

**2008-10** December 1, 2008

By E-mail: 2 Pages

## **BCTF/ SD No. 36 (Surrey): Medical Leave**

**Issue:** In order to assess a medical leave application, is the employer able to request additional medical information beyond the standard medical form (i.e., the diagnosis and treatment plan)?

**Facts:** In the fall of 2005, after two parents complained to the school, the grievor was investigated for teaching a controversial lesson to two English classes. He was issued a letter that threatened progressive discipline up to and including termination. On November 30, 2005, the employer sent a letter to the BC College of Teachers attaching the discipline letter and referring to "inappropriate interactions and the use of inappropriate materials." Upon reading the letter, which had been copied to him, the grievor became extremely upset, experienced a "full blown panic attack," and was unable to finish the work day.

On December 5, 2005, the grievor submitted to the school a District Medical Certificate (DMC) form completed by his physician indicating that he required an extended medical leave. The reason stated was "anxiety disorder and panic attacks, depression related to stressful situation at school." The estimated duration of the leave was "indefinitely." The employer was concerned about how much leave the grievor would require in light of the reference to "indefinitely," as well as the reference to the "situation at school."

On December 12, 2005, the health consultant the district hired wrote to the school expressing the view that the information contained in the DMC was "insufficient to support such an extended period of sick leave." Among the information that she recommended be sought was a "diagnosis using DSM-IV full axial format ... current treatment plan — including medications, therapy and any consultation referrals ... [and] symptoms meeting DSM-IV criteria for the Axis I diagnosis." On January 6, 2006, the union filed a grievance with respect to the request for additional information.

**Decision:** Grievance allowed.

Arbitrator Korbin stated that:

A completed DMC is a threshold criterion for an employee seeking an extended medical leave, and that submitting a DMC does not automatically entitle an employee to have his or her leave granted...

Korbin also agreed with Arbitrator Munroe's decision which said:

Whether further investigation is warranted, and the proper nature and degree of such investigation, including the degree of medical intrusion, can only be determined case by case.

Arbitrator Korbin noted that:

In establishing reasonable grounds to request extra medical information the Employer must be cognizant of the fact that the DMC itself evolved through a comprehensive process of arbitration

between the parties. Therefore, to ask for information beyond the questions on this document there must be some significant reservation or uncertainty over the way it was completed or the information contained therein.

One can anticipate some of the various conditions that would merit, on a case by case basis, the requirement for extra information when evaluating a DMC in regards to a request for an extended medical leave. Either the form is incomplete; the *bona fides* of either the employee or the physician who filled out the form are somehow in doubt; there is some legitimate uncertainty surrounding the meaning of the answers to the questions on the form; or, the information contained in the form is insufficient for the Employer to determine whether or not the employee is contractually entitled to an extended sick leave.

Korbin decided that:

The Employer's concerns related only to the meaning of the physician's answers on the DMC and what it considered insufficiencies that precluded it from making a decision...the Employer's concerns were extremely specific — relating to two particular answers on the form: the physician's use of the term "indefinitely"; and the information about the Grievor's condition being caused by stress in the workplace. The question then becomes, did these concerns reasonably merit the Employer's request for additional medical information in the form that was put to the Grievor, prior to granting him the leave? I find they did not...Instead of seeking clarification on its two narrow issues, the Employer chose to subject the Grievor to a comprehensive and invasive request for additional medication information.

**Significance:** Whether or not the request by the employer for further medical information is warranted can only be determined on a case by case basis. In this case it was found that the concerns could have been addressed through clarification of the responses on the DMC as opposed to requesting a diagnosis and treatment plan.

*BCPSEA Reference No. A-58-2008*

## Questions

If you have any questions concerning these decisions, please contact your BCPSEA labour relations liaison. If you want a copy of the complete award, please contact **Nancy Hill at [nancyhi@bcpsea.bc.ca](mailto:nancyhi@bcpsea.bc.ca)** and identify the reference number found at the end of the summary.