

IN THE COURT OF APPEALS OF IOWA

No. 4-198 / 93-905

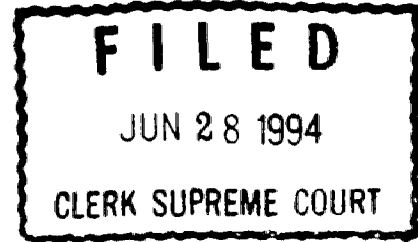
CRAIGE L. GHEER,

Appellant,

vs.

HON INDUSTRIES INC., A Corporation,

Appellee.



Appeal from the Iowa District Court for Muscatine County, James E. Kelley, Judge.

The plaintiff-employee appeals the district court's ruling granting the defendant-employer's motion for directed verdict on his wrongful discharge action.
AFFIRMED.

David Scieszinski, Wilton, for appellant.

Patrick J. Madden of Stanley, Lande & Hunter, P.C.,
Muscatine, for appellee.

Heard by Donielson, C.J., and Sackett and Huitink, JJ.

DONIELSON, C.J.

In September 1975 Craige Gheer started his employment with HON Industries (HON) as an assembler. In May 1989 Gheer felt his elbow pop with a burning sensation. Subsequent physical therapy did not adequately alleviate the injury. Gheer left work in October 1989 on medical advice and began receiving workers' compensation benefits. In November 1989 Gheer had surgery on the elbow. He returned to work with work restrictions limiting him to lifting under fifty pounds. On the day he returned to work in April 1990, he was given a final disciplinary warning from HON for unsatisfactory job performance. A second surgery was performed on Gheer in October 1990.

In April 1991, Gheer was released to return to work with trial restrictions involving no repetitive lifting and no lifting over twenty pounds. Gheer's surgeon, Dr. Ripperger, stated Gheer had reached maximum improvement and rated his permanent impairment of the whole person at zero. On June 4, 1991, HON's workers' compensation carrier advised the plaintiff that it was terminating his weekly temporary total disability benefits as of July 2, 1991. On June 24, 1991, HON advised the plaintiff they were terminating his employment because his one-year medical leave of absence had expired.

Gheer subsequently filed a wrongful discharge action against HON claiming that they terminated his employment

because he filed a workers' compensation claim. HON filed an answer denying Gheer was discharged on such a basis.

During the jury trial, HON moved for a directed verdict asserting Gheer had not established he was fired because of his workers' compensation claim. On May 12, 1993, the district court granted the motion for directed verdict. The court determined that there was not substantial evidence that Gheer's application and receipt of workers' compensation benefits were the reasons for HON's decision to discharge Gheer.

Gheer appeals. We affirm the district court's grant of a directed verdict.

We review for correction of errors of law. Iowa R. App. P. 4. In reviewing the district court's grant of a directed verdict, we view the evidence in the light most favorable to the nonmoving party, making every legitimate inference which may fairly and reasonably be deduced from the evidence. Springer v. Weeks & Leo Co., 475 N.W.2d 630, 631 (Iowa 1991). If substantial evidence supports each element of plaintiff's claim, the motion should be denied. Id. If there is not substantial evidence on an element of the claim, a directed verdict is appropriate. Smith v. Smithway Motor Xpress, Inc., 464 N.W.2d 682, 684 (Iowa 1990). Evidence is substantial if a reasonable mind could accept it as adequate to reach a conclusion. Johnson v. Dodgen, 451 N.W.2d 168, 171 (Iowa 1990).

Gheer needed to prove (1) he was an employee of HON, (2) HON discharged him, (3) HON discharged him because he filed a workers' compensation claim, (4) the discharge was a proximate cause of damage to Gheer, and (5) the nature and extent of damages. Springer, 475 N.W.2d at 633. Our review of the record, applying the same standard as the district court, brings us to the conclusion there is not substantial evidence to support the necessary element Gheer was discharged because he filed a workers' compensation claim. Gheer testified HON did not discourage him from filing a claim. He admitted he knew of others who had filed claims and were not fired. He testified about the accommodations HON made to allow him to work at a position within his limitations, even to the extent of allowing him to work at a position using only one hand. Gheer knew about the leave policy. He was notified by HON about the extent of leave and when it expired. His surgeon's evaluation of his condition showed he had reached maximum recovery and had no whole body disability. The physician noted Gheer's reluctance to return to his old position was based on Gheer's fear of reinjury, not any current lack of capacity. Gheer did not act to extend his leave. We agree with the district court the evidence does not rise to the level of being "substantial" that HON based its decision to terminate Gheer on his workers' compensation claim. We affirm the grant of a directed verdict.

Gheer also argues the leave policy acts to relieve HON of its obligations under the statutory workers' compensation scheme in contravention of public policy. We disagree. Gheer's physician rated his disability at zero. The insurance carrier terminated Gheer's benefits on the basis of that evaluation. There is no evidence in the record the insurance company terminated Gheer's benefits because it knew HON was going to terminate Gheer.

For the reasons stated, we affirm the district court's grant of a directed verdict. We conclude any other issues the parties may have raised are either covered by this opinion or are without merit.

AFFIRMED.