LRB File No. 150-19

In the matter of an appeal to an adjudicator pursuant to ss. 3-53 and 3-54 of *The Saskatchewan Employment Act*

BETWEEN

Carol Gillespie **Appellant**

-and-

Life Force Home Health Care Inc. **Respondent**

Adjudicator: Gerald Tegart
Appellant represented herself
Respondent represented by Denise Cwynar
Hearing conducted by teleconference November 23, 2021, and January 10, 2022

DECISION

I. INTRODUCTION

[1] This is an appeal pursuant to ss. 3-53(1) and 3-54(1) of *The Saskatchewan Employment Act* ("the Act") from a decision of occupational health officers dated May 30, 2019, regarding a complaint of discriminatory action brought by Carol Gillespie ("the employee") against Life Force Home Health Care Inc. ("the employer").

[2] The employee's allegations of discrimination arise from the termination of her employment with the employer in April of 2018. The employee referred the matter of her dismissal to an occupational health officer as provided for by s. 3-36(1) of the Act. An investigation was conducted.

[3] The occupational health officers determined that the employer's termination of the employee was not because the employee had acted or participated in a protected activity but was based on good and sufficient other reason within the meaning of s. 3-36(4)(b) of the Act.

[4] The employee appealed that decision and the parties agreed to have the appeal heard by way of a Zoom hearing on November 23, 2021. At the commencement of the hearing technical difficulties were encountered. The parties agreed to continue the hearing by teleconference. At the close of the teleconference hearing on November 23, the hearing was adjourned for completion by teleconference on January 10, 2022.

[5] No objections were made with respect to my appointment or my jurisdiction to hear and determine the appeal.

II. FACTS

[6] The evidence considered at the hearing included the material provided by the Director of Occupational Health and Safety pursuant to s. 3-55(b) of the Act, which was previously provided to both parties, plus additional documents provided by both parties and oral submissions provided on behalf of the parties during the hearing. Because the bulk of the evidence was comprised of the director's files, and because it would be impractical to attempt to test each element of the content of those files through oral evidence given under oath or affirmation, none of the oral submissions at the hearing were given under oath or affirmation.

[7] Neither party was represented by counsel during the hearing. The employee represented herself and the employer was represented by Ms. Cwynar, who is the employer's assistant director of care. No one else attended the hearing.

[8] The employer is a Regina-based business that, according to its filing with the Saskatchewan Corporate Registry, provides health care for people in their own homes. In the circumstances giving rise to this appeal, the care was being provided to residents of a facility in Regina that the employee described as a "retirement community", as opposed to a "long term facility". The employer maintained an office in the facility.

[9] The employee's resume indicates she obtained a nursing attendant certificate in 1993 from Newfoundland Career Academy. Also presented in evidence was a 2006 diploma as a nursing attendant from an Ontario institution. She began employment with the employer in October of 2017. The employer ran a morning shift and an evening shift in the facility, and the employee was trained for both. She was originally given responsibility as the supervisor on the evening shifts that she worked.

[10] The employee's initial hiring had been subject to a 3-month probationary period, which would run to January 20, 2018. The executive director provided a December 1, 2017, letter to the employee with a re line "New employee probation review". It opened with a statement saying that the employer had some concerns with the employee's job progress and went on to outline four areas of concern.

[11] The first related to the executive director's understanding that the employee too often spoke to other workers about her work experience. The letter made a reference to the importance of the team.

[12] The second was a concern that clients were not receiving adequate care during the night shift.

[13] The third related to the employee's use of sticky notes to record care, rather than making entries directly in the client care record.

[14] The final concern was that the employee spent too much time on shifts talking to others.

[15] The closing paragraph advised the employee that she would no longer have supervisory responsibilities.

