



Employee's Misrepresentation in Medical Questionnaires?

Many employers as part of their recruitment process require appointees to complete medical questionnaires. This can cause difficulties when at a later date the truthfulness of the content of the questionnaire is tested. In a recent case in England Cheltenham Borough Council brought a case for damages against an ex-employee for fraudulent and negligent misrepresentation in the pre-employment medical questionnaire as she failed to disclose her history of recurrent depressive illness.

Mrs Laird applied for the post of Managing Director at Cheltenham Borough Council. Following a thorough selection procedure she was offered the post which was "conditional upon medical clearance being obtained from our Medical Advisor". A medical questionnaire was enclosed and Mrs Laird completed same and answered the questions as follows:

"Do you normally enjoy good health? **Yes.**

Do you have either a physical and/or mental impairment? **No.**

State when you last had medical treatment and reason. **Bruising to lower back following a fall at work on 17 September 2001.**

Have you any ongoing condition which would affect your employment? **No – NB I get occasional migraine but this does not affect my ability to work or usually require time off from work."**

Mrs Laird commenced her new post on 4 February 2002. Due to some difficulties in the work place she raised grievances and was subsequently off work for a substantial period due to depression. A consultant psychiatrist's report was arranged by her employer to determine whether or not she was medically fit to undergo investigation. The psychiatric report revealed that Mrs Laird had a history of recurrent depressive illness dating back to 1997 in the course of which she had been treated with anti-depressants. He concluded that in her current state of health she was not fit to undergo the investigation. Furthermore the report stated that she was permanently incapable of undertaking her senior management position. On foot of this the council wrote to Mrs Laird and advised her that her contract was frustrated as there was no reasonable prospect of the investigation ever taking place or being concluded. Mrs Laird was retired on an ill health pension in March 2006.

The Council brought proceedings against Mrs Laird for negligent and fraudulent misstatement on the basis that her pre-employment medical questionnaire made no mention of depression, stress related illness or any anti-depressant medication. The claims were brought under the tort of deceit and under the Misrepresentation Act 1967.

The High Court held that there is no general duty of disclosure and non-disclosure would only give rise to a right of termination if it related to material which had been wilfully withheld – wilfully meaning deliberate or at least reckless withholding. The Court stated that the questionnaire was poorly drafted and contained "not particularly well phrased questions".

The council's claim for deceit and misrepresentation was dismissed as the Court held that the representations made by Mrs Laird in answer to the questionnaire were not false, nor, given the terms of the questions asked were they misleading. Her interpretation and responses to the

questions were those of a reasonable person in her position. Even if the representations had been false the Court stated that they would have gone on to state that they had not been fraudulently or negligently provided as they believed that Mrs Laird had honestly believed them to be true in that she never thought she was suffering from a depressive disorder but that she was suffering attacks of anxiety and stress due to specific events.

It is rare for an employer to bring such a claim. The normal remedy would be to terminate the contract of employment based on the grounds that the misrepresentations had induced the employer to enter into the contract of employment. The employer in this case was claiming almost £1million in damages to recover the ill health element of the employee's pension.

Employer's with queries should take legal advice to ensure that any medical questionnaires are correctly drafted.

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