JONATHAN ASCHENBRENER, Appellant v SASKATCHEWAN HEALTH AUTHORITY, Respondent

LRB File Nos.: 130-24 and 066-21; October 2, 2025
Vice-Chairperson, Carol L. Kraft (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*
Citation: *Aschenbrener v Saskatchewan Health Authority,* 2025 SKLRB 47

The Appellant, Jonathan Achenbrener: Self-Represented

Counsel for the Respondent, Saskatchewan Health Authority: Paul Clemens

Appeal of Adjudicator's Addendum Decision – Section 4-8 of *The Saskatchewan Employment Act* – Work Refusal Alleged Under Section 3-31 – Psychological Harm and Accommodation – Non-Suit Motion – No Prima Facie Case Established – No Error of Law – Appeal Dismissed

REASONS FOR DECISION

Background:

[1] Carol L. Kraft, Vice-Chairperson: This matter concerns an appeal by Mr. Jonathan Aschenbrener (the "Appellant") under Sections 3-53 and 3-54 of *The Saskatchewan Employment Act, SS 2013, c S-15.1* (the "Act"), following the adjudicator's second decision. The second decision was issued in response to directions from the Labour Relations Board in its earlier decision: *Jonathan Aschenbrener v Saskatchewan Health Authority*, 2023 CanLII 61453 (SK LRB) ("*Aschenbrener*, 2023").

[2] Mr. Aschenbrener was hired by the Saskatchewan Health Authority ("SHA") in 2013. He worked exclusively at SHA Wascana location as an Environmental Service Worker, and, at various times, he worked as a supervisor. His employment was terminated on February 25, 2021.

[3] In or around 2020, Mr. Aschenbrener made requests to his Employer for accommodation in the workplace. He was on a leave of absence while the parties exchanged communications which included medical documentation about accommodation and return to work.

[4] In 2021, when SHA required that Mr. Aschenbrener attend work, he refused, citing dangerous conditions. As a result of his refusal to attend work, Mr. Aschenbrener was considered absent without leave. SHA then requested that he attend an in-person meeting. Mr.

Aschenbrener made a request to attend the meeting electronically, which request was refused. After he did not attend the meeting, SHA terminated his employment.

[5] On or about March 3, 2021 Mr. Aschenbrener filed a complaint of discriminatory action against SHA alleging that returning to work at the SHA was unusually dangerous to his health and safety. On May 10, 2021, the Occupational Health and Safety Officer ("OHS Officer") issued a decision finding that the termination of his employment was not an unlawful discriminatory action contrary to s. 3-35 of the Act. The complaint was dismissed.

[6] Mr. Aschenbrener appealed that decision pursuant to s. 3-53. An adjudicator was selected pursuant to s. 4-3 of the Act. At the hearing before the adjudicator, SHA brought an application for non-suit, which the adjudicator granted, and thereby dismissed the appeal and upheld the decision of the OHS Officer. The adjudicator's decision was rendered August 26, 2022 (the "First Adjudicator Decision").

[7] Mr. Aschenbrener appealed the First Adjudicator's Decision to the Board pursuant to s. 4-8 of the Act.

[8] The Board heard the appeal. In *Aschenbrener,* 2023, the Board dismissed the majority of Mr. Aschenbrener's grounds of appeal, finding that the adjudicator's original decision was procedurally fair and that the non-suit application was properly considered. However, the Board identified a narrow set of legal errors relating to the adjudicator's treatment of certain evidentiary issues. Specifically, the Board found that the adjudicator had mischaracterized aspects of the Occupational Health and Safety Officer's decision, disregarded relevant evidence, and made final findings of fact at the non-suit stage.

