

Can Employer Require Injured, Obese Worker to Lose Weight?



SITUATION

An obese truck driver at a mine injures his back while operating his truck. His doctor says that he's at significant risk of reinjuring his back or having a heart attack if he returns to work without first losing 85 pounds and getting in shape. The employer agrees that the driver is at significant risk of re-injury because the jarring and bouncing inherent in driving a truck can't be avoided. And if his back problem and poor cardiovascular health result in an accident, other workers could be injured. So to accommodate his disability (i.e., obesity), the employer develops a plan that requires him to lose 85 pounds, enter a rehabilitation program and see a cardiologist to assess and address his cardiovascular risks before it'll return him to work. There are other workers at the mine who are also overweight but not required to lose weight. The driver's union objects to the plan and files a grievance.

QUESTION

Can the employer require the driver to lose weight?

- A. No, because it's disability discrimination.
- B. No, because other obese workers aren't required to do the same.
- C. Yes, because it's a reasonable condition of his accommodation plan.
- D. Yes, because the driver is entitled to return to his former duties, which he can't do without significant risk of re-injury at his current weight.

ANSWER

C. An employer can require workers to comply with reasonable conditions necessary to accommodate their disabilities.

This hypothetical is based on an actual grievance before an Alberta arbitrator in which a truck driver objected to an accommodation plan that required him to lose weight and get in shape before being allowed to return to work after an

injury. The arbitrator agreed that an employer has a duty to protect the safety of its workers'both disabled workers and their co-workers'and to accommodate a disabled worker to the point of undue hardship. The arbitrator found that the medical evidence clearly showed the driver couldn't do his job in his current condition, hadn't taken any steps to improve his health and would be putting others at risk if he returned to work without adhering to the employer's accommodation plan, including the condition requiring him to lose weight. Therefore, compliance with the accommodation plan was a reasonable condition of the driver's return to work.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because although the driver may be disabled because of his obesity, that doesn't mean it's discrimination for the employer to require him to lose weight as part of a reasonable accommodation plan. Employers must accommodate disabled workers to the point of undue hardship. In doing so, employers can impose reasonable conditions on those workers. Here, the driver's doctor and the employer determined that the driver's weight posed a threat to his own health and safety as well as that of other workers. Therefore, requiring him to lose weight wasn't discriminatory but was necessary for the employer to meet its obligations to protect all workers and accommodate disabled ones.

B is wrong because disparate treatment may be 'but isn't always' evidence of discrimination. Yes, other workers at the mine are overweight. But there's no evidence concerning the exact weight of these workers, their job responsibilities and whether their weight put them at risk of injuring themselves or others. So it may not be reasonable to require every overweight worker to lose weight. Each workers' circumstances need to be considered. For example, it's likely unreasonable to require an obese accounting staff member who works at a desk to go on a diet.

D is wrong because an injured worker isn't entitled to the same job he had before the injury, especially if he's disabled. A reasonable accommodation for a worker's disability could be to place him in a different job at the company better suited to his physical limitations. So in this case, if the employer had another job that the driver was qualified to do and that involved less risk of re-injury regardless of his obesity and cardiovascular health, the employer could accommodate the worker by placing him in that job.

Insider Says: For information on ensuring the health and safety of overweight workers without discriminating against them, see 'Worker Profile'Overweight Workers,' Feb. 2010, p. 13.

SHOW YOUR LAWYER

Teck Coal Ltd. v. United Mine Workers of America, Local 1656, [2012] CanLII 71111 (AB GAA), Nov. 6, 2012