

Canada Labour Code
Part II
Occupational Health and Safety

Charles Cobb
appellant

and

Department of National Defence
respondent

May 28, 2007

This matter was decided by Appeals Officer Richard Lafrance

For the appellant

Jeff Bennie, National Health and Safety Officer, Public Service Alliance of Canada (PSAC)

For the respondent

Richard Fader, Counsel, Treasury Board Secretariat, Legal Services

- [1] This matter concerns an appeal made by Charles Cobb on May 9, 2003, pursuant to subsection 129(7) of the *Canada Labour Code*, Part II. The appeal was against a decision of absence of danger rendered on April 30, 2003, by health and safety officer (HSO) Gord Logan following his investigation of the refusal to work of C. Cobb on April 17, 2003. C. Cobb is employed as a civilian firefighter for the Department of National Defence based in Shilo, Manitoba.
- [2] C. Cobb felt that a danger existed while taking the “Fire Fighter Physical Maintenance Program Evaluation” as he believed that there was no one who could check the firefighters for cyanosis while wearing full bunker gear with a breathing apparatus.
- [3] HSO Logan decided that there was absence of danger because his investigation uncovered that there was a very specific procedure and protocol for the conducting of the fitness evaluation. It was the opinion of the HSO that as long as the procedures were strictly adhered to and that the test participants were accurate in their self assessment of their condition during the test and communicated this to the physical education coordinator; the symptoms which could lead up to cyanosis would be observed long before it could occur.

- [4] HSO Logan believed that the possibility of cyanosis occurring during the performance of the evaluation test was so remote, provided that all procedures were adhered to, that there was no reasonable expectation that it could occur.
- [5] On July 3, 2003, and again on October 5, 2004, Jeff Bennie, National Health and Safety Officer, PSAC, who represented C. Cobb in these proceedings, requested that the hearing be held in abeyance until such time as a decision on a similar case was rendered.
- [6] On May 24, 2007, C. Cobb informed the Canada Appeals on Occupational Health and Safety to notify the Appeals Officer that due to recent change in the annual physical test, he was withdrawing the appeal that he had initiated against the decision of HSO Logan.
- [7] Considering the above and having reviewed the case file, I duly note the stated intention of the appellant. This appeal is thus withdrawn and this case is closed.

Richard Lafrance
Appeals Officer

Summary of Appeals Officer's Decision

Decision: CAO-07-019

Appellant: Charles Cobb

Respondent: Department of National Defence

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

Keywords: Absence of danger, Fire Fighter Physical Maintenance Program Evaluation, cyanosis, withdrawal

Summary:

On May 9, 2003, an appeal was made of a decision of absence of danger following the refusal to work of Mr. Charles Cobb, a civilian firefighter for the Department of National Defence. Mr. Cobb felt that a danger existed while taking the "Fire Fighter Physical Maintenance Program Evaluation". On May 24, 2007, Mr. Cobb withdrew his appeal of the decision due to recent change in the annual physical test. The case is therefore close.