

- reasons why viable alternative standards were not implemented
- whether different standards that reflect group or individual differences and capabilities could be established
- whether there is a way to do the job that is less discriminatory while still accomplishing the employer's legitimate purpose
- whether the standard is properly designed to ensure the desired qualification is met without placing an undue burden on those to whom the standard applies
- whether other parties who are obliged to assist in the search for possible accommodation, such as the employee and union, have fulfilled their roles

4.5 How might a mental health or addiction disability interfere with an employee's ability to fully meet obligations arising from the accommodation process?

A mental health or addiction disability may interfere with employees' obligation to realize that they have a disability and require accommodation. Employees may not recognize that they are unwell and as a result may not report the presence of a disability to their employer. This is particularly a concern in the area of addiction disabilities, where the lack of awareness of the problem (deeply rooted denial) may hamper disclosure. Alternatively, an employee may recognize a need for accommodation but may be afraid to report it, fearing negative outcomes.

As well, a mental health or addiction disability may affect a person's judgment or self-awareness, which in turn may interfere with adherence to accommodation requirements. Employees may not recognize the need for accommodation and may believe that they are capable of performing the work without accommodation. For example, people with bipolar disorder may show impaired judgment during the hypomanic and manic phases of the illness; their self-awareness is affected and they may feel they are even more skilled than usual. As a result, they may believe that accommodation is not necessary. As mentioned in Chapter

1, Section 1.11.1, people with personality disorders often have limited self-awareness and thus may be less likely to understand or accept the need for accommodation. And as discussed in Chapter 1, Section 1.10.4, people with addiction disabilities very often do not recognize that they have a problem, which in turn makes them less likely to engage in the accommodation process.

4.6 What happens if an employee denies having a disability in the course of the accommodation process? Can the employee be disciplined or discharged for attendance or performance problems in these circumstances?

When an employer perceives that an employee has a mental health disability that may be affecting work performance, attendance, or conduct, and the employee denies having a disability, the employer should nonetheless try to initiate the accommodation process and offer appropriate accommodation. However, there is a limit to the extent that an organization is obligated to accommodate an employee's disability without the employee's cooperation and participation once it has fulfilled its procedural duty to inquire and attempted to accommodate based on the information provided.²¹ An employer may be justified in disciplining or discharging an employee for attendance or performance problems in circumstances where the employer can establish that it has made genuine and reasonable efforts to accommodate.

Example: An arbitration board held that a secondary school teacher who was dismissed after he failed to attend a number of meetings regarding his return to work and work performance, and who maintained that he was not disabled or ill at the time of his dismissal, failed to cooperate in the accommodation process. The board accepted that the employee's mental illness impeded him from recognizing that his disability was one of the main contributing factors to the behaviour that led to his suspension and ultimate termination, and that this manifestation of the illness persisted after

²¹ See *Policy on preventing discrimination based on mental health disabilities and addictions*, note 6, above, p. 66.