

Canada Labour Code
Part II
Occupational Health and Safety

Tammy Partridge
appellant

and

Department of National Defence
respondent

April 26, 2007

This matter is decided by Appeals Officer Jean-Pierre Aubre.

For the appellant

Mr. Andrew Raven, Counsel, Raven, Cameron, Ballantyne & Yazbeck

For the respondent

Mr. John J. Jaworski, Counsel, Treasury Board Legal Services

- [1] This case concerns an appeal made on July 15, 2005, pursuant to subsection 129(7) of the *Canada Labour Code*, Part II (the *Code*), by Ms. Tammy Partridge, a Firefighter at the C.F.B. Shilo - Fire Hall, Department of National Defence, against a decision of absence of danger issued by Health and Safety Officer (HSO) Bryan N. Zachary.
- [2] According to HSO Zachary's report dated February 5, 2005, Ms. Partridge refused to work on June 20, 2005, stating that:

“I believe participation in the FFPFMP (Fire Fighter Physical Fitness Maintenance Program) constitutes a danger, specifically task #6 Forcible Entry. I believe the combination of excretion (sic), improper techniques and striking a tire will be dangerous to me as defined under Occupational Health and Safety Part II sec. 128”

On completion of his investigation, HSO Zachary determined, pursuant to subsection 129(4) of the *Canada Labour Code*, that a danger did not exist.

- [3] On July 7, 2006, an adjudicator under the Public Service Staff Relations Act rendered a decision on grievances presented by Terrance Barr and Sherry Flannery, firefighters with the Department of National Defence that challenged the FFPFMP as being discriminatory and sought an order precluding the Department of National Defence from using the eight minute standard established by the paid Program as a condition of employment.
- [4] On March 14, 2007, by letter from Mr. Raven on behalf of the appellant, the Appeals Officer was informed of the decision by the Adjudicator under the Public Service Staff Relations Act mentioned above as well as of the position adopted by the appellant that this appeal would therefore serve no useful purpose as “the fitness test which gave rise to Ms. Partridge’s work refusal is no longer in use by the Department of National Defence”.
- [5] Consequently, Counsel indicated the decision by Ms. Partridge to withdraw her appeal.
- [6] Considering the above and having reviewed the file, this appeal is withdrawn and this case is closed.

Jean-Pierre Aubre
Appeals Officer

Summary of Appeals Officer's Decision

Decision: CAO-07-013

Appellant: Tammy Partridge

Respondent: Department of National Defence

Provisions: *Canada Labour Code*, 129(7)

Keywords: Withdrawal, FFPFMP (Fitness test), Public Service Staff Relations Act,

Summary:

On July 15, 2005, Tammy Partridge appealed a decision of no danger following a work refusal. On March 14, 2007, Andrew Raven, Counsel for Ms. Partridge, withdrew the appeal. The case is therefore close.