

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE MCKINNEY,

Plaintiff-Appellant,

v

AMERICAN AXLE & MANUFACTURING,
INC.

Defendant-Appellee.

UNPUBLISHED

January 10, 2006

No. 255662

Wayne Circuit Court

LC No. 02-234858-CZ

Before: O’Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court’s order granting defendant summary disposition under MCR 2.116(C)(10). The question in this case is whether a decision by American Axle and Manufacturing (AAM), plaintiff’s employer, violated Michigan’s Civil Rights Act, prohibiting employment discrimination on the basis of weight, MCL 37.2202(1). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was employed by AAM as an unskilled worker. In 1999 he applied for and was accepted into the company’s skilled trades program as an electrician trainee. However, on the day that he was scheduled to begin that training, AAM management told him that he was “too big” to be trained as an electrician. Documentary evidence showed that, near the time that AAM made this decision, plaintiff was six feet, five inches tall and weighed 436 pounds.

Defendant’s apprentice coordinator told the plaintiff that AAM had no safety harnesses that would fit him during training. Plaintiff was also advised that the ladders and man lifts that AAM had at its factory would not support his weight. Plaintiff was offered, and he accepted, alternative skilled training as a machine repairman. Plaintiff undertook and completed this training. Plaintiff was trained at the same wage and under the same working conditions as other skilled employee trainees.

Plaintiff sued his employer, alleging that its decision to preclude plaintiff from training as an electrician violated MCL 37.2202(1). After discovery was completed, defendant moved for summary disposition. The trial court granted the defense motion, ruling that plaintiff had not sustained his burden to show discrimination.

We review the trial court's grant of a motion for summary disposition de novo. In that review, this Court gives the non-moving party, here the plaintiff, the benefit of every logical inference from the evidence in determining whether there is a genuine issue of material fact. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999); *Bertrand v Alan Ford, Inc*, 449 Mich 606, 618; 537 NW2d 185 (1995).

Plaintiff alleges that AAM discriminated against him because of his weight. MCL 37.2202(1)(a) provides that an employer shall not "[f]ail or refuse to hire or recruit, discharge or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition or privilege of employment because of . . . weight" To establish a prima facie case for unlawful employment discrimination, a plaintiff must show that (1) he was a member of a protected class; (2) he suffered an adverse employment action; (3) he was qualified for the position: but, (4) he suffered the adverse employment consequence under circumstances giving rise to an inference of unlawful discrimination. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 172-173; 579 NW2d 906 (1998).

Once the plaintiff makes his prima facie case, the burden shifts to the defendant to show a "legitimate" nondiscriminatory rationale for its employment decision. The defendant need not persuade the court that it was actually motivated by the proffered reason; rather, it is enough if the defendant's evidence raises a "genuine issue of fact" with respect to whether its decision amounted to discrimination against the plaintiff. Once the defendant makes such a showing, the presumption raised by the plaintiff's prima facie case disappears and the burden returns to the plaintiff. *Lytle, supra* at 173-174.

Once past the initial stage, when there is a motion for summary disposition by the defendant, plaintiff has a renewed burden to show that there is a triable issue of fact that the employer's reasons for the personnel action are not true, but are a sham or pretext. Under Michigan's "intermediate position" disproof of an employer's articulated reason for an adverse employment decision can defeat the summary disposition motion only when the plaintiff's proof raises a triable issue that "discriminatory animus" was a motivating factor underlying the employer's decision. *Lytle, supra* at 175-176.

In the case before us, we find that the plaintiff did make his prima facie case. He is a member of the class protected by statute; he was accepted into the AAM electrician apprentice program and was turned out of that program because of his weight. However, AAM has made a sufficient showing that its decision was based on important safety considerations, not this plaintiff's weight. Plaintiff has not established that the safety rationale given by AAM was a pretext or sham, nor has plaintiff shown any "discriminatory animus" in the defendant's decision not to allow him to train as an electrician.

We conclude that, where AAM could not obtain safety harnesses that would fit the plaintiff and where federal and state regulations mandated the use of safety harnesses, weight restrictions limiting electrician training to employees who weighed less than 310 pounds were a bona fide occupational qualification under MCL 37.2208. This qualification was "reasonably necessary" to the conduct of the defendant's business.

Moreover, where plaintiff was fully trained at his employer's expense as a skilled machine repairman, at the same wage as an electrician, under nearly identical working conditions, plaintiff suffered no "adverse" employment action.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Michael J. Talbot