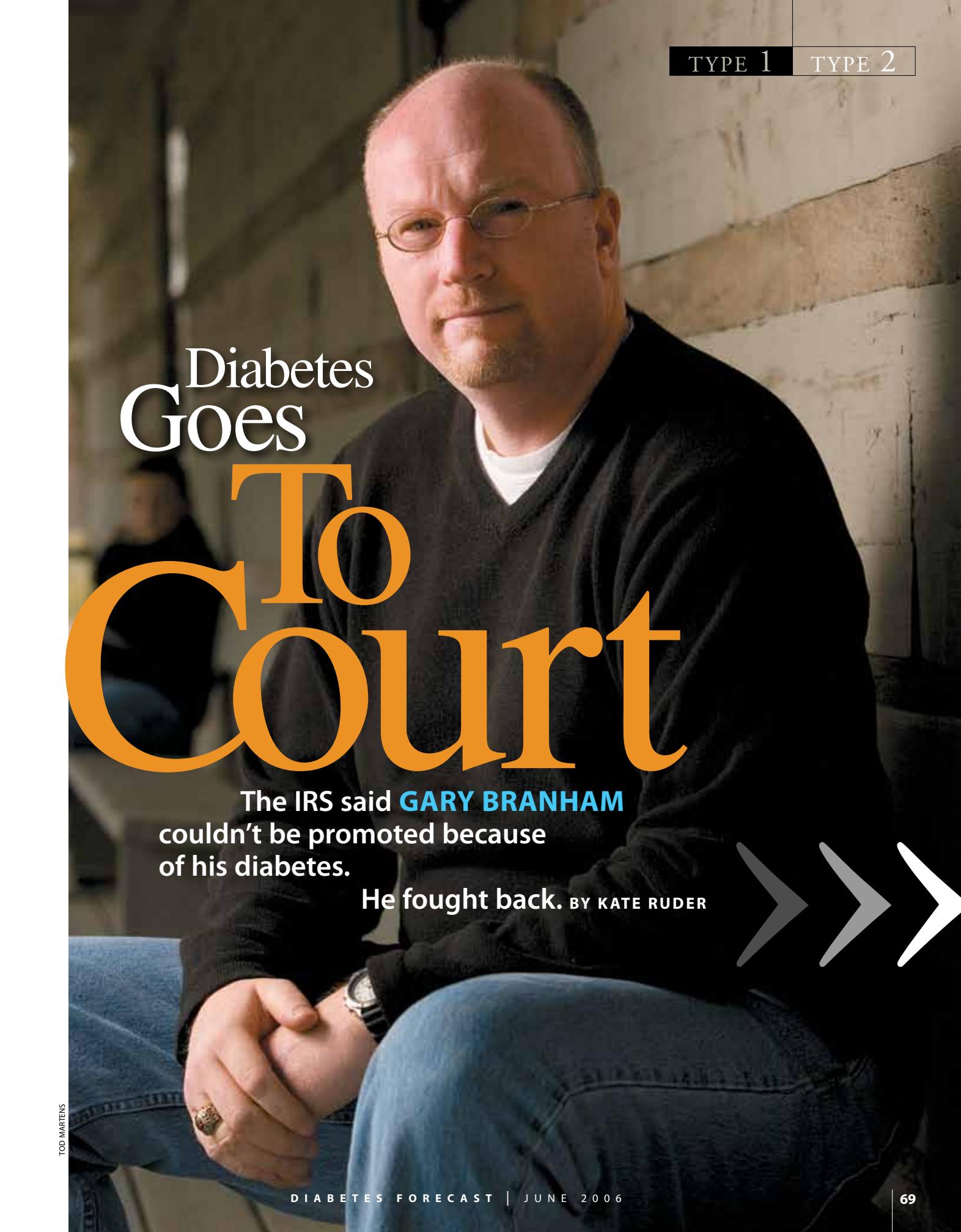


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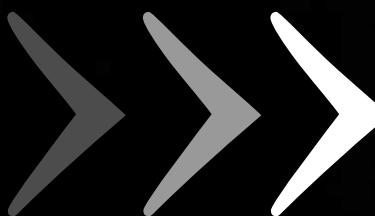
TYPE 2



Diabetes Goes To Court

The IRS said **GARY BRANHAM**
couldn't be promoted because
of his diabetes.

