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Willful Misconduct: Court Rules Off-Duty Illicit Drug Use Is Grounds To Fire CNA.

A certified nursing assistant employed in a nursing home injured her back on the job. She was treated by her personal physician. He sent his bill to the nursing home's human resources director for payment as a worker's compensation claim.

To the bill the physician attached a medical history which contained an admission from the aide that she smoked marijuana off the job daily and had been taking prescription medication she obtained illegally, that is, she used painkillers that were being prescribed for her daughter.

The human resources director and director of nursing confronted the CNA. She admitted her doctor's statements were true. However, she adamantly denied she ever reported for work under the influence of alcohol, marijuana or illegal drugs. She was terminated anyway. Her supervisors believed her off-duty conduct posed a threat to patient safety.

The CNA applied for unemployment. Her claim was denied. She filed an appeal. The Commonwealth Court of Pennsylvania upheld the unemployment department's denial of benefits, on the grounds that she was dismissed for willful misconduct which disqualifies an employee from benefits.



The CNA admitted she used marijuana off the job on a daily basis and was habituated to pain medication she started taking for a prior back injury that was no longer being prescribed for her.

It was reasonable for her employer to fear she might report for work intoxicated, which could create unacceptable problems with patients' safety.

COMMONWEALTH COURT OF PENNSYLVANIA, 2001.

Off Duty Drug Abuse = Impairment

The court ruled that the CNA's off-duty substance abuse showed a level of impairment that posed a threat to the nursing home's patients. It was reasonable for her supervisors to be apprehensive she would report for work intoxicated or otherwise impaired. The court supported their decision to terminate her in the interest of safe and effective patient care.

Willful Misconduct Connected With Work

The CNA's supervisors had to show that she was guilty of willful misconduct and that her willful misconduct was connected with her work. Those are the two basic legal criteria for firing an unsatisfactory employee without risking legal repercussions.

The court ruled that an employer can consider off-duty substance abuse willful misconduct and can consider it connected with an employee's work.

The court rejected the argument that the employee's apparent chemical dependency rendered her substance-abuse behavior to some extent involuntary. That argument was irrelevant to her employer's decision to remove her from patient care. **Burger v. Unemployment Compensation Board of Review, 780 A. 2d 731 (Pa. Cmwlth., 2001).**

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