IN THE COURT OF APPEALS OF IOWA

No. 2-415 / 91-1956

FILED
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CLERK SUPREME COURT

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DENNIS RAWLINGS,

Appellant,

vs.

IBP, INC.,

Appellee.

Appeal from the Iowa District Court for Buena Vista County, Charles H. Barlow, Judge.

Dennis Rawlings appeals a district court decision granting IBP, Inc.'s motion for summary judgment on Rawlings' claim of retaliatory discharge for seeking workers' compensation benefits. **AFFIRMED.**

Steve Hamilton of Hamilton Law Firm, P.C., Storm Lake, for appellant.

James R. Villone of Klass, Hanks, Stoos, Stoik & Villone, Sioux City, for appellee.

Heard by Hayden, P.J., Habhab, J., and McCartney, S.J.*

*Senior Judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

HAYDEN, P.J.

This appeal involves plaintiff Dennis Rawlings' claim of retaliatory discharge against his employer, Iowa Beef Processors, Inc. (IBP). Rawlings alleged his discharge was due to his filing a workers' compensation claim against IBP. The trial court granted IBP's summary judgment motion. We affirm.

On August 5, 1985, Rawlings started work for IBP trimming hams. Rawlings began to experience some problems with numbness in the fingers of his right hand. In early 1987 Rawlings was placed on light duty. On June 25, 1987, Rawlings underwent right carpal tunnel release and was off work from June 25, 1987, to August 17, 1987. During his time off, Rawlings received workers' compensation benefits.

Rawlings returned to light-duty work at IBP on August 17, 1987. Rawlings was assigned to a job blacking out a portion of mailing labels. On September 10, 1987, Rawlings was medically disqualified from using knives. IBP assigned Rawlings to a nonknife job. Rawlings complained to IBP management fellow hourly employees were verbally teasing him about his injuries. IBP officials talked to the individuals.

On the morning of September 21, 1987, Rawlings allowed two pieces of meat product to fall to the floor on two separate occasions. After the first incident, Rawlings was instructed by his supervisor to keep up in his work. After

the second incident, which resulted in the line being shut down by the USDA inspector, Rawlings was relieved of duty. Following an investigation, Rawlings was suspended by the plant superintendent. On or about September 22, 1987, IBP terminated Rawlings' employment for poor work performance. Rawlings continued to receive workers' compensation benefits after his termination.

On October 29, 1987, Rawlings filed an original notice and petition with the Iowa Industrial Commissioner. Rawlings voluntarily dismissed his workers' compensation petition just a few days before his arbitration hearing.

On September 21, 1989, Rawlings filed this petition alleging IBP terminated his employment as a result of his filing a workers' compensation claim. On September 12, 1991, IBP filed a motion for summary judgment. Rawlings filed a resistance.

On November 14, 1991, the trial court sustained IBP's motion for summary judgment and dismissed Rawlings' petition. The trial court found the record was devoid of evidence which would indicate Rawlings' discharge had anything to do with his workers' compensation claim. In his resistance to the summary judgment motion, Rawlings had also failed to set forth specific facts which constitute competent evidence showing a *prima facie* claim of retaliatory discharge. The basis of Rawlings' termination was found to be poor work performance. In addition, the trial court found the alleged harassment by Rawlings'

coworkers was irrelevant to his claim of retaliatory discharge. The trial court concluded Rawlings failed to prove IBP management encouraged the actions of his coworkers. Based upon these findings, the trial court concluded no genuine issue of material fact existed and IBP was entitled to judgment as a matter of law. Rawlings has appealed.

The following rules guide our inquiry into whether the trial court erred in granting IBP's summary judgment motion.

> Summary judgment is proper when there appears no genuine issues of material fact and the moving party [IBP] is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c). The burden is upon the moving party to show that no issue of material fact exists. Northrup v. Farmland Indus[.], Inc., 372 N.W.2d 193, 195 (Iowa 1985). Moreover, the resisting party [Rawlings] is afforded every legitimate inference that can be reasonably deduced from the evidence and a fact question is generated if reasonable minds could differ on how the issue should be resolved. Henkel v. R & S Bottling Co., 323 N.W.2d 185, 187-88 (Iowa 1982).
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> The party resisting summary judgment, however, "may not rest upon the mere allegations or denials of his pleading." Iowa R. Civ. P. 237(e). The resistance must set forth specific facts which constitute competent evidence showing a prima facie claim. Prior v. Rathjen, 199 N.W.2d 327, 330 (Iowa 1972).

Fogel v. Trustees of Iowa College, 446 N.W.2d 451, 454 (Iowa 1989). In reviewing a grant of a summary judgment motion, we determine only whether a material fact exists and whether the law was correctly applied. Meylor v. Brown, 281 N.W.2d 632, 634 (Iowa 1979) (citing Frohwein v. Haesemeyer, 264 N.W.2d 792, 795-96 (Iowa 1978)). We

reverse the grant of summary judgment if it appears from the record an unresolved issue of material fact. Id.

The Iowa Supreme Court has recognized a cause of action for retaliatory discharge due to the filing of a workers' compensation claim. Springer v. Weeks & Leo Co., 429 N.W.2d 558, 559 (Iowa 1988). In that case, plaintiff claimed her discharge was in retaliation for her refusal to sign a document stating her carpal tunnel syndrome problems were not work related. Id. This evidence tended to show the employer was interfering with the employee's receipt of benefits. The court held plaintiff's evidence was sufficient to create a jury issue as to whether her discharge was due to the filing of the workers' compensation claim. Id. at 560.

In Smith v. Smithway Motor Xpress, Inc., the court broadened the Springer decision. Smith v. Smithway Motor Xpress, Inc., 464 N.W.2d 682, 685 (Iowa 1990). The court held retaliatory discharge violates public policy even if the employer does not interfere with the discharged employee's benefits. Id. Evidence in Smith showed the employer did not interfere with the payment of benefits. However, evidence showed the employer's insurance director, who fired Smith rather than the personnel director, admitted the cost of paying workers' compensation benefits entered into his decision to discharge Smith. Id. at 684. The court held denial of the employer's motion for summary judgment was proper because evidence was sufficient to justify submitting the issue to the jury. Id.

This case is distinguishable from Springer and Smith. There is no evidence showing IBP interfered with payment of benefits or IBP threatened discharge if Rawlings filed a workers' compensation claim. Rawlings conceded no one at IBP discouraged him from filing a claim for benefits. Rawlings stated he knew of no witnesses who were going to support his allegations. Following his surgery, Rawlings was unable to work for seven weeks. During that time he received workers' compensation benefits. Evidence also shows Rawlings did not file his last claim for workers' compensation until one month after his discharge. Thus, there was no pending petition on file with the industrial commissioner when Rawlings was terminated.

Under this record we conclude Rawlings failed to provide evidence sufficient to generate a jury issue as to whether his discharge was due to the filing of a workers' compensation claim. We affirm the trial court's granting of IBP's summary judgment motion.

AFFIRMED.