
Drug Dependency and Denial: Alberta Court of Appeal Rules Denial not a Shield to Discipline

By: Landon Young and Jessica Young

Employee addiction is a challenging topic for HR professionals. Under Canadian human rights legislation, drug addiction or dependency is considered a disability that triggers the duty to accommodate to the point of undue hardship. However, an employee struggling with substance abuse may be in denial that they have a problem, and may not request accommodation as a result.

A recent case from the Alberta Court of Appeal sheds light on how Canadian courts will treat post-termination evidence of drug dependency where an employee, in denial about his dependency, in a safety sensitive position is terminated for a workplace accident.

In **Stewart v. Elk Valley Coal Corporation**, an employee was terminated after he tested positive for cocaine in a post-accident drug test. He caused a workplace accident when the vehicle he was operating collided with another vehicle on a worksite. He worked in a safety sensitive position and admitted to using cocaine during his days off. At the time of the accident, he did not believe he had a problem or that his cocaine use would have an impact on his work performance. However, after his employment was terminated, he admitted to having an addiction.

The incident occurred a few months after the employee had attended a training session with respect to the company's Alcohol and Drug Policy. The policy provided that employees with dependency or addiction could, prior to a significant event like a workplace accident, seek assistance without fear of discipline. However, the policy went on to provide that discipline, including termination, may be imposed when a dependency is only disclosed after a significant event has occurred.

The Alberta Human Rights Tribunal held that the employee was not terminated due to his addiction or dependency, but because he breached the policy. Accordingly, there was no discrimination because the disability itself was not the reason for termination. Although the evidence established that the employee was to some degree in denial, he had the capacity to make choices as to when to use drugs. The discipline related to his failure to follow the policy and was not discriminatory.

The Tribunal reasoned that even if there had been discrimination, the policy was a bone fide occupational requirement given the safety sensitive nature of the workplace. The Tribunal also took into account that the policy provided treatment options to those who came forward prior to an incident, and that the employer would consider reinstating employees terminated pursuant to the policy, subject to conditions including successful completion of a rehabilitation program.

The Alberta Court of Queen's Bench agreed with the Tribunal that there was no discrimination. However, the court disagreed with the Tribunal in finding that, if there had been discrimination, the policy was a reasonable accommodation since it did not provide protection to employees who were not aware that they had an addiction problem that required accommodation. It reasoned that although the employee was capable of making choices about when to use drugs, he was not capable of seeking pre-incident treatment as he did not know he had a dependency problem.

The Alberta Court of Appeal upheld the Tribunal's original decision. With respect to discrimination, it agreed that the policy did not distinguish between people with a disability and those without one, but instead distinguished between those who violated the policy and those who did not.

On the accommodation issue, the Court of Appeal rejected the lower court decision pertaining to the issue of denial, finding that denial should not be used as a basis for excusing an employee from bringing the accommodation need to the attention of the employer. This would essentially provide employees with drug addictions a more favourable status as compared to employees with other forms of disability. The Court stated that denial could then be used as a "vaccine" against discipline by employees who only admit to a dependency problem post-incident.

Implications

The fact that the employer had an alcohol and drug policy that provided for accommodation was key to the positive outcome of this case for the employer. This demonstrates the importance of such policies in safety sensitive workplaces. From a legal perspective, the finding that there was no discrimination because the employee was terminated for violating the policy, and not because of an addiction, is open to question. Other cases have found discrimination where the addiction was merely a causal factor in the termination. It will be interesting to see what treatment this case receives from other tribunals and courts.

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