

Can Employer Fire Addicted Worker for Fraud and Stealing Drugs?



SITUATION

A nurse suffers chronic pain and becomes addicted to prescription pain medication. She's in charge of the hospital's narcotics inventory and starts stealing pain medication. To cover up her theft, she forges other nurses' names on hospital documents and fraudulently indicates in records that the medications she stole were administered to patients. The hospital's disciplinary policy includes both theft and fraud as grounds for termination. When the hospital discovers the theft, forged signatures and faked patient records, it fires her. The nurse admits to committing theft and fraud but claims her addiction caused her criminal behaviour and thus her termination was discriminatory.

QUESTION

Was the nurse's termination proper?

- A. Yes, because drug addiction isn't a disability.
- B. Yes, because the employer fired her for committing crimes, not being an addict.
- C. No, because you can't discipline a drug-addicted worker.
- D. No, because the hospital's policy permitting the firing of a worker for theft or similar crimes indirectly discriminates against drug addicts.

ANSWER

B. An employer can fire a drug-addicted worker for engaging in criminal conduct.

This hypothetical is based on an Alberta Court of Appeals decision in which two nurses were disciplined by a professional association after they were caught stealing drugs and committing forgery to cover up the thefts. Human rights laws prohibit discrimination on the basis of a disability, such as addiction. The court explained that discriminatory treatment arises when individuals are treated differently based on 'stereotypical or arbitrary characteristics.' The

court ruled that the discipline imposed on the two nurses wasn't discriminatory because it wasn't arbitrary or based on their addiction. Instead, the association disciplined the nurses on the basis of the theft and fraud they'd committed, just as it would any other nurse committing the same conduct. (The same is true for the hospital's discipline of the nurse in the hypothetical.) Discipline for criminal conduct, the court said, was 'based on objectively justifiable social criteria.' Dismissing the nurses' argument that the addiction caused the thefts, the court also found no evidence that addictions lead to stealing or that stealing is 'predominantly' caused by addiction.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because an addiction to drugs and/or alcohol is considered a disability. So an employer can't treat a worker with an addiction differently because of that addiction. In this case, however, the hospital didn't fire the nurse because she was an addict but because she committed theft and fraud in violation of its policy. Thus, it wasn't guilty of disability discrimination.

C is wrong because although addiction is a disability, being disabled doesn't completely insulate a worker from discipline, including termination. An employer may discipline a disabled worker provided it has legitimate and reasonable grounds to do so. In this case, the hospital's policy says theft and fraud are grounds for termination. Thus, the nurse's theft alone justifies her firing. Additionally, fraud or forgery relating to her job responsibilities'such as completion of patient records'undermines the hospital's trust in her and also justifies her termination.

D is wrong because indirectly discriminatory policies can be valid if they're necessary to support a legitimate business interest, such as workplace safety. Employment actions, such as discipline, can be discriminatory if they indirectly have an adverse impact on a protected group. For example, a requirement that all workers must be over 6' tall disproportionately affects women and so indirectly discriminates. Plus, it's unlikely such a policy furthers any legitimate business interest. Here, the nurse could argue that firing workers for theft or fraud disproportionately affects drug addicts who are led to such activity by their addiction. But even if a policy disciplining workers for committing crimes does disproportionately affect drug addicts, employers'and society in general'have a legitimate business interest in holding their employees accountable for engaging in such conduct. Thus, a court is likely to uphold such a policy despite its impact on addicts.

SHOW YOUR LAWYER

Wright v. College and Assn. of Registered Nurses of Alberta (Appeals Committee), [2012] A.J. No. 943, Sept. 18, 2012