[16] The employer normally assigned at least two workers to each shift, but on occasion the employee worked shifts by herself. In February of 2018 the employer took on additional clients and determined that two staff were required for each shift. However, according to the employer, some of the other staff members were uncomfortable working with the employee. Consequently, starting the week of March 3, 2018, she began again to work evening shifts on her own. On March 13 an additional worker was hired to work shifts with the employee.

[17] On March 14, 2018, the employer hired a licensed practical nurse to assume responsibilities as the "charge nurse", with responsibility to supervise staff members on both shifts. One of her responsibilities was to provide a shift report to the evening shift when they began their day. On April 3, 2018, the employee walked out of a shift report before it was completed. However, the employee explained in her submissions that she left early because one of the clients needed immediate care.

[18] Both parties referred to a March 28, 2018, incident where the employee was injured while managing a client who had fallen off his bed and become lodged between the bed and the wall. According to the employee, during this event the client grabbed her wrist and pulled her down to the floor, hurting her shoulder and neck. The employer's submissions indicated that the executive director and the assistant director were not aware of the injury at the time. The employee made an entry on the client's care record on April 3, 2018, that includes a reference to her injured shoulder and neck.

[19] On the evening of Tuesday, April 3, 2018, the employee was experiencing pain in her neck and shoulder. The next morning, Wednesday, April 4, she went to a walk-in medical clinic. She was scheduled to work that day, and there were several texts exchanged between her and the executive director during the day discussing whether she would be able to report for work. At noon the employee's text said she was still at the medical clinic getting something for her shoulder, and that she might be late. At 1:40 she said she wasn't sure when she'd be done at the clinic and that her phone battery was low. At 2:29 the executive director asked whether she was coming, and sent a subsequent text stating that the employee's shift had been cancelled and that she would see her Saturday, which was April 7. At 5:33 p.m. the employee said she was "just getting back.. my battery died on me.. I do have medication.. and weight restrictions.. but since we don't lift anyone really.. and 209 is a 2 person.. there isn't any issues..". The executive director asked if she was at work. She replied she was at home, having gone there to change, and that she had plugged in her phone and had seen the executive director's messages. The executive director told her again that her shift had been covered and that she would see her Saturday (April 7) at 2:00 p.m.

[20] A text from the executive director to the employee at 8:37 a.m. on Thursday, April 5, asked her to meet that afternoon at 2:00. The employee replied that she wasn't sure that was possible because she had an appointment that might run past that time. The executive director replied saying that she would see her Saturday, which was the next day she was scheduled to work.

[21] As it turned out, the employee didn't report for work Saturday because she had a reaction to her medication.

[22] On Sunday, April 8, the employee reported for the evening shift at 2:00 p.m., although she was not expected to work that shift. The executive director, the assistant director and the charge nurse went to the facility and met with the employee. She was advised that her employment was terminated effective immediately. She was given a termination letter.

[23] The termination letter was dated April 4. According to the employer, at some point on or prior to that date, the employer made the determination that the employee's employment would be terminated. The letter read as follows in its entirety:

> As of the date of this letter, we have not received the rest of your certification, TLR, Medication training, LPN certification as you had promised. You indicated that you had just moved and would have to look for them.
>
> Regarding your Probation review dated December 1, 2017, you still have not corrected our concerns.
>
> Over the last month we have been receiving complaints from residents who have stated they are afraid of you. It has also been reported by numerous Life Force team members that they are not comfortable working with you and have refused to do so.
>
> You signed a memo on March 24, 2018 informing you that Kathrine was hired as the Charge Nurse and that she would be providing shift report to the evening staff, which you are a part of, as you would need to be informed of any nursing care required by clients.
>
> I was informed that you walked out during shift report yesterday April 3, 2018 while Kathrine was trying to update you on new Heath Care regulations that were in effect immediately. On December 20, 2017 in your review letter you were informed that you were relieved of your Supervisory position on the evening shift and that you would work only as a team member, as other team members were not comfortable working with you. Life Force has given you opportunity to change concerns brought to our attention and you have continued not to do so.
>
> Please be advised that due to all of the above, especially with clients being afraid of you (which falls under senior abuse), and their families not being comfortable with you looking after their loved ones, we have no choice but to terminate your employment immediately. Your final pay, plus one weeks' pay for immediate termination, will be deposited to your account today as per labour standards regulations.

