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January 16, 2025

VIA US MAIL AND E-MAIL

Serge Wandji
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RECEIVED

Jan 24 2025

SC Court of Appeals

RE: *Serge R. Wandji v. The Regional Medical Center and Dr. John H. Samies*
Case No. 2023-CP-38-00331

Dear Mr. Wandji:

Enclosed please find a copy of Order Granting Defendant's Motion for Summary Judgment which was e-filed with Court yesterday, January 15, 2025.

Thank you and with kinds regards, I am

Sincerely,

A handwritten signature in blue ink that reads 'Amanda C. Williams'.

Amanda C. Williams

ACW/cle
Enclosures

PPAB 11894739v1

Complaint and the sole remaining claim for worker's compensation retaliation. On November 14, 2024, a hearing was held before this Court.

FACTS

A. Plaintiff's Nursing Position at TRMC.

Plaintiff began working as a bedside nurse at TRMC in Orangeburg, South Carolina on or about March 8, 2021. The nursing position required Plaintiff to have the ability to "stand up to twelve (12) hours, walk, sit, use hands, reach, stoop, kneel, talk, hear and smell." In addition, the position also required Plaintiff to perform certain mental functions such as "deal[ing] with concrete and abstract concepts and interpret[ing] verbal, nonverbal and written instructions." Plaintiff worked in the behavioral health unit and performed various duties as a nurse, including conducting nursing assessments for patients, administering patients medication as needed, changing sheets, and taking urine samples.

B. Plaintiff's COVID-19 Diagnosis and Medical Leave.

On August 27, 2021, Plaintiff tested positive for COVID-19. On August 31, 2021, Plaintiff filed a workers' compensation claim with TRMC contending that his illness was an occupational disease contracted while working at TRMC. Plaintiff subsequently filed a Form 50 - Employee's Notice of Claim and Request for Hearing with the South Carolina Workers' Compensation Commission on November 29, 2021.

Following his COVID-19 diagnosis, Plaintiff alleges his health condition deteriorated quickly, and he was diagnosed with pneumonia due to COVID-19 with acute hypoxemic respiratory failure. On September 7, 2021, TRMC provided Plaintiff with Family and Medical Leave Act ("FMLA") paperwork. On September 22, 2021, Plaintiff's doctor signed the FMLA paperwork and noted Plaintiff would be incapacitated until October 22, 2021. On September 24, 2021, TRMC informed Plaintiff that he was not eligible for protected leave under the FMLA

because he had only worked for TRMC for five months. However, TRMC granted Plaintiff a leave of absence that would allow him to take up to twelve weeks of medical leave beginning on August 28, 2021.

On October 22, 2021, Plaintiff was unable to return to work and his doctor recommended that he continue to convalesce at home from October 22, 2021 through November 22, 2021.

As of November 20, 2021, Plaintiff had been on leave for twelve weeks, and his doctor submitted another note stating Plaintiff should continue to convalesce at home through January 1, 2022. On January 13, 2022, Plaintiff had not yet returned to work, and thus, TRMC sent Plaintiff a letter noting that TRMC had not received any updated information on an expected return to work date or notice of additional leave needed. TRMC requested that Plaintiff submit an updated physician's note. On January 17, 2022, Plaintiff provided TRMC with a doctor's note that stated Plaintiff "could not currently return to work full time floor nursing for numerous reasons." Plaintiff testified that his doctor told him, "you cannot lift, you are forgetful, you can give the wrong medication and kill patient...." Plaintiff was not cleared to work as a floor nurse and no return to work date was provided.

C. Plaintiff's Ongoing Medical Restrictions as it Relates to His Nursing Duties.

Plaintiff remained on medical leave, and on March 11, 2022, Plaintiff provided TRMC with a doctor's note stating there were "still concerns that could mildly limit [Plaintiff's] functionality at bedside nursing (physical - still waiting to gain back his smell, mental/emotional - acute stress due to COVID-19 experience and hospitalization)." Plaintiff's provider did not clear him to work in his position as a nurse and noted he could only return to work if it was in an administrative, part-time role.

