

**Occupational Health and Safety Council**  
**Appeal Hearing**  
May 14, 2009

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**Decision upon Application By:**

**John White – Appellant**

**And**

**Canonbie Contracting Limited – Respondent**

**And**

**Workplace Health and Safety**

**Board Members**

Eugene Sarrasin    Appeal Panel Chair, Employer Representative,  
Occupational Health and Safety Council  
Greg Harris        Public Representative  
Occupational Health and Safety Council  
Judy Barry         Worker Representative  
Occupational Health and Safety Council

**Appearances:**

For the appellant:    John White, Appellant  
Debby Perkins, Appellant Support/Witness

For the respondent: Matt MacKenzie, HR Canonbie  
Vern Middleton, EHS Loss Control Manager

For Workplace Health and Safety:

Mark A. Greene, Legal Council for Workplace Health and Safety  
(WH&S)

Cherie Whelan, Occupational Health and Safety Officer

Randy Gauthier, Manager of Compliance Programs

**Government  
of Alberta**   
Employment  
and Immigration

**Occupational Health and Safety Council**

The Appeal Panel (the Panel) convened on May 14, 2009 to hear an appeal pursuant to Section 37 of the *Occupational Health and Safety (OH&S) Act. (Act)*

Section 37 of the *Act* reads:

*37(1) A worker who has reasonable cause to believe that that the worker has been dismissed or subjected to disciplinary action in contravention of section 31(5) or 36 may file a complaint with an officer.*

*(2) An officer who receives a complaint under subsection (1) shall prepare a written record of the worker's complaint, the investigation and the action taken and shall give the worker and the employer a copy of the record.*

*(3) A worker or an employer who receives a record under subsection (2) may request a review of the matter by the Council by serving a notice of appeal on a Director of Inspection within 30 days from the receipt of the record.*

*(4) After considering the matter, the Council may by order*

*(a) dismiss the request for a review, or*

*(b) require one or more of the following:*

*(i) reinstatement of the worker to the worker's former employment under the same terms and conditions under which the worker was formerly employed;*

*(ii) cessation of disciplinary action;*

*(iii) payment to the worker of money not more than the equivalent of wages that the worker would have earned if the worker had not been dismissed or had not received disciplinary action;*

*(iv) removal of any reprimand or other reference to the matter from the worker's employment records.*

*(5) If the worker has worked elsewhere while the dismissal or disciplinary action has been in effect, those wages earned elsewhere shall be deducted from the amount payable to the worker under subsection 14(b)(iii).*

*(6) An appeal lies to the Court of Queen's Bench from an order of the Council on a question of law or a question of jurisdiction and on hearing the matter the Court may make any order, including the awarding of costs, that the Council considers proper.*

*(7) An appeal under subsection (6) shall be made by way of originating notice within 30 days from the date that the order of the Council is served on the person appealing the order of the Council.*

*(8) The commencement of an appeal under subsection (6) does not operate as a stay of the order of the Council being appealed from except insofar as a judge of the Court of Queen's Bench so directs.*

**The specific reasons for appeal are:**

- Mr. White believes his employment with Canonbie Contracting Limited was terminated as a result of his acting in compliance with the Occupational Health and Safety Act the regulations and adopted Code.

**The respondents contend that:**

- Mr. White terminated his own employment by giving verbal notice that he quit.

**The Issue to be Resolved:**

Was Mr. White disciplined for acting in compliance of the Act, Regulation and Code?