[9] As a result, the Board remitted the matter back to the adjudicator for the limited purpose of reconsidering whether the existing evidentiary record could reasonably support the inferences Mr. Aschenbrener sought to have drawn in support of his work refusal. Specifically, the Board identified the following concerns:

1. Whether the adjudicator disregarded relevant evidence contained in the Occupational Health and Safety Officer's decision (Exhibit A-7), particularly regarding alleged harassing conduct and psychological harm;

2. Whether the adjudicator failed to consider medical notes dated June 23, 2020 (Exhibit A-2) and September 10, 2020 (Exhibit A-6), and whether those notes supported Mr. Aschenbrener's claim of psychological harm;

3. Whether the adjudicator properly assessed the accommodation evidence, including whether SHA met the accommodation recommendations made by Mr. Aschenbrener's physician;

4. Whether the adjudicator applied the correct legal test for a non-suit motion and properly distinguished between permissible inferences and impermissible findings of fact.

[10] In response to the Board's direction, on June 12, 2024, the adjudicator issued an Addendum to Decision ("Addendum").

[11] She first addressed the concern that she had disregarded relevant evidence from the Occupational Health and Safety Officer's decision (Exhibit A-7). Upon re-examination, she concluded that while the OHS Officer used language suggesting SHA's conduct "could" or "may" affect a worker's psychological wellbeing, there was no direct finding that SHA had harassed Mr. Aschenbrener or caused him psychological harm. The adjudicator emphasized that Mr. Aschenbrener's interpretation of the OHS decision overstated its conclusions, and she could not rely on it as objective evidence of harm. She also clarified that she had not overturned any factual findings, as none had been made by the OHS Officer in the first instance.

[12] Next, the adjudicator addressed the Board's concern that she may have disregarded medical notes in Exhibits A-2 and A-6. She confirmed that these documents were considered multiple times in her original decision and were referenced in several paragraphs, including paragraph 87. The medical notes contemplated Mr. Aschenbrener's return to work and did not objectively support a claim of psychological harm. The adjudicator reiterated that a diagnosis of psychological harm must come from a qualified medical professional and be supported by objective evidence, which was not present in the materials provided.

[13] The adjudicator conducted a detailed review of the accommodation recommendations made by Mr. Aschenbrener's physician (Exhibit A-3) and assessed whether the evidence could reasonably support the inference that SHA failed to meet those requests. She examined each accommodation item individually and noted that, in most cases, Mr. Aschenbrener either acknowledged SHA's efforts or did not provide specific evidence of how the accommodations were lacking. Viewing the evidence in the light most favourable to Mr. Aschenbrener, the

adjudicator determined that the evidence did not reasonably support a conclusion that SHA's workplace was unusually dangerous due to unmet accommodations.

[14] The adjudicator ultimately concluded that the evidence, including the accommodation-related materials, did not establish a prima facie case that Mr. Aschenbrener had reasonable grounds to refuse to attend work. Accordingly, she upheld SHA's non-suit application and dismissed the appeal.

[15] Mr. Aschenbrener's appealed the adjudicator's decision in the Addendum to the Board.

Argument on behalf of Mr. Aschenbrener:

[16] In this appeal, Mr. Aschenbrener raises three primary concerns with the adjudicator's Addendum decision:

1. That the adjudicator disregarded his testimony and failed to account for the challenges faced by a hearing-impaired worker who is not accommodated;

2. That the sufficiency of medical evidence regarding his hearing disability should not preclude consideration of whether the risk of psychological harm was reasonable; and

3. That the adjudicator failed to draw inferences from his documents in the light most favourable to him.

Argument on behalf of SHA:

[17] The Respondent, SHA, submits that the adjudicator properly reconsidered the relevant evidence and correctly concluded that the Appellant did not have reasonable grounds to believe his workplace was unusually dangerous.

[18] SHA argues that the OHS Officer's decision (Exhibit A-7) did not contain a factual finding of psychological harm specific to the Appellant, but rather used conditional language and referred generically to "a worker."

[19] SHA further contends that the medical documentation, including Exhibits A-2 and A-6, was appropriately considered and does not support an inference of psychological harm, as both documents contemplate a return to work.

[20] With respect to accommodation, SHA maintains that the recommendations made by the Appellant's physician were substantively and reasonably addressed, and no specific unmet request was shown to objectively support a conclusion of unusual danger.

