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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0472**

John R. Trenter,
Appellant,

vs.

Fairview Health Services d/b/a Fairview Southdale Hospital,
Respondent.

**Filed November 18, 2013
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CV-12-3837

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(for appellant)

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Considered and decided by Hudson, Presiding Judge; Halbrooks, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's summary-judgment dismissal of his claims of disability discrimination, failure to accommodate a disability, and reprisal under the Minnesota Human Rights Act (the MHRA), arguing that he presented evidence

sufficient to defeat summary judgment on each claim. Because appellant's claims fail as a matter of law, we affirm.

FACTS

Appellant John R. Trenter worked for 23 years as a "float pool" nurse for respondent Fairview Health Services. His employment was terminated in January 2011, following a year-long medical leave of absence.

Trenter took several leaves of absence during his employment with Fairview pursuant to the terms of his employment contract. Trenter took medical leave first in 2004 and again in July 2005 until June 2006.

In 2006, P.C., the patient-care supervisor for the float pool, became Trenter's supervisor. In annual performance evaluations in both October 2006 and November 2007, P.C. rated Trenter as "fully effective" and concluded that he met all job-related goals. In the 2007 evaluation, P.C. directed Trenter to "[w]ork on reducing his ill time" and learn work-related procedures.

In 2006, Trenter was diagnosed with moderately severe chemical depression and anxiety, and he experienced difficulty sleeping. Trenter also suffered from a hiatal hernia, a condition with which he was diagnosed in the 1980s that became worse over the years. According to Trenter, a hiatal hernia is "a chest hernia where the stomach actually goes up through a tear in the diaphragm." Trenter developed anemia but was able to manage the condition by taking iron supplements. During his time at Fairview, P.C. was aware that Trenter had "an extraordinary number of health issues" including

“depression. . . [a]nxiety, sleep issues, inability to sleep . . . an umbilical hernia . . . a back strain of some kind.”

By 2007, Trenter felt that P.C. was “monitoring [him] more closely” and would harass him whenever he returned to work following a leave of absence. In October 2008, Trenter sent an e-mail to P.C.’s supervisor, director of nursing operations, T.M., complaining that P.C. repeatedly called him at home and work regarding alleged “issues or problems.” He stated that he felt “intimidated and harassed” by P.C. T.M. met individually with both Trenter and P.C., after which he concluded that Trenter’s complaints “were not valid.” The same day that Trenter e-mailed T.M., Trenter was given a “Verbal Advisement” for a “pattern of incomplete charting regarding narcotics administration.”

On November 10, 2008, Trenter took medical leave because of a work-related injury. While Trenter was on leave, P.C. conducted Trenter’s performance evaluation, deeming Trenter competent in all areas but rating him as “failing to meet expectations.” The evaluation indicated that Trenter had been asked to improve the accuracy of his narcotics-administration charting, learn work-related procedures, and “work on reducing his ill time.” Trenter returned to work on December 17, 2008, but resumed medical leave in February 2009 until July 10, 2009.

In September 2009, T.M. e-mailed R.H. in Fairview’s human-resources department to ask: “Is there any way we can move or advance . . . John Trent[e]r to suspension/termination[?] What do we need to get us there . . . feeling we have given him more than ample opportunity to improve.” Later that month, Trenter received a

written “notice of corrective action” for continued “inadequate and careless charting of narcotics administration,” “inappropriate behavior to team members and patients,” and “charting that exceeds the scope of the RN role.” P.C. met with Trenter, R.H., and a representative from the Minnesota Nurses Association (the MNA), to deliver the corrective action. In that meeting, Trenter accused P.C. of discriminating against him due to his age, gender, and medical leave taken.

In October 2009, Trenter sent a letter to T.M., challenging the bases for the corrective action and complaining of a “hostile environment” at Fairview. Trenter also stated that he wanted to add “disability and age discrimination” to his previous complaint of harassment and intimidation. In contrast to his response to Trenter’s first letter, T.M. did not investigate Trenter’s allegations.

