

# DIABETES



A D V O C A T E

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

## The Good Fight

Although he didn't survive to see it, Gilberto Wise won a major victory for people with diabetes.

**F**or 30 years, Gilberto Wise served as an Immigration and Naturalization Service (INS) special agent on the Mexico-Texas border.

Federal law enforcement jobs have a mandatory retirement age of 57. As Wise approached this age, he had no interest in retiring, so he applied for a job as a

court security officer (CSO) in 2002. CSOs provide security for federal judges, staff, and the public at federal courthouses. Only the most experienced officers are chosen to guard such important facilities. And since these positions don't involve patrolling streets or intense physical exertion, they are often filled

by retirees from other federal agencies. People just like Wise.

Wise got the job at the federal courthouse in San Antonio, Texas, and he was liked and respected. Everything seemed to be going well.

Unfortunately, a problem soon emerged. Wise was diagnosed with type 2 diabetes shortly before he took the CSO position. Initially, he had an A1C of 10 percent, but with diet, exercise, and oral medication, he was able to bring it down below 7.

However, the United States Marshals Service (USMS) learned that Wise had an A1C of 8.8 during the time he was successfully working to lower his A1C to below 7. The USMS ordered him removed from his position, even though he had been successfully serving as a CSO for more than a year. Wise was devastated. He knew he was qualified for the job and that his diabetes didn't interfere in any way.

Then he remembered something that would ultimately change his situation drastically.

Wise had seen a *Diabetes Forecast* article about a police officer



PHOTO COURTESY OF PEGGY WISE

**Gilberto Wise, a career law enforcement officer, sued the United States Marshals Service when he was wrongly dismissed from his court security officer job because his A1C was above 8 percent.**

who had diabetes and had been rejected for a job because of it. That police officer, Jeff Kapche, later went on to win a discrimination suit with help from ADA's legal advocacy team. Kapche's victory established the precedent that workers with diabetes must be given a reasonable, individual evaluation for any job.

Wise and his wife, Peggy, drove to Victoria, Texas, to meet with John Griffin, who is not only the chair of ADA's Legal Advocacy Committee and an ADA national board member, but also the attorney who won the Kapche case. Griffin and co-counsel, Kathy Butler, agreed to take Wise's case.

Wise brought his case to the Equal Employment Opportunity Commission (EEOC), which found that he had, in fact, been discriminated against because of his diabetes. His case then went to mediation, in an effort to reach an agreement both he and his employer could be satisfied with. Wise wanted a fix for anyone who might face the same situation he was in, and he made it his goal to have the USMS revise its medical standards so that people with diabetes would be judged on their ability to do the job.

But mediation failed. Wise then filed suit in federal court in San Antonio.

Peggy Wise remembers her husband buying a suit for his deposition (an on-the-record interview that takes place before

trial). She would later say how proud he was of what he was doing. He knew that Ralph A. DeFronzo, MD, a world-renowned endocrinologist at the Texas Diabetes Institute and long-time ADA volunteer, was behind him all the way. DeFronzo would spend hours helping with Wise's case, refusing all payment, because he felt it was the right thing to do. Once again, things were going well for Wise.

Tragically, Wise never got to see the fruits of his labor.

In January 2005, while the case was still preparing for trial, Wise was killed in a car accident. Peggy Wise was devastated. Eventually, however, she decided to continue the case, because, as she put it, "that is what Gilbert would want us to do. It was so important to him."

As trial preparation continued, Peggy Wise gave a deposition in which she described her husband and his dedication to public safety. She watched as DeFronzo was questioned for more than 4 hours about dia-

betes and how the USMS had wrongly removed Wise from his position.

Earlier this year, the case was settled favorably in three ways. First, the USMS agreed to end its reluctance to consult with the CSO's treating physician. Second, it agreed to end its use of a fixed A1C cutoff in evaluating CSOs in favor of an individualized assessment of a CSO's performance.

Finally, and perhaps most importantly, the USMS agreed to have a board-certified endocrinologist involved before firing or disqualifying an employee with diabetes. The agreement even provided that Peggy Wise and her legal team could have input into who would be selected for that key role.

Peggy Wise, John Griffin, and Kathy Butler each contributed \$1,000 to the American Diabetes Association Legal Advocacy Fund in the name of DeFronzo, who was instrumental in achieving this monumental settlement that will benefit people with diabetes for years to come.

## 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 issues, be sure to click on the "Become a Diabetes Advocate" link.