[21] SHA also notes that the Appellant's appeal introduces fresh evidence not presented at the adjudication hearing, which it submits cannot be considered at this stage.

[22] Overall, SHA asserts that the adjudicator followed the Board's direction, applied the correct legal framework, and committed no error of law in the second decision.

Issue:

[23] The issue before the Board is whether the adjudicator committed an error of law in her Second Decision by failing to properly consider relevant evidence, applying the incorrect legal test, or drawing irrational inferences of fact amounting to an error of law.

Jurisdiction and Standard of Review:

[24] As set out in *Aschenbrener*, 2023 the Board's jurisdiction on appeal is limited to questions of law. The Board does not re-weigh evidence or substitute its own findings for those of the adjudicator. The Board must determine whether the adjudicator:

a) Applied the correct legal test;
b) Considered all relevant evidence;
c) Made findings based on no evidence, irrelevant evidence, or in disregard of relevant evidence;
d) Drew irrational inferences of fact amounting to an error of law.

[25] Secondly, *Aschenbrener*, 2023 confirmed that the adjudicator acted within her discretion under section 4-4(2) of the *Act* in choosing to proceed by way of non-suit. She applied the correct legal test, which requires determining whether the complainant has presented a prima facie case at the close of their evidence, viewed in the light most favourable to them. In doing so, the adjudicator relied on the test articulated in *K.V. Miazga*, 2003 SKQB 451 (CanLII) ("*Miazga")*:

> *16. The general legal test to be applied in determining non-suit applications is well established. It is whether a prima facie case has been made out at the conclusion of the plaintiffs' case in the sense that a reasonable trier of fact (a judge or properly instructed jury) could find in the plaintiffs' favour on the basis of the uncontradicted evidence adduced. Where the nature of the case requires the drawing of inferences of fact from other facts established by direct evidence, the test includes the question of whether the inferences*

> *that the plaintiffs seek could reasonably be drawn from the direct evidence adduced if the trier of fact chooses to accept the direct evidence as fact.*
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> *17. I use the term prima facie case to indicate that the applicants have a lesser onus than having to demonstrate the absence of "any" evidence on a material issue. The case law clearly establishes that the applicants need only demonstrate the absence of "sufficient" evidence, which if left uncontradicted, could satisfy a reasonable trier of fact that the case has been made out on a balance of probabilities. The ruling on a nonsuit motion is a question of law. The determination of the credibility or believability of the evidence is a question of fact to be subsequently determined in the action if the non-suit application fails.*

Analysis:

[26] As a preliminary matter, it is important to clarify the scope of the adjudicator's mandate on reconsideration. The Board did not direct the adjudicator to receive new evidence or entertain further submissions. Her task was limited to reassessing the existing evidentiary record in accordance with the Board's instructions. This procedural constraint is central to understanding both the nature of the Addendum decision and the limits of the adjudicator's findings. Notably, the Appellant made no application to introduce fresh evidence. No evidence other than that contained in the original record was reviewed.

The OHS Decision & Medical Notes

[27] In *Aschenbrener,* 2023, the Board addressed the Appellant's argument that the adjudicator overturned the findings of another decision maker without investigation, weighing of evidence, or determining credibility. Specifically, the Appellant took issue with the adjudicator's determination in relation to the OHS Decision dated December 10, 2020. In effect, he stated that the adjudicator failed to consider relevant evidence of harassing conduct as found by that OHS officer, or overturned the findings of fact that were made by the OHS officer in that decision, and thereby discounted the existence of reasonable grounds. The Board referred to parts of the OHS Decision as follows:

> ***[108]*** *In the earlier decision, the OHS Officer found that, although there was no discriminatory action in his view, the Appellant had been treated in a heavy-handed manner when he attempted to raise concerns with illicit sharps in the workplace. He stated that the letter of expectation, which was disciplinary in nature, "could be construed as harassing" and "could serve to adversely affect the worker's psychological wellbeing". He also observed "how extraordinarily difficult it must be for any worker in this facility to exercise their 3 basic worker rights as they pertain to this issue".*
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> ***[109]*** *He stated that after the impugned meeting, the Appellant went off on the first of multiple medical leaves due to the "alleged" impact on his mental health. He then said that the impugned actions "could cause a worker to be humiliated or intimidated and could serve to adversely affect the worker's psychological wellbeing". And, finally, he declared that "if these letters routinely use [similar language] these letters may serve to cause the worker ongoing psychological harm".[24] (the footnote states: "The Board notes that there is also*

an email in evidence in which the decision-maker attempted to explain the decision after the fact."

