Employee Discharged For Lying To His Doctor And Employer



In *Brewers Distributors Ltd* v. *Brewery, Winery and Distillery Workers, Service Employees International Union, Local 2, Branch Local 300 (Banwait Grievance),* [2024] B.C.C.A.A.A. No. 115 (Sullivan), Arbitrator Christopher Sullivan agreed that the employer had just and reasonable cause to discharge the grievor from employment after he was untruthful about his medical restrictions.

Background

In September 2021, the grievor claimed he had a medical condition that restricted him to working only graveyard shifts that were no longer than 6.5 hours. The regular shift lengths were 9.5 hours. At first, the employer accommodated the grievor but became suspicious after he continued to claim such a specific and unique medical restriction.

In December 2022, the employer informed the grievor that it would no longer accommodate the grievor in 6.5-hour graveyard shifts and, going forward, he would be scheduled for 9.5-hour day or afternoon shifts in accordance with his medical restrictions.

The grievor called in sick for all his assigned day and afternoon shifts.

In January 2023, the employer accidentally scheduled the grievor for a 6.5-hour graveyard shift. During his shift, the grievor reported to first aid that he had injured his back while emptying a garbage can and went home before the shift ended.

The following day, the grievor informed the employer that he was disabled to the point of not being able to get out of bed.

The grievor filed a WorkSafeBC claim. In support of the claim, his physiotherapist wrote on January 23, 2023 that he had “[d]ifficulty maintaining any particular position like sitting, standing [or] walking” and “[f]elt weakness in [his] right arm picking [up] a water bottle”. His claim was accepted.

On January 25, 2023, the grievor’s physiotherapist provided medical information to the employer indicating that he was totally disabled and could not climb, crouch, bend, twist, reach above his shoulders, or reach forward.

The employer hired a private investigator who conducted video surveillance of the

grievor on February 3, 2023. That surveillance revealed that the grievor was acting or behaving in a manner inconsistent with his reported medical capabilities.

The employer met with the grievor. He confirmed that his condition was consistent with the note received from his physiotherapist. Even after the employer showed him the video surveillance evidence, he continued to maintain that he was complying with the restrictions set by his healthcare providers. At the end of the meeting, the employer terminated the grievor's employment.

Analysis

Arbitrator Sullivan held that the grievor's conduct warranted discipline, finding that he had been dishonest about his medical restriction around a 6.5-hour graveyard shift and in his benefits claim for wage loss.

Arbitrator Sullivan held the fact that the grievor's WorkSafeBC claim was approved was not determinative, especially since the administrative decision-maker did not have access to the video surveillance evidence. He rejected the grievor's position that he was just following the advice of his healthcare providers, finding he either told his healthcare providers what to write or they drew a conclusion based on what he subjectively self-reported to them. The arbitrator noted that the grievor refused to accept responsibility for what his healthcare providers wrote, both with respect to his being restricted to working 6.5-hour shifts and the results of his back injury.

Arbitrator Sullivan then turned to the issue of whether discharge was a reasonable disciplinary penalty in all the circumstances and found that it was. He noted that the misconduct, including dishonesty in relation to a claim of disability, was "extremely serious, going to the heart of the basic and fundamental trust required in an employment relationship".

Arbitrator Sullivan acknowledged that the grievor had raised drug and alcohol addiction, but found there was no specific connection raised between his dependency and the misconduct. He noted that the assertion of addiction is not a "get out of jail free card".

Takeaways

This decision highlights that arbitrators will not always view the content of notes from a healthcare provider to be true and accurate. Where the circumstances are suspicious, and the employer can adduce clear, cogent and convincing evidence which throws the medical evidence into question, an employee's claim around disability might be determined to be fraudulent.

This decision also serves as a reminder that arbitrators treat dishonesty around a claim of disability very seriously. That misconduct may be enough, on its own, to support cause for discharge.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Author: Talia Behrmann

Roper Greyell LLP