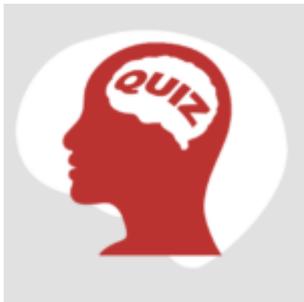


Does Fear of Attack Justify Work Refusal by Residential Home Worker?



SITUATION

A cafeteria worker in a residential home for mentally challenged adults refuses to deliver food to residents, claiming she's afraid that, due to a medical condition, she's likely to suffer serious injury if attacked by aggressive residents. The home, admitting there's some risk inherent in the job, says it's taken measures to minimize that risk, including providing a daily risk assessment list of potentially violent residents and training on how to avoid aggressive residents. Still, it investigates the work refusal and implements a new requirement that two workers must deliver the food together so one worker can watch for aggressive residents. Other workers assigned to deliver food say they feel safe with or without this new procedure. The worker provides a doctor's note regarding her condition. But the home asks for more objective medical evidence as to why delivering food to residents is riskier for her than other staff. She fails to provide any more information. So the home orders her to deliver food to the residents.

QUESTION

Was the worker's refusal justified?

A. No, because the refusal was emotional, not reasonable.

B. No, because a worker can't refuse work based on a medical condition that makes a job dangerous only to her.

C. Yes, because the worker honestly believed the work was unreasonably dangerous.

D. Yes, because a worker can refuse to work based on safety risks that are inherent in the job.

ANSWER

A. Because the worker cited only her personal fear of physical injury and no objective evidence, her refusal wasn't justified.

This hypothetical is based on a Nova Scotia case in which a cafeteria worker said she was afraid of being hit by a resident, claiming that her medical condition made it more likely she would suffer serious injury if physically attacked. The labour board explained that the right to refuse work is based on an 'average individual' having *reasonable* grounds to believe the work would endanger her health or safety or that of another person, such as a co-worker. The OHS law 'doesn't address fears,' it added. The board found that a risk of violence existed throughout the residential facility and was inherent in working at such a facility. The measures the home implemented to protect staff from violence were reasonable and adequate. And other workers assigned to deliver food felt safe doing so. Thus, the board ruled that the worker's perception of the risk was 'an emotional reaction' and not based on reasonable grounds.

WHY THE WRONG ANSWERS ARE WRONG

B is wrong because, in some cases, a worker *can* refuse a job or task that's unsafe only to her. In most work refusals, the perceived danger would be a threat to any worker, such as an unguarded pinchpoint in machinery. But a job could be unreasonably dangerous to a specific worker because of a

unique condition, such as pregnancy. (See, [Protecting Pregnant Workers, Part 1: Drawing the Line Between Safety and Discrimination](#), Oct. 2008, p. 1.) For example, wearing rubber gloves wouldn't endanger most workers but would pose a threat to a worker who's allergic to latex. So that worker could justifiably refuse work that required her to wear rubber gloves. In this case, the worker failed to provide sufficient medical information as to why delivering food to residents posed more of a risk to her than other workers.

C is wrong because the grounds for a work refusal must be both genuine *and* reasonable. In this case, the worker may honestly feel unsafe delivering food to the residents. In other words, her refusal may not be a pretext to avoid an unpleasant task. But her fear isn't reasonable. Although there's a risk of violence inherent in the job, the home did take measures to minimize the risk to workers while delivering food. And no other workers assigned to this task felt it was too dangerous. Thus, the worker's refusal was based on her own genuine fear or individual perception of the risk, not on reasonable and objective evidence that the work unreasonably unsafe.

D is wrong because a worker can't refuse to work based on risks that are inherent in or a normal part of the job. A worker still has the right to refuse work, but that right is limited. That is, the worker may exercise the right to refuse work because of a dangerous condition that *isn't* inherent in his job. For example, a firefighter can't refuse to enter a burning building because of the dangers posed by fire. But he can refuse to do so if his PPE is malfunctioning. Here, because of the nature of a facility for mentally challenged adults, there's some risk of violence inherent in working there. But the home adequately addressed that risk by implementing appropriate safety procedures and providing training. So the worker's refusal based on that inherent risk wasn't justified.

Insider Says: For more information about workers' right to

refuse unsafe work, go to the [Work Refusal Compliance Centre](#), which includes '[Work Refusals: Answers to 10 Frequently Asked Questions](#)' and '[8 Traps to Avoid in Responding to Work Refusals](#).'

SHOW YOUR LAWYER

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