STATE OF MICHIGAN

COURT OF APPEALS

COLLETTE BRAINERD-SPRENKEL,

Plaintiff-Appellant,

v

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
March 15, 2002

No. 227055
Eaton County Circuit Court
LC No. 99-000152-NO

Before: Meter, P.J., and Markey and Owens, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting summary disposition in favor of defendant. We affirm.

Plaintiff first argues that the trial court erred in granting summary disposition in favor of defendant and dismissing her claim brought pursuant to the Persons with Disabilities Civil Rights Act (PWDCRA). We disagree. A trial court's grant of summary disposition is reviewed de novo on appeal. *Paul v Lee*, 455 Mich 204, 210; 568 NW2d 510 (1997).

With respect to employment, MCL 37.1202(1)(b) of the PWDCRA states that an employer shall not:

> (b) Discharge or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a disability or genetic information that is unrelated to the individual's ability to perform the duties of a particular job or position.

Further, the PWDCRA defines "disability" as:

> [a] determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic . . . substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment . . . . [MCL 37.1103(d)(i)(A).]

"To establish a prima facie case of discrimination under the PWDCRA, a plaintiff must demonstrate (1) that she is disabled as defined by the PWDCRA, (2) that the disability is

unrelated to her ability to perform the duties of a particular job, and (3) that she was 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).

Plaintiff argues that the trial court erred in finding that her disability was related to her ability to perform the duties of her job. Plaintiff claims that she is excepted from the requirement that the disability be unrelated to her ability to perform her duties because she was on an approved medical leave that had not expired at the time she was terminated. In response to plaintiff's argument, the trial court stated:

> Plaintiff claims that her approved medical leave constituted a protection of her employment status. However, the [PWDCRA] no longer requires that an employer allow a disabled employee a reasonable time to heal. *Lamoria [v Health Care & Retirement Corp*, 233 Mich App 560, 562; 593 NW2d 699 (1999)]. It is undisputed that Plaintiff was an at-will (exempt) employee in a supervisory capacity and therefore had no reasonable expectation of continued employment when she went on leave status. Based upon the evidence submitted, this Court finds that Plaintiff's disability was related to her ability to perform her duties as a supervisor, therefore her termination was not in violation of the [PWDCRA].

We agree with the trial court. In a case involving a plaintiff employee being terminated by the defendant employer while she was on a medical leave of absence, this Court held that the PWDCRA "does not require that an employer allow a disabled employee a reasonable time to heal." *Lamoria, supra* at 562. This Court affirmed the trial court's grant of summary disposition in favor of the defendant company with regard to the plaintiff's PWDCRA claim. *Id.* Thus, defendant was not required to grant plaintiff a medical leave and a reasonable time to heal until such time as she would be able to perform the requirements of her job. *Id.*

Further, although instant plaintiff apparently is arguing that her job was "protected" while she was on leave and that she could not be terminated during this time, there is no dispute that plaintiff was an "at will" employee who had no reasonable expectation of continued employment. *Franzel v Kerr Manufacturing Co,* 234 Mich App 600, 606; 600 NW2d 66 (1999). In *Franzel, supra* at 602, the defendant appealed a jury verdict that found it liable for breaching the parties' contract that formed the basis for the plaintiff's return to work. In vacating the judgment in favor of the plaintiff, this Court stated that "even if defendant breached its contract with plaintiff regarding her return to work, nothing in the contract ensured her continued employment because . . . she was an at-will employee . . . ." *Id*. at 603, 606. Similarly, instant plaintiff was not guaranteed continued employment. Because of plaintiff's at-will employment status, defendant had the right to terminate plaintiff's employment.

Further, plaintiff's disability was related to her ability to perform her supervisory duties. The disability status of an individual is determined as of the date of discharge. *Ashworth v Jefferson Screw Products, Inc,* 176 Mich App 737, 744; 440 NW2d 101 (1989), quoting *Wilson v Acacia Park Cemetery Ass'n*, 162 Mich App 638, 643-644; 413 NW2d 79 (1987). In this case, plaintiff was discharged on June 11, 1998. Viewing the evidence in a light most favorable to

plaintiff, *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999), the evidence demonstrates that plaintiff could not perform the duties of her job that required her to be physically present at work at least 7.75 hours per day so that she could, for example, supervise and monitor her subordinates, prioritize and assign work to employees, select and train support staff personnel, and interface with other company personnel to resolve issues and inquiries. Plaintiff acknowledged in her deposition that in not working full-time on a daily basis, she was unable to observe and monitor the work production of those employees that she supervised and was unable to attend meetings with the employees. When plaintiff was discharged on June 11, 1998, she was not working at all and plaintiff's physician previously had written a note in April 1998 stating that plaintiff was restricted to working four hours per day until at least June 18, 1998 at which time she would be reevaluated. Plaintiff's absenteeism was ongoing and her inability to work full-time related to the performance of her duties when she was terminated on June 11, 1998. The trial court did not err in granting summary disposition to defendant on this issue.

Plaintiff next argues that the trial court erred in dismissing her retaliation claim. We disagree.

MCL 418.301(11) 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 a right afforded by this act.

To establish a retaliatory discharge claim, the plaintiff must prove: (1) she was engaged in a protected activity, (2) defendants knew of the protected activity, (3) defendants acted adversely to plaintiff, and (4) the protected activity caused the adverse employment action. *DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997). The burden is on the plaintiff to establish that there was a causal connection between the protected activity, i.e., the filing of her worker's compensation claim, and the adverse employment action. *Chiles v Machine Shop, Inc*, 238 Mich App 462, 470; 606 NW2d 398 (1999).

In addressing this issue, the trial court stated that it had reviewed all the evidence submitted by plaintiff in support of the retaliation claim and that a "causal link" between plaintiff's filing for worker's compensation benefits and her subsequent termination cannot be found. Thus, the trial court concluded that the fourth element was not established. We agree.

In the present case, there is no evidence to support a causal connection. Plaintiff merely has introduced evidence that she applied for worker's compensation benefits and that she was terminated several months later. There is no evidence that defendant terminated plaintiff because she filed for benefits or that defendant had any ill-will against plaintiff regarding her claim for benefits. See *Roulston v Tendercare, Inc*, 239 Mich App 270, 280; 608 NW2d 525 (2000) (this Court concluded that sufficient evidence existed to support an inference of retaliation after the defendant displayed visible anger toward the plaintiff and terminated her just hours after learning

of the plaintiff's protected activity). Further, although not addressed by the trial court, there is no evidence, contrary to plaintiff's assertion, that she was terminated because she had filed a prior lawsuit against defendant. The trial court did not err in granting summary disposition in favor of defendant on plaintiff's retaliation claim.

We affirm.

/s/ Patrick M. Meter
/s/ Jane E. Markey
/s/ Donald S. Owens