News

The Duty to Accommodate and Poor Workplace Performance

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What happens when an employee with physical restrictions is placed in a position consistent with those restrictions and provided with sufficient training, but is unable to perform the functions of that position?

An Ontario arbitrator recently found that an employee's inability to perform in such a position was unrelated to her disability, and that she was properly held to the same standards as others performing that function. There was no obligation on the employer to keep the employee in the position in light of her inadequate performance. The arbitrator noted that "accommodation is not about ensuring the individual remains in the workplace, but rather to ensure the disability is not a basis to exclude the individual. […] An individual who happens to have a disability is not entitled to any different treatment, or any greater level of job security, when the existence of the disability is unrelated to whether he or she can meet the skill and performance requirements."

Here, the employer had made several attempts to accommodate the employee, and there was no breach of the collective agreement or any human rights obligations. The arbitrator affirmed that employees who receive appropriate accommodation will be held to the same performance standards of others, where that performance is unrelated to the disability.

For more information on this decision, read our Case in Point blog post "Grievor's Poor Performance in Modified Work Not Due to Disability, Employer Met its Duty to Accommodate."