IN THE COURT OF APPEALS OF IOWA

No. 8-691 / 97-1450

DONNIE SHAFFER,

Plaintiff-Appellee,

vs.

EXIDE CORPORATION,

Defendant-Appellant.

FILED
JAN 27 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Des Moines County, R. David Fahey, Judge.

Defendant appeals from the judgment entered upon a jury verdict in favor of plaintiff on his wrongful discharge claim. **AFFIRMED.**

John M. Loeschen of Loeschen & Loeschen, Burlington, for appellant.

Michael J. Schilling of Cahill, Dieterich & Schilling Law Office, Burlington, for appellee.

Heard by Sackett, C.J., and Streit and Vogel, JJ.

SACKETT, C.J.

Defendant-appellant Exide Corporation appeals a verdict entered for plaintiff-appellee Donnie Shaffer. Plaintiff, a former employee of defendant corporation, sued claiming he was discharged from employment in