STATE OF MICHIGAN

COURT OF APPEALS

JOSE LOPEZ RUIZ,

Plaintiff-Appellant,

v

L. LOYER CONSTRUCTION CO.,

Defendant-Appellee.

UNPUBLISHED
April 4, 2000

No. 208133
Wayne Circuit Court
LC No. 96-643706-NO

Before: Cavanagh, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this action under the Persons with Disabilities Civil Rights Act (PWDCRA),[1] MCL 37.1101 *et seq*; MSA 3.550(101) *et seq*. We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

I

Plaintiff first claims that the trial court erred in granting defendant's motion for summary disposition because a genuine issue of material fact exists as to whether plaintiff was "disabled" within the meaning of the PWDCRA. We disagree.

The PWDCRA provides that an employer shall not "[d]ischarge or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position." MCL 37.1202(1)(b); MSA 3.550(202)(1)(b). To recover under the PWDCRA, a

plaintiff must allege and prove that (1) the plaintiff is "disabled" as defined by the PWDCRA, (2) the disability is unrelated to the plaintiff's ability to perform the duties of a particular job, and (3) the plaintiff has been discriminated against in one of the ways described in the statute. *Lown v JJ Eaton Place*, 235 Mich App 721, 727; 598 NW2d 633 (1999).

The PWDCRA defines a "disability" as a "determinable physical or mental characteristic of an individual . . . if the characteristic . . . substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion." MCL 37.1103(e)(i)(A); MSA 3.550(103)(e)(i)(A).

Under the plain language of the PWDCRA, to fall within the definition of a disability, an individual's condition must substantially limit at least one of his major life activities. *Stevens v Inland Waters, Inc*, 220 Mich App 212, 216; 559 NW2d 61 (1996). "Major life activities" are "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." *Id*. at 212, 217-218. Whether an impairment substantially limits a major life activity is determined in light of (1) the nature and severity of the impairment, (2) its duration or expected duration, and (3) its permanent or expected permanent or long-term effect. *Id*. at 218. An impairment that interferes with an individual's ability to do a particular job, but does not significantly decrease that individual's ability to obtain satisfactory employment elsewhere, does not substantially limit the major life activity of working. *Id*.

Plaintiff has failed to present evidence that plaintiff's lumbarization[2] of the spine substantially limited any of his life's major activities. Plaintiff admitted at his deposition that his back condition did not interfere with his ability to walk, bend, lift, work, talk, sleep, see, or hear. With regard to his ability to work, plaintiff specifically testified that his condition did not interfere with his ability to perform his duties for defendant and that he had no trouble performing the tasks assigned to him by defendant.

This Court has recently held that a lifting restriction constitutes a disability under the PWDCRA when it imposes substantial limitations on an individual's ability to perform the normal activities of daily living. *Lown*, *supra* at 732. However, plaintiff presented no evidence to indicate that the restriction on heavy lifting imposed substantial limitations on his ability to perform the normal activities of daily living.[3]

Even if plaintiff's impairment had affected his ability to perform his job with defendant, it did not significantly decrease his ability to find satisfactory employment elsewhere. Plaintiff testified at his deposition that, after he left his job at defendant corporation, he obtained a better-paying job as a roofer with Centimark Corporation. Plaintiff admitted that this job, like his previous position with defendant, required lifting and bending. He offered no evidence to indicate that he was unable to perform the tasks associated with his roofing position or that his ability to find satisfactory employment elsewhere had been affected by his impairment in any way.

Plaintiff also contends that defendant discriminated against him because of a perceived disability, contrary to MCL 37.1103(e)(iii); MSA 3.550(103)(e)(iii). However, plaintiff cites no record evidence in support of this claim.

In sum, plaintiff did not meet his burden of establishing a genuine issue of material fact for trial with regard to whether he has a disability as defined by the PWDCRA. Accordingly, the trial court did not err in granting defendant's motion for summary disposition.[4]

II

Plaintiff also claims that defendant violated the Worker's Disability Compensation Act (WDCA), specifically MCL 418.301(11); MSA 17.237(301),[5] by retaliating against him by terminating his employment when he refused to sign a medical restriction letter. However, the letter made no mention of plaintiff's rights under the WDCA. See *Edelberg v Leco Corp*, 236 Mich App 177, 184; 599 NW2d 785 (1999). Moreover, defendant hired plaintiff despite his refusal to sign the letter. Finally, plaintiff admitted at his deposition that he was not fired by defendant; rather, he voluntarily left his position. Therefore, there is no support for plaintiff's claim that defendant retaliated against him because of his refusal to sign the letter.

