Canada: Employer Entitled To "Better Doctor's Note" After Six Month Absence

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The Federal Court of Appeal decided in *Western Grain By-Products Storage Ltd. v. Donaldson*, 2015 FCA 62 (March 4, 2015), that Western Grain By-Products Storage Ltd ("Western Grain") did not constructively dismiss its employee, Donaldson, when it refused to return him to work from extended leave due to illness without receipt of "*a better doctor's note*."

Donaldson had been employed by Western Grain, the operator of a grain terminal, for approximately 20 years. On May 9, 2007, he was hospitalized for approximately 11 days due to illness. He remained off work and notified his employer that his physician had concluded that he was unable to return to work due to health concerns. He made a claim with the Workplace Safety and Insurance Board (WSIB) stating that his symptoms were possibly related to a toxic allergic reaction to grain dust. On October 17, 2007, the WSIB informed Donaldson that his medical records did not establish that his illness was an occupational disease.

On October 25, 2007, Donaldson provided Western Grain with a two line note from his physician indicating that he was "*now capable of returning to his job*." Western Grain found the note to be deficient and advised Donaldson that he would not be permitted to return to active employment until he presented "*a better doctor's note as to his fitness level in relation to his duties and the work environment*." At issue in this case was whether Western Grain was justified in asking for a more substantive medical note.

The adjudicator who originally heard this matter concluded that Donaldson had been constructively dismissed because the WSIB had found that there was no medical basis for finding that Donaldson suffered from an allergic reaction. He found that the 25 week absence from the workplace was to allow for consideration, investigation and determination of Donaldson's WSIB claim, and that the WSIB report was authoritative that he was able to return to work. The adjudicator concluded that Western Grain had "*placed effective barriers*" that "*exceeded any reasonable term of employment*" and denied Donaldson his right to return to work.

The Federal Court and the Federal Court of Appeal overturned the adjudicator's decision. The evidence showed that Donaldson, who had not previously been off work for such an extended period of time or filed any previous WSIB claims, had been ill and unfit for work for a period of months. The WSIB report was not conclusive about Donaldson's ability to return to work and the medical note provided by Donaldson to Western Grain indicating his fitness to return in October 2007, lacked an explanation as to why the appellant was now able to return to work.

The Federal Court of Appeal acknowledged that employers have an obligation to ensure its workers' safety. It concluded that the two-line doctor's note provided contained insufficient information and that it was reasonable in the circumstances for Western Grain to request further medical information prior to allowing Donaldson's return.

Lessons for Employers

Generally the amount of medical information to which employers are entitled positively correlates with the duration of the employee's absence from the workplace. The Federal Court of Appeal acknowledged in this case that employers have a duty to ensure the safety of its employees and as such, employers are entitled to reasonably satisfy themselves that its employees are fit to return to work after absences due to illness. This decision appears to indicate that such satisfaction may require employees to provide a medical opinion as to why they are able to return to work after an extended absence related to an unexplained illness.

A full copy of the decision can be found at the following link:
Donaldson v. Western Grain By-Products Storage Ltd., 2015 FCA 62 (CanLII)