[110] *In the decision under appeal, the adjudicator found that the following statement made by the Appellant was not supported by the evidence: "…the [OHS] Officer identified harassing behavior which would affect a worker psychologically, which it had (leading to months of time off work)". At paragraph 101, she observed that, instead, the first reference to psychological harm was in Exhibit A-17, an email in which the Appellant describes the decision of the OHS Officer. In the email, the Appellant states, "I worry that such harassment would continue and lead to more psychological harm to myself, as it has in the past". The implication of the adjudicator's decision is that the Appellant, in his email, had misdescribed the OHS Officer's decision.*

[111] *Although the OHS Officer's decision may or may not be found to have definitively determined that the Appellant suffered psychological harm, it cannot possibly be said that Exhibit A-17 was the first reference to psychological harm, generally. The adjudicator's reasons disregarded the passages from the OHS Officer's decision, as noted above, which referred to psychological wellbeing and psychological harm, and which described the conduct of the Employer that could cause a worker psychological harm.*

[112] *Relatedly, the adjudicator found that the Appellant should not expect SHA to respond to claims of psychological harm without supporting medical evidence – that instead of "psychological harm", the medical evidence referred to "needs". The adjudicator did not mention the notes contained in the forms, dated June 23, 2020 and September 10, 2020, or explain whether those notes may or may not have supported the Appellant's claims of "psychological harm". In this respect, the reasons disregarded the foregoing medical notes and did not consider what inferences might be drawn from those notes.*

[113] *The preceding findings were made in support of the adjudicator's observations that the Appellant was militant and resolved and that he attempted to resolve his accommodation complaints through section 3-31.*

[114] *Given the foregoing, the Board cannot conclude that the adjudicator considered all such inferences of fact that she would be warranted in drawing from the direct facts (in the light most favourable to the Appellant). To be sure, what inferences are to be drawn are not for this Board to decide.*

[28] In the Addendum, the Adjudicator revisited the OHS Officer's decision and Mr. Aschenbrener's evidence, and states as following in her Addendum:

6. At the hearing, Mr. Aschenbrener testified that the written decision by the OHS Officer (Exhibit A-7), made a direct finding there was harassing behaviour from SHA, towards Mr. Aschenbrener, which caused Mr. Ashenbrener (sic) psychological harm. Mr. Ashenbrener's testimony, on this point, is referenced in paragraph 100 of the Decision:

> *…the Occupational Health Officer identified harassing behaviour which would affect a worker psychologically, which it had (leading to months of time off work).*

7. During the hearing, I took Mr. Ashenbrener's testimony at face value that, in Exhibit A-7, there had been a clear finding of fact by the OHS Officer of harassing behaviour by SHA towards Mr. Ashenbrener. However, close review of the OHS decision quickly revealed there was a discrepancy between what Mr. Ashenbrender stated the document said/concluded and what was actually written.