However, in an effort to get around the fact that he was not actually terminated by defendant, plaintiff also claims that he was constructively discharged when defendant's employee, "Judy," repeatedly requested that he sign the letter and indicated that he would be fired if he did not sign the medical restriction letter. Plaintiff claims that "Judy" asked him to sign the letter every day that he worked for defendant.

A constructive discharge occurs only where an employer's conduct is so severe that a reasonable person in the employee's place would feel compelled to resign. *Champion v Nation Wide Security, Inc*, 450 Mich 702, 710; 545 NW2d 596 (1996). Stated differently, a constructive discharge is established when working conditions become so difficult or unpleasant that a reasonable person in the employee's shoes would feel compelled to resign. *Mourad v Automobile Club Ins Ass'n*, 186 Mich App 715, 721; 465 NW2d 395 (1991). Constructive discharge is not in itself a cause of action, but rather is a defense against the employer's argument that the employee is precluded from bringing suit because he voluntarily terminated his employment. *Vagts v Perry Drug Stores, Inc*, 204 Mich App 481, 487; 516 NW2d 102 (1994). In other words, the law does not differentiate between employees who are actually discharged and those who are constructively discharged: once an individual establishes that he was constructively discharged, he is treated as if his employer had actually fired him. *Champion*, *supra*. A finding of constructive discharge depends on the facts of each case. *Wolff v Automobile Club of Michigan*, 194 Mich App 6, 15; 486 NW2d 75 (1992).

Here, plaintiff does not allege that he was transferred to another position, demoted, paid a lower salary, or given additional or reduced responsibilities. He merely alleges that he was repeatedly asked to sign a medical restriction letter. The repeated requests for plaintiff to sign the letter do not amount to conduct that would cause a reasonable person to feel compelled to resign because of unpleasant or

intolerable working conditions. See *Champion*, *supra* at 710-712. Accordingly, plaintiff has not presented any evidence to support his claim that he was constructively discharged.

III

Lastly, plaintiff claims that the trial court erred by denying his request to compel defendant to produce copies of medical restriction letters provided to other employees and copies of those employees' personnel files. The trial court's decision to grant or deny a request for discovery is reviewed for an abuse of discretion. *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 616; 576 NW2d 709 (1998).

Michigan law generally provides for the discovery of any relevant, non-privileged matter. MCR 2.302(B)(1). In determining whether to grant a discovery request, the trial court should consider whether the granting of discovery will facilitate or hamper the litigation. Factors such as the timeliness of the request, the duration of the litigation, and the possible prejudice to the opposing party should also be considered. *Nuriel v Young Women's Christian Ass'n of Metropolitan Detroit*, 186 Mich App 141, 146; 463 NW2d 206 (1990).

Here, where plaintiff should have been aware of the possibility that other employees were provided similar medical restriction letters from the inception of this lawsuit, where he waited to request those documents until well after discovery had closed, and where the discovery request would likely have led to additional discovery requests and additional delay in the resolution of this matter, the trial court did not abuse its discretion in denying plaintiff's request to compel defendant to produce those documents.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Helene N. White
/s/ Michael J. Talbot

[1] The PWDCRA was formerly known as the Handicappers' Civil Rights Act.

[2] The *Attorneys' Dictionary of Medicine* defines "lumbarization" as "[a]n abnormal fusion between the transverse processes of the 5th lumbar vertebra and the first sacral vertebra."

[3] Plaintiff was restricted from lifting more than twenty pounds. This Court has held that evidence of a twenty-five pound lifting restriction does not constitute a disability within the meaning of the PWDCRA. See *Lown*, *supra* at 732-733.

[4] Because plaintiff failed to establish a genuine issue of material fact that he was disabled, it is unnecessary to decide whether plaintiff established the other two elements of a prima facie case. However, we briefly note that plaintiff also failed to establish that he was discriminated against in one of the ways set forth in the statute. Initially, plaintiff claimed that defendant fired him because of his disability. However, in his deposition, plaintiff admitted that he was not fired by defendant but, rather, that he voluntarily left his job with defendant because he was not "happy" there. Therefore, plaintiff was not fired, and he alleges no other adverse action taken against him by defendant.

[5] MCL 418.301(11); MSA 17.237(301) provides:

> A person shall not discharge an employee or in any manner discriminate against an employee because the employee filed a complaint or instituted or caused to be instituted a proceeding under this act or because of the exercise by the employee on behalf of himself or herself or others of a right afforded by this act.