

Was Depressed Worker's Termination Discriminatory?



SITUATION

A worker gets in a fight at work with a co-worker and eyewitnesses say he threw the first punch. The co-worker gets a black eye. So the employer terminates the worker. But he claims he was standing up for himself and only fought back after the co-worker hit him three times. The worker doesn't mention that he has depression or that it was a factor leading to the fight until *after* he's terminated. The only evidence supporting these claims is a doctor's note relating to a medical absence over a year before the fight. But the note and supporting information only indicate the worker has depression and needs medication. It doesn't indicate any limitations or need for accommodation. The worker also never asked his employer for any accommodation for his depression. However, he files an application alleging discrimination based on his disability.

QUESTION

Was the worker's termination proper'

- A. Yes, because an employer must fire a worker after even just one instance of violent behaviour to protect the safety of other workers.
- B. Yes, because the worker didn't prove a link between his

depression and the fight.

C. No, because the employer had a duty to inquire whether the fight was due to his depression and to accommodate that disability.

D. No, because depression isn't a disability.

ANSWER:

B. The worker didn't provide evidence linking his actions in the fight to his depression, so termination was reasonable for assaulting and injuring his co-worker.

EXPLANATION

This hypothetical is based on an Ontario Superior Court of Justice decision, which said a worker wasn't entitled to damages for discrimination because there was no link between his disability and a workplace fight that led to his dismissal. The court said the dismissed worker had the burden of proving discrimination by demonstrating a link between the depression and the fight.

Evidence proved that the worker threw the first punch at the co-worker, who suffered a black eye. The court found that this conduct 'would reasonably justify discipline.' The worker never alleged the fight was linked to his depression until *after* he was terminated, noted the court. Also, there was no medical evidence demonstrating that he was suffering from depression at the time of the fight. Additionally, the only evidence at all of a disability was a doctor's note from a year prior about his medical leave for depression due to hypothyroidism but even that letter never mentioned potential violence or need for accommodation. Further, the worker never requested an accommodation. So the court said there was no evidence indicating the worker's depression could be linked to the fight. Thus, it wasn't reasonable to find his termination was discriminatory, concluded the court.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because employers aren't required to automatically dismiss workers based on one act of violence in the workplace. Most OHS laws do require employers to have workplace violence policies and procedures but don't mandate employers terminate for one violation of them. Before firing a worker due to violence, an employer would need to consider the cause of the violence and any mitigating circumstances. For example, if a worker was acting in self-defence or simply engaging in horseplay, progressive discipline might be warranted instead of termination. Here, although the worker was involved in and may have started a fist fight with a co-worker, the employer isn't required to fire him.

Insider says: For more information about violence in the workplace, see the [Workplace Violence Compliance Centre](#).

C is wrong because an employer doesn't have a duty to investigate whether a disability may be the cause of misconduct without some evidence the worker has a disability, which could be linked to the misconduct. In this case, although the employer was on notice of the worker's depression, it had no evidence that the disability could be linked to violence or that the worker required any accommodation or was limited at all. Additionally, the worker never asked for an accommodation nor did he indicate during the investigation of the fight or any other time prior to dismissal that his disability was a cause of the fight. Thus, the employer didn't have a duty to investigate or accommodate that disability.

D is wrong because depression *could* be a disability. The human rights laws protect workers from disability discrimination based on both physical conditions, such as blindness, and mental conditions, such as post-traumatic stress disorder. So a mental condition such as depression could be considered a disability. Here, the worker has a doctor's note indicating he

was diagnosed with depression. Thus, he would likely be considered disabled and protected from dismissal or other adverse actions based on his depression.

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[Walton Enters. v. Lombardi](#), [2013] ONSC 4218 (CanLII), July 11, 2013