STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA A. BROWN,

Plaintiff-Appellee,

v

LEAR CORPORATION,

Defendant-Appellant.

UNPUBLISHED
November 3, 2000

No. 220491
Kent Circuit Court
LC No. 98-005860-CZ

Before: White, P.J., and Talbot and R. J. Danhof*, JJ.

PER CURIAM.

Defendant appeals by leave granted from the trial court's order denying its motion for summary disposition of plaintiff's wrongful termination claim under the persons with disabilities civil rights act (PWDCRA), MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.*, and retaliatory discharge claim under the Worker's Disability Compensation Act, MCL 418.301(11); MSA 17.237(301)(11). Having reviewed de novo the trial court's denial of defendant's summary disposition motion under MCR 2.116(C)(10), *Van v Zahorik*, 460 Mich 320, 326; 597 NW2d 15 (1999), we reverse.

In the employment context, a "disability" is defined as a determinable physical or mental characteristic of an individual that substantially limits one or more major life activities and is unrelated to the individual's ability to perform the duties of a particular job or position, with or without accommodation. MCL 37.1103(d)(*i*)(a), (l)(*i*); MSA 3.550(103)(d)(*i*)(a), (l)(*i*); *Lown v JJ Eaton Place*, 235 Mich App 721, 727; 598 NW2d 633 (1999). On appeal, defendant contends that the trial court erred in denying its motion for summary disposition of plaintiff's PWDCRA claim where no genuine issue of fact existed whether plaintiff's disability was related to her ability to perform the duties of the operator technician ("op tech") position and that no reasonable accommodation could be made to facilitate her employment. We agree with defendant that plaintiff has failed to establish a prima facie case of a PWDCRA violation.

Plaintiff was diagnosed with carpal tunnel syndrome for which her physician imposed permanent restrictions regarding lifting, repetitive forceful gripping, use of power or vibration tools, and production line work that involved quotas. Plaintiff testified that she could, and did for brief periods with her

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

condition, perform the motor cell op tech position, although coworkers had

to assist her by lifting full tubs of parts. Plaintiff conceded that the motor cell op tech position involved tasks outside of her restrictions—e.g., production line quotas, gripping, twisting, and the use of power tools—and that she could not perform the other op tech positions involved in an eight-hour shift rotation. Thus, even with accommodation in the form of lifting assistance, plaintiff has not demonstrated the existence of an issue of fact whether her condition was unrelated to her ability to perform the op tech position, especially given the permanent restrictions imposed by her own physician.

We further reject plaintiff's suggestion that defendant had a duty to accommodate her disability by assigning her to a light-duty position, similar to the ones that she had performed on a temporary basis for defendant's predecessor, or to place her in one of the positions that defendant's regional risk manager referred to as being within plaintiff's restrictions. An employer must accommodate disabled employees, unless such accommodation would impose an undue hardship on the employer. MCL 37.1102(2); MSA 3.550(102)(2); *Rollert v Dep't of Civil Service*, 228 Mich App 534, 540; 579 NW2d 118 (1998). The duty to accommodate disabled employees does not include the duty to transfer the employee to a position other than that actually held by the employee. *Rourk v Oakwood Hospital Corp*, 458 Mich 25, 33-34; 580 NW2d 397 (1998); *Kerns v Dura Mechanical Components, Inc (On Remand)*, 242 Mich App 1, 16; ___ NW2d ___ (2000). In *Rourk, supra* at 34-35, the Supreme Court explained:

> We find it would be illogical to conclude that plaintiff is handicapped or is entitled to a job transfer under the [former] HCRA because she is qualified to perform another position despite her physical restrictions. To disassociate employee qualifications from the jobs for which they were hired or for which they are being considered would effectively bind employers permanently to their employees. Even when an employee is unable to perform the duties for which originally hired or currently being considered, the employer would have to place the employee in another position. It is not for the courts to impose such a burden on employers in the absence of express, unequivocal language from the Legislature. Further, there is no actual or implied support in the statute for the imposition of such a burden. Examining the use of the language "to perform the duties of a particular job or position" against other provisions using the same language clarifies that the Legislature intended the inquiry to focus on the job for which plaintiff was originally hired.

Moreover, "[j]ob restructuring and altering the schedules of employees . . . applies only to minor or infrequent duties relating to the particular job held by the handicapper." MCL 37.1210(15); MSA 3.550(210)(15); *Rourk, supra* at 32-33. Transferring an individual to a different job or creating a new position with restricted duties clearly is beyond the scope of an employer's duty to accommodate under the PWDCRA. *Id.* at 33. Here, defendant's regional risk manager testified that defendant had no policy of offering permanent light-duty positions to disabled employees. Accordingly, we conclude that the trial court erred in denying defendant's motion for summary disposition of plaintiff's PWDCRA claim.

Next, defendant argues that the trial court erred in denying its motion for summary disposition of plaintiff's retaliatory discharge claim. Pursuant to MCL 418.301(11); MSA 17.237(301)(11), an

employer is prohibited "from discharging or discriminating 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 of a right afforded by this [worker's compensation] act." In her complaint, plaintiff alleged that her termination by defendant was in retaliation for her earlier filing of a worker's compensation claim against defendant's predecessor, ITT Corporation. Defendant countered that any causal connection between the protected activity and the adverse employment action was defeated in light of the fact that plaintiff was unable to perform the duties of her job, and that she had not filed a worker's compensation claim against defendant, but only against ITT Corporation. We reluctantly agree with defendant and reverse.

Employees, even those employed at-will, have a cause of action in tort if they are discharged in retaliation for filing a worker's compensation claim. *Phillips v Butterball Farms Co, Inc (After Second Remand)*, 448 Mich 239, 245-249; 531 NW2d 144 (1995). To establish a retaliatory discharge claim under § 301(11), a plaintiff has the burden of proving that (1) she asserted a right under the WDCA, (2) she was discharged or her employment was otherwise adversely affected, (3) defendant's stated reason for its action was a pretext, and (4) defendant's true reason for its actions was in retaliation for plaintiff's having filed a worker's compensation claim. *Chiles v Machine Shop, Inc*, 238 Mich App 462, 470; 606 NW2d 398 (1999). The burden is on the plaintiff to demonstrate a causal connection between the protected activity, i.e., the filing of a worker's compensation claim, and the adverse employment action. *Id.*

After reviewing the record, we conclude that plaintiff has failed to establish the existence of genuine issues of fact as to elements (3) and (4) above. Plaintiff began work for ITT Corporation in 1995 and was thereafter off work numerous times because of work-related injuries. She filed a worker's compensation claim against ITT Corporation and it was eventually redeemed in 1998. In the meantime, in late July 1997, defendant acquired the Walker Plant from ITT Corporation and all of its employees were temporarily laid off. At that time, plaintiff was receiving unemployment benefits, not worker's compensation benefits. Plaintiff alleged that she was singled out as the only employee who was not rehired by defendant.

Plaintiff alleged that defendant offered her no formal explanation for her termination, other than defendant's "personnel action form," dated January 22, 1998, which indicated that plaintiff's "Termination/Lay Off" was effective January 1, 1998. Defendant's regional risk manager, John Simonetti, testified that plaintiff was "not considered an employee" of defendant's because she was not working the day of the acquisition. During these proceedings, defendant has alleged that plaintiff was terminated because of the absence of any job that she could perform within her restrictions, and because defendant had no policy of offering permanent light-duty jobs to injured employees. Plaintiff supports her allegation that these stated reasons were pretextual by citing the following excerpt from Simonetti's deposition:

> *Q.* We're talking about employees who were working for a company that was to be acquired by Lear. They were suffering from a work-related injury, and they weren't working on the day of the acquisition. Would Lear—was it the policy of Lear to offer those employees light duty positions at Lear Corporation?

A. No.

Q. Was there any discussion about why those employees would not be offered light duty positions?

A. They weren't offered light duty positions for the fact that if they came back to work and reinjured themself [sic], then it would become the liability of Lear.

Q. From a workers' compensation standpoint?

A. Yes.

Section 301(11) prohibits discharge of an employee in retaliation for having filed a worker's compensation claim. *Lamoria v Health Care & Retirement Corp*, 230 Mich App 801, 818-819; 584 NW2d 589 (1998), vacated and reinstated in part, 233 Mich App 560 (1999); *Wilson v Acacia Park Cemetery Ass'n*, 162 Mich App 638, 646; 413 NW2d 79 (1987). We agree that plaintiff submitted evidence to rebut Simonetti's testimony that plaintiff was not defendant's employee.[1] We conclude, however, that Simonetti's deposition testimony, set forth above, is insufficient to establish a nexus between plaintiff's earlier filing of a worker's compensation claim against ITT Corporation and her termination by defendant. The evidence merely supports a finding that defendant chose not to grant injured employees a permanent light-work accommodation, which is not required by law, not that it retaliated against plaintiff for her earlier worker's compensation claim. Consequently, we conclude that the trial court erred in denying defendant's motion for summary disposition on this claim.

Reversed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Robert J. Danhof

[1] Through discovery, plaintiff obtained an excerpted copy of the acquisition agreement between defendant and ITT Corporation. Paragraph 8.2(a) defined "Business Employees" to mean "all persons employed as of the date immediately preceding the Closing Date . . . including those who are not actively-at-work as of such date on account of (i) layoff. . . ." Paragraph 8.2(b)(i) provided that "[t]he Buyer shall offer employment to all Business Employees."