

It's people like these that give employers a bad name

Disabled VA employee terminated two weeks before his probationary period ended

All too often we read about employee layoffs and terminations just before Christmas. Employers wanting to avoid 401K contributions or profit sharing to employees get rid of them just before the date they would be eligible for the funds.

Seldom are there stories like the factory owner in New England that continued to pay his employees after his place burned to the ground and was closed.

Here in Cheyenne, we want to believe the stories of poor employee treatment always come from somewhere else. Because most of the jobs around here are government, we assume that supervisors treat employees well because it's no skin off their nose. The money's not theirs. Often that may be true. But not always.

The Veterans Administration complex off Pershing has a generally good reputation. It is often the only medical care facility available to veterans. Caring for those who gave service to their country does not end in the exam rooms and hospital rooms. The VA employs many here in Cheyenne. According to their printed publications, they encourage those in protected classes to apply for jobs. One of those protected classes is the disabled.

Because of their mission, you'd expect the VA to have a special concern for disabled veterans who apply for and are hired for jobs on the VA grounds. Most times, that is probably true.

But, a story that tests that commitment has come to the Cheyenne Herald.

It is a story of a man, a veteran, with a disability not service-connected, who was hired for a job by a supervisor well aware of the disability. At the interview, the supervisor said the disability would create no work problems for the guy.

Because the applicant is a veteran, his care is through VA hospitals, here in Cheyenne and also in Denver. There are procedures that cannot be performed in Cheyenne but can be in Denver. It is a recurring dispute between the facilities as to whom provides better care and an ensuing disagreement as to whether the other is capable enough.

The subject of this story (and other stories to come) is ambulatory. He has all of his limbs and is in possession of his faculties. He has a bad back and it causes him great pain at times and he suffers stress when lifting weights too heavy or by certain movements.

The VA supervisor who hired him in November of 2007 knew full well the guy's limitations and that he'd be continuing to seek correction for his back problems. He and the employee's next level of supervision continued to offer support over the next several months, always encouraging the oft-absent employee, "It's all right. Your health comes first." Based on records in our possession, the employee did miss considerable time at work. He does not deny that. Everyone knew it.

Conscientious, he expressed concerns to his supervisor about his absences. The response was always the same, "Your health comes first." All of the care was provided by VA medical personnel. Onsite or, because Cheyenne cannot do all that he required, he had to make appointments at the Denver VA.

Their attitude down there included what is a heavy measure of disdain for the Cheyenne VA, based on what this guy and others have told the Herald. But, he had no choice. He was caught in the middle. He would travel to Denver, sit for hours in the waiting room, only to be told they couldn't see him that day.

He had a few years previously had a stimulator implant placed and it was not functional and he needed to have it removed before other necessary tests could be performed or corrective surgery scheduled. He had a helluva time getting the removal scheduled and resorted to contacting Senator Enzi's office.

Once the implant was removed, about nine months into his employment, he could finally take the next steps toward better health.

His employee evaluations were good. He did good work - he just missed a lot of time. He used up his earned vacation and sick leave and even had to take time off without pay. Shortly before his termination, he was ordered by his VA doctor to take a week off (after the implant removal). His second level supervisor, whom he barely knew and who barely knew him, saw him a few weeks later at the VA pharmacy and suggested that he go to HR and seek donated sick leave (that is from other employees with a great accumulation of sick leave can donate some of theirs to help another employee who has no available sick leave remaining) for the week he missed so he would not go without pay - having no balance in vacation or sick leave of his own.

She suggested that action to him. He had not sought her advice nor brought up the possibility to her.

At HR, a supervisor told him he should seek "advance sick leave" so donated sick leave could be held for his anticipated future surgery to correct his back problem. He made such application. The second line supervisor in his own department denied it and set wheels in motion to terminate him before his probationary period ended. Because she abhors advance sick leave, believing employees who need that consideration could never pay it back (even though one pay period of this guy would more than repay any unearned sick pay advanced), she was offended that he disobeyed her directive to seek donated sick leave. She was okay with his fellow employees donating their hours but she did not want the VA to do similarly. The VA was secure - they would not have to "donate" anything - they would get their advanced pay back when or if he were terminated before accruing enough sick hours to cover any advance.

Having never been counseled about his excessive absences by his supervisor or his supervisor's supervisor (the woman who spoke to him at the pharmacy) - never admonished, never warned, never threatened - he was looking forward to finally having the surgery required and recovering his good health so he would not have to miss work. He loved his job and had become friends with his co-workers. One of them had been granted advanced sick leave even though he had not applied for it and had not even signed the application form for it.

This guy's final weeks were caught up in the two supervisors being gone at different times and that necessitated him having direct contact with the woman who later said she "never" approved advance sick leave. And she was piqued that he had gone that direction, though he was advised to by HR, as though that put her on the spot. Insubordination?

After she denied his request for advance sick leave, she all of a sudden became concerned about his medical condition and ordered him to provide medical records for her review. In about 11 months employment at the VA, despite having missed considerable time from work because of his back problems, neither this woman or the guy's direct supervisor, cared enough to seek medical records to either confirm or disprove he was undergoing the treatment and exams he had claimed.

She gave him a deadline date to get those medical records to her. Why she wanted them if she had already determined to terminate his employment before his probationary period ended shortly thereafter remains a puzzle. It could be because after she had denied the advance leave application, the employee visited with the VA's on-site EEOC representative.

That arrangement certainly leaves nothing to the imagination. The EEO guy's office is right outside the hospital administrator's office. In other words, anyone discussing employment matters with the EEO guy might be overheard by

the very guy an employee may be criticizing or challenging. Word would get around the VA complex as fast as an e-mail could travel that this guy was bringing some kind of a beef about the VA to the Equal Employment Opportunity office. "Get rid of him if you can!"

Four days after the edict was issued by the second line supervisor demanding medical records, the employee's VA doctor responded. Four days! Yet, in the termination letter to this guy, the second line supervisor said, basically, that her demand was ignored and she had never received the medical records nor a response from his doctor. Later, in her EEO interview, she admitted that she had.

In the end, she and the employee's direct supervisor claimed the termination was all about the absences. That it had nothing to do with his disability or his EEO or Sen. Enzi contacts. Would he have missed any time had it not been for the disability known to exist when he was hired?

In the investigation process, only four people were interviewed. Three VA employees (the three levels of supervision over the employee who was terminated - two of whom did not know the guy) and the VA employee. He had provided them names of others but EEO did not interview them. His physician was not asked if she had responded timely to a demand made about his medical records. Co-workers were not contacted about precedent involving advance sick leave. No one who could back up the terminated employee's assertions was interviewed.

The dismissed employee's supervisors took the position that VA surgeons could not correct his problem - that they did not have the skills necessary to alleviate the back pain he suffered - that had caused him to miss so much work. They said, in effect, "we need to get rid of you now, regardless of how good an employee you are, because you will continue to miss excessive time because our doctors cannot cure you." So, they used the fact that he was at the end of his probationary period. He still has some rights.

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