

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CARL E. VANKRIMPEN,

Plaintiff-Appellant,

v

HOLLAND COMMUNITY HOSPITAL,

Defendant-Appellee.

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UNPUBLISHED

August 3, 2001

No. 224103

Ottawa Circuit Court

LC No. 98-029829-CZ

Before: Collins, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition to defendant regarding plaintiff's claims of discrimination and retaliation under the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*, and the Rehabilitation Act, 29 USC 794. We affirm.

Plaintiff first contends that the trial court erred in concluding that he failed to establish a material factual dispute with respect to whether defendant viewed plaintiff as disabled when defendant decided to revoke his staff privileges. This Court reviews the trial court's summary disposition ruling *de novo*. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), which tests the factual basis underlying the plaintiff's claim. In reviewing a (C)(10) motion, this court considers the relevant evidence of record and all reasonable inferences arising therefrom in the light most favorable to the nonmoving party to determine whether a genuine issue regarding any material fact exists to warrant a trial. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999).

A review of the instant record reveals that while there is evidence that some of the hospital staff regarded plaintiff as unstable or paranoid, no evidence tends to support a conclusion that either the medical staff Executive Committee or defendant's Board of Directors viewed plaintiff as mentally disabled. The Board constituted the ultimate decision maker acting on the Executive Committee's recommendation. An initial Investigatory Committee report, which was forwarded to the Executive Committee and formed the basis for the Executive Committee's recommendation to revoke plaintiff's privileges, lacks any mention of paranoia, a suspected personality disorder or any other mental disease or defect.

While Dr. Valerie Mathis-Allen, the chairperson of the Investigatory Committee, did question plaintiff about his willingness to undergo psychiatric treatment, she did not recommend this course of action to the Executive Committee. In her testimony before the Appeal Committee, Dr. Mathis-Allen did not once mention any perceived mental disability as a reason for revoking plaintiff's privileges. Furthermore, Drs. Phil Vanderwoude and Larry Smith, the other Investigatory Committee members, also testified before the Appeal Committee and did not mention any perceived disability as a basis for revoking plaintiff's privileges. Thus, the facts indicate that neither the testimony of the Investigatory Committee members nor the report that the Investigatory Committee provided the Executive Committee mentions any perceived disability. The Executive Committee recommended revocation of plaintiff's privileges on the basis of the Investigative Committee report detailing plaintiff's history of disruptive behavior,<sup>1</sup> and the Board of Directors adopted the Executive Committee's recommendation to terminate plaintiff's privileges because of plaintiff's history of disruptive behaviors.

Because the evidence indicates that (1) the Executive Committee in adopting its initial recommendation did not consider any allegations of plaintiff's mental instability, (2) the Executive Committee rejected the Appeal Committee's suggestion that plaintiff should undergo psychiatric treatment, and (3) the Board of Directors adopted the Executive Committee's recommendation to revoke plaintiff's privileges solely on the basis of his ongoing misconduct, we conclude that the trial court properly granted defendant summary disposition of plaintiff's discriminatory discharge claims<sup>2</sup> pursuant to MCR 2.116(C)(10).

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<sup>1</sup> The facts show that the Investigatory Committee report constituted the sole basis for the Executive Committee's recommendation. Plaintiff argues that because (1) Dr. G. Daniel McNeil testified before the Investigative Committee that plaintiff "had a real paranoia" and (2) Dr. McNeil occupied a position on the Executive Committee, a suggestion arises that the Executive Committee's decision to revoke plaintiff's privileges involved some consideration of plaintiff's perceived disability. The Executive Committee report indicates, however, that its decision was based on the Investigative Committee's report, which made no mention of any perceived mental disorder. Furthermore, the Appeal Committee testimony of Dr. Roger A. Phillips, defendant's chief of staff and chair of the Executive Committee, indicated that the Executive Committee considered only the Investigative Committee's report, and that no transcripts of witness statements before the Investigative Committee were available to the Executive Committee when it made its decision to recommend revocation of plaintiff's staff privileges.

The report of the Appeal Committee that conducted hearings after the Executive Committee issued its initial recommendation concluded that plaintiff should receive a temporary suspension of his privileges and undergo a psychiatric evaluation and treatment "to help clarify the finding that his behavior is disruptive to the operations of the Hospital," but did not imply that plaintiff suffered any specific mental disorder. In any event, the Executive Committee rejected the Appeal Committee's recommendation, specifically stating that "[t]here was no evidence offered at the [Appeal Committee] hearing[s] to support a conclusion that [plaintiff]'s conduct . . . was related to a psychiatric problem." In its final resolution, the Board of Directors also explicitly noted that "this decision is not based upon any conclusion or finding that [plaintiff] is suffering from any mental or physical disorder, disability, or condition," rejecting plaintiff's argument to the contrary.

<sup>2</sup> See MCL 37.1103(d)(iii); *Michalski v Bar-Levav*, 463 Mich 723, 730-733; 625 NW2d 754 (continued...)

Plaintiff next argues that the trial court erred when it concluded that no cause of action existed to support plaintiff's claims of retaliation based on the PWDCRA or the Rehabilitation Act. We agree with plaintiff that such causes of action exist,<sup>3</sup> but we nonetheless conclude that the trial court correctly dismissed plaintiff's claims.

Both the PWDCRA and the Rehabilitation Act require a plaintiff alleging retaliation to prove (1) that he engaged in protected activity known by the defendant, (2) that he suffered an adverse employment action, and (3) that a causal connection existed between the protected activity and the adverse employment action. *Davis v Flexman*, 109 F Supp 2d 776, 801-802 (SD Ohio, 1999); *DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997). Applying the facts in this case, however, we conclude that plaintiff has not suffered an adverse employment action. The mere fact that defendant refused to reinstate plaintiff's staff privileges after his privileges were revoked does not support a claim for retaliation without some objective proof that the privileges would have been reinstated absent plaintiff's filing of his complaint. See *Wilcoxon v Minnesota Mining & Manufacturing*, 235 Mich App 347, 364; 597 NW2d 250 (1999) (an adverse employment action must be materially adverse and supported by objective proof). We therefore conclude that although the trial court employed erroneous logic, it reached the correct conclusion in granting defendant summary disposition of plaintiff's retaliation claims. *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 475 (1997).

Affirmed.

/s/ Jeffrey G. Collins

/s/ Joel P. Hoekstra

/s/ Hilda R. Gage

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(...continued)

(2001) (discussing the PWDCRA's prohibition against discriminatory actions based on an individual's perceived disability); 29 USC 705(20)(B)(iii); *Crocker v Runyon*, 207 F3d 314, 318 (CA 6, 2000) (similarly prohibiting under the Rehabilitation Act discriminatory actions against an individual solely on the basis of his perceived disability).

<sup>3</sup> MCL 37.1602(a), 37.1606(1) of the PWDCRA; *Davis v Flexman*, 109 F Supp 2d 776, 801-802 (SD Ohio, 1999) (discussing a retaliation claim under the Rehabilitation Act).