

Rhode Island High Court Upholds ‘Reasonable Grounds’ Drug Testing, Dismissal of Employee

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An employer may terminate an employee for refusing to submit to a drug test based on reasonable suspicion under the state drug testing law, the Rhode Island Supreme Court has held. *Colpitts v. W.B. Mason Co., Inc.*, No. 2018-337-Appeal (R.I. May 29, 2020). This is the case even though the employee’s odd behaviors could have been attributed to pain or other reasons, the Court ruled.

Background

Michael Colpitts was employed as a supply delivery driver for W.B. Mason. He began using medical marijuana for pain, as well as post-traumatic stress disorder, in 2017. He did not disclose to his employer he had begun using medical marijuana. He testified he never used marijuana while working and never was impaired at work.

On March 5, 2018, Colpitts alleged he injured his arm and back while finishing a delivery as part of his job. When he returned to the worksite and reported his injury, he was questioned by his supervisor and the branch manager. They determined he might be impaired due to their observations that Colpitts was stuttering and swearing excessively, was “jumping all over the place,” was confused and had difficulty describing his injuries, did not speak in complete sentences, was staggering and bending over, and stating “I’m f***ed up,” among other things.

After his supervisor and branch manager advised Colpitts that he would have to go for drug testing, he insisted he was “fine” and “got very agitated.” On the way to the collection facility, Colpitts disclosed he used medical marijuana and would probably test positive for marijuana.

Once he arrived at the collection facility, Colpitts refused to be drug tested, but agreed to an alcohol test. The alcohol test was negative.

His employment was terminated because he violated company policy by refusing the drug test.

Colpitts sued his former employer, claiming it ordered him to take a drug test without “reasonable grounds” as required by the Rhode Island drug testing law, R.I. Gen. Laws § 28-6.5-1(a)(1).

The law permits testing when the “employer has reasonable grounds to believe, based on specific aspects of the employee’s job performance and specific contemporaneous documented observations, concerning the employee’s appearance, behavior or speech that the employee may be under the influence of a controlled substance, which may be impairing his or her ability to perform his or her job.”

After a trial, the court ruled in favor of the employer, finding its witnesses to be credible and Colpitts’ “incoherent recitation,” “volatile behavior,” and “the use of profanity” was

sufficient to support “reasonable grounds” for drug testing under Rhode Island law.

Reasonable Grounds Ruling

The Rhode Island high court held the trial justice did not abuse her discretion in ruling in favor of the employer.

Colpitts argued that there was no evidence he was under the influence of drugs and his behaviors were due to the pain from his injuries. The Court disagreed that because his behaviors “could” have been pain-related, there was no basis for drug testing. Even if his odd behaviors had been due to pain, rather than drugs, the Court said the employer had reasonable grounds to believe Colpitts *may* have been under the influence of drugs. The Rhode Island drug testing statute does not require an employer to be *certain* that an employee is under the influence of drugs or alcohol, the Court explained.

The Court’s decision reinforces that employers need not be absolutely certain that an employee is using drugs before requiring a “reasonable grounds” drug test.

Please contact a Jackson Lewis attorney with any questions about this case or for assistance with your drug and alcohol testing policies and practices.

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