> *8. While the OHS Officer wrote it was possible the behaviour of the SHA could affect a worker psychologically, there was not a direct finding of fact of same. Moreover, specific to this case, there was not a direct finding by the OHS Officer that the actions of SHA had directly caused Mr. Ashenbrener psychological harm. I appreciate that Mr. Ashenbrener may have felt that way, however, direct psychological harm was not the conclusion made by the OHS Officer in his decision of December 10, 2020, as represented by Mr. Ashenbrener at the hearing.*
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> *9. As the arbitrator of this matter, I did not feel I could, relying upon the OHS decision presented by Mr. Ashenbrener as his evidence make this finding of fact as well. Nor could I accept Mr. Ashenbrener's statement at the hearing that, on the basis of Exhibit A-7, there was a finding of fact by the OHS Officer directly connecting harassing behaviuor by SHA as leading to the psychological harm of Mr. Ashenbrener. Instead, the Officer used generic terms such as "a worker" or "the worker" and phrases such as "could" and "may".*
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> *10. Accordingly, in answer to the query whether the adjudicator failed to consider relevant evidence of harassing conduct as found by that Officer (para 107 of Aschenbrener, 2023), there was not a direct factual finding by the Officer that SHA harassed Mr. Ashenbrener and caused him psychological harm. As such, in further answer to the question that the arbitrator overturned findings of fact that were made by the OHS Officer in that decision (Exhibit A7), and thereby discounted the existence of reasonable grounds, it was not possible for the arbitrator to overturn these findings of fact when they were not made in the first instance by the OHS Officer.*

[29] Accordingly, in answer to the query whether the adjudicator failed to consider relevant evidence of harassing conduct as found by the Officer (para 107 of *Aschenbrener, 2023*), there was no direct factual finding by the Officer that SHA harassed Mr. Aschenbrener or caused him psychological harm. As such, the adjudicator could not have overturned findings that were not made in the first instance, and her conclusion did not discount any established factual determinations.

[30] The Adjudicator next reviewed the medical notes as directed by the Board in *Aschenbrener,* 2023. The Board had stated that the adjudicator's reasons disregarded the medical notes and did not consider what inferences might be drawn from those notes (para 112). For ease of reference, the notes are:

- **Exhibit A-2** which is "Statement of Medical Restrictions" dated June 23, 2020 from Mr. Ashenbrener's physician, Dr. Mohamed, which referred to Mr. Aschenbrener needing accommodation to be "able to do better work".

- **Exhibit A-6** which is a letter from SHA to Mr. Aschenbrener dated August 28, 2020, requesting further information from his medical provider. On September 10, 2020, Dr. Mohamed responded. In response to the question "is it safe for Mr. Aschenbrener to continue to work in his unit without risk to the safety and

> care of himself, patients and other staff", Mr. Mohamed wrote "yes he is safe for himself and people around him."

[31] The Appellant argues that the adjudicator failed to interpret the evidence in the light most favourable to him, as required at the non-suit stage. He submits that the adjudicator misread the meaning and context of several documents, despite his testimony regarding their significance. In particular, he challenges the adjudicator's reliance on paragraph 87 of the Addendum, which outlines medical evidence the adjudicator viewed as inconsistent with a claim of unusual danger.

[32] The Appellant contends that his physician's notes, particularly Exhibits A-2, A-3, A-6 and A-9, should be understood as supporting his ability to work *if* accommodations were provided. He asserts that the adjudicator misconstrued Exhibit A-6, which was a response to SHA's decision to place him on medical leave due to concerns about suicidal ideation. He maintains that his physician disagreed with the leave and instead recommended accommodation.

[33] The Appellant further argues that the adjudicator overlooked the context of his communications, including his statement that routine was beneficial to his mental health and that he required written communication due to his hearing impairment. He maintains that his refusal to work was not a tactic, but a response to deteriorating mental health and a lack of accommodation, which he believed placed him and others at risk.

[34] In sum, the Appellant submits that the adjudicator failed to draw reasonable inferences from the medical documentation and his testimony, and that the evidence, properly interpreted, supports a finding that the workplace was unusually dangerous in the absence of accommodation.

[35] The adjudicator's Addendum reflects a thorough reconsideration of Exhibits A-2 and A-6. She confirmed that these medical notes were not disregarded and were referenced in multiple paragraphs of her original decision, including paragraph 87. Importantly, the Board notes that she did not merely assess whether the notes contained a formal diagnosis of psychological harm, but also considered whether the language used, such as references to "needs", could reasonably support an inference of unusual danger.

