

Drug testing and workers' comp claims. Do they mix?

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Can an employer require an employee who is initiating a workers' compensation claim to take a drug test?

And, can the employer fire that employee if the employee refuses to take the required drug test?

The Seventh Circuit Court of Appeals, says yes – maybe. The “yes” answer in this case was based on the following facts and circumstances –

- The employer had a written policy that required drug testing under certain circumstances:
 - Pre-employment testing
 - Random testing during the first 12 months of employment
 - For-cause testing
 - OSHA recordable accident
 - Transportable injury
 - Serious equipment/property personal damage incident
 - Initiation of a workers' compensation claim
- The policy provided that a refusal to submit to the drug test would be cause for immediate suspension pending termination.
- The employee indicated he wanted to initiate a workers' compensation claim, but he refused to take the required drug test as requested.

- The employer consistently applied this policy and had discharged other employees who had refused to take the drug test. In other words, the policy was not just applied to those employees making workers' compensation claims.
- Employees had initiated workers' compensation claims and not been discharged.
- This employee had filed a workers' compensation claim and received benefits despite his termination.
- The employee admitted that he was discharged because he refused to take the drug test. He could not identify any other reason for his discharge.

Under these facts and circumstances, the Court found that the employer was not liable for retaliatory discharge, noting "causation requires more than a discharge in connection with filing a claim."

In retaliatory discharge cases, the employer's motivation for the discharge is always the key inquiry. If the actual motivation for the termination was the employee's pursuit of a workers' compensation claim, then the employer is liable. But, it is not enough for the employee to show that a workers' compensation claim "set in motion a chain of events that ended in a discharge."

The Court looked at the decision in *Clark v. Owens-Brockaway Glass Container, Inc.*, 697 N.E.2d 743 (1998) and saw a difference there from this case. In *Clark*, the employer discharged the employee because it thought the employee was exaggerating the claim and the employer admitted the discharge was connected to the claim. There was no such evidence in this case.

What does this case teach employers –

- Have a well-defined and up-to-date written policy that has been made known to the employees.
- Apply the policy consistently and evenly, not just to employees making workers' compensation claims.
- Do not interfere with employee's right to make a claim or receive benefits.

In the final analysis, the Court confirmed that drug testing in employment is not against Illinois public policy. The Illinois Workers' Compensation Act expressly contemplates drug and alcohol testing in connection with workers' compensation claims. 820 ILCS 305/11.

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