

CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY

Andrew Marshall
applicant

and

Correctional Services Canada
employer

and

Todd Campbell
health and safety officer

Decision No. 03-009
April 22, 2003

- [1] On November 4, 2002, Mr. Andrew Marshall, a Correctional Officer with Correctional Services Canada, refused to work in the living unit at Matsqui Institution out of concern that he would be exposed to second hand tobacco smoke produced by inmates smoking there. He had read in a draft policy review report commissioned by Correctional Services Canada that, according to the World Health Organization, "*There is sufficient evidence that involuntary smoking (exposure to second-hand smoke) causes lung disease in humans.*"
- [2] Following his investigation of the refusal to work, health and safety officer Mr. Todd Campbell decided that a danger did not exist for Mr. Marshall and informed him and Correctional Services Canada of his decision. Mr. Marshall appealed the health and safety officer's decision to an appeals officer on November 5, 2003 pursuant to subsection 129.(7) of the *Canada Labour Code*.

- [3] On March 3, 2003, Mr. Marshall wrote to the Canada Appeals Office on Occupational Health and Safety and withdrew his appeal. He confirmed that his decision to withdraw the appeal was made in consultation with the Confédération des Syndicats Nationaux (CSN).
- [4] As the appeals officer assigned to the case, I confirm that Mr. Marshall withdrew his appeal of health and safety officer's decision that a danger did not exist, and formally close the file in this case.

Douglas Malanka
Appeals Officer

SUMMARY OF APPEALS OFFICER DECISION

Decision No.: 03-009

Applicant: Andrew Marshall

Employee: Correctional Services Canada

Key Words: danger, second-hand tobacco smoke, living unit, inmates, refusal to work, withdrawal.

Provisions: C.L.C. 129.(7)

Summary:

On November 4, 2002, a Correctional Officer with Correctional Services Canada, refused to work in the living unit at Matsqui Institution out of concern that he would be exposed to second hand tobacco smoke produced by inmates smoking there. He had read that, according to the World Health Organization, "*There is sufficient evidence that involuntary smoking (exposure to second-hand smoke) causes lung disease in humans.*"

A health and safety officer investigated into the refusal to work and decided that a danger did not exist. On November 5, 2002, the employee appealed the health and safety officer's decision to an appeals officer pursuant to subsection 129.(7) of the *Canada Labour Code*.

On March 3, 2003, Mr. Marshall wrote again to the Canada Appeals Office on Occupational Health and Safety and withdrew his appeal. He confirmed that his decision to withdraw his appeal was made in consultation with the Confédération des Syndicats Nationaux (CSN).

The appeals officer assigned to the case confirmed that the employee had withdrawn his appeal of the health and safety officer's decision that a danger did not exist, and formally closed the file in this case.