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Dish Worker's Firing For Medical Pot Use Deemed Lawful

By **Ben James**

Law360, New York (June 15, 2015, 10:56 AM ET) -- The Colorado Supreme Court ruled Monday that Dish Network LLC was within its rights to fire a quadriplegic customer service representative who used medical marijuana, rejecting his argument that the company violated a state law that protects workers who engage in lawful off-duty conduct.



The Colorado Supreme Court ruled against Brandon Coats, pictured in 2012, who was fired for medical marijuana use on nonwork time. (Credit: AP)

Brandon Coats claimed Dish unlawfully discharged him for state-licensed medical marijuana use on nonwork time after he failed a drug test in 2012, but Colorado's highest court held, in a 6-0 ruling, that that state's lawful activities statute doesn't shield workers who engage in an activity that is allowed by state law but prohibited by federal law, affirming an intermediate appeals court decision that also went against Coats.

Coats argued that the term "lawful" meant "lawful under Colorado state law," but the state high court saw that reading as too restrictive, according to the en banc opinion from Justice Allison Eid.

"Instead, the term is used in its general, unrestricted sense, indicating that a 'lawful' activity is that which complies with applicable 'law,' including state and federal law. We therefore decline Coats' invitation to engraft a state law limitation onto the statutory

language," Justice Eid wrote.

The state Supreme Court **accepted the case** for review in January 2014. In April 2013, a split appellate panel **upheld the dismissal** of Coats' claim that his discharge violated the off-duty conduct law, saying the firing was lawful because, despite the state's decision to permit the use of medical marijuana, the drug remains illegal under federal law.

Coats, who worked for Dish a telephone customer service representative from 2007 to 2010, has been confined to a wheelchair since his teens and received a license from the state to use marijuana for painful muscle spasms caused by his quadriplegia, Monday's opinion said, adding that he consumed marijuana at home and after work.

Dish fired Coats for violating its drug policy in June 2010 after a positive test, triggering his wrongful termination claim under a statute that forbids discharging workers based on lawful outside of work activities.

"We are pleased with the outcome of the court's decision today. As a national employer, Dish remains committed to a drug-free workplace and compliance with federal law," the company said in an email Monday.

In an emailed statement from his attorney, Michael Evans, Coats said he hoped views on medical marijuana would change.

"Although I'm very disappointed today, I hope that my case has brought the issue of use of medical marijuana and employment to light. If we're making marijuana legal for medical purposes we need to address issues that come along with it such as employment," Coats said.

Evans called the ruling "devastating" but added that the opinion brought clarity to what had been a gray area in the law.

Justice Monica Marquez didn't participate in the opinion.

Coats is represented by Michael D. Evans of The Evans Firm LLC and attorney Thomas K. Carberry.

Dish is represented by Meghan W. Martinez, Ann E. Christoff, Elizabeth Imhoff Mabey and Drew D. Hintze of Martinez Law Group PC.

The case is Brandon Coats v. Dish Network LLC, case number 13SC394, in the Colorado Supreme Court.

--Editing by Rebecca Flanagan.