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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

JEFFREY G. AKIENS,)	
)	
Plaintiff,)	No. 14cv19 EJM
vs.)	
)	ORDER
HY-VEE, INC.,)	
)	
Defendant.)	
)	
)	
)	

This matter is before the court on defendant's resisted motion for summary judgment, filed January 27, 2015. Denied.

Plaintiff was employed by Hy-Vee from 1983 to mid-December 2011, when his employment was terminated. He brings this suit alleging that defendant fired him for using the Family Medical Leave Act (FMLA), 29 U.S.C. §2615. Defendant claims that he was terminated not for using FMLA time off, but for falsifying his time sheets.

Movant "bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record which show a lack of a genuine issue." PSK, LLC v. Hicklin, 757 F.Supp.2d 836 (N.D.Iowa 2010), citing Woods v. DaimlerChrysler Corp., 409 F.3d 984, 990 (8th Cir. 2005.) Summary judgment is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there are no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed.R.Civ.Pro. 56(c). A court considering a

motion for summary judgment must view all the facts in the light most favorable to the non-moving party, and give the non-moving party the benefit of all reasonable inferences that can be drawn from the facts. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986.)

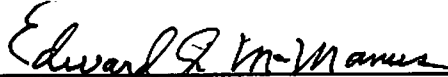
Considering the substantial evidence of both sides for and against both positions, and viewing the facts in the best light for the non-moving party, it appears that there is a disputed question of material fact on the motive behind plaintiff's termination. Bassett v. City of Minneapolis, 211 F.3d 1097, 1099 (8th Cir. 2000)(summary judgment should seldom be granted in employment cases.)

It is therefore

ORDERED

Denied.

March 23, 2015



Edward J. McManus, Judge
UNITED STATES DISTRICT COURT