

ECAB TRENDS

Presented by

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Merit Decisions v Non Merit Decision

A distinction without a difference?
However, with one you may win and the
other you lose.



Merit Decisions v Non Merit Decision

Explanation



Merit Decisions v Non Merit Decision

- T.S. and Postal Service
111 LRP 32854
ECAB Docket 10-1362 April 26 2011
 - The statement of acceptance facts was wrong.



Merit Decisions v Non Merit Decision

- A.B. and Post Office
111 LRP 20366
ECAB Docket 10-1070 March 8 2011
 - EEO decision was probative new evidence.



Merit Decisions v Non Merit Decision

- M.W. and the Department of the Air Force
112 LRP 18297
ECAB Docket 11-1287 March 26 2012
 - Mere Allegations of a hostile work environment do not constitute new evidence.



Wage Earning Capacity

A good reason to return to work



Wage Earning Capacity

Explanation



Wage Earning Capacity

- H.N. and US Postal Service
112 LRP 51268
ECAB Docket 11-155 September 24 2012
 - OWCP must determine whether the job was a make work job or a real job.



Wage Earning Capacity

- D.B. and US postal Service
112 LRP 3809
ECAB Docket 11-950 January 12 2012
 - OWCP must compare apples to apples.

Emotional Disorders

What is crazy?





Emotional Disorder

Explanation



Emotional Disorder

- D.S. and Postal Service
111 LRP 27668
ECAB Docket 10-1643 April 25 2011
 - Transfer of place of employment is a legitimate administrative function.



Emotional Disorder

- C.R. and Postal Service
11 LRP 38667
ECAB Docket 10-1942 May 20 2011
 - Imagery of racial discrimination is clearly offensive.

Intoxication

Does this affirmative defense really exist?





Intoxication

Explanation



Intoxication

- A.S. and Postal Service
111 LRP 28703
ECAB Docket 10-0514 April 12 2011
 - Claimant tested positive for narcotic medication.
 - Smashed into mailboxes.
 - Defense did not stand.

Intoxication

- N.P. and Postal Service
111 LRP 57996
ECAB Docket 10-952 July 26 2011
 - Toxicology reports indicated that claimant had an extremely high concentration of morphine and oxycodone in her system within hours after the accident.
 - Defense was not established

Termination by Legal Fiat - Technicalities

Is the final decision written in stone?





Termination by Legal Fiat - Technicalities

- **Explanation**



Termination by Legal Fiat - Technicalities

- L.K. and US Postal Service
112 LRP 6639
ECAB Docket 11-1393 January 19 2012
 - A suitable job offer must consider all medical conditions – not just work related conditions.



Termination by Legal Fiat - Technicalities

- J.R. and Department of Health and Human Services

112 LRP 18441

ECAB Docket 11-1398 March 7 2012

- Attending a Union meeting is a personal activity and not an employment activity.



Termination by Legal Fiat - Technicalities

- R.M. and US Postal Service
112 LRP 17461
ECAB Docket 11-1773 March 9 2012
 - Failure to notify claimant's representative of a decision will always void the decision.



Termination by Legal Fiat - Technicalities

- C.E. and Department of Justice
112 LRP 25101
ECAB Docket 12-631 April 25 2012
 - Notice must be sent to the correct address when OWCP knows of the address or the decision is void.



Termination by Legal Fiat - Technicalities

- J.C. and Department of Treasury
112 LRP 9575
ECAB Docket 11-1039 February 15 2012
 - OWCP must read the reports in file, or at least say it did, or the decision is void.



Termination by Legal Fiat - Technicalities

- W.F. and Postal Service

111 LRP 35873

ECAB Docket 10-1828 May 13 2011

- Proof that the claimant is not able to drive, and there is no public transportation is enough to refuse a suitable job offer.