Can You Revoke An Employment Offer If The Candidate Fails A Drug Test?



The Human Rights Tribunal of Alberta recently determined that an employer did not discriminate against a job candidate by revoking an offer of employment after the job candidate failed a pre-employment drug test.

The candidate was offered a job as Business Continuity and Emergency Management Advisor. The position was classified as safety-sensitive, and the offer of employment specifically required the candidate to take a pre-employment drug test. The candidate testified that:

- he understood the job offer was conditional and that he would have to undergo a pre-employment drug test; and
- the drug testing company informed him that cannabis was one of the substances that he was being tested for.

The drug test came back positive for cannabis. As a result, the employer revoked the job offer.

The candidate alleged that in revoking the job offer, the employer discriminated against him based on a physical disability in contravention of Alberta's human rights legislation. Specifically, he alleged that he suffered from symptoms related to Hashimoto's disease and that he used cannabis for medical purposes. The Tribunal accepted that the candidate suffered from a physical disability.

However, an obstacle for the candidate in this matter was that he only informed the employer of his disability and his medical use of cannabis *after* the job offer was revoked. Therefore, the Tribunal found that the employer could not have had knowledge of the candidate's physical disability at the time it revoked the job offer. Furthermore, there were no indicators of a disability triggering a duty to inquire on the employer's part.

Based on the above, the Tribunal determined that the candidate's disability played no role in the revocation of the job offer and that the employer did not discriminate against the candidate.

Takeaway for Employers

This is a welcome decision for employers with safety-sensitive positions. It supports

placing a positive onus on employees to appropriately disclose disability-related issues to their employer.

Each case needs to be reviewed based on its own facts. There may be times when it is in an employee's best interest to voluntarily disclose a disability, and there may be others where indicators exist that trigger an employer's duty to inquire. Employers are well-advised to follow the lead of the employer in this case and ensure that offers of employment clearly articulate the conditions and expectations related to pre-employment drug and alcohol testing.

We recommend that employers seek legal advice prior to implementing a drug or alcohol testing policy and prior to taking any disciplinary action against an employee who fails a drug or alcohol test.

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