On March 15, 2022, TRMC communicated to Plaintiff that he exhausted his twelve week maximum period of available leave under TRMC's Leave of Absence policy over three months

ago (December 2021), and was being separated from employment due to his physical inability to return to his position as a bedside nurse. Both the email and the letter from TRMC made clear that the decision to separate Plaintiff from employment was not punitive, and informed him that he was eligible for rehire.

Since Plaintiff's separation from his employment at TRMC, he has been unable to work as a nurse. Though he obtained a position as a nurse at Tri-County Commission on Alcohol and Drug Abuse in May 2022, he resigned a month after his hire due to "personal health and personal safety reasons." Specifically, Plaintiff testified that after administering the wrong medication to a patient, which Plaintiff attributed to his long COVID, forgetfulness, and confusion, his doctor told him to quit before he hurt somebody else and himself. To date, Plaintiff has not held any other positions as a nurse and testified he continues to suffer from long COVID and has ongoing memory issues. In fact, in his deposition, Plaintiff could not remember where he was born, where he has lived, whether he has any criminal history, what educational degrees he has received, his employment history, the medications he takes, and whether he has been a party to any other legal actions or complaints. As a result of his long COVID issues, Plaintiff testified when he looks for employment, he is not seeking floor nurse positions, but rather "[s]omething that the life of somebody is not going to be on the line. Something academic."

STANDARD OF REVIEW

Rule 56, SCRCR, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by 'showing' – that is, pointing out to the trial court – that there is an absence of evidence to support the nonmoving party's case." *Baughman v. American Tel.*

and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the opposing party “must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*.” *Id.* (emphasis in original); *Midland Mut. Life Ins. Co. v. Harrell*, 331 S.C. 394, 397, 503 S.E.2d 189, 190 (Ct. App. 1998). The nonmoving party must specifically set forth such facts, “as would be admissible in evidence,” to show that a true jury issue exists. *See* S.C. R. Civ. P. 56(e).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). Under South Carolina law, where “plain, palpable and indisputable facts exist on which reasonable minds cannot differ,” summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

DISCUSSION

This Court finds that there is no genuine issue of material fact, and Defendant is entitled to judgment as a matter of law on Plaintiff’s sole remaining claim for workers’ compensation retaliation.

In order to prevail on a workers’ compensation retaliation claim under S.C. Code § 41-1-80, Plaintiff bears the burden of proving the following: “1) institution of workers’ compensation proceedings, 2) discharge or demotion, and 3) a causal connection between the first two elements.” *Hinton v. Designer Ensembles, Inc.*, 343 S.C. 236, 242, 540 S.E.2d 94, 97 (2000) (citing *Hines v. United Parcel Serv., Inc.*, 736 F. Supp. 675, 677 (D.S.C. 1990)). In order to prove causation, Plaintiff must provide that the filing of the workers’ compensation claim was the “determinative factor” in his termination. *Id.* Specifically, he must show that “he would not have been discharged

‘but for’ the filing of the workers' compensation claim.” *Id.* (citation omitted). Plaintiff bears the ultimate burden of proof under Section 41–1–80. *Horn v. Davis Elec. Constructors, Inc.*, 307 S.C. 559, 564, 416 S.E.2d 634, 636 (1992).

A. Plaintiff’s Failure to Meet Established Work Standards Defeats His Claim as a Matter of Law.

The workers’ compensation retaliation statute sets forth several affirmative defenses that may defeat a claim for workers’ compensation retaliation, including an employee’s “failure to meet established employer work standards.” S.C. Code Ann. § 41-1-80; *see also Horn v. Davis Elec. Constructors, Inc.*, 302 S.C. 484, 489, 395 S.E.2d 724, 727 (Ct. App. 1990), *aff’d as modified*, 307 S.C. 559, 416 S.E.2d 634 (1992) (“An employer may prove as an affirmative defense [to S.C. Code § 41-1-80] that an employee failed to meet established work standards because he could not perform the physical requirements of the job.”). Though “the employer has the burden of proving its affirmative defenses, the employer does not have the burden of establishing the affirmative defenses are causally related to the discharge.” *Hinton*, 343 S.C. at 242, 540 S.E.2d at 97. Here, Plaintiff’s inability to perform the duties of a floor nurse (even as of the date of his deposition on September 18, 2024) clearly satisfies this affirmative defense.

