable medical basis for suspecting that Leckelt had been exposed to HIV and for requiring that he submit the results of his HIV antibody test." The court held that the State had a substantial and compelling interest in: preventing the spread of HIV/AIDS to hospital patients and co-workers; preventing the spread of highly contagious diseases to HIV patients with weakened immune systems; and in insuring that health care workers could safely and adequately perform their jobs. The court declared that "even if some form of heightened scrutiny were applicable to classifications involving handicapped persons," Leckelt had not established an equal protection violation.

The court further held that the hospital's actions did not constitute a violation of the right to be free from unreasonable searches and seizures under the Fourth Amendment. It held that the hospital's strong interest in maintaining a safe workplace through infection control outweighed the limited intrusion on any privacy interest Leckelt may have had in the results of the HIV antibody test which he had already taken voluntarily. The court stated that Leckelt had at least a diminished expectation of privacy given his knowledge of the hospital's policy requiring employees to report exposure to infectious diseases and to undergo testing when necessary. The court also noted that the Supreme Court recognized the strong government interest in a safe, efficient workplace, and that the expectations of privacy of hospital employees are diminished by reason of their participation in an industry that is regulated pervasively to ensure safety.

### Decision Excerpts

Even though the probability that a health care worker will transmit HIV to a patient may be extremely low and can be further minimized through the use of universal precautions, there is no cure for HIV or AIDS at this time, and the potential harm of HIV infection is extremely high. 909 F.2d, p. 829.

One of the essential practices of health care facilities . . . is to establish and enforce policies and procedures for controlling the risk of transmission of infectious diseases. Although [the hospital] did not have a written policy specifically applicable to HIV infection or AIDS, it generally required that health care workers report exposure to infectious diseases and undergo testing and work restrictions where necessary . . . The [Center for Disease Control] guidelines also recommended that a health care worker infected with HIV should be counseled about the risks of infection and that the facility, in conjunction with the health care worker's personal physician, should determine what duties the health care worker could safely perform . . . [I]t is clear that [the hospital] could not comply with these guidelines without first knowing Leckelt's HIV status. 909 F.2d, p. 830.

By refusing to submit the results of his HIV antibody test, Leckelt prevented [the hospital] from ever knowing his HIV status and from deciding what, if any, measures were necessary to protect the health of Leckelt, other employees, and patients. In other words, Leckelt prevented [the hospital] from knowing whether he had a handicap for which federal law arguably required reasonable accommodations. 909 F.2d, p. 830.

[The hospital] requested that Leckelt submit the results of the HIV antibody test that he had voluntarily taken on his own initiative. Likewise, at about the same time, [it] requested that an RN, who had recently been exposed to HIV through a needle stick, undergo HIV antibody testing and submit those results to [the hospital]. Under the circumstances, there was a reasonable medical basis for suspecting that Leckelt had been exposed to HIV and for requiring that he submit the results of his HIV antibody test. 909 F.2d, p. 832.

Leckelt knew that [the hospital's] infection control policies required its employees to report exposure to any infectious diseases and to undergo serological testing where necessary. Although there was no written policy specifically targeted at HIV infection or AIDS, the existing policies were sufficient to encompass such diseases as HIV. Leckelt was treated . . . for lymphadenopathy, a condition that is symptomatic of recent HIV infection and his treating physician advised him [sic] might be related to AIDS. Leckelt also had been the roommate for eight years of Potter, who was diagnosed with AIDS and later died of AIDS-related complications. In light of Potter's illness, Leckelt was concerned about his own health and on his own initiative underwent HIV antibody testing . . . Under the circumstances, Leckelt at least had a significantly diminished expectation of privacy in the results of his HIV antibody test. 909 F.2d, p. 833.

[The hospital] had a strong interest in protecting the health of its employees and patients by preventing the spread of infectious diseases, such as HIV. Under all the circumstances respecting Leckelt, including his apparent homosexuality, medical condition, and long-term relationship with a man who was hospitalized with and ultimately died from AIDS-related complications, Smith was justified in demanding the results of Leckelt's HIV antibody test. Leckelt's duties as a licensed practical nurse provided opportunities for HIV transmission, and if he were infected with HIV, he would need to be advised of the risks and be evaluated periodically as to whether he could safely and adequately perform his duties. Thus, we conclude that [the hospital's] strong interests in maintaining a safe workplace through infection control outweighed the limited intrusion on any privacy interest of Leckelt in the results of his HIV antibody test. 909 F.2d, p. 833.