Dishonesty Regarding Activities While on Modified Work Didn’t Warrant Termination



A worker was diagnosed with tennis elbow and returned to work with modified duties that limited his lifting on the job. Co-workers complained about being assigned heavy work this worker said he couldn’t do when he was seen performing tasks beyond his restrictions outside of work. The employer videotaped the worker outside of work and saw him lifting and carrying heavy items without difficulty. So the employer fired him for misrepresenting the extent of his injuries. The union challenged his termination. An arbitrator found that although the worker hadn’t exaggerated his injury or need for accommodation, he did perform acts beyond the restrictions in his modified work plan, which he initially denied until confronted with a video. In addition, engaging in such activities recklessly put his recovery at risk. And he was “less than candid” when confronted by the employer, noted the arbitrator. But given his 10-year employment record without discipline, termination for his dishonesty wasn’t warranted [*United Steelworkers, Local 6571 v. Gerdau Ameristeel’Whitby (Spulnick Grievance)*, [2016] O.L.A.A. No. 135, April 4, 2016].