

Terminating the Employee Who Claims to Be Disabled

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As the California Appellate Court recently discussed in *Arteaga v. Brink's*, it is sometimes difficult to terminate the employee who claims to be disabled, but it can be done. Carlos Arteaga worked for Brink's, Incorporated as a messenger. He was the person responsible for accurately receipting the money he picked up at the ATM's on his route and then returning the money to the Brink's vault. In early 2003, he was questioned about a \$12,000 shortage that occurred on one of his runs.

In August 2003, Mr. Arteaga had a medical examination to maintain his driver certification for Brink's. The medical report stated that he was in good health. He indicated that he did not have any impairment to his "hand, arm, foot, leg, finger, toe".

On March 1, 2004, there was a \$4,540 shortage on Mr. Arteaga's run. Raul Ruiz, Mr. Arteaga's supervisor, began investigating, and he found that in July and August 2003, there had been eight shortages totaling nearly \$6,500 on Mr. Arteaga's runs. In October and November 2003, there were eight more shortages on Mr. Arteaga's runs, totaling approximately \$6,800.

Mr. Ruiz let Mr. Arteaga know that these shortages were being investigated. On March 17, 2004, Mr. Arteaga told Brink's for the first time that he had been experiencing work-related pain and numbness in his arms, shoulders, fingers and feet for "a year or two". He had never told anyone else about this pain, and no one had observed him looking as if he was in pain. A physician examined him that same day and determined that he was "okay" and sent him back to work with a full release. Several days later, Mr. Arteaga said he had a work-related rash, and the physician sent him back to work without restrictions.

On March 23, 2004, Mr. Arteaga's employment with Brink's was terminated because Brink's had a "loss of confidence" in his ability to perform his duties.

Mr. Arteaga sued Brink's, Mr. Ruiz, and another supervisor, alleging that they discriminated against him based upon his disability, and that they fired him in retaliation for filing his workers' compensation claims. The trial court dismissed Mr. Arteaga's claims on a motion for summary judgment, and the appellate court affirmed.

The appellate court concluded that Mr. Arteaga was not disabled under the Fair Employment and Housing Act (FEHA). Under FEHA, a disability must make it difficult for the employee to achieve a major life activity such as working. Mr. Arteaga claimed that his pain and numbness impaired his ability to work, but the court noted that Mr.

Arteaga's August 2003 physical indicated no impairments, and the court noted that Mr. Arteaga had actually performed his duties as a message for "a year or two" without any apparent impairment.

The appellate court also concluded that Brink's had not discriminated against Mr. Arteaga for filing the workers' compensation claims. Although the workers' compensation claims were filed right before the termination, timing alone did not prove that the termination was in retaliation for the claims, especially in light of the documentation regarding the shortages.

This case demonstrates that just because an employee claims to be disabled, that does not mean the employee is disabled. It also demonstrates the importance of documenting the legitimate, nondiscriminatory reasons for terminating an employee's employment.