In *Varner v. Serco Inc.*, plaintiff, who worked as a warehouse associate for the defendant employer, initiated workers’ compensation proceedings on July 14, 2014, after sustaining a job-related back injury. *Varner*, No. 2:16-CV-02340-DCN, 2018 WL 4052447, at *1 (D.S.C. Aug. 24, 2018). On July 11, 2015, while the workers’ compensation proceedings were ongoing, plaintiff was terminated by defendant after defendant received notice of a new 35 pound lifting restriction imposed on plaintiff by his doctor. *Id.* The court granted defendant’s summary judgment motion, holding that because plaintiff’s restrictions prevented him from performing his job duties, which required that plaintiff lift 50 pounds, plaintiff was unable to prove a “but for” causal link between his workers’ compensation proceedings and his termination. *Id.* at *4.

Here, like in *Varner*, Plaintiff's employment with Defendant was terminated after Plaintiff provided Defendant with multiple doctor's notes, which not only imposed restrictions preventing Plaintiff from performing certain job duties, but which stated Plaintiff was unable to perform the duties of a full-time nurse. Because Plaintiff was unable to return to his position as a nurse and had no return to work date, TRMC separated his employment but noted he was eligible for rehire. Plaintiff does not dispute the fact that his doctor instructed him not to return to work as a full-time floor nurse with TRMC, and Plaintiff affirmed that he followed his doctor's recommendation.

"Section 41-1-80 and statutes like it do not [] require an employer to retain an employee who can no longer perform the duties of her job simply because her inability to perform the duties results from an on-the-job injury." *Varner v. Serco Inc.*, No. 2:16-CV-02340-DCN, 2018 WL 4052447, at *3 (D.S.C. Aug. 24, 2018) (quoting *Hines v. United Parcel Serv., Inc.*, 736 F. Supp. 675, 677 (D.S.C. 1990)) (granting defendant's motion for summary judgment on plaintiff's workers' compensation retaliation claim because plaintiff was unable to meet the requirements of her job as a result of a lifting restriction imposed on her by her physician.). Based on the undisputed facts before it, the Court finds that Defendant has established an affirmative defense to Plaintiff's claim under S.C. Code § 41-1-80, and Plaintiff's claim fails as a matter of law.

B. Temporal Proximity is Insufficient to Prove Causation When Defendant Provided a Legitimate, Non-Retaliatory Reason for Plaintiff's Termination.

Plaintiff alleges in his Opposition that the alleged temporal proximity between his workers' compensation claim and subsequent termination raises an inference of retaliatory intent. As an initial matter, Plaintiff submitted a workers' compensation claim sometime in September 2021. TRMC did not terminate Plaintiff's employment until seven months later -- after Plaintiff's doctor issued a note stating that Plaintiff could not return to work as bedside nurse, nor could he return to any position on a full-time basis. Thus, there is no temporal proximity between the filing of Plaintiff's workers' compensation claim and his subsequent termination.

Even if Plaintiff could prove temporal proximity, where, as here, the employer proffers a “legitimate, non-retaliatory reason” for the termination, any temporal proximity between the filing of the workers’ compensation claim and the termination is insufficient as a matter of law to defeat summary judgment. *Hinton*, 343 S.C. at 243, 540 S.E.2d at 97; *see also Johnson v. J.P. Stevens & Co., Inc.*, 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992) (“[i]n light of the conceded legitimate, nonretaliatory motives for the termination, [the] proximity in time does not meet the employee’s burden of proof”); *Marr v. City of Columbia*, 307 S.C. 545, 548, 416 S.E.2d 615, 617 (1992) (rejecting retaliatory discharge claim where only evidence suggesting retaliatory motive for discharge was temporal proximity of claim to discharge). In *Hinton*, plaintiff initiated workers’ compensation proceedings in or around September 1994, following a job-related injury. 343 S.C. at 241, 540 S.E.2d at 96. On October 28, 1994, plaintiff was released to return to work with restrictions which were accommodated by defendant. *Id.* at 239, 540 S.E.2d at 95. In November 1994, following numerous unexcused absences related to plaintiff’s job-related injury, plaintiff was terminated for violation of defendant’s absentee policy. *Id.* at 240, 540 S.E.2d at 96. In granting defendant’s motion for summary judgment, the court held that because plaintiff offered no evidence that his employer’s reason for terminating him was pretextual other than the fact that his termination occurred in temporal proximity with his work-related injury, his claim failed as a matter of law. *Id.* at 246, 540 S.E.2d at 99.