[24] In addition to the pay for one week, the employee was paid for three hours on April 8.

[25] According to the employee's submissions, she applied to the Workers' Compensation Board for compensation related to the injuries she sustained on March 28. It appears this application was made after April 4 but before she was told of her termination on April 8, because she alleges that the employer backdated the termination letter to April 4 in order to render her ineligible for workers' compensation.

[26] The employer insists the letter is dated the day it was signed.

[27] The employer has a harassment policy, a copy of which was provided to the occupational health officers and is part of the appeal record.

[28] According to the notes of the two occupational health officers who interviewed the employee on April 2, 2019, she did not file a health safety or harassment complaint prior to being dismissed. However, she did state that she had "brought up harassment" with the executive director, although no details are provided in the notes.

[29] During the hearing the employee was asked to outline the actions she took to complain of harassment. She said the employer had an open-door policy and that she told the executive director on several occasions about the conduct of other employees. She said these conversations were not recorded.

[30] In another interview conducted on May 1, 2019, she told the occupational health officers that she had "brought up bullying of Elaine and Lucy" - also described as "bullied by Elaine/Lucy" - with the executive director. Their notes also indicate she said that she had "brought up harassment". Again, no details of either matter are recorded in the notes.

[31] According to the form the employee completed when submitting her complaint to the occupational health officers in March of 2019, she had made certain concerns about resident care known to the executive director:

> On many occasions I went to Elizabeth (my Boss) with concerns about certain residents who needed to be moved to a long term care facility and that we were not equipped to handle their needs.. I would talk to her on a daily basis on what I witnessed in their health. mental deterioration, etc. Anything needed for the residents well being.. In fact the resident who caused my injury I was telling Elizabeth for months that he needed to be moved to a long term facility.. that in the evenings he was a 2 person *[illegible]* lift.. and nothing was ever done about it.. on my shift alone he has had 6 falls.. that's not counting what occurred what happened prior to my shift.. or mid-nights.. my complaint to Elizabeth about certain situations just fell on deaf ears: but after my accident.. that resident was upgraded to a 2-person transfer.. in fact the new LPN that was hired a few weeks before I was let go.. is willing to back me up.

[32] In that same form she provided the following answer to a related question:

> Q: On what date, and to whom, did you raise your health and safety concern/complaint prior to the action taken against you?
>
> A: My time line was usually done by phone.. because I worked evenings alone.. But there is logs about it in my Bosses communication book.. it details on a daily basis as to his falls..

[33] In her notice of appeal, the employee stated that it was untrue that she had never brought forward harassment concerns. She referred here as well to the employer's open-door policy. An email she sent to the executive director on January 4, 2018, is attached to the notice of appeal. It describes an exchange between the employee and one of the residents of the facility. The employee says it explains some of the hostilities she had experienced in the work place. She states that the executive director was aware of this.

[34] The notice of appeal also states that the executive director had bullied the employee on occasions, and refers to a disagreement between the two of them regarding shifts the employee would work. The employee says she had to call Labour Standards before the employer would agree with her position.

[35] The notice of appeal describes in some detail the incident with the charge nurse on April 3, 2018, where the employee left the shift report to attend to a client.