[36] The adjudicator concluded that, viewing the evidence in the light most favourable to the Appellant, the notes contemplated a return to work and did not support a prima facie case of psychological harm, either individually or cumulatively.

[37] Her analysis demonstrates compliance with the Board's instruction to assess the inferential value of the medical documentation, not simply its diagnostic content. She did that and she concluded that these elements, even when viewed favourably to the Appellant, did not reasonably support an inference of unusual danger.

[38] The adjudicator also noted the absence of contemporaneous medical documentation identifying a hearing impairment or requesting related accommodation, which limited the weight that could be given to the Appellant's subjective concerns.

[39] The Board has considered the Appellant's submissions regarding the adjudicator's treatment of the evidence. His central concern is that she failed to interpret the medical documentation and his testimony in the light most favourable to him, as required at the non-suit stage. He argues that she mischaracterized the context and meaning of several exhibits, particularly those relating to his physician's recommendations and mental health status.

[40] While the Appellant's interpretation reflects his personal experience and understanding of his condition, the adjudicator's role was not to resolve factual disputes or make final findings. Her task was to determine whether the evidence, viewed most favourably to the Appellant, could reasonably support the inference that the workplace was unusually dangerous. This approach is consistent with the test articulated in *Reid v Krause*, 2000 SKCA 32 (CanLII) where the Court of Appeal held that the question on a non-suit motion is whether there is sufficient uncontradicted evidence to satisfy a reasonable trier of fact. The adjudicator reviewed the medical notes, correspondence, and testimony, and concluded that the evidence did not support a prima facie case under section 3-31 of the Act.

[41] The Board now turns to the issue of accommodation.

Accommodation

[42] In *Aschenbrener, 2023*, the Board emphasized that the adjudicator needed to fully assess whether the accommodation evidence could support the inference that the workplace was unusually dangerous. The Appellant had argued that SHA's failure to meet his accommodation requests created such danger. While the adjudicator found that objective evidence of danger was lacking (Decision at paras 87–88), the Board noted that this conclusion was reached before a complete review of the accommodation evidence. It was therefore necessary to determine whether the alleged failure to accommodate could reasonably support the Appellant's refusal to work.

[43] In response, the adjudicator conducted a detailed item-by-item review of the accommodations recommended by the Appellant's physician and compared them to SHA's responses (Addendum at paras 18–27). She found that the Appellant either acknowledged that SHA had met the accommodation requests or failed to explain how the efforts were unreasonable. Even when the evidence was viewed in the light most favourable to the Appellant, she concluded that SHA had made reasonable efforts to accommodate him. As she stated:

> *26. Overall, Mr. Ashenbrener's (sic) evidence provided very little, if any, substantive criticism as to the reasonableness of the accommodation offered by SHA. As reviewed in detail above, Mr. Ashenbrener either agreed that SHA had met the accommodation request or was unable to explain why, or how, accommodation efforts made by SHA were not reasonable. Even with the evidence viewed in the most favourable way to Mr. Ashenbrener, when reviewing the accommodation requests made by his own physician, and Mr. Ashenbrener's evidence as to what the employer provide, I find that reasonable efforts were made by the employer to address the accommodations in a substantive way.*
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> *27. As such, with respect to the issue of whether the evidence objectively establishes that accommodation efforts were not made by the employer such that Mr. Ashenbrener's attendance at the workplace was unusually dangerous to his health and safety, I find that it does not. As a result, I further find that Mr. Ashenbrener did not have reasonable grounds to refuse to attend work.*

[44] The adjudicator acknowledged the Appellant's need for accommodation and his subjective experience of psychological distress. However, she correctly focused on whether the evidence demonstrated an objective danger that would justify a work refusal under the Act. In doing so, she applied the framework set out in *Miazga*, which requires the adjudicator to consider the tendency of the evidence to establish the issue in dispute, including all reasonable inferences that could be drawn from proven facts. Although the medical documentation referenced accommodation needs, it did not identify any condition or risk that rendered the workplace unusually dangerous. Her conclusion, that the threshold for a work refusal was not met, is consistent with both the statutory framework and the Board's direction.