To survive summary judgment, Plaintiff must come forward with evidence sufficient to raise an inference that the employer’s stated reasons were a mere pretext for illegitimate retaliation. *Porter v. U.S. Alumoweld Co., Inc.*, 125 F.3d 243, 248 (4th Cir. 1997) (“[T]he plaintiff must provide evidence sufficient to support the conclusion that the employer’s proffered reason for discharging the employee was pretext for retaliation.”). Here, no such evidence exists. Defendant argues, and the Court agrees, that Plaintiff’s inability to perform the duties of his job and to meet

established work standards for a seven month period constitutes a “legitimate, non-retaliatory reason” for Plaintiff’s termination. *Hinton*, 343 S.C. at 243, 540 S.E.2d at 97. Plaintiff has not presented any evidence showing that the provided reason for termination is pretextual.

C. An Employer’s Failure to Accommodate an Employee’s Medical-Related Job Restrictions is Not Evidence that the Employer’s Proffered Reason for a Termination is Pretextual.

Plaintiff appears to assert that Defendant’s alleged failure to accommodate his post-injury work restrictions is evidence that Defendant’s proffered reason for his termination is pretextual. This Court finds Plaintiff’s argument is unsupported by the facts and the law. South Carolina’s workers’ compensation laws do not require an employer to accommodate restrictions stemming from a work-related injury, and Plaintiff has presented no legal authority to the contrary. TRMC hired Plaintiff for a full-time nursing position. Plaintiff was no longer able to perform this role. Notwithstanding the foregoing, Defendant granted Plaintiff seven months of medical leave. When Plaintiff was still unable to return to his position after seven months, TRMC separated his employment because Plaintiff could not meet TRMC’s established work standards. Plaintiff’s conclusory assertion that TRMC’s stated reason for the termination is pretextual is insufficient to defeat TRMC’s motion for summary judgment. Rule 56, SCRCF, requires Plaintiff to support any factual assertions with actual evidence. He “must, under Rule 56(e), ‘do more than simply show that there is some metaphysical doubt as to the material facts,’ but must come forward with ‘specific facts showing that there is a *genuine issue for trial.*’” *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (emphasis in original); *Midland Mut. Life Ins. Co. v. Harrell*, 331 S.C. 394, 397-98, 503 S.E.2d 189, 190-91 (Ct. App. 1998). Plaintiff has failed to do so.

Based on the record before it, this Court concludes that Plaintiff has failed to cite to any evidence or material dispute of facts showing that Plaintiff would not have been discharged ‘but

for' the filing of his workers' compensation claim. Instead, the undisputed facts demonstrate that Plaintiff was terminated from his position because he could not meet the established work standards for the job -- one of the applicable affirmative defenses to a workers' compensation retaliation claim under S.C. Code Ann. § 41-1-80. Thus, Plaintiff's claim against TRMC fails as a matter of law.

CONCLUSION

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Summary Judgment is GRANTED, and the case is dismissed, with prejudice.

AND IT SO ORDERED.

THE HONORABLE MAITE MURPHY

December ____, 2024



Orangeburg Common Pleas

Case Caption: Serge R Wandji VS The Regional Medical Center

Case Number: 2023CP3800331

Type: Order/Summary Judgment

So Ordered

s/ Maite Murphy 2166