



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Joseph Whitwell

Applicant

-and-

U.S. Steel Canada Inc. – Hamilton Works

Respondents

INTERIM DECISION

Adjudicator: Douglas Sanderson
Date: January 23, 2012
File Number: 2010-05077-I
Citation: 2012 HRTO 169
Indexed as: **Whitwell v. U.S. Steel Canada**

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WRITTEN SUBMISSIONS

Joseph Whitwell, Applicant)	Self-represented
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)	
U..S. Steel Canada Inc. –)	
Hamilton Works, Dan Fisher,)	Patricia G. Murray,
Dean Comand and James Kee,)	Counsel
Respondents)	
)	

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[1] This is an Application filed under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19 as amended (the “Code”), alleging discrimination in employment because of disability. The hearing of this matter is scheduled for February 6 and 7, 2012.

[2] The Application refers to events that took place between 2005 and 2009. In a previous Interim Decision, 2011 HRTO 670, the Tribunal dismissed portions of the Application as untimely and removed the individual respondents. The remaining allegation relates to the respondent’s decision to terminate the applicant’s employment because it had no suitable work for the applicant, given his physical restrictions. The applicant received benefits under the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Schedule A (“WSIA”). The case manager from the Workplace Safety and Insurance Board (“WSIB”) granted supplementary benefits under section 147(4)(14) of the *WSIA* on the strength of the respondent’s representation to the WSIB that there were no suitable assignments at the workplace to accommodate the applicant.

[3] On December 22, 2011, the respondent filed a Request for an Order During Proceeding (the “Request”) to dismiss the Application pursuant to section 45.1 of the *Code* because the case manager’s decision was a proceeding that appropriately dealt with the issue of accommodation. The respondent relies on the recent decision of the Supreme Court of *Canada British Columbia (Workers’ Compensation Board) v. Figliola*, 2011 SCC 52, in support of the Request. On January 11, 2012, the applicant filed a Response to Request for Order resisting the Request.

[4] It appears that this Application raises significant issues regarding the interpretation of section 45.1 of the *Code* in light of the decision in *Figliola*. I note that the Tribunal has found in decisions pre-dating *Figliola* that the decisions of “front line” WSIB, such as case managers, may not be proceedings and did not deal appropriately with the substance of the application in question. See for example *Galves v. Balzac’s Coffee Roastery*, 2010 HRTO 1539; *Murphy v. Quiktemp*, 2010 HRTO 2393; *Wang v. Delta Chelsea Ltd.*, 2011 HRTO 1161; and *Mousseau v. Prince (Township)*, 2009 HRTO 1123.

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[5] This Interim Decision shall be sent to the Ontario Human Rights Commission, the Human Rights Legal Support Centre, the Office of the Worker Adviser, the Office of the Employer Adviser, and the Crown Law Office–Civil of the Ministry of the Attorney General, so that they may make a request to intervene should they wish. Should any of them, the applicant’s Union, or any other organizations wish to intervene, they shall file their Request to Intervene by February 1, 2012.

Dated at Toronto, this 23rd day of January, 2012.

_____ *”signed by”* _____
Douglas Sanderson
Vice-chair