IN THE COURT OF APPEALS OF IOWA

No. 0-461 / 89-1974

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HEINZ HOFMANN,

Appellant,

vs.

SIMMONS AIRLINES, INC., d/b/a AMERICAN EAGLE; GREAT LAKES AVIATION, LTD.; IOWA AIRWAYS, INC.; and THE CITY OF WATERLOO, IOWA;

Appellees.

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Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Plaintiff appeals the district court's grant of defendants' motion for summary judgment. **AFFIRMED.**

Robert L. Rausch of the Rausch Law Office, Waterloo, for appellant.

James R. Hellman of Mosier, Thomas, Beatty, Dutton, Braun & Staack, Waterloo, for appellee Simmons Airlines, Inc.

Elizabeth Gregg Kennedy and Richard G. Santi of Ahler, Cooney, Dorweiler, Haynie, Smith & Allbee, Des Moines, for appellee Great Lakes Aviation, Ltd.

Robert A. Van Vooren and Thomas D. Waterman of Lane & Waterman, Davenport, for appellee Iowa Airways, Inc.

Hugh M. Field, City Attorney, for appellee City of Waterloo.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

**OXBERGER, C.J.**

Plaintiff Heinz Hofmann worked as an airline security guard at the Waterloo Municipal Airport. On May 11, 1988, the Federal Aviation Administration (FAA) conducted a security test by sending a simulated pipe bomb in an attache case through an X-ray security check operated by Hofmann. Hofmann failed to detect the simulated pipe bomb. He alleged the X-ray machine did not work properly when the simulated bomb passed through it. Hofmann was discharged on June 22, 1988, because of the FAA incident.

Hofmann brought this suit based on tortious infliction of emotional distress and wrongful discharge against his former employers (several airlines and the City of Waterloo). Defendants filed a motion for summary judgment. The district court granted the motion, finding no evidence of outrageous conduct nor emotional distress. The court also found Hofmann failed to show his discharge violated public policy. Hofmann appealed.

Hofmann claims his discharge violates public policy because his employers knew the X-ray machine did not work properly and they told him to pretend it worked in order to get flights out on schedule. He believes his employers decided to discharge him in order to reduce the fine ordered by the FAA. Hofmann contends his discharge violates the public policy of promoting transportation safety. Hofmann also claims the court erred in granting

defendants' motion for summary judgment because he presented genuine issues of material fact. He asserts the fact questions concerning whether the X-ray equipment was properly functioning and if not, whether his employers knew about the faulty equipment, precluded the grant of summary judgment.

Northrup v. Farmland Industries, Inc., 372 N.W.2d 193, 195 (Iowa 1985), enunciated the principles for evaluating a summary judgment action:

> Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c). The burden of showing the nonexistence of a material fact is upon the moving party. Every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party, and a fact question is generated if reasonable minds can differ on how the issue should be resolved. (citations omitted).

Keeping the principles for reviewing summary judgment actions in mind we review this case at law for correction of errors at law. Iowa R. App. P. 4.

Hofmann asserts his case is similar to the situation in Springer v. Weeks and Leo Company, Inc., 429 N.W.2d 558 (Iowa 1988) in that his discharge frustrated the public policy of Iowa. Hofmann claims his discharge frustrated the public policy of insuring the safety of persons traveling on airlines. He further argues that allowing an employer to fire an employee, after telling him to fake security checks, in order to obtain decreased FAA fines

after the employee follows the "fake it" instruction places the air traveling public at risk.

Generally in Iowa an employer may terminate an at will employee's employment at any time for any reason. Northrup v. Farmland Industries, Inc., 372 N.W.2d at 195. The Iowa courts have carved out an exception to the general rule where an employer's conduct in discharging an employee violates public policy. Springer v. Weeks and Leo Company, 429 N.W.2d at 560. While recognizing the existence of the exception the supreme court has cautioned "[c]ourts should not declare conduct violative of public policy unless it is clearly so." Northrup v. Farmland Industries, Inc. 372 N.W.2d at 196 quoting Abrisz v. Pulley Freight Lines, Inc., 270 N.W.2d 454, 456 (Iowa 1978).

We do not find this case analogous to the Springer case, nor do we find a clear violation of public policy in Hofmann's discharge. In Springer, the plaintiff was discharged for filing a worker's compensation claim. The Iowa Code specifically provides injured workers with the right to file such claims when an injury arises from their employment. In Springer, the plaintiff could show that allowing employers to discharge injured employees for filing statutorily directed compensation served to frustrate the legislature's intent to compensate injured workers. In Hofmann's case we fail to see any such clear frustration of public policy. A more analogous situation

would have arisen if Hofmann had been discharged for refusing to fake safety searches or for reporting safety irregularities to the FAA.

We join Hofmann in condemning any airlines that would place concerns of efficiency over passenger safety but we do not join Hofmann in asserting his discharge violated public policy. We fail to find any connection between disallowing Hofmann's discharge and the promotion of air travel safety. Hofmann failed a test designed to insure passenger safety. Even if Hofmann's employers instructed him to pretend the x-ray machine worked properly when it did not and if his employers discharged him to appease the FAA, Hofmann's discharge did not serve to endanger the air traveling public nor to make other employees fear following the FAA regulations for safety checks. If anything, Hofmann's discharge served to emphasize that security guards have a personal duty to insure the public's safety. We find no merit in Hofmann's claim that his discharge violated public policy nor that disallowing Hofmann's discharge would promote public safety. We fail to see how instructions to fake safety checks and a failed safety test could combine to create a right of continued employment for Hofmann.

Since we find the district court correctly sustained the defendants' motion for summary judgment even assuming that the x-ray machine did not work properly and Hofmann's

employers told him to fake safety checks, we need not address Hofmann's claim that genuine issues of fact precluded summary judgment. Additionally, after reading the record it appears the only person Mr. Hofmann remembered telling him to fake security checks was an employee of Ozark Airlines and Ozark did not employ Mr. Hofmann or serve the Waterloo airport when Hofmann failed the security test. The only evidence in the record pertaining to the defendant airlines instructing Hofmann to fake security checks for efficiency reasons came from Hofmann's deposition. In his deposition Hofmann fails to provide a statement attributable to any of the defendant airlines, relying only on an assertion that comments made by airport or airline personnel "left no doubt in anyone's mind that the time factor was a greater priority than the security."

**AFFIRMED.**