He fought back. BY KATE RUDER



When Gary Branham listed insulin on a medical form for his promotion to Internal Revenue Service (IRS) special agent in 1999, he didn't think twice. He was well qualified for the job, which meant busting criminals who break tax laws. He had passed the treasury enforcement exam. He had a tentative offer letter.

"I was completely naïve," says Branham, who was living in Indianapolis. "I never thought a thing about it when I wrote it down. When doctors from the IRS came back and asked for copies of his logbook and other medical records, he still didn't worry. He had taken insulin for his type 1 diabetes for years and had excellent blood glucose control.

After more than a year of back and forth with government doctors, Branham got final word: He was denied the promotion because of his diabetes. The government said diabetes would interfere with his ability to use a gun on the job and carry out covert operations.

"I knew it was wrong," says Branham. "I knew it was a mistake. And I knew it was happening because [the doctors] didn't understand diabetes." So Branham fought back.

have you been discriminated against?

If you feel you are being discriminated against on the job because of your diabetes, call **1-800-342-2383**. You can request a free packet of information on discrimination. You can also ask to speak with the legal advocate about your situation.

Discrimination And Diabetes

The American Diabetes Association (ADA) receives roughly 100 calls a month about discrimination in the workplace. Shereen Arent, ADA's managing director of legal advocacy, says the nature of the calls hasn't changed that much over time.

"Usually when discrimination occurs it's because the employer really doesn't understand diabetes," Arent says. She and her colleagues provide educational materials for employees and employers, as well as tips on how to negotiate problems in the workplace. They also offer legal help.

Branham is among those who have called Arent for help. Arent provided assistance to both Branham and his attorney, Betsy Russell. In early 2001, Russell filed a lawsuit on Branham's behalf against the government at the U.S. District Court.

Russell argued that the IRS had violated the federal disabilities law. The government argued that Branham's diabetes was so well controlled that he didn't have a disability, and therefore wasn't protected under the law.

Not Giving Up

The judge sided with the government. The court dismissed the case and tossed out Branham's lawsuit.

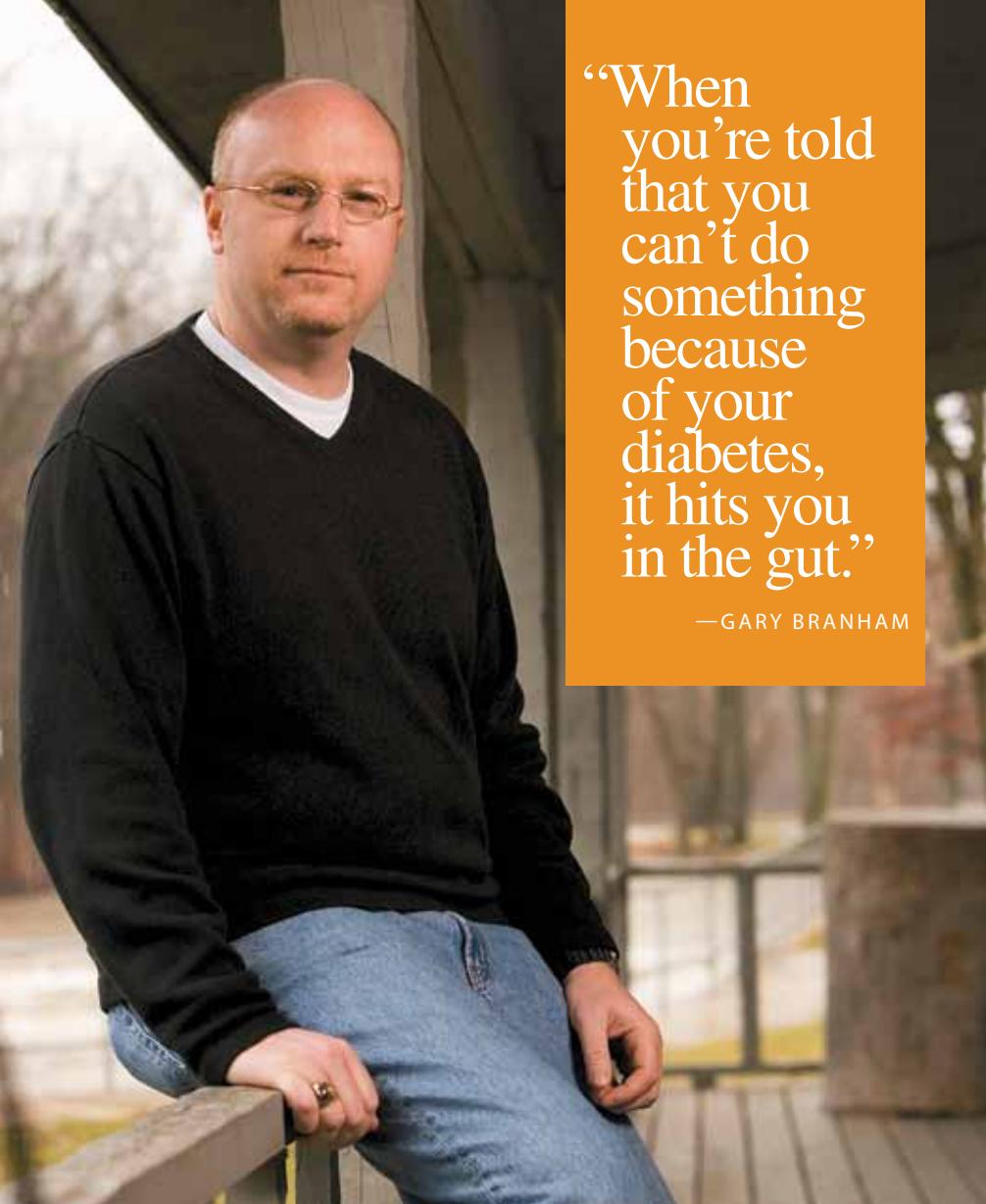
"That was a bad day," Branham says. At this point it had been 5 long years since he had applied for the promotion. He had legal bills. And now, a judge said his case shouldn't be heard in a court of law.