[36] She was also asked during the hearing to describe the reason she was dismissed. She pointed to her injury and her application for workers' compensation, saying that nothing happened until she made the application. In the form she completed when she submitted her complaint, she wrote that the executive director "just made up lies to get rid of me because I filed a WCB claim". In that form she also provided answers to some of the form's questions as follows:

> Q: What reasons were provided to you for the action taken against you?
>
> A: No true reason was given to me.. I didn't see it coming.. there is no proof.. No evidence of any wrong doings.. Nothing.. I always went by the book. I always used protocol.. But like I said.. I never seen it coming.. there was nothing..
>
> Q: What do you view as an appropriate resolution to this situation?
>
> A: Elizabeth.. needs to listen to her staff who follows the guidelines that is laid out for staff safety.. She needs to stop talking badly about her staff to one another and causing friction between them.. She owes me an apology for saying I am abusive.. there is no record of this ever.. But statements like that can hurt a persons reputation and follow them wherever they go.. She cause my injury which would not of happened if she would of listened to complaints months prior.. Its very frustrating that I got injured at work and she post dated my firing to that date so that I could not collect WCB for an injury that they caused.. the loss of wages and frustrations.. etc.

[37] During the hearing the assistant director was asked why the employee was terminated. She said there were a number of issues identified when the termination took place. Some clients and their families had said they didn't want the employee looking after the clients. As well, the employee didn't want to listen to others in authority. She said they were getting things together to let the employee go, and were not aware she was making a workers' compensation claim when the decision to dismiss the employee was made.

[38] A written submission prepared by the employer dated May 15, 2020, was filed during the hearing. The employer explained that it had been prepared in anticipation of an earlier hearing date. It contains the following statement:

> We had a number of client's that expressed to Life Force that they were afraid of Carol and family members indicated that they were not comfortable with Carol looking after their loved ones. Clients and families expressed this verbally and they did not want to give Life Force anything in writing. Life Force did receive one letter from a client.

[39] An exhibit to the written submission states that the executive director, the assistant director and the charge nurse were going to meet with the employee on April 4, 2018, before the start of her shift in order to terminate her employment. However, the employee did not report for work, as set out earlier. As also described earlier, the employee did not report for work again until April 8. The exhibit states that the executive director was informed on April 8 that the employee had come to work, and that she, the assistant director and the charge nurse went to the workplace where they met with the employee and terminated her employment. The exhibit states that, as the employee was leaving the meeting, she indicated she had filed a workers' compensation application.

[40] The notes from an interview conducted by an occupational health officer with the executive director on May 8, 2019, contain the statement "WCB – never reported to employer". The notes contain two additional statements: "no concerns about harassment" and "never raised an issue w/employer".

[41] The following excerpts are taken from the May 29, 2019, written decision of the occupational health officers:

> On April 2, 2019 Occupational Health Officers Paradowski and Boan met with Carol Gillespie to discuss the particulars of her concerns. During that meeting, Carol Gillespie stated that she did not file a health and safety or harassment complaint prior to being fired. She did say that she had issues with working alone and that she had been injured by a resident that had grabbed her wrist trying to get up off the floor after he had fallen.
> ...
>
> On May 8, 2019, OHS conducted an inspection at Life Force Home Health Inc. and met with Elizabeth Krislock, Executive Director. Elizabeth Krislock stated that they had terminated Carol Gillespie as she was not following protocols and were waiting for her certifications as they had come from out of province, but were never provided. Elizabeth Krislock stated that Carol Gillespie had never brought forward any harassment concerns.

[42] The employee takes the position that the factual basis the employer advances to support its decision to terminate her employment is largely false. However, there was little if anything advanced by way of evidence to substantiate her position in this respect. She simply disagrees with the facts the employer advances and the reasons the employer gives and at times maintains that the employer's representatives are not being truthful.

III. LEGISLATIVE FRAMEWORK

[43] The Act includes several provisions relevant to discriminatory actions by an employer:

> 3-1(1) In this part...:
> ...
> (i) "discriminatory action" means any action or threat of action by an employer that does or would adversely affect a worker with respect to any terms or conditions of employment or opportunity for promotion, and includes termination....

