

Not Discrimination to Deny Safety-Sensitive Job to Legal Medical Marijuana User



After one successful stint, a veteran and reliable construction worker was rehired to work on another project provided that he pass a drug test. Before taking the test, he revealed that he legally vaped about 1.5 grams of medical marijuana containing up to 22% THC each night after work to manage pain related to Crohn's disease. So, the employer revoked the offer in the interest of safety. The union claimed discrimination but the arbitrator tossed the grievance. The worker was entitled to accommodations but letting him do a safety-sensitive job would be undue hardship. Although he vaped only after work hours, THC remains in the system at potentially impairing levels for up to 24 hours. Offering him a non-safety-sensitive position would be a reasonable accommodation; unfortunately, no such jobs were available. The union appealed but the Newfoundland court said the arbitrator's ruling was reasonable and refused to reverse it [*IBEW, Local 1620 v. Lower Churchill Transmission Construction Employers' Association Inc.*, 2019 NLSC 48 (CanLII), Feb. 22, 2019].