

# California Court Upholds Employer's Refusal To Hire Applicant Who Failed Pre-Employment Drug Test Due To Medical Marijuana Use

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A federal court in California dismissed the disability discrimination claims of a job applicant who failed a pre-employment drug test due to medical marijuana use, holding that he did not sufficiently prove that he was disabled. More specifically, the court concluded that the applicant's "subjective belief" that he suffered from "chronic back pain" was insufficient to establish that he was disabled for purposes of the California Fair Employment and Housing Act ("FEHA") where he failed to "provide any supporting documentation . . . to substantiate the nature of his purported physical disability or any consequent restrictions or limitations on his ability to perform his work." *Espindola v. Wismettac Asian Foods, Inc.*, No. 2:20-cv-03702 (C.D. Cal. Apr. 28, 2021).

The employer extended an offer of employment to the applicant (who lived in Florida) for an executive level position at their location in California. Pursuant to the offer letter, the applicant's employment was at-will and subject to the policies set forth in the employer's Employee Handbook. The Handbook outlined the employer's drug testing policy and, specifically, its pre-employment drug testing policy. The employer did not provide the applicant with a copy of the Handbook nor did the employer explicitly state that the offer of employment was contingent upon passing the pre-employment drug test.

After the applicant's acceptance of the offer of employment, but prior to starting the position, the employer informed the applicant that he must submit to pre-employment drug testing. The applicant requested the testing be delayed because he had contractors working in his home in Florida and he was going overseas to visit his mother. The employer obliged and delayed the drug test. A few days later, the applicant sought a medical marijuana card in Florida. The drug test was delayed until the applicant's first day on the job in California. Prior to his first day of work, he never told anyone that he used medical marijuana or that he was disabled.

While completing the completed the onboarding paperwork, the applicant signed a drug testing consent form. After completing this paperwork, the applicant informed the employer's CEO that he suffered from "chronic back pain" and that he had obtained a medical marijuana card from the State of Florida. As proof that he was prescribed marijuana to treat his purported condition, the applicant submitted correspondence from the Florida Department of Health which confirmed the applicant's approval for a medical marijuana card. The correspondence, however, did not contain any

information regarding the applicant's underlying medical condition, or the criteria used in deciding whether to issue a medical marijuana card.

A few days later, the applicant submitted to the pre-employment drug test and tested positive for marijuana. Upon receipt of the drug test results, the employer terminated the applicant's employment.

The applicant filed a federal action for, among other things, retaliation and disability discrimination under the FEHA for wrongful termination, failure to accommodate, and failure to engage in the interactive process. The employer moved for summary judgment on all claims arguing that the applicant could not establish a *prima facie* case for disability under the FEHA because the mere reporting of subjective symptoms is not sufficient to establish a disability under the FEHA.

The Court agreed with the employer, noting that the applicant failed to provide any supporting documentation that would establish that "his symptoms did not make the performance of his job duties difficult as compared to his unimpaired state or to a normal or average baseline," nor did he "provide any explanation or detail concerning how his chronic back pain limited his ability to work." The Court also noted that during the short time that the applicant worked for the employer, he worked full days and completed multiple projects without incident, further demonstrating that the applicant's purported disability did not impact his ability to work. Moreover, the applicant never made any specific request for an accommodation.

The applicant also argued that the pre-employment drug test was illegal because it was conducted after he commenced working and was used as a pretext to fire him for his disability. The Court rejected these arguments. The applicant was advised before his employment started that he would be required to submit to pre-employment drug testing and even was granted a delay in testing at his own request.

Accordingly, the Court granted the employer's motion for summary judgment in its entirety.

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