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News from the American Diabetes Association

advocacy

CRACKING THE CASE

A FEDERAL JURY FINDS DIABETES DISCRIMINATION AT THE FBI



When Jeff Kapche, 41, was denied a job at the Federal Bureau of Investigation, he was no stranger to the obstacles that people with diabetes can face. He had already fought a Texas police department for denying him a job because of his diabetes (he won, too). And he'd heard from people all over the country who were inspired by his fight—from an Indianapolis Internal Revenue Service agent to a Forest Service officer in Georgia.

Kapche, who has type 1 diabetes, is a detective with the sheriff's office in Fort Bend County, Texas. He had always dreamed of working for the FBI, and in 2002, he finally applied, at the urging of FBI field agents who had come to his department to work on a federal case. He would make a great special agent, they told him. But it wasn't the grueling physical exams, tough aptitude tests, and extensive interviews that kept him from getting the job. It was his diabetes.

Some seven years after applying to the FBI, Kapche finally scored a victory, winning a civil suit against the bureau in U.S. District Court. A jury in Washington, D.C., found on May 20 that the FBI had discriminated against Kapche when it refused to hire him as a special agent because of his diabetes. Kapche and his legal team—led by John Griffin, Jr., of Victoria, Texas, who is the

Jeff Kapche, a detective with the sheriff's office in Fort Bend, Texas, on the set of *America's Most Wanted*. He appeared on the show in connection with a homicide he was investigating.

American Diabetes Association vice chair of the board, and Kathy Butler of Houston, a member of ADA's legal advocacy subcommittee—were ecstatic. After two years of litigation, the jury had stood up for Kapche's right to be considered for the job on the basis of his individual merits.

The Winning Argument

After the FBI had denied him the job in 2005, Kapche and his lawyers took the case before the Equal Employment Opportunity Commission, which led to filing a suit in federal court. They cited the Rehabilitation Act of 1973 as the law under which Kapche's right to equal employment opportunity within the federal government was protected.

The FBI argued that Kapche did not have a disability and, therefore, wasn't protected under the law. Griffin and Butler set out to prove the bureau wrong. The FBI's "argument was that Jeff's type 1 diabetes is no disability at all because he's done so well in managing his disease," says Griffin. But, he explains, "just because he's a good worker doesn't mean that diabetes is not a disability under the law. People who don't have diabetes don't inject themselves with insulin or do finger stick blood glucose testing."

After first showing that Kapche was protected under the law, the lawyers turned to the issue of why the FBI had blocked Kapche's hiring. They established that it was unofficial FBI policy to hire as special agents applicants who have diabetes and take insulin only under one condition: that they manage their disease with an insulin pump. In the FBI's view, using a pump ensured that agents would be able to manage their diabetes and be dependable even in unpredictable circumstances. But Kapche's team presented expert witnesses to refute the idea that only people on insulin pumps could manage their diabetes well; in fact, the experts testified, optimal management of the disease varies from person to person, and Kapche had maintained excellent control over the years using injections. According to Griffin, the FBI does employ a couple of special agents who are on pump therapy. "But the FBI admitted that [their diabetes was] not as well managed as Jeff Kapche's," he adds.

Not His First Fight

When Kapche applied to the San Antonio Police Department in 1994, just after graduating from the police academy, he was rejected on account of his diabetes. Despite having found another job, with the Fort Bend sheriff's office, Kapche decided to fight San Antonio's decision, hoping to pave the way for other people with diabetes who had similar goals. It took more than six years and two appeals before a court ultimately ruled in his favor, deciding that San Antonio's blanket ban was illegal and that Kapche could not be excluded because of his diabetes and

Jeff Kapche (left) with his winning legal team: Kathy Butler, Garin Reetz, David Cashdan, and John Griffin.



must be evaluated as an individual. The victory set an important precedent for cases to follow and required the San Antonio Police Department to change how it considered applicants with diabetes.

In the meantime, Kapche was climbing the ladder in Fort Bend. Starting out as a civilian jailer, he soon became a deputy sheriff in the jail, then advanced to become a patrol deputy sheriff, and finally was promoted to the detective bureau, where he has investigated property crimes, homicides, identity theft, fraud, and financial crimes.

For Kapche, the FBI was to be the next step in a successful career. When the bureau blocked him, he says, "I was really angry and irritated; this was the job I wanted. [I thought], I was able to change their hiring policies [in San Antonio].... Maybe at the federal level we would get some attention and stop this discrimination that's going on."

Looking Ahead

Kapche's case against the FBI is not over. After the federal jury found in Kapche's favor, the FBI appealed to the judge to throw out the verdict, a request that was pending at press time. If that request is denied, Griffin says, the judge will hold a hearing to determine what damages Kapche is entitled to collect from the FBI—a job at the FBI, other compensation, back pay, attorney's fees, or some combination of those. Then the FBI would have the right to appeal to a federal Court of Appeals. The FBI would not comment on the case. Kapche and his team may still have months of work ahead to preserve their victory.

The legal landscape for people with diabetes has changed significantly since Kapche took San Antonio to court 15 years ago and even since he challenged the FBI in 2005. In January, the Americans with Disabilities Act Amendments Act took effect. It makes clear that people with diabetes will not have to fight in court simply to establish that they are protected against discrimination. This will help ensure fair consideration of issues such as whether a person was improperly denied a job based on his or her diabetes despite being qualified for the position. And in August, Sonia Sotomayor, a federal judge who herself has type 1 diabetes, won Senate confirmation as President Barack Obama's nominee for the U.S. Supreme Court and was sworn in as an associate justice.

Kapche, who earned a master of science degree in leadership and management this summer from the College of Criminal Justice at Sam Houston State University, still has his sights on the badge of an FBI special agent. "I hope first and foremost that the judge makes a decision that will be beneficial to people with diabetes and people with disabilities in general," he says. "[I want to] help other people and change the way things are done. And if he decides to give me the [special agent] job ... that will be icing on the cake." ▲



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WHERE TO FIND HELP

If you believe you have been discriminated against because of your diabetes, **call the American Diabetes Association** at 1-800-DIABETES (1-800-342-2383) to request a free packet of information, plus assistance from a legal advocate.