

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

CEDRICK CARTER

Case No. 2005-06805

Plaintiff

Judge Joseph T. Clark

v.

DECISION

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

{¶1} Plaintiff brought this action alleging racial discrimination and wrongful discharge in violation of public policy. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} Plaintiff's claims arise as a result of his involuntary "disability separation" from employment with the Montgomery Education and Pre-Release Center (MEPRC). Plaintiff had been employed as a corrections officer at MEPRC since May 1989 and his disability separation began in May 2003.

{¶3} On June 26, 2002, plaintiff was working in the kitchen tool room near the dining rooms at MEPRC. Lieutenant Jeff Penic testified that at approximately noon on that date he went into the tool room to investigate allegations that plaintiff was improperly documenting the removal and return of kitchen tools. According to Lieutenant Penic, an argument ensued. Lieutenant Penic then took plaintiff's keys, exited the room, closed the door and locked plaintiff inside. Lieutenant Penic stated that he returned soon thereafter with Mike Mockabee, the institutional inspector, so that Mockabee could observe plaintiff's behavior and the condition of the tool room.

{¶4} Plaintiff testified that later that day, he reported to the Ohio State Highway Patrol that he had been unlawfully detained by Lieutenant Penic. Plaintiff also filed an incident report at MEPRC stating that Lieutenant Penic had locked him in the tool room for an extended period of time. (Plaintiff's Exhibit 15.) Lieutenant Penic also filed an incident

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report, alleging that plaintiff had refused a direct order and that the tool room was not properly maintained. (Plaintiff's Exhibit 16.)

{¶15} Curtis Wingard, warden of MEPRC, testified that following the incident, he assigned Captain Kurt Klopfenstein to investigate the allegations of both plaintiff and Lieutenant Penic. Captain Klopfenstein concluded that plaintiff had not properly logged tools in and out of the tool room and that he had refused a direct order from Lieutenant Penic. (Plaintiff's Exhibit 18.) Ultimately, plaintiff was given an oral reprimand concerning tool room procedure, and he was fined two day's wages for insubordination. (Plaintiff's Exhibits 24, 32.) Additionally, Warden Wingard testified that he conducted an independent investigation into the incident, that he found no fault with the manner in which Lieutenant Penic had handled the situation, and that no further action was necessary.

{¶16} Plaintiff alleges that as a result of being locked in the tool room, he suffered severe emotional and psychological injuries. Plaintiff asserts that his injuries were exacerbated by his perceived unfairness of the subsequent investigations and by the disciplinary action that was taken against him. Plaintiff testified that he was embarrassed by defendant's actions and that employees at other institutions ridiculed him about his situation. Plaintiff further testified that he sought psychological treatment as a result of the incident.

{¶17} Plaintiff contends that his psychological condition caused him to take leave on several occasions over the next few months; further, that he began to miss work for days at a time over the next several months. In February 2003, plaintiff was given "corrective counseling" for improperly filling out leave paperwork. (Plaintiff's Exhibit 41.) Plaintiff was also disciplined in early March 2003, for taking leave when he had already exhausted his available sick time. (Plaintiff's Exhibit 44.) Plaintiff testified that these actions caused him more stress and anxiety. On March 14, 2003, plaintiff was placed on administrative leave and was informed that he would not be able to return to work until he received a favorable evaluation from a licensed psychologist. (Plaintiff's Exhibits 46, 48,

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49.) Finally, effective May 22, 2003, plaintiff was placed on disability separation.¹ (Defendant's Exhibit A, pg. 1.)

{¶8} Plaintiff claims that the tool room incident, subsequent disciplinary actions, and his eventual disability separation were racially motivated. Plaintiff also claims that his disability separation amounted to a wrongful termination of employment in violation of public policy.

{¶9} R.C. 4112.02 provides in relevant part:

{¶10} "It shall be an unlawful discriminatory practice:

{¶11} "(A) For any employer, because of the race, color, religion, sex, national origin, disability, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment."