[45] The adjudicator's analysis also reflects the guidance in *Hander v Kumar*, 2022 SKCA 33 (CanLII) where the Court emphasized that the adjudicator must assess whether the inferences sought by the complainant could reasonably and logically be drawn from the evidence, if accepted as fact. She did so, and found that the evidence, even when viewed favourably to the Appellant, did not support the inference of unusual danger.

[46] The Appellant's submissions suggest a misunderstanding of the adjudicator's mandate. She was not tasked with determining whether SHA met its duty to accommodate or whether

psychological harm occurred. Rather, her role was to assess whether the existing evidentiary record could reasonably support the inferences necessary to establish a prima facie case under section 3-31. Her analysis remained within the bounds of permissible inference and avoided impermissible findings of fact, as required by the non-suit framework.

[47] Taken together, the adjudicator's reasoning demonstrates a balanced consideration of both subjective and objective evidence. She applied the correct legal test, considered all relevant materials, and respected the procedural limits of her role. Her approach aligns with the jurisprudence governing non-suit motions and addresses the Board's concerns regarding disregarded evidence. Accordingly, the Board finds no legal error in her conclusion.

[48] The adjudicator's analysis remained appropriately focused on whether the evidence, viewed in the light most favourable to the Appellant, could reasonably support the inference that the workplace was unusually dangerous due to unmet accommodations. She did not make final findings of fact or determine whether SHA fulfilled its duty to accommodate. Instead, she evaluated whether the existing evidence could support the inferences required to establish a prima facie case under section 3-31, in accordance with the non-suit framework and the Board's direction. This approach reflects a clear understanding of the distinction between permissible inferences and impermissible findings, a central concern in *Aschenbrener, 2023*. By applying the correct legal test and respecting the procedural limits of her mandate, the adjudicator ensured her analysis remained within the bounds of the non-suit stage.

Summary

Legal Test

[49] In assessing whether Mr. Aschenbrener established a prima facie case under section 3-31 of the Act, it is essential to maintain the distinction between the adjudicator's legal function and the fact-finding role of a trier of fact. The adjudicator's task at the non-suit stage was not to decide whether the workplace was in fact unusually dangerous, but whether the evidence could reasonably support such an inference if accepted by a trier of fact.

[50] The adjudicator addressed the legal test for establishing a dangerous workplace in the First Adjudication Decision beginning at paragraph 70. She referred to *I.B.E.W. Local 213 v. Jim Pattison Sign Co.*, 2004 CarswellBC 3348, where the British Columbia Labour Relations Board stated:

> *The examination is to determine whether the employee's apprehensions were objectively reasonable. As a general matter, the question is 'whether the average employee at the workplace, having regard to his general training and experience, would, exercising normal and honest judgment, have reason to believe that the circumstances presented an unacceptable degree of hazard.'*

[51] She also cited *Inverness County Municipal Housing Corp. v. C.U.P.E. Local 1485*, 1987 CarswellNS 597, at paragraph 22:

> *The requirement that an employee 'have reasonable cause to believe' that there is a danger imposes an objective standard by which to test the employee's action. The Act does not, by the use of the words 'reasonable cause,' legislate different standards of protection for the squeamish and the intrepid. … This Board must ask itself whether the average employee at the workplace, having regard to his general training and experience, would, exercising normal and honest judgment, have reason to believe that the circumstances presented an unacceptable degree of hazard to himself or another employee.*

[52] She also referred to the test for non-suit articulated in *Miazga*, and reaffirmed in *Hander v Kumar* and *Reid v Krause*, which require the adjudicator to assess whether the inferences sought by the complainant could reasonably be drawn from the direct evidence adduced, if accepted as fact.

Evidence

[53] She reviewed the evidence relied upon by Mr. Aschenbrener which consisted of several sources, including:

- The Occupational Health and Safety Officer's decision (Exhibit A-7), which used conditional language about psychological harm but did not make direct findings.
- Medical notes (Exhibits A-2 and A-6), which contemplated a return to work and did not diagnose psychological harm.
- Accommodation requests and correspondence, including his testimony about unmet needs and hearing impairment.
- His own interpretation of workplace events and communications.