On December 7, 2009, Trenter went on medical leave to address a shoulder injury and his depression. The following day, P.C. conducted Trenter’s annual performance review. In the evaluation, Trenter was deemed competent in all areas and as having achieved all goals, but was rated as “failing to meet expectations.” The evaluation indicated several strengths demonstrated by Trenter, but noted that he “continued a pattern of performance issues,” including “inadequate and careless charting of narcotics, rude and inappropriate behavior to a fellow staff member . . . and out of scope charting.” The evaluation further noted that Trenter was placed on a performance plan and “asked to reduce his absenteeism.”

Nine months later, while still on leave in September 2010, Trenter underwent surgery for his hiatal hernia. The surgery corrected the condition, and Trenter “was ready to come back to work” in December 2010.

Under the collective-bargaining agreement between the MNA and Fairview that governed Trenter’s employment, Fairview was required to grant nurses up to 12 months’ unpaid leave for “personal illness, injury, or disability.” When a leave lasted three or less months, “the nurse will be returned to her or his previous position.” But when a leave lasted more than three months, but fewer than 12 months, “the nurse will be returned to her or his previous position if it is open and, if not, to her or his previous classification and scheduled number of hours.”

Trenter returned to work on December 7, 2010—12 months after commencing medical leave. Trenter provided Fairview with a doctor’s letter, indicating that he had a ten-pound lifting restriction for 20 more days—until December 27, 2010. Fairview assigned Trenter to transitional work that included “answering phone[s]” and “dispatching volunteers.” Fairview notified Trenter that his transitional work would expire December 26 and that Trenter had until then to secure a new position at Fairview. Because Trenter’s previous position in the float pool was no longer available, he was required to apply to open positions.

S.J., in Fairview’s talent acquisition and career services, assisted Trenter with his job-search efforts. S.J. began working with Trenter in late 2010 while he was still on medical leave. She “identified several RN jobs Trenter was qualified for an[d] urged him to apply for them.” There were seven positions open in “med/surg” in December 2010

for which Trenter was qualified. But Trenter did not apply for any of those positions. Had Trenter applied for any of the seven open positions, he would have been hired, due to his qualifications and his seniority relative to the other applicants.

Trenter applied for five positions at Fairview, none of which he was qualified to perform. There is no dispute that Trenter lacked the minimum qualifications for the two “RN-Emergency” positions and the two “RN ICU” positions for which he applied. The fifth position, a critical-care float position, required applicants to take a telemetry test. Trenter took the test and failed. Although P.C. testified that float nurses who fail the telemetry test are given an opportunity to continue working and take it again, Fairview has a policy that applicants will not be considered for *critical-care* positions unless they pass the telemetry test on their first try. Trenter was neither hired for the critical-care position nor given an opportunity to retake the telemetry test.

Fairview terminated Trenter’s employment on January 10, 2011. In its termination letter, T.M. and C.O. of the human-resources department explained that because Trenter did not apply for an open position for which he was qualified, his employment with Fairview had terminated.

In December 2011, Trenter sued Fairview, asserting claims under the MHRA, Minn. Stat. §§ 363A.01-.43 (2012), of age discrimination, disability discrimination, failure to accommodate a disability, and reprisal. Fairview moved for summary judgment on all claims, and Trenter moved for partial summary judgment on his failure-to-accommodate claim. Following a hearing, the district court concluded that Trenter failed

to establish a prima facie case on each claim, entered summary judgment in favor of Fairview, and dismissed Trenter's complaint in its entirety. This appeal follows.

DECISION

The question this case presents is whether the district court erred by granting summary judgment to Fairview on Trenter's claims of disability discrimination, failure to accommodate a disability, and reprisal under the MHRA.¹ We review a district court's decision on summary judgment de novo. *Riverview Muir Doran, LLC v. JADT Dev. Group, LLC*, 790 N.W.2d 167, 170 (Minn. 2010). "In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Id.*

I.

