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Fired Worker Loses Suit Over Leave

By **David Forster**
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A FORMER DENVER paramedic dispatcher who sued after she was fired for missing too much work due to illnesses and injuries lost her case in federal court.

Early on the third day of trial, a federal judge decided he'd heard enough. The former dispatcher was not entitled to medical leave, he said, because she filed her request too late and because her doctor said she didn't need it anyway.

U.S. District Judge John Kane said he was reluctant to step into the jurors' shoes, and rarely does so, but as a matter of law there was no other possible verdict, so there was no point in continuing the trial.

Attorney Robert Liechty of Cross Liechty Lane, who represents plaintiff Shanya Crowell, said he was flabbergasted by the judge's decision and is appealing to the U.S. 10th Circuit Court of Appeals.

"My mouth just dropped," he said. "I had no idea what he was talking about."

Much of the case turned on a disputed incident on June 5, 2011, when Crowell complained of chest pain at work and was taken to the hospital because paramedics thought she might have a life-threatening condition.

That was one too many times missing work, even for medical reasons, and was the grounds for her termination a month later.

Crowell worked for Denver Health and Hospital Authority, which has strict attendance policies for dispatchers because of the critical job they perform, said Colin Walker, who along with Brent Johnson defended the employer. Both are attorneys at Fairfield & Woods.

Under Denver Health's policies, six absences within a 12-month period is grounds for termination, and leaving before a shift ends counts as an absence, regardless of the reason.

The June 5 incident was Crowell's sixth absence. She knew it and told paramedics she didn't want to go to the hospital for fear of losing her job. Crowell said they made her go anyway; Denver Health said it was her choice.

Colin Walker and Brent Johnson | LAW WEEK PHOTO **AMY VANCHINA**

In any case, her supervisor advised her the next day to apply for leave under the Family Medical Leave Act. The following day, June 7, she communicated her intention to do this and printed out the forms. She turned in the application 10 days later.

Crowell's doctor indicated that she needed both continuous leave and intermittent leave for injuries she suffered in a Feb. 5, 2011, automobile accident. Crowell said the pain she was suffering June 5 was from that accident.

Because of some ambiguous wording the doctor used in the intermittent leave section of the form, an administrator at Denver Health understood him to be saying that Crowell could not work and needed a block of time off, not a day off here and there when the pain from her injuries flared up.

Crowell's medical leave was granted, and made retroactive to June 17, the day she submitted her application.

When Crowell was told she'd been granted a period of continuous leave, she said that's not what she wanted. She couldn't afford to take off a big block of time. Instead, she wanted to take time off as needed.

The leave administrator called the doctor for clarification, and he told her that what he meant by his written comments was that Crowell would need continuous and intermittent leave after she had surgery to repair a shoulder injury from the accident. She didn't need any medical leave until then, he said.

Crowell was fired July 5, 2011, because of excessive absences, including leaving her shift early June 5 to go to the hospital for the chest pain.

Liechty argued at trial two weeks ago that Crowell's leave should have been made retroactive to June 5, because her reason for requesting leave was to make sure that absence was covered so she wouldn't lose her job. There was no sense in making it effective the day she submitted her application.

Denver Health's lawyers countered that the leave administrator didn't know about the significance of the June 5 incident, or that it might be related to her car accident, and that if Crowell was so concerned she should have gotten the application in sooner.

The defense lawyers challenged Crowell's argument that the reason it took so long was because she was unfamiliar with the process and had trouble getting help. Crowell had been granted medical leave before for another condition. She knew the drill, they said.

Liechty also argued that when the doctor indicated on the form that Crowell needed both continuous and intermittent leave, he meant just that. The doctor didn't indicate that the intermittent leave was to start after her surgery. Whatever assumptions the administrator made, and whatever the doctor may have told her later in a followup conservation, should not be held against his client, he said.

The defense lawyers countered that under the Family Medical Leave Act, an employer is allowed to contact a doctor for clarification, and that trumps some wording on a form that both sides agreed lacked clarity.

Liechty called two Denver Health employees to the stand who testified that she complied with the employer's policies for filing leave requests and that her injuries fell within the scope of what is covered under medical leave.

But after Liechty's last witness, Crowell, testified, the defense moved for a directed verdict, and Lane granted it.

Requests for FMLA leave must be filed within a reasonable time, and Crowell took too long, the judge said, calling the 10-day delay unreasonable. Lane also said the doctor's testimony made it clear that Cromwell was not suffering from a disabling injury at the time.

"For the life of me I can't understand the judge's ruling," Liechty said. "I think we've got a very good argument that this should be a directed verdict in Ms. Crowell's favor."

The way the defense lawyers see it, Crowell made some poor decisions and lost her job, and now she's trying to blame her employer.

Walker put it this way: "She had a very important job to do, and she wasn't doing it, and that's why she got fired, period." •

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