

## **Missouri Employer Had Just Cause To Terminate Union Employee Who Tested Positive For Marijuana, Despite Lack of Workplace Impairment**

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A Missouri-based manufacturer of animal pharmaceuticals had just cause to terminate a 37-year employee who tested positive for marijuana despite the union's argument that the employee's personal use of CBD oil and marijuana did not cause impairment at work. *Virbac Corporation and International Brotherhood of Electrical Workers, Local 1*, (January 10, 2020) (Horn, Arb.)

The employer required the employee, a maintenance electrician and member of the company's safety committee, to submit to a drug test as part of a return-to-duty physical following a 47-day medical leave of absence. The employer's policy required drug testing at the end of any medical leave lasting more than 30 days. The employee tested positive for marijuana. He admitted that he used marijuana during his medical leave to help him sleep and he further admitted that he used CBD oil to help with arthritis and chronic back pain. However, the employee was not a licensed medical marijuana user under Missouri law.

The drug test was subject to confirmatory testing, and a Medical Review Officer attempted to reach the employee before certifying the results. Due to the employee's failure to respond, the Medical Review Officer reported the test result as positive. The employer then suspended the employee pending investigation, giving the employee an opportunity to provide documentation to explain the test result. The employee failed to do so, and the employer terminated the employee.

The employer routinely terminated employees when they tested positive for drugs, including marijuana. The employee was familiar with the 30-day drug testing rule and had been tested under that rule once before, without complaint.

The employee filed two union grievances regarding the termination. During the initial grievance meetings, the employee claimed he tested positive for marijuana due to lawful CBD oil use. However, during the arbitration, the employee admitted that he smoked marijuana both before he was tested and after he was tested and returned to work. The employee's medical records also revealed that he asked his doctor about medical marijuana, but the employee's doctor suspected he was attempting to "further his addiction."

The arbitrator determined that the employer met its burden of showing just cause, reasoning that the

legalization of marijuana “whether medicinal or recreational,” does not require employers to embrace the use of “legal” marijuana products. The arbitrator further found that the Department of Human Health and Services’ testing thresholds are “effective, lawful and enforceable,” and do not require “impairment.” The arbitrator recognized the employee’s significant tenure with the company, but ultimately found the employee’s dishonesty regarding his marijuana use was an aggravating circumstance and that his behavior was particularly egregious given his role on the safety committee.

Although the union setting is unique, this decision reinforces the importance of ensuring employees have notice of the employer’s position on marijuana and CBD products (recognizing any state law obligations), and to enforce a drug and alcohol testing policy consistently.

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