

RENDERED: NOVEMBER 26, 2008; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001886-MR

DORA JANE ROBINSON

APPELLANT

APPEAL FROM JESSAMINE CIRCUIT COURT  
v. HONORABLE C. HUNTER DAUGHERTY, JUDGE  
ACTION NO. 06-CI-00523

MCKECHNIE VEHICLE  
COMPONENTS USA, INC.

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON AND MOORE, JUDGES; GUIDUGLI,<sup>1</sup> SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: Dora Jane Robinson appeals from a summary judgment dismissing her retaliatory discharge claim. We affirm.

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<sup>1</sup> Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

In 2000, Robinson was hired by McKechnie Vehicle Components USA, Inc. to work as a press operator in its manufacturing facility in Nicholasville, Kentucky. On May 1, 2003, Robinson injured her right shoulder while performing work-related duties. She was examined by a physician who recommended that Robinson perform only light duty work. Robinson communicated this recommendation to McKechnie who then transferred her to a light duty position. McKechnie's workers' compensation carrier paid Robinson temporary total disability benefits in October 2004.

In January 2005, Dr. Peter Hester performed outpatient surgery on Robinson's right shoulder at the Lexington Clinic in Lexington, Kentucky. Dr. Hester restricted Robinson from working and communicated the restriction to Leslie Lee, McKechnie's human resources assistant, in a fax dated January 18, 2005. Eventually, Robinson was permitted to return to work. However, she reinjured her right shoulder on her first day back. Robinson again sought treatment from Dr. Hester. On June 28, 2005, Robinson returned to work.

Robinson injured her left shoulder on July 11, 2005. She reported the injury to Lee on July 12th. Lee arranged to have Robinson treated by Dr. Greg L. Snyder who practices in the Lexington Clinic. On July 12, 2005, Robinson was examined by Dr. Snyder and nurse practitioner Judy Cleary. Cleary restricted Robinson to lifting five pounds with her left arm. Cleary informed Lee of the

restrictions. Lee explained to Cleary that McKechnie did not have any way of accommodating Robinson's restrictions at that time.

Robinson's injury was reported to the Department of Workers' Claims on July 18, 2005. McKechnie's carrier determined that Robinson's injury was not work-related. Robinson did not contest this determination. McKechnie's carrier informed McKechnie that it had closed the claim file. After her visit to Dr. Snyder on July 12, 2005, Robinson never returned to work nor did she call in to apprise McKechnie of her situation. Robinson returned to visit Dr. Hester in early August 2005 who determined that she could not physically work. Robinson did not take any further steps to inform McKechnie of her disability.

In April 2006, McKechnie hired a new human resources manager, Linda Haft. In the same month, Robinson elected to have a MRI performed on her right shoulder. Robinson did not inform anyone at McKechnie of her procedure or its results. The Lexington Clinic prepared a report of Robinson's April 2006 visit to Dr. Hester. The Lexington Clinic provided a copy of the report to ESIS, Inc., the third-party administrator for McKechnie's workers' compensation carrier. The report was not provided to McKechnie prior to this litigation.

During the process of familiarizing herself with McKechnie's workforce, Haft discovered that Robinson had not worked or called in since July 2005. Since Robinson had not provided any documentation of her July 2005 treatment or any treatments thereafter, Haft was unaware that Robinson continued to receive treatment for her shoulders. Haft concluded that Robinson had

abandoned her employment because there was no explanation for the long-term absence nor was there a pending workers' compensation claim. McKechnie formally terminated Robinson on May 2, 2006.

Robinson filed a complaint in Jessamine Circuit Court on June 27, 2006 alleging that McKechnie discharged her in retaliation for pursuing workers' compensation benefits. After several hearings, the trial court granted summary judgment in favor of McKechnie. This appeal followed.

KRS 342.197(1) states:

No employee shall be harassed, coerced, discharged, or discriminated against in any manner whatsoever for filing and pursuing a lawful claim under this chapter.

In order to establish a *prima facie* case of retaliatory discharge, the plaintiff must prove that: (1) she engaged in a protected activity; (2) the defendant knew that the plaintiff had done so; (3) adverse employment action was taken; and (4) that there was a causal connection between the protected activity and the adverse employment action. *Dollar General Partners v. Upchurch*, 214 S.W.3d 910, 915 (Ky. App. 2006).

We have thoroughly reviewed the record before us. The evidence demonstrated that Robinson pursued a workers' compensation claim that was closed in July 2005 approximately ten months prior to her termination. Robinson did not contest the determination. Robinson never returned to work nor did she ever inform McKechnie of her circumstances. There is no evidence that McKechnie otherwise had any knowledge of Robinson's continuing medical

treatment. Even when viewed in the light most favorable to Robinson, we are convinced that there is no disputed issue of material fact regarding her inability to establish a causal connection between her pursuit of workers' compensation benefits and her termination from employment. Therefore, summary judgment was proper.

Accordingly, the judgment of the Jessamine Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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