{¶12} The Supreme Court of Ohio has stated that "federal case law interpreting Title VII of the Civil Rights Act of 1964, Section 2000(e) *et seq.*, Title 42 U.S. Code, is generally applicable to cases involving alleged violations of R.C. Chapter 4112." *Plumbers & Steamfitters Joint Apprenticeship Comm. v. Ohio Civ. Rights Comm.* (1981), 66 Ohio St.2d 192, 196. In order to establish a prima facie case of racial discrimination, plaintiff must demonstrate that: 1) he is a member of a protected class; 2) that he suffered an adverse employment action; 3) that he was qualified for the position; and 4) either that he was replaced by someone outside the protected class or that a comparable, non-protected person was treated more favorably. *Mowery v. City of Columbus et al.*, Franklin App. No. 05AP-266, 2006-Ohio-1153, ¶43; see, also, *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792, 802; *Mitchell v. Toledo Hosp.* (C.A.6, 1992), 964 F.2d 577, 582.

¹ At the time of trial, plaintiff had been reinstated by defendant; however, no testimony or evidence was offered as to the date of plaintiff's reinstatement.

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{¶13} Plaintiff has not established a prima facie case for discrimination. While it is undisputed that plaintiff is a member of a protected class and that he was qualified for the position, it is arguable whether plaintiff has suffered an “adverse employment action” because he was placed on disability separation, rather than being terminated. Additionally, even if plaintiff’s disability separation were to satisfy that requirement, plaintiff has not provided the court with any evidence of who, if anyone, replaced him in his position, or that an employee of a non-protected class was treated more favorably. The court finds that defendant has provided sufficient evidence that plaintiff’s frequent absences from work and his inability to satisfactorily perform his job duties constituted cause for separation.

{¶14} “Once a plaintiff has established a prima facie case, the employer assumes the burden of production to articulate some legitimate, non-discriminatory reason for its action.” *Samadder v. DMF of Ohio, Inc., et al.*, 154 Ohio App.3d 770, 2003-Ohio-5340; citing *McDonnell Douglas*, supra, at 802. However, “[i]f the employer carries this burden, then the plaintiff must establish that the reasons the employer offered were not its true reasons, but were a pretext for discrimination.” *Samadder* at 780; citing *Texas Dept. of Community Affairs v. Burdine* (1981), 450 U.S. 248, 253.

{¶15} Inasmuch as the court has found that defendant had a legitimate non-discriminatory reason for the action taken against plaintiff, the presumption of discrimination has been rebutted, and plaintiff must show that the proffered legitimate reason is a mere pretext for discrimination. *Samadder*, supra. In order to meet that burden, plaintiff must show, by a preponderance of the evidence, that the “employer’s explanation is not credible.” *Ullmann v. Ohio Bur. of Job & Family Servs.*, Franklin App. No. 03AP-184, 2004-Ohio-1622. In addition, the Sixth Circuit Court of Appeals has held that to prove pretext, plaintiff must show that: 1) defendant’s reasons had no basis in fact; 2) the reasons did not actually motivate the discharge; and 3) the reasons were insufficient to warrant a discharge. *Manzer v. Diamond Chemicals Co.* (C.A.6, 1994), 29 F.3d 1078.

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{¶16} It is clear from the evidence and testimony that Warden Wingard placed plaintiff on disability separation due to continued absences and abuse of leave time. The court finds no evidence that defendant's decision was motivated by race, or that the stated reasons were insufficient to warrant disability separation. Accordingly, the court finds that plaintiff has failed to prove by a preponderance of the evidence that defendant's reasons for placing him on disability separation were a mere pretext.

{¶17} Plaintiff also asserts a claim for wrongful termination in violation of public policy. In order to establish a claim for tortious violation of public policy, plaintiff must prove four elements: 1) a clear public policy manifested in a statute, regulation, or the common law; 2) that discharging an employee under circumstances like those involved would jeopardize the policy; 3) that the discharge at issue was motivated by conduct related to the policy; and 4) that there was no overriding business justification for the discharge. *Kulch v. Structural Fibers, Inc.*, 78 Ohio St.3d 134, 151, 1997-Ohio-219.

{¶18} As discussed, plaintiff has satisfied the first two requirements of his claim; the public policy at issue is manifested in R.C. 4112.02, and placing an employee on disability separation for discriminatory reasons would jeopardize that policy. However, plaintiff fails to meet the final two requirements. Plaintiff was unable to show that his disability separation was motivated by discriminatory reasons or that there was no overriding justification for the separation. Accordingly, plaintiff's claim that he was wrongfully terminated in violation of public policy must also fail.

{¶19} For the foregoing reasons, the court concludes that plaintiff cannot prevail on any of his claims. Accordingly, judgment shall be rendered in favor of defendant.

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JUDGMENT ENTRY

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JOSEPH T. CLARK
Judge

cc:

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