IN THE COURT OF APPEALS OF IOWA

No. 0-49 / 99-786
Filed June 28, 2000

FILED
JUN 28 2000
CLERK SUPREME COURT

TERRI MOLAND,
Plaintiff-Appellant,

vs.

IBP, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Buena Vista County, John P. Duffy, Judge.

Former employee appeals following the grant of summary judgment on her wrongful discharge claim against her former employer. **REVERSED AND REMANDED.**

Steven D. Hamilton of the Hamilton Law Firm, Storm Lake, for appellant.

Gary W. Armstrong of Mack, Hansen, Gadd, Armstrong & Brown, Storm Lake, for appellee.

Considered by Streit, P.J., and Zimmer and Miller, JJ.

STREIT, P.J.

Terri Moland appeals the decision of the district court granting summary judgment to IBP, Inc. on her action for retaliatory discharge. She claims summary judgment was improper because there is a genuine issue of material fact concerning IBP's motivation for discharging her. We reverse and remand.

Moland was employed by IBP. She received a repetitive motion injury and filed a claim for workers' compensation benefits in May 1994. She requested a transfer to a job as a scale operator, which was a part-time position. This job involved working at a different location, at Bil-Mar, and working with Bil-Mar employees.

In February 1995 Moland reported to Bil-Mar management she had been sexually harassed by one of its employees. Bil-Mar asked IBP to no longer assign Moland to work at its location. Moland then asked the IBP personnel manager, Lonny Jepson, to assign her to a different job with IBP. Moland never returned to work at IBP.

In December 1996 Moland filed suit against IBP, alleging she had been wrongfully discharged. IBP filed a motion for summary judgment in which it claimed Moland had failed to show a causal connection between losing her job as a scale operator and her workers' compensation claim. The district court granted the motion, finding Moland offered no evidence of a retaliatory motive for IBP's conduct. Moland appealed.

We review a summary judgment ruling for corrections of errors of law. *Howell v. Merritt Co.*, 585 N.W.2d 278, 280 (Iowa 1998). Under Iowa Rule of

Civil Procedure 237, summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* The facts are reviewed in the light most favorable to the nonmoving party. *Shriver v. City of Okoboji,* 567 N.W.2d 397, 400 (Iowa 1997).

In Iowa it is against public policy to discharge an employee based on retaliation for seeking workers' compensation benefits. *Smith v. Smithway Motor Xpress, Inc.,* 464 N.W.2d 682, 686 (Iowa 1990). In order to recover in a suit for wrongful discharge, a party must prove a determining factor in the employer's decision to terminate his or her employment was the fact the party engaged in the protected activity of seeking workers' compensation benefits. *Weinzetl v. Ruan Single Source Transp. Co.,* 587 N.W.2d 809, 811 (Iowa App. 1998).

The causation standard in a common-law retaliatory discharge case is high. *Teachout v. Forest City Community Sch. Dist.,* 584 N.W.2d 296, 301 (Iowa 1998). The mere fact that an adverse employment decision occurs after an employee engages in protected activity is not in itself sufficient to support a finding the adverse employment decision was in retaliation to the discrimination claim. *Hulme v. Barrett,* 480 N.W.2d 40, 43 (Iowa 1992). Where there is inadequate evidence of causation, summary judgment is proper. *Phipps v. IASD Health Servs. Corp.,* 558 N.W.2d 198, 203 (Iowa 1997).

In the present case the motion for summary judgment was based on IBP's assertion there was no causal connection between Moland's claim for workers' compensation benefits and the fact she was asked to leave her job as a scale

operator. However, leaving the scale operator's job is not the event which gives rise to Moland's suit.

Moland claims IBP acted in retaliation by failing to find her a new job assignment. In an affidavit filed with her resistance to the motion for summary judgment, Moland states Jepson told her, "Terri, because you filed a contested workers' compensation claim, that is going to make it very hard for me to put you to work in a different job." Moland made tape recordings of some of her conversations with Jepson. The district court discounts the alleged statement by Jepson because it is not in the conversations that Moland recorded, although the court also finds the tape recordings are not admissible evidence. In any event, Moland does not claim to have taped all of the conversations, or that Jepson's statement was in the conversations she recorded.

Jepson's statement provides evidence of retaliatory discharge. Moland presents sufficient evidence to create a fact issue, when viewing the evidence in a light most favorable to her. *See Shriver,* 567 N.W.2d at 400. We determine summary judgment in this case was improper.

We reverse the grant of summary judgment and remand for further proceedings. Costs of this appeal are assessed to IBP.

REVERSED AND REMANDED.