

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD629/2008

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr. M. Forde
Ms H. Kelleher

heard this claim at Cork on 10th December 2008

Representation:

Claimant: Mr Henry J McCourt, McCourt Mullane & Co, Solicitors
St. Mary's Road, Midleton, Co. Cork

Respondent: Mr. Fergus Long, Ronan Daly Jermyn, Solicitors, 12 South Mall, Cork

The determination of the Tribunal was as follows:

Respondent's case:

The Employment Health Advisors (EHA) doctor (MH) gave evidence that she reviewed the claimant's medical form that came back from the GP showing a history of childhood asthma. Some people are known to grow out of their asthma, others don't. Because of this history she had to clarify the issue, so he was referred to a Consultant Respiratory Physician who saw him on 7 June 2007. The Consultant confirmed that he had an underlying diagnosis, which rendered him unsuitable for fire fighting duties.

She said that asthma is a disqualifying condition for employment with the County Council as a retained firefighter, so the claimant was not medically fit to work in this capacity, as it must be safe for his co-workers and the public if he does so. The guidelines state that asthma is a disqualifying condition. She accepted that the issue of asthma had not arisen in his pre-employment medical. The

letter from Dr. J outlining his childhood asthma was not received until some time after the claimant's appointment.

An employee of the HR section (DO'G) gave evidence that he dealt with the claimant in the latter stages of his employment. He said that he was aware that the claimant's asthma was not discovered at the time of appointment or at his pre-employment medical. This should not have happened, and was an administrative glitch. When it came to light, the claimant was stood down and put on station duties only, and was not on call. It was not acceptable to hire someone who was not medically fit for the duties involved, and his employment had to cease.

Claimant's case:

The claimant gave evidence that he had asthma up until he was 10 or 11 years old, but has had no symptoms or medication since that time. He said that he was an extremely fit individual who played first-team rugby for his local club. All went well at his pre-employment medical and he received a letter appointing him as a retained firefighter on 4 May 2006. He said that he handed in Dr. J's report about his childhood asthma to his local station.

While he was attending a first aid course, he was told that he was being stood down. He said that he got a letter terminating his employment on 30 December 2007. He admitted that he was aware that asthma was a disqualifying condition for the job, but that he had no problem or symptoms since childhood. He was given no right of appeal after being stood down.

Determination:

It is the view of the Tribunal that the respondent should have completed its pre-medical testing of the claimant prior to his appointment.

However, on the evidence presented to the Tribunal, it finds that the claimant was not unfairly dismissed.

Therefore, his claim under The Unfair Dismissals Acts, 1977 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