(l) "harassment" means any inappropriate conduct, comment, display, action or gesture by a person:

(i) that either:

(A) is based on race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; or

(B) subject to subsections (4) and (5), adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated; and

(ii) that constitutes a threat to the health or safety of the worker....

(4) To constitute harassment for the purposes of paragraph (1)(l)(i)(B), either of the following must be established:

(a) repeated conduct, comments, displays, actions or gestures;

(b) a single, serious occurrence of conduct, or a single, serious comment, display, action or gesture, that has a lasting, harmful effect on the worker.

(5) For the purposes of paragraph (1)(l)(i)(B), harassment does not include any reasonable action that is taken by an employer, or a manager or supervisor employed or engaged by an employer, relating to the management and direction of the employer's workers or the place of employment.

...

3-8 Every employer shall:

(a) ensure, insofar as is reasonably practicable, the health, safety and welfare at work of all of the employer's workers;

...

(d) ensure, insofar as is reasonably practicable, that the employer's workers are not exposed to harassment with respect to any matter or circumstance arising out of the workers' employment....

...

3-9 Every supervisor shall:

(a) ensure, insofar as is reasonably practicable, the health and safety at work of all workers who work under the supervisor's direct supervision and direction;

...

(c) ensure, insofar as is reasonably practicable, that all workers under the supervisor's direct supervision and direction are not exposed to harassment at the place of employment;

...

3-35 No employer shall take discriminatory action against a worker because the worker:

(a) acts or has acted in compliance with:

(i) this Part or the regulations made pursuant to this Part;...

(b) seeks or has sought the enforcement of:

(i) this Part or the regulations made pursuant to this Part....

...

S. 3-36(1) A worker who, on reasonable grounds, believes that the employer has taken discriminatory action against him or her for a reason mentioned in section 3-35 may refer the matter to an occupational health officer.

(2) If an occupational health officer decides that an employer has taken discriminatory action against a worker for a reason mentioned in section 3-35, the occupational health officer shall serve a notice of contravention requiring the employer to:

(a) cease the discriminatory action;

(b) reinstate the worker to his or her former employment on the same terms and conditions under which the worker was formerly employed;

(c) subject to subsection (5), pay to the worker any wages that the worker would have earned if the worker had not been wrongfully discriminated against; and

(d) remove any reprimand or other reference to the matter from any employment records maintained by the employer with respect to that worker....

(4) If discriminatory action has been taken against a worker who has acted or participated in an activity described in section 3-35:

(a) in any prosecution or other proceeding taken pursuant to this Part, there is a presumption in favour of the worker that the discriminatory action was taken against the worker because the worker acted or participated in an activity described in section 3-35; and

(b) the onus is on the employer to establish that the discriminatory action was taken against the worker for good and sufficient other reason.

...

3-52(1) In this Division: ...

(b) "decision" includes:

(i) a decision to grant an exemption;

(ii) a decision to issue, affirm, amend or cancel a notice of contravention or to not issue a notice of contravention; and

(iii) any other determination or action of an occupational health officer that is authorized by this Part.

...

3-53(1) A person who is directly affected by the decision of an occupational health officer may appeal the decision.

IV. ANALYTICAL FRAMEWORK

[44] In *Ross v Saskatchewan Indian Gaming Authority*, LRB File No. 282-19, dated November 23, 2020, I summarized the analytical framework for appeals founded on alleged discriminatory actions, based on a more extensive explanation provided in an earlier decision. The summary read:

> In *Banff Constructors Ltd. v Arcand*, LRB File No. 184-19, dated April 28, 2020, I outlined fairly extensive reasons for an analytical framework for appeals based on alleged discriminatory actions. I won't repeat those reasons here, other than to provide a brief explanation.
>
> An appeal that comes to an adjudicator from a decision of an occupational health officer, where that decision is based on ss. 3-35 and 3-36 of the Act, will be determined in large part by the specific wording of those sections. In order to find a contravention of s. 3-35, the adjudicator must be satisfied that the employer took discriminatory action against the employee - "worker" within the language of these provisions - because the employee engaged in protected activities, i.e. the activities described in that section. To state the obvious, there are three elements that must be established – that the employer took the discriminatory action, that the employee engaged in protected activities, and that the discriminatory action was taken because the employee engaged in those activities.
>
> S. 3-36(4) contains a presumption and a reverse onus. Once the first two elements are established, the third is presumed, i.e. "there is a presumption in favour of the worker that the discriminatory action was taken against the worker because the worker acted or participated in an activity described in s. 3-35". The onus then shifts to "the employer to establish that the discriminatory action was taken against the worker for good and sufficient other reason".
>
> Consequently, there are generally three broad issues to be determined in appeals of this kind:
>
> 1. Did the employee engage in protected activities, i.e. activities that come within the ambit of s. 3-35?
>
> 2. Did the employer take discriminatory action against the employee within the meaning of that term as defined in s. 3-1(1)(i)?
>
> 3. If the first two questions are answered in the affirmative, was the discriminatory action taken for good and sufficient other reason within the meaning of s. 3-36(4)?
>
> The employee will bear the onus of proving the first two. Because of the presumption and reverse onus, the employer will bear the onus of establishing the discriminatory action was taken for a reason other than because the employee engaged in the protected activities, i.e. for good and sufficient other reason.

[45] I will apply this framework in determining this appeal.

V. ANALYSIS AND REASONS

1. Did the employee engage in protected activities, i.e. activities that come within the ambit of s. 3-35?

[46] While the employee did not advance legal arguments that applied the relevant legislation to the facts she was asserting, it is my responsibility to consider her appeal based on the facts I have found, as determined through the hearing process, and on the relevant legislation.

[47] There are arguably two bases on which the employee's case might be founded. The first involves the obligation of the employer set out in s. 3-8(a) of the Act to "ensure, insofar as is reasonably practicable, the health, safety and welfare at work of all of the employer's workers". Supervisors have a similar duty that is set out in s. 3-9(a).

[48] The second basis involves the employer obligation contained in s. 3-8(d) to "ensure, insofar as is reasonably practicable, that the employer's workers are not exposed to harassment with respect to any matter or circumstance arising out of the workers' employment". Supervisors again have a similar duty set out in s. 3-9(c).

[49] S. 3-35(b) protects workers against discriminatory action that is taken against them because they have sought enforcement of these employer obligations.

[50] The employee did not file a formal complaint with the employer related to a failure to carry out these obligations. However, there is some evidence that the employee had brought concerns to the employer's attention related to worker safety prior to her termination. According to the employee, this occurred primarily in the frequent discussions she had with the executive director, where she would describe the conduct of other workers. She indicated that she had specifically discussed the need to move the client who she says caused her injuries, including discussions she says took place prior to her injury, and that the employer had not acted on her concerns. In the form she completed when making her complaint to occupational health officers, she stated that she brought her concerns to the executive director "on many occasions" and the concerns related to "certain residents who needed to be moved to a long term care facility and that we were not equipped to handle their needs".

[51] The employer does not acknowledge that the employee raised concerns the employer understood to be complaints about worker safety. It wouldn't be surprising for workers and supervisors to have discussions concerning the care of clients, including matters related to the physical challenges of providing that care. If we consider again the form the employee completed when making her complaint to the occupational health officers, her concerns appear to be focussed on providing adequate care for clients, rather than the safety of workers providing that care. The evidence does not establish that she brought forward concerns about worker safety.

[52] Consequently, I am not satisfied the employee engaged in a protected activity insofar as the employer's obligations related to worker health and safety are concerned.