The MHRA prohibits an employer from discharging an employee based on a disability. Minn. Stat. § 363A.08, subd. 2(2) (2012). To survive a motion for summary judgment, a plaintiff must establish a discrimination claim under the MHRA using either the direct-evidence method or the burden-shifting method adopted in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 1824 (1973). *Friend v. Gopher Co., Inc.*, 771 N.W.2d 33, 37, 40 (Minn. App. 2009).

Trenter seeks to prove his claims under the *McDonnell Douglas* burden-shifting framework. Under that method, a plaintiff must first establish a prima facie case of discrimination. *Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534, 542 (Minn.

¹ Trenter does not appeal the summary-judgment dismissal of his age-discrimination claim.

2001). If the plaintiff sustains that burden, the employer must provide a legitimate, nondiscriminatory reason for the adverse employment action. *Id.* If that burden is met, the plaintiff must prove that those reasons were a pretext for discrimination. *Id.*

To establish a prima facie case of disability discrimination, a plaintiff must show that (1) he was disabled within the meaning of the MHRA, (2) he was qualified to perform the essential job functions with or without reasonable accommodation, and (3) he suffered an adverse employment action “under circumstances giving rise to an inference of unlawful discrimination.” *Snow v. Ridgeview Med. Ctr.*, 128 F.3d 1201, 1206 (8th Cir. 1997), *abrogated on other grounds by Torgerson v. City of Rochester*, 643 F.3d 1031 (8th Cir. 2011).

A disabled person is one who: “(1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.” Minn. Stat. § 363A.03, subd. 12 (2012). Major life activities include “caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” *Gee v. Minn. State Colleges & Univs.*, 700 N.W.2d 548, 553 (Minn. App. 2005) (quoting 29 C.F.R. § 1630.2(i) (2003)).

Treter argues that he was disabled because he suffered from hiatal hernia, chemical depression, anxiety, and a sleep disorder. The question dispositive to this appeal is not whether Treter suffered these conditions when he was employed by Fairview—there is no dispute that he did—but whether Treter submitted evidence that he was materially limited in a major life activity as a result of his medical conditions.

On appeal, Trenter asserts that his medical conditions impaired his ability to care for himself, eat, digest, control his mood and affect, work, and sleep. But Trenter asserts these limitations in his appellate brief without citation to the record, and during oral argument his counsel was unable to identify any evidence in the record that demonstrates these claimed material limitations. It is not enough for Trenter to prove the existence of medical conditions or symptoms resulting from his medical conditions. In order to meet his burden to establish that he is disabled under the MHRA, Trenter must instead offer evidence to establish that his conditions or symptoms have *materially limited* him in the performance of a major life activity. *See Hoover*, 632 N.W.2d at 544.

With respect to his hiatal hernia, Trenter concedes that the 2010 surgery corrected the condition. And there is no evidence that prior to the surgery Trenter was materially limited by the hiatal hernia. Trenter testified that his hiatal hernia *might* have interfered with his ability to sleep and absorb nutrients, because doctors had told him that that is a “possibility” with that condition. But these conjectural assertions do not establish that Trenter was disabled as a result of his hiatal hernia.

Trenter’s argument that his chemical depression and anxiety caused weight gain, sleep problems, and loss of energy also fails to establish a disability under the MHRA. Trenter has not presented evidence to demonstrate how these symptoms materially limited any of his major life activities.

Finally, Trenter alleges that he is disabled because he had a sleep condition that “impacted his ability to work night shifts.” In support of his position, Trenter points to deposition testimony in which he explained that he decided not to apply for any night

positions in late 2010 because he “was worried that the night shift would not work out” because of his “sleep disorder history.” This evidence demonstrates Trenter’s reluctance to work nights but fails to establish that, as a result of a sleep disorder, he was either unable to work nights or would experience material limitations in a major life activity if he were to work nights. Consequently, Trenter has failed to satisfy his burden to demonstrate that his problems sleeping constitute a disability under the MHRA.

We agree with the district court that, on this record, Trenter’s disability-discrimination claim fails as a matter of law because he has not submitted evidence that his medical impairments have materially limited him in a major life activity.

