

**Canada Labour Code**  
**Part II**  
**Occupational Health and Safety**

Leah Walton  
Shepody Healing Centre  
*applicant*

and

Correctional Service Canada  
*employer*

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Decision No. 05-008  
February 3, 2005

This case was decided by Michael McDermott, appeals officer.

- [1] This case concerns an appeal, pursuant to Section 129(7) of the *Canada Labour Code*, Part II, made on November 12, 2003, by Alan Phillips, Employment Relations Officer for the Professional Institute of the Public Service of Canada, on behalf of Leah Walton (the employee) a Registered Nurse employed by Correctional Services Canada (the employer) at the Shepody Healing Centre – Health Care Unit, 4902 Main Street, Dorchester, New Brunswick.
- [2] The appeal was filed as a result of a decision of no danger rendered on November 7, 2003, by health and safety officer Daniel St-Onge, following his investigation of Leah Walton's refusal to work, pursuant to Section 128 of the *Canada Labour Code*, Part II, made initially on October 28, 2003.
- [3] The statement of the refusal to work in health and safety officer St-Onge's report is as follows:
- Mrs. Leah Walton invoked her right to refuse under section 128 of the *Canada Labour Code* because the employer is not providing a correctional officer in the Health Care Unit as per Commissioner Directive (CD) 566-3.
- [4] Health and safety officer St-Onge conducted his investigation at the Shepody Healing Centre on November 7, 2003, accompanied by Gilles Bourque, a PIPSC representative, Bernard Galarneau of Health Care management and Leah Walton.
- [5] In his full report and detailed decision, issued at Dorchester, New Brunswick on November 25, 2003, the health and safety officer concluded that:

there is no real solid evidence that was gathered throughout the investigation that would prove that the safety (of) Mrs. Walton was in danger. It was determined that some risks are integrated and present in the workplace and the employer is responsible to do everything (to) remove or minimize those risks. Also, it is to be noted that in a Correctional environment, there is always the fact that an inherent danger exists when performing the duties.

He further stated that:

deficiencies have been noted during the investigation that did not constitute a danger; however, these deficiencies will be addressed separately.

- [6] Subsequent to the filing of the appeal, the applicant, Alan Phillips, in his letter to the Appeals Office of February 18, 2004, requested an oral hearing and site visit. In the same letter, he also listed the names of persons he wished to have subpoenaed to attend the proceedings. The Appeals Office consulted with respect to mutually acceptable dates for a hearing. The requested subpoenas were issued by appeals officer Douglas Malanka on January 25, 2005, for a hearing in Moncton, New Brunswick, on February 8, 2005. The file was assigned to me for hearing.
- [7] During the week of January 24, 2005, the Appeals Office was informed that the applicant and respondent were discussing a possible settlement of the issues underlying the refusal to work. On February 1, 2005, Alan Phillips faxed a Memorandum of Understanding (MoU) signed by himself and Leah Walton, and by Hal Davidson, Acting Warden of Dorchester Penitentiary and Luc Doucet, Director of the Shepody Healing Centre, on January 31, 2005. The MoU confirmed: that Leah Walton would withdraw the appeal on February 1, 2005; noted that the rights of the employer and employees under the *Canada Labour Code*, Part II are in no way restricted by the MoU; and, detailed other steps to be taken to address the issues of concern.
- [8] As the appeals officer assigned to the case and after reviewing the file, I confirm that Leah Walton has withdrawn the appeal lodged on her behalf by Alan Phillips. The case is closed.

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Michael McDermott  
Appeals Officer

## Summary of Appeals Officer's Decision

**Decision No.:** 05-008

**Applicant:** Leah Walton, Shepody Healing Centre

**Respondent:** Correctional Service Canada

**Key Words:** Correctional environment, healing centre, nurse, inherent danger

**Provisions:** *Code 129(7), 128*  
Regulation

### **Summary:**

The applicant appealed a decision of no danger issued by a health and safety officer, following a refusal to work. The applicant further withdrew her appeal and the appeals officer closed the file.