**Submissions Considered by the Appeal Panel**

*From the Appellant, John White*

- OHSC Appeal Questionnaire – completed by John White
- Evidence by Witness – Debby Perkins
- Evidence presented by John White
  - Verbal testimony
  - Written witness statements
  - Exhibit B – compensation for tools document

*From the Respondent, Canonbie Contracting Limited OHSC*

- Verbal testimony by representatives of Canonbie Contracting Limited – Matt MacKenzie, HR and Vern Middleton, EHS Loss Control Manager
  - Employment termination form for John White
  - John White's time sheet for last week of employment
  - Accident/Incident Reports
    - October 5, 2008 – Swing gate incident
    - October 5, 2008 – Hand Guardrail incident
    - October 19, 2008 – John White back injury
  - Canonbie's accident/incident investigation standard (document 001-03)
  - Written witness statements
  - Exhibit C – Employment termination for Stuart Stevenson
  - Exhibit D – Physician's WCB progress report C-151
  
- *From Workplace, Health and Safety (WH&S)*
  - Submission binder produced from WH&S, containing appellant's information, WH&S investigation, investigating officer notes, interviews and findings
  - Summation document prepared and presented by Mark A Greene

**Facts:**

The following is a list of facts agreed to by the parties and considered by the appeal panel:

- John White was an employee of Canonbie Contracting Limited
- John White was diligent in his efforts to create and maintain a safe workplace
- John White did initiate reports and corrected safety deficiencies at the Canonbie Contracting Limited, Muskeg River Project #CPX1
- On October 19, 2008, John White sustained a workplace back injury as a result of a worksite safety deficiency
- On October 28, 2008, Dr. J. C. Bouwer completed a progress report indicating Mr. White was fit to return to pre-accident work
- John White left the worksite prior to the shift end on November 1, 2008
- John White was absent from the worksite on November 2 & 3, 2008
- John White's employment with Canonbie Contracting Limited ended on November 3, 2008

**Position of the Parties and Remedy Requested:**

**Appellant, John White**

John White feels that Canonbie Contracting Limited terminated his employment for raising health and safety concerns.

The remedy sought: Initially at the time of the request for appeal John White requested reinstatement to his former employment under the same terms and conditions under which he was formerly employed and payment of money not more than the equivalent wages that he would have earned if he had not been dismissed or had not received disciplinary action.

During summation of the appeal and in direct response to a question from the Chair regarding the specific remedy he was seeking, John White stated he required no further remedy than the hearing that had just taken place with the exception of an amendment to his record of employment which currently indicates that he quit.

**Respondent, Canonbie Contracting Limited**

Canonbie Contracting Limited stands by the company's employment termination form which indicates that on November 3, 2008 John White verbally quit.

**Decision:**

In respect to Mr. White's allegation that he was terminated as a result of raising health and safety concerns the Legal Test to determine a Contravention of s.36 of the *Act* includes:

1. The worker must have been acting in compliance with the *OHS Act*, Regulation, or Code;
2. Disciplinary action must have been taken against the worker; and
3. The disciplinary action taken against the worker was by reason of that worker acting in compliance with the *OHS Act*, Regulation, or Code.

In response to:

1. The worker must have been acting in compliance with the *OHS Act*, Regulation or Code.

It is the decision of the Panel that Mr. White was acting in compliance with the *OHS Act s.2 (2)*. Documented and verbal evidence supports that John White was actively involved in identifying and correcting safety concerns at the worksite.

2. Disciplinary action must have been taken against the worker.

It is the decision of the Panel that disciplinary action was taken against Mr. White by reason of termination of his employment. Documented and verbal evidence supports the worker was given an ultimatum to quit, be fired or laid off, which removed all choice from the employee to continue his employment with Canonbie Contracting Limited. Canonbie Contracting Limited contracted the services of another scaffolding company to replace the existing employees thereby constituting a layoff. The Panel hereby orders Canonbie Contracting Limited to amend Mr. White's record of employment to reflect that the worker was laid off and compensate Mr. White in accordance with Alberta Labour Standards or the Collective Agreement of the worker, whichever is the greater.

3. The disciplinary action taken against the worker was by reason of that worker acting in compliance with the *OHS Act*, Regulation, or Code.

It is the decision of the Panel that although John White raised worksite health and safety concerns that effected the time commitments of the project, there is inconclusive evidence that the effect on the timelines was substantial enough to have been the cause of the termination of Mr. White's employment.

**Occupational Health and Safety Council Appeal Panel**