Application

[54] Finally, applying the legal standard referenced above, the adjudicator determined that while Mr. Aschenbrener individually believed his workplace was unusually dangerous to his health and safety, the objective evidence did not support this belief. Accordingly, she concluded that Mr. Aschenbrener did not establish any facts from which it may be reasonably inferred that his workplace was unusually dangerous.

Conclusion:

[55] Having reviewed the adjudicator's Addendum in accordance with the Board's direction, the Board finds no legal basis to interfere with her conclusion that Mr. Aschenbrener did not establish a prima facie case under section 3-31 of the Act. The adjudicator applied the correct legal test, considered all relevant evidence, and respected the procedural limits of her mandate.

[56] Her analysis reflects a clear understanding of the non-suit framework. She assessed whether the evidence, particularly the OHS Officer's decision, medical documentation, and accommodation records, could reasonably support the inferences Mr. Aschenbrener sought to have drawn. She did not make final findings of fact or determine whether SHA met its duty to accommodate. Instead, she evaluated whether the evidence, viewed in the light most favourable to the Appellant, could support a reasonable inference that the workplace was unusually dangerous.

[57] While Mr. Aschenbrener continues to assert that his hearing impairment was not adequately considered, the adjudicator noted the absence of contemporaneous medical documentation identifying a hearing disability or requesting related accommodation. She did not disregard this issue, but found that the evidence, even when interpreted favourably, did not support a reasonable inference of danger arising from the alleged impairment.

[58] The adjudicator's Addendum demonstrates a legally sound process that aligns with the Board's direction and the jurisprudence governing non-suit motions. She refrained from making impermissible findings of fact and instead focused on the sufficiency of the evidence to support the necessary inferences. Her analysis was thorough, objective, and consistent with her adjudicative role.

Statutory Interpretation of Section 3-31:

[59] Although the adjudicator's analysis was procedurally and legally sound, this matter raises a broader interpretive question: whether section 3-31 of the Act is an appropriate statutory vehicle for adjudicating claims arising from alleged failures to accommodate disability-related needs.

[60] Section 3-31 provides workers with the right to refuse work they reasonably believe to be unusually dangerous to their health or safety. This provision is traditionally interpreted to address immediate and objectively verifiable risks, such as unsafe equipment, hazardous substances, or threats of violence. In contrast, the Appellant's concerns centered on whether his personal health

limitations, including psychological distress and hearing impairment, were adequately accommodated.

[61] The duty to accommodate arises under *The Saskatchewan Human Rights Code* and employment law principles, and is not typically adjudicated through the occupational health and safety regime. While psychological harm may intersect with workplace safety in some cases, using section 3-31 to litigate accommodation failures risks conflating individual health limitations with the type of objective and imminent danger contemplated by the statute.

[62] Importantly, before accommodation concerns can be considered under section 3-31, a worker must first establish reasonable grounds to believe that the workplace itself is unusually dangerous. In this case, the evidence did not identify any objective danger in the workplace. Rather, it focused on whether the Appellant's health permitted him to perform the work. Once the adjudicator found that the threshold was not met, the analysis need not have proceeded further.

[63] The Appellant's position, that unmet accommodations rendered the work unusually dangerous, is not supported by the statutory language or legal precedent. Nonetheless, given the procedural history and the Board's prior direction to reconsider the evidentiary record under the non-suit framework, the Board proceeded with the analysis as remitted, while noting that the legal appropriateness of using section 3-31 in this context remains unsettled.

[64] Accordingly, the appeal is dismissed.

[65] An appropriate order will accompany these Reasons.

[66] The Board thanks the parties for the helpful submissions they provided, all of which were reviewed and considered in making a determination in this matter.

DATED at Regina, Saskatchewan, this **2nd** day of **October, 2025.**

LABOUR RELATIONS BOARD

Carol L. Kraft
Vice-Chairperson