[53] Similarly, there is some evidence related to what might be considered one or more complaints of harassment. Although the employer says the worker never complained of harassment, the employee insists she did. She told occupational health officers that she had "brought up harassment" with the executive director and mentioned being "bullied by Elaine/Lucy". In the notice of appeal she states she was bullied by the executive director on occasions. However, no details of bullying or other actions that might fall within the definition of harassment in s. 3-1(1)(l) of the Act have been provided. When asked during the hearing to outline the actions she took to complain of harassment, she referred to the open-door policy and said she had on several occasions told the executive director about the conduct of other employees, but again with no details that would connect that conduct with harassment. There is simply no dependable evidence that the employee used language in discussions with the executive director that should have led the executive director to conclude the employee was complaining of harassment.

[54] Consequently, I am not satisfied the employee made a complaint of harassment or engaged in a protected activity insofar as the employer's obligations related to harassment are concerned.

2. Did the employer take discriminatory action against the employee within the meaning of that term as defined in s. 3-1(1)(i)?

[55] Yes. Although the term "discriminatory action" is normally thought of as pejorative, as defined in s. 3-1(1)(i) of the Act it is merely descriptive of an employer action, and specifically includes termination. The employee's termination was discriminatory action within the meaning of this provision and s. 3-35.

3. If the first two questions are answered in the affirmative, was the discriminatory action taken for good and sufficient other reason within the meaning of s. 3-36(4)?

[56] Since I have determined that the employee did not engage in protected activities, the consideration of this last issue becomes unnecessary, and the appeal cannot succeed. However, if I had determined that the employee had engaged in protected activities, I would find that her termination was not because she engaged in those activities, but was for good and sufficient other reason within the meaning of s. 3-36(4) of the Act.

[57] The employer provided specific reasons for the termination, none of which related to complaints made by the employee. The initial reasons provided by the employer are contained in the April 4 termination letter. These include her failure to provide the rest of her "certifications", the fact she had not addressed all of the concerns set out in her probation review, complaints from residents, indications from families of residents that they were not comfortable having the employee care for their family members, indications that fellow workers weren't comfortable working with the employee, and her walking out of a shift report.

[58] When asked during the hearing to explain the employer's decision to dismiss the employee, the assistant director said that issues were explained when the termination took place.

She added comments about clients and families who didn't want the employee to continue to provide care, as well as the employee's unwillingness to listen to others in authority.

[59] In the May 15, 2020, written submission filed at the hearing the employer emphasized the concerns raised by clients and their families about the care provided by the employee.

[60] I find the employer's explanation of the reasons for the employee's termination to be credible and I accept that explanation.

[61] In considering whether the employer has met the reverse onus in s. 3-36(4), I'm mindful that it doesn't simply require the employer to rebut the presumption, but to do so by establishing "that the discriminatory action was taken against the worker for good and sufficient other reason". What is "good and sufficient other reason"?

[62] For a discriminatory action to have been taken for good and sufficient other reason, the action must not be arbitrary and must be objectively reasonable. This is not to say the decision made by the employer must be the same decision the adjudicator (or the occupational health officers in the original decision) would have made if placed in the employer's position at that time. There may have been several options for action when the employer's decision was taken that would have been objectively reasonable. The question is whether this is one of those options.

[63] The employee takes the position that she was dismissed because she had made a workers' compensation application. The evidence as a whole does not support that allegation, and I am satisfied that the employer has established that the employee's workers' compensation application had no bearing on its decision to terminate her employment.

[64] I am also satisfied the employer's decision to terminate the employee's employment was not based on any complaint she made or on the exercise of any protected activity. I find that the decision was thoughtfully and sincerely considered, and was based on the employer's determination that the employee should no longer be allowed to provide the services she had been hired to provide. This was reasonable and constitutes good and sufficient other reason.

VI. ORDER

[65] For the reasons set out above, the appeal is dismissed.

[66] This order is made pursuant to s. 4-6 of the Act.

Dated at Regina, Saskatchewan, this 4th day of March, 2022.

"Gerald Tegart"
Gerald Tegart, Adjudicator