Employer Ordered To Pay For Weight-Loss Surgery

9/11/2009

Charles Wilson, Associated Press

INDIANAPOLIS (AP) — An Indiana court has ruled that a pizza shop must pay for a 340-pound employee's weight-loss surgery to ensure the success of another operation for a back injury he suffered at work.

The Indiana Court of Appeals decision, coupled with a recent Oregon court ruling, could make employers think twice before hiring workers with health conditions that might cost their companies thousands of dollars in one shot down the road. “This kind of situation will happen again ... and employers are undoubtedly worried about that,” said Lewis Maltby, president of the National Workrights Institute in Princeton, N.J.

At issue is Boston's Gourmet Pizza having to pay for Adam Childers lap-band surgery. The cook, who was 25 and weighed 340 pounds in March 2007, was accidentally struck in the back by a freezer door. Doctors said he needed surgery to ease his severe pain, but that the operation would do him no good unless he first had surgery to reduce his weight, which rose to 380 pounds after the accident. His employers agreed to pay for the back surgery, but argued they were not obligated to pay for a weight-loss operation that could cost $20,000 to $25,000, because Childers already was obese before he was hurt.

The court, however, said the surgery and all disability payments should be covered by the restaurant because his weight and the accident had combined to create a single injury. They said Boston's didn't present any evidence that his weight had been a medical problem before the accident.

“There's actually a string of cases from across the country that have reached similar conclusions,” said Childers' attorney, Rick Gikas. The most recent was in Oregon, where the state's Supreme Court ruled on August 27 that the state workers' compensation insurance must pay for gastric bypass surgery to ensure that a man's knee replacement surgery was effective.

But some believe the Indiana case, which experts said reflects general rules of workers' compensation law, could have a chilling effect on business.

“The case in Indiana kind of draws a line in the sand,” said Tom Lynch, CEO of Lynch, Ryan & Associates Inc., a Wellesley, MA-based consulting firm. What's different, he said, is that it was based not just on state law but on principles used in several states.

“I think employers are going to be really upset about this,” said Maltby. Part of the reaction stems from people's attitude to obesity, he said. “Because we all think it's his own fault for being so fat, and it's such an expensive procedure, a lot of people would say it isn't fair to the employer.”

Gikas said Childers has lost some weight on his own during his two years off. Court records said he had also tried to quit smoking. He's still awaiting the surgery. Lynch said the ruling could make employers wary of hiring people who are overweight or have other conditions that might expose them to workplace injury, but he noted, employers in all 50 states must take workers “as they are” when they hire them.

One-third of American adults are considered obese, with a body mass index of 30 or more. Last year, at least 220,000 obesity surgeries were done in the United States.

Source URL (retrieved on *07/23/2014 - 2:20pm*):
http://www.surgicalproductsmag.com/news/2009/09/employer-ordered-pay-weight-loss-surgery