



# DIABETES

A D V O C A T E

PROVIDING THE LATEST NEWS FROM ADA'S GOVERNMENT AFFAIRS AND ADVOCACY DEPARTMENT

## Fighting Workplace Discrimination

The American Diabetes Association (ADA) is helping an Indianapolis man with type 1 diabetes fight the Internal Revenue Service (IRS).

**G**ary L. Branham has worked as an agent for the IRS in Indianapolis since 1998. In 1998, Branham, who has type 1 diabetes, applied for a position as an IRS special agent. As a special agent, he would continue to use his accounting skills, but he also would have some law enforcement duties requiring him to carry a gun.

Someone with Branham's skills and experience typically would be an excellent candidate for the job. However, the IRS denied Branham the promotion because he uses insulin, arguing that reliance on insulin created a direct threat to him and others in the workplace.

While the assertion made by the IRS is simply wrong, it is

unfortunately not uncommon: Many people with diabetes experience discrimination in the workplace. Branham knew he had good control of his diabetes, and he also knew he was being treated unfairly. So he took action.

With the help of Indianapolis lawyer Elizabeth "Betsy" Russell, Branham sued the IRS. Russell argued that Branham was being discriminated against

because of his diabetes in violation of federal law. The IRS responded by saying that because he managed his diabetes so well, Branham didn't have a disability and therefore wasn't protected from discrimination based on his diabetes. "First they said I couldn't do the job because I had diabetes; then they say I managed my disease too well to be protected by the law. I felt like I was being punished for taking good care of my diabetes," Branham said.

Legal problems of this kind are not uncommon for people with diabetes. The issue is complex, but it boils down to whether diabetes should be



PHOTO COURTESY OF GARY L. BRANHAM

◀ With the help of ADA, Gary L. Branham is fighting the IRS to become a special agent.

considered a “disability” in the eyes of the law. Many people with diabetes dislike the term “disability,” preferring instead to focus on the fact that good diabetes management makes any activity possible. However, if a person with diabetes is not protected by disability discrimination law, then it is perfectly legal to hire or fire that person based on his or her diabetes.

“Using the word ‘disability’ to describe my life with diabetes was a bit of an emotional balancing act, but I felt I had to

*It boils down to whether diabetes should be considered a “disability” in the eyes of the law.*

swallow my pride a little to get justice,” Branham said. “The fact that I am in good control of my diabetes should not make me more vulnerable to discrimination, so it made the decision a little

easier.”

Unfortunately, the federal district court agreed with the IRS and threw out Branham’s case. Branham appealed. The government’s argument was both that Branham was too healthy to be protected by federal antidiscrimination law and that he was too sick to be able to safely perform the job of IRS special agent.

The appeal was expertly handled by John Griffin, a Texas attorney who has handled many diabetes discrimination cases, including a case in Texas (which

he won) that was similar to Branham’s (see “Lone Star,” *Diabetes Forecast*, April 2003, pages 56–61).

Griffin, the chair of the ADA’s Legal Advocacy Subcommittee, was able to show the Seventh Circuit Court of Appeals that the lower court had erred. The court subsequently rejected the IRS’s claim, determining that Branham had adequately showed that he should be protected by federal antidiscrimination law and that he was capable of handling the special agent position. The court reinstated Branham’s lawsuit, which allows him to have a jury decide if he was

## have you been discriminated against?

If you feel you are being discriminated against because of your diabetes, call 1-800-DIABETES. You can request a free packet of information on discrimination. You can also ask to speak with the legal advocate about your situation.

treated unfairly by the IRS.

Although Branham’s story is not over, this victory is still very important because it supports the claim that a person who manages diabetes well can still be covered by anti-discrimination laws. In other words, one does not have to be suffering from the debilitating complications of diabetes—which can give employers the damaging impression that the employee is unqualified—to be protected by the law. What Branham and ADA argued in this case is that even when diabetes is being managed well, it is a difficult, time-consuming, often-treacherous process. Those who endure this process are exactly the kind of people our civil rights laws were designed to protect.

A number of ADA volunteers played key roles in the victory, particularly former Board Chair Mike Greene, who filed an amicus curiae (friend of the court) brief on behalf of ADA, and former ADA President Charles M. Clark Jr., MD, who provided medical testimony in court.

## become a diabetes advocate

Taking action in the fight against diabetes has never been easier.

Get involved in the American Diabetes Association’s efforts to:

- Increase funding for diabetes research and prevention programs
- Improve health care and insurance coverage
- End discrimination based on a person’s diabetes

Go to <http://advocacy.diabetes.org>. To receive updates from the Association about important public policy, be sure to click on the “Become a Diabetes Advocate” link.