



CONFLICTING MEDICAL ADVICE

In some cases, employers receive conflicting medical opinions. The employee's own General Practitioner or hospital doctor may state that an individual is unfit to return to work and issue a Med3 or Med5 certificate. The occupational health doctor or specialist nurse may be of the opinion and confirm this in writing in a report to management that the employee is fit to return to work.

In such a situation, employment tribunals have in the past in the main accepted that a 'reasonable employer' can rely upon the view of the occupational health specialist doctor or nurse.

The cases supporting this view are:

Jones v The Post Office (2001) IRLR 381

British Gas plc v Breeze EAT 503/87

Evers v Doncaster Monks Bridge

Jefferies v BP Tanker Co Ltd (1979)

The above cases, however, stress the importance of the following:

- The employee must be personally examined by the occupational health doctor or specialist nurse and the decision has not been made merely on a report or on the basis of a review of the medical notes.
- That the written report by the occupational health specialist or specialist nurse is specific and clear.
- That if the employee has been treated or is being treated by a hospital specialist, there is a current report on file from the specialist concerned
- In some situations it may be appropriate for the employer, particularly if requested by a Union representative, to arrange a second occupational health opinion from a different occupational health specialist or specialist nurse.

- In some cases the employee has requested that a second hospital specialist report be taken into account, this may also be considered to be appropriate.
- Finally, when making a decision with regards to conflicting medical advice, it is important that the employer has established that returning an individual to the workplace would not pose a serious threat to the health and safety of that employee or to the health and safety of colleagues, visitors to the site or the general public.

Employment tribunals have accepted that an unreasonable refusal by an employee to return to work following a report prepared by an occupational health doctor or specialist nurse after a face to face occupational health assessment constitutes misconduct on the part of the employee. The reason for any management decision with regards to the employee's continued employment or potential dismissal is 'conduct' – refusing to obey a lawful and reasonable instruction. Employment tribunals have not been tolerant of employers who take decisions about the continued employment of an employee in haste, and before a medical report is received.

Reference

Rao v CAA (1994) IRLR 248

WM Computer Services Ltd v Passmore (1987)

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The situation may arise where the employee refuses to attend an occupational health assessment appointment, or persistently fails to attend a number of appointments. The employee may also refuse to agree to sign a consent form for the occupational health doctor or nurse to consult the GP or specialist for a report in order for the employer to be fully informed with regards to the case.

In this situation current case laws support the employer, once all reasonable steps have been exhausted to obtain further information, making a decision with regards to the employee's ongoing employment with the information to hand which may lead to the employees termination of employment.

Reference

McIntosh v John Brown Engineering Ltd (1990)