

Michigan Medical Marijuana Law Allows Employees Terminated for Positive Marijuana Test Results to Receive Unemployment Benefits

By Roger S. Kaplan on October 28, 2014

A Michigan appellate court has held that an employee who holds a state medical marijuana card is not disqualified from receiving unemployment benefits after the employee has been terminated for failing a drug test, where the employee received a positive test result for marijuana or its metabolites. Thus, the question we posed earlier this year, shortly after one of the three cases involved in the consolidated Court of Appeals decision was determined by a lower court – “Will Positive Medical Marijuana Test Result In Denial of Unemployment Benefit?” – has been answered in the negative. *Braska v. Challenge Mfg. Co. and Dep’t. of Licensing & Reg. Affairs, Unemployment Insurance Agency*, (DLRA/UIA) No. 313932 (Kent Circuit Court); *Kemp v. Hayes Green Beach Mem. Hosp. and DLRA, UIA*, No. 315441 (Ingham Circuit Court); and *Kudzia v. Avasi Services, Inc. and DLRA, UIA*, No. 318344 (Macomb Circuit Court), decided October 24, 2014.

Each of the employees involved had a registration identification card under the Michigan Medical Marijuana Act (MMMA) and was fired based on a positive drug test result. There was no evidence they used marijuana other than as permitted under the Act. They had not appeared to be impaired at work.

The appeals court concluded that although the Michigan Employment Security Act (MESA), which authorized the payment of unemployment insurance, provided a disqualification for a suspension or termination resulting from a positive drug test, the MMMA preempted or trumped that statute by granting a qualifying patient “broad” immunity from “arrest, prosecution, or penalty in any manner, or den[ial of] any right or privilege, including but not limited to civil penalty...for the medical use of marijuana in accordance with this act....”

The Court found that a denial of unemployment benefits by a state actor, the DLRA/UIA, would constitute a proscribed “penalty” under the MMMA, since the claimants here otherwise met the threshold requirements for the receipt of unemployment benefits and the only reason they were disqualified was for their positive test results for marijuana. Thus, the court held, the claimants had to forfeit their right to unemployment benefits simply because they used medical marijuana.

The court accordingly rejected a DLRA argument that disqualification was not a penalty; it was, it said, if a claimant otherwise satisfied the requirements for benefits. In response to the agency’s argument that the court should distinguish between the act of failing a drug test from the medical use of marijuana, the court stated that it

declined the “invitation to ignore the basis for the positive drug tests and engage in linguistic gymnastics in an attempt to avoid the plain language of the MMMA.” The two were “inextricably intertwined,” the court said.

The court likewise rejected a contention that in upholding an award of benefits, the court would have to disregard the MMMA’s provision that employers are not required to accommodate the use of marijuana in the workplace, saying that the provision did not say that an employer is not required to accommodate the medical use of marijuana, including its “internal possession.” Instead, the court concluded that only the ingestion of marijuana in any workplace or working while under the influence of marijuana need not be accommodated. There was no evidence the claimants either ingested marijuana at work or worked under its influence, the court said.

The court rejected the DLRA’s reliance on a Sixth Circuit decision, *Casias v. Wal-Mart*, 695 F.3d 428 (6th Cir. 2012), to support its argument that the MMMA does not apply to private employers, stating such reliance was unpersuasive. First, the court noted that federal court precedent is not binding on a state court. Second, the issue was not whether a private employer violated the MMMA, as in *Casias*, but whether the Michigan Compensation Appellate Commission (MCAC), as a state actor, had done so. There was no question the MMMA applied to that agency.

Accordingly, the appeals court upheld the lower court decisions reversing the decisions of the MCAC denying the claimants benefits.