"When you're told that you can't do something because of your diabetes, it hits you in the gut," he says. Married, with three boys, Branham worried about the message he would send to his family and others with diabetes if he gave up.

So he took the case to the next level: John Griffin, a Texas attorney, chair of ADA's Legal Advocacy Subcommittee, and a member of the ADA Board of Directors, agreed to appeal Branham's case. In the summer of 2004, Griffin appealed the decision before the Seventh Circuit Court of Appeals in Chicago.

Griffin had to refute two arguments that were being made by the IRS: Branham was too healthy to be covered under disability law because he controlled his diabetes so well, and at the same time, his diabetes made him sick enough to be a direct threat to himself and others on the job.

The Seventh Circuit Court gave Branham his first legal victory. The court disagreed with both IRS arguments, sided with Branham, and said the case should be kicked back and heard by a jury in Indianapolis.



“When you’re told that you can’t do something because of your diabetes, it hits you, in the gut.”

—GARY BRANHAM

A Jury Trial

During the week-long trial late last year, jurors from Indianapolis heard both sides of the case. Charles M. Clark, Jr., MD, professor of medicine at the Indiana University School of Medicine and former president of ADA, testified as an expert medical witness on behalf of Branham.

“The thing that surprised me the most was the fact that the government can take a stand to discriminate against someone with a chronic disease, such

as diabetes, without going to an expert to get accurate scientific reasons,” says Clark.

The doctors were bringing up things that people with diabetes hadn’t needed to do for years, says Clark.

The jury deliberated and returned with a verdict in favor of Branham. Yes, he has a disability and is therefore protected under disability law. Yes, he is qualified for the job of IRS special agent. No, his diabetes would not make him a threat on

the job. He was awarded 6 years of back pay from the IRS.

“We’ve now shown that people can have excellent management of their diabetes and be covered by disability law,” says Arent. “And they can do their job.”

She hopes that, as a result of Branham’s case, fewer people will have to go to court to fight diabetes-related discrimination. And that those who do will feel empowered to fight for their rights.

“A person with diabetes has a right to be looked at as an individual, not a diagnosis,” says Arent.

He Did It For Others

Meanwhile, Branham has continued working for the IRS as a revenue agent. His coworkers have been supportive, he says.

Ironically, Branham will never realize his dream to become an IRS special agent. Although the jury decided that Branham was qualified, the now 42-year-old has passed the age barrier of 37 to become a special agent.

Years ago, Branham had realized that he would be too old for the promotion. But he kept fighting the government, wanting to make sure that other, younger people weren’t discriminated against in the same way.

“My plan was to become a special agent, but now I’m an advocate for diabetes,” says Branham. “And there’s still more work to be done.” ▲

Kate Ruder is an associate editor of Diabetes Forecast.