Trenter has also failed to establish the remaining elements of a prima facie claim of disability discrimination: qualification for a position and circumstances surrounding his termination that imply unlawful discrimination. Uncontroverted evidence shows that Trenter did not meet the minimum qualifications for any of the five positions for which he applied when he returned to Fairview in 2010 following a year-long leave of absence. Trenter argues that he was qualified for his prior position in the float pool. But that position was not open when Trenter returned to work, and Fairview was not required to return Trenter to his former position due to the length of the leave he had taken.

Trenter has also failed to offer evidence demonstrating that his employment was terminated under circumstances that give rise to an inference of unlawful discrimination. The district court concluded that the fact that the individuals who decided to terminate Trenter did not regard him as disabled was fatal to his disability-discrimination claim. We agree.

In a disability-discrimination case, “[t]he employee must prove that the employer knew of the employee’s disability or perceived him or her as disabled.” *Hunter v. United Parcel Serv., Inc.*, 697 F.3d 697, 703 (8th Cir. 2012). While T.M., P.C., and other decision-makers at Fairview were aware that Trenter had taken extensive time off work and suffered an “extraordinary number of health issues,” that evidence is insufficient to show that any of these individuals perceived Trenter as disabled. On appeal, Trenter points to P.C.’s directives to reduce his “sick time” and absenteeism as evidence of Fairview’s discriminatory animus. But P.C.’s frustration with Trenter’s repeated absences from work does not reflect unlawful intent.

Because Trenter has failed to produce evidence sufficient to establish a prima facie claim of disability discrimination, the district court properly granted summary judgment on this claim.

II.

We next address Trenter’s claim that Fairview unlawfully discriminated against him by failing to accommodate his disability. Trenter asserts that Fairview failed to accommodate a disability when he returned to work in December 2010. This argument is unavailing. As a threshold matter, we conclude that Trenter is not entitled to an accommodation under the MHRA because he has not established that he is disabled within the meaning of the act. Further fatal to his claim, Trenter concedes that he never requested an accommodation. To establish a claim of failure to provide a disability accommodation, “the employee must inform the employer than an accommodation is

needed.” *See Cannice v. Norwest Bank Iowa N.A.*, 189 F.3d 723, 727 (8th Cir. 1999). Due to these deficiencies, Trenter’s claim cannot withstand summary judgment.

III.

Finally, we consider whether Trenter presented evidence sufficient to survive Fairview’s summary-judgment motion on his claim of reprisal. The MHRA prohibits reprisal against an individual for taking action protected by the act. Minn. Stat. § 363A.15 (2012). “A reprisal includes . . . any form of intimidation, retaliation, or harassment.” *Bahr v. Capella Univ.*, 788 N.W.2d 76, 81 (Minn. 2010) (emphases omitted). A reprisal claim is analyzed under the *McDonnell Douglas* burden-shifting test. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). The prima facie case for reprisal requires the plaintiff to establish “(1) statutorily-protected conduct by the employee; (2) adverse employment action by the employer; and (3) a causal connection between the two.” *Hubbard v. United Press Int’l, Inc.*, 330 N.W.2d 428, 444 (Minn. 1983).

Trenter argues that Fairview refused to return him to the float pool and later terminated him in retaliation for his request for accommodation and his October 2009 complaint of discrimination. Because Trenter never requested an accommodation, his theory of reprisal based on a request for accommodation is without merit.

With respect to Trenter’s claim of reprisal in connection with his October 2009 complaint of discrimination, Trenter has failed to submit evidence to establish a causal connection between that complaint and the employment actions he challenges. We agree with the district court’s reasoning that the passage of time between Trenter’s complaint to

T.M. and his termination in January 2011 disproves any causal relationship between the two events. Trenter's reprisal claim is also defeated by the uncontroverted evidence that, pursuant to the MNA contract, Trenter was not entitled to return to his previous float-pool position or to remain at Fairview without applying for open positions for which he was qualified. Trenter's refusal to apply for positions for which he was qualified further erodes any causal relationship between his complaint of discrimination and his termination. Because Trenter has failed to produce evidence sufficient to establish a prima facie claim of reprisal, his claim cannot withstand summary judgment.

Affirmed.