IN THE COURT OF APPEALS OF IOWA

No. 0-093 / 09-1007
Filed February 24, 2010

RYAN HUFFMAN,
Plaintiff-Appellant,

vs.

AADG, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, Paul W. Riffel, Judge.

An employee appeals a district court ruling granting summary judgment in favor of his employer. **AFFIRMED.**

Mark D. Sherinian and Andrew L. LeGrant of Sherinian & Walker Law Firm, West Des Moines, for appellant.

Frank B. Harty and Debra L. Hulett of Nyemaster, Goode, West, Hansell & O'Brien, P.C., Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

MANSFIELD, J.

In this employment dispute, Ryan Huffman appeals the district court's grant of summary judgment to AADG, Inc., his employer. Huffman alleges that because he filed two workers' compensation claims, he was not allowed to return to work, was reassigned to jobs with lower pay, and was subjected to a hostile work environment. For the reasons set forth herein, we affirm.

I. Facts and Procedural Background.

Because this appeal is from an order granting summary judgment, we set forth the facts in the light most favorable to the non-moving party, Huffman. A year after graduating from high school, Huffman went to work for AADG, which operates a door manufacturing factory in Mason City. Huffman's initial job, which he began in June 2004, was "door lugger." In December 2004, Huffman sustained a back injury while on the job and received workers' compensation benefits. These included both temporary disability benefits, and a settlement for Huffman's permanent partial disability resulting from the back injury. Following back surgery, Huffman returned to work with restrictions. For a while, Huffman performed some light duty jobs. He then became a "pallet checker." This job required him to write on the pallets of doors and band them up. However, because Huffman could not do the bending, someone else banded the pallets for him. As Huffman put it, "I always had an extra helper to band my pallets for me."

Subsequently, Huffman successfully bid into a "finishing" job.[1] This job required Huffman to perform grinding on doors. In the course of that job, Huffman suffered a wrist injury in 2007. Huffman had wrist surgery and again

[1] At AADG, existing employees get to bid for job openings based on seniority.

received temporary disability benefits, but could no longer perform the essential functions of the "finisher" position. At the time of trial, his claim for permanent disability benefits based on the wrist injury was still pending.

At all relevant times, Huffman remained employed by AADG. However, for a considerable period of time, Huffman was not actually going to work at AADG and instead received temporary total disability workers' compensation benefits. Huffman conceded he could not perform any of his former jobs, and that he could only perform light duties.[2] Huffman conceded he had not bid any of the jobs that were available. He also acknowledged there was no specific full-time job available that he wanted to perform during his period of recovery. Rather, he wanted AADG to find enough light duty tasks and combine them into a job to provide him with full-time work in lieu of temporary disability benefits.

> Q. So you wanted the company to combine three jobs or take parts of three jobs and make a job out of them so you could do it? A. Until I got better.
> Q. Do you think it's their obligation to do that? [Objection omitted.] A. Yeah.
> Q. Why? A. I'm supposed to be on light duty. I'm not supposed to be at home.

However, by the time the district court granted AADG's motion for summary judgment, Huffman had returned to full-time work with AADG.

Huffman also claimed he had been subjected to verbal abuse. One supervisor told Huffman he "needed a brain scan after I got done with my EMG." Huffman also was told by a coworker that he had put on weight after he returned from his injury. (Huffman admitted that he had indeed gained weight.) In

[2] Huffman argued that he had performed some of these light duties in the past on a "fill-in" or "back-up" basis in addition to his regular job.

addition, coworkers called Huffman a "pussy" when he could no longer lift a door. Coworkers also called him "faker," "liar," and other derogatory terms. Huffman contends his supervisor would have heard these comments.

Huffman brought this action in February 2008. Originally, another employee was also part of the case, but his claim against AADG was settled. Huffman's claim against AADG was titled, "Hostile Work Environment." Therein, Huffman alleged he was not allowed to return to work, was reassigned to jobs for lower pay, and was subjected to ridicule and humiliation.

The district court originally denied AADG's motion for summary judgment, reasoning a fact finder could potentially infer Huffman had been constructively discharged in retaliation for bringing workers' compensation claims, and that constructive discharge could support a claim under *Below v. Skarr*, 569 N.W.2d 510, 512 (Iowa 1997) (holding that an employee did not have a cause of action against an employer for interfering with his rights to file a workers' compensation claim by threatening termination and harassment short of discharge). However, on the eve of trial, the district court reconsidered the prior ruling and granted summary judgment to AADG. It reasoned that Huffman had not been discharged, either actually or constructively, that he remained employed, and that his harassment claim was not viable under *Below*. Huffman now appeals.[3]

[3] Huffman also appeals the district court's decision granting AADG's motion in limine. That motion sought to preclude Huffman from raising alleged incidents of retaliation involving other workers who filed workers' compensation claims. Because we affirm the granting of AADG's motion for summary judgment, we do not reach this aspect of Huffman's appeal.

II. Standard of Review.

We review a district court's ruling on a motion for summary judgment for correction of errors at law. Iowa R. App. P. 6.907 (2009); *Baker v. Shields*, 767 N.W.2d 404, 406 (Iowa 2009). Summary judgment should be granted when the entire record demonstrates there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Anderson v. Nextel Partners, Inc.*, 745 N.W.2d 464, 466 (Iowa 2008). We review the record in the light most favorable to the nonmoving party, and afford the nonmoving party every legitimate inference the evidence will bear. *Lloyd v. Drake Univ.*, 686 N.W.2d 225, 228 (Iowa 2004).

III. Analysis.

A. Constructive Discharge.

In *Springer v. Weeks & Leo Co.*, 429 N.W.2d 558 (Iowa 1988), the supreme court made clear that a worker who had been *discharged* in retaliation for filing a workers' compensation claim had a judicial remedy. The court relied in part on section 85.18 of Iowa's workers' compensation laws, which provides: "No contract, rule, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this chapter except as herein provided." *Springer*, 429 N.W.2d at 560 (quoting Iowa Code § 85.18 (1987)). As the court noted, "To permit the type of retaliatory discharge which has been alleged in this case to go without a remedy would fly in the face of this policy." *Id*. at 561.

Huffman argues, and for purposes of this appeal we will assume, that a worker who has been "constructively" discharged for filing a workers'

compensation claim also would have a cause of action under *Springer*. *See Below*, 569 N.W.2d at 512 (leaving open the question whether conduct of the employer "so egregious as to amount to a constructive termination" could be actionable). However, no reasonable fact finder could conclude Huffman has been constructively discharged. A constructive discharge occurs "when the employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation." *Haberer v. Woodbury County*, 560 N.W.2d 571, 575 (Iowa 1997). Huffman has not resigned and, in fact, continues to work for AADG. His differences with his employer relate to alleged delays in recalling him to work, the job assignments he has been offered, and statements allegedly made by supervisors and coworkers.

B. Alleged Denial of Work and/or Work Assignments.

Even accepting that he may not have been constructively discharged, Huffman alternatively argues that we should extend *Springer* to situations where a worker has been *demoted* for filing a workers' compensation claim. Huffman concedes that *Below* seems to suggest a worker must have been "deprived of continued employment" to have a workers' compensation retaliation claim. 569 N.W.2d at 512; *see also Napreljac v. John Q. Hammons Hotels, Inc.*, 505 F.3d 800, 803 (8th Cir. 2007) (discussing the Iowa case law on workers' compensation retaliatory discharge claims and noting the Iowa supreme court's "obvious reluctance to expand this public policy exception to the law of at-will employment"). However, Huffman notes that in two nearby states supreme courts have permitted employees to bring claims when they were demoted in retaliation for filing workers' compensation claims. *Brigham v. Dillon Cos*., 935

P.2d 1054 (Kan. 1997) (grocery manager who was reassigned to a position of frozen foods manager with a corresponding reduction in pay); *Trosper v. Bag 'N Save*, 734 N.W.2d 704 (Neb. 2007) (deli manager who was demoted to deli clerk after reporting injury to her employer). Huffman argues that Iowa should follow their lead.

We need not decide that issue. *Brigham* and *Trosper* are not comparable factually to this case. In those cases, the employer demoted the employee. Here, by contrast, Huffman is not complaining about a demotion, but (according to his appellate briefing) about a "company's refusal to find him work to perform" during periods when it was paying him temporary disability benefits. Yet, Huffman concedes that he could no longer perform his previous jobs, and that he never bid for other job openings. Nonetheless, he contends that AADG should have put together a set of tasks for him to perform that would have paid him more than his temporary disability benefits.

Whatever the merits might be of a hypothetical retaliatory demotion claim, we believe Huffman's proposed new common-law claim for "failure to take an employee off temporary disability" would improperly intrude upon the statutory workers' compensation system. Iowa Code section 85.33(1) (2007) provides that an employer shall pay temporary total disability benefits "until the employee has returned to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first." Section 85.33(3) provides:

> If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's

> disability the employee shall accept the suitable work, and be compensated with temporary partial benefits.

In simplified terms, these provisions require the employer to pay benefits to the temporarily disabled employee while that employee is not working, or performing more limited job duties than before. As worded, section 85.33 gives the employer a choice. The employer can pay temporary benefits, or it can bring the worker back to the workplace. Huffman does not dispute that AADG met that obligation. Instead, Huffman wants to rewrite section 85.33 so it also requires the employer to put the injured employee to work as soon as possible at any job or combination of jobs it can potentially devise.

If Huffman's position became the law, not only would this amount to a rewording of section 85.33, but employers would be put in a tight spot. If an employer failed to pay temporary disability benefits, it would be subject to sanctions, including penalties, under the Iowa Workers' Compensation Act. *See* Iowa Code § 86.13. But, according to Huffman, if the same employer failed to assign the maximum possible work to that employee, it would be subject to civil litigation for alleged retaliation.

Nor do we see a significant need for this new cause of action. While we do not deny that retaliation can occur, and that is why the supreme court decided *Springer* as it did, the type of "retaliation" that Huffman alleges (i.e., paying temporary disability benefits instead of bringing the employee back to work) seems unlikely to occur in most instances. Usually, if there is work available, the employer has a strong incentive to bring the injured worker back, since it would rather get something from the employee in return. Also, if the employer (or its

workers' compensation carrier) is concerned about excessive claims, it generally would rather have the injured employee required to work, instead of being able to collect benefits for not working. The notion that paying unnecessary temporary disability benefits is an effective way to deter the filing of workers' compensation claims seems odd to us.

Thus, we agree with AADG that Huffman's claim here violates the exclusive remedy provision of section 85.20. Huffman is seeking not only workers' compensation benefits for his injury, which are guaranteed by chapter 85 and to which he is entitled, but also a right to compel his employer to put together a new job for him instead of paying him temporary disability benefits. Whereas *Springer* furthers the goals of the workers' compensation system by insuring that employees are not discouraged from bringing legitimate claims, we believe Huffman's claim could potentially undermine that system by subjecting employers to inconsistent obligations.

In short, because Huffman was not discharged, constructively discharged, or even demoted, and instead is complaining about his employer's alleged failure to find him work in lieu of paying temporary disability benefits, we believe the district court properly granted summary judgment on those aspects of Huffman's claim.

C. Harassment.

Huffman's claim has another component. In addition to complaining about a lack of work and job assignments while he was collecting temporary disability payments, Huffman also alleges that he was subjected to harassment for having filed his workers' compensation claims. This theory of recovery is squarely

foreclosed by *Below*. *See Below*, 569 N.W.2d at 512 ("[W]e hold that claimed harassment of a worker, including threatened termination, does not give rise to a claim at common law."). Hence, for that reason alone, summary judgment was properly granted on Huffman's harassment allegations.

Moreover, in this case almost none of the harassment was perpetrated by the employer, AADG. Huffman recounted only two incidents. First, he recalled that when he told one of his supervisors about his EMG, the supervisor asked, "What are they going to do next, head scan, see if you got a screw loose?" At that point, Huffman hung up the workplace phone on which he was speaking with the supervisor. Huffman also complained that another supervisor "kept giving me glares" after he was injured. The remainder of the alleged harassment consisted of statements made by coworkers, e.g., comments on Huffman's weight or that he was a "pussy." In summary, there is relatively little evidence of harassment by AADG itself.

It is true that in the civil rights context, an employer's tolerance of ongoing sexual, racial, or other protected-class harassment by coworkers may be treated as tantamount to discrimination by the employer itself. *See Farmland Foods, Inc. v. Dubuque Human Rights Comm'n*, 672 N.W.2d 733, 744 (Iowa 2003). However, we disagree with Huffman that the analogy from civil rights law is apt here. Today, we have reached the point in our society where offensive comments relating to a person's race, gender, or other protected status are widely viewed as beyond our social norms. It is not asking too much of employers to police their workplaces for this behavior. But holding an employer liable for employee comments on another employee's weight gain or inability to

perform lifting tasks would open the door to far too many claims. *See Below*, 569 N.W.2d at 512 (expressing concern about encouraging "a rash of common-law claims").

For the foregoing reasons, we affirm the judgment of the district court.

AFFIRMED.