

UK Stress Conference 2013

Rednal, Birmingham
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Absence Management III Health Case
Scott Donohoe – Stress Network

Introduction & background

- Give an overview of employer absence management policy
- Looking at the role of the Occupational Health provider
- Identify good or bad practice
- Long term and short term absence
- Implications for members of termination of contract on capability grounds

Background

- J Barnwell – Roadsweeper
- Age – 56
- Employer – Glasgow City Council – EPS
- Commenced employment 14 October 1996
- Member of LG Pension Scheme

Absence Facts

- Condition – Chronic Fatigue Syndrome
- Absence commenced – May 2002
- Long term absence – 19 days or more
- Interviews with manager and H.R.
- Interviews with O.H.P. Bupa
- Appointments with G.P. & Specialists

Absence Facts

- G.P. supplied a medical report which expressed the view that it would be unlikely that Mr Barnwell would ever be able to work as a road sweeper again
- BUPA Wellness stated he did not meet the criteria for ill health retiral
- A BUPA report recommended alternative employment for Mr Barnwell within the Clerical & Administrative field
- Department made the decision to terminate his contract from 21 April 2003 on capability grounds

Appeal Process

- Local Government Pension Scheme (Scotland) Regulations 1998
- Internal Dispute Resolution Procedure
- Regulation 26(1)
- Regulation 30
- Regulation 96
- Regulation 97

Appeal Process

- Stage 1 – Falkirk Council
- Stage 2 – Scottish Public Pensions Agency
- Stage 3 – The Pension Advisory Service
- Stage 4 – Pension Ombudsman

Stage 4 submission Unison

- The decision of BUPA was insufficient to meet criteria of Regulation 96(9)
- The Council should have ensured decisions were made by a doctor qualified in occupational health medicine
- BUPA Wellness is not independent of the Council
- Unison's own independent medical reports were ignored
- Should have been granted an unreduced pension under Regulation 30(5)

Stage 4 submission Glasgow City Council

- BUPA Wellness is independent of the Council
- BUPA did not recommend Cognitive Behaviour therapy (CBT)
- It was not for the Council or BUPA to say what treatments Mr Barnwell should try
- The Assistant Cleansing area manager had authority to inform Mr Barnwell of the BUPA decision

Stage 4 submission

Scottish Public Pensions Agency

- It is required by law to decide appeals within 2 months of receipt
- Because the individual had not received CBT they could not be said to be permanently incapacitated
- Given the 2 month timescale it cannot defer a decision until the result of treatment is known
- Waiting for the result of further treatment would be an unwarranted drain on the public purse £500 - £600
- Sometimes applicants refuse to undergo the recommended treatment
- An individual can apply for ill health retiral again & again

Ombudsman's decision

- The appeal was upheld – 16 July 2007
- Found BUPA were not independent in the way required by the Regulations
- Found the BUPA advice of non-manual work as comparable work for a roadsweeper as unsound
- Critical of the Stage 1 decision maker who failed to seek an independent medical opinion
- Critical of the Stage 2 decision which cited cost as a major reason for not exploring the issue of treatment via CBT within a reasonable timescale

Directions

- Within 56 days of the decision, SPPA were instructed to reconsider their decision made at Stage 2 of the process, taking account of further appropriate medical evidence
- If the decision is reversed then the Council should make arrangements for back payment of pension from 21 April 2003
- Within 28 days of the decision the Council instructed to make a payment of £250 to Mr Barnwell

Further information

- SPPA decided Mr Barnwell did meet the criteria for ill health retiral
- Received backdated pension rights amounting to a five figure sum
- UNISON received a report in May 2007 from a Consultant Psychiatrist which stated “ I can conclude that on the balance of probabilities in my view it is unlikely that Mr Barnwell will be fit for gainful employment now or in the foreseeable future ”

Conclusions & Observations

- Proved to be an extremely difficult & demanding case
- Highlighted major flaws & unsound decision making within the statutory process
- Timespan of over 4 years
- Appropriate medical evidence & reports were the key to winning the case
- Additional training courses crucial for Stewards & Safety Reps through the TUC, Branch etc
- UK Government – Carol Black review
- Fit Note & Westminster agenda on Absence

European context – Wellbeing at Work

- 2013 Survey
- Job satisfaction
- Good working conditions
- Fair treatment
- Quality of work
- Health at Work
- Physical & mental wellbeing

Issues & Challenges

- Social problems & stress due to recession
- Keeping momentum in economic chaos
- Poor health of the general population
- Getting stakeholders to work together
- Influencing healthcare professionals
- Engaging effectively with SME's
- Improving people's understanding of WAW

WAW Initiatives

- Netherlands, National Government
- Vitality Package & Action plan
- 2012 – 2014
- Ensure people can keep working until retirement age in a healthy productive way
- Supporting SME's to improve working conditions
- Promotion of healthy lifestyle

WAW Initiatives (2)

- Osram, Czech Republic
- Holistic approach
- Skill development
- Health & wellbeing improvement
- Positive family friendly policies
- Schedule of shifts according to needs
- Subsidised transport to work

WAW Initiatives (3)

- Iceland, VIS Insurance
- Promoting health & safety
- Good communication policy
- Staff, management & customers
- Life/Work balance strategy
- Part time & flexible working schemes
- Lifelong learning & development
- Regular social events (with families)

Further information

- S.donohoe@glasgowcityunison.co.uk
- www.pensions-ombudsman.org.uk
- www.spfo.org.uk
- www.glasgowcityunison.co.uk
- www.workstress.net
- www.scottishhazards.co.uk
- www.osha.europa.eu/en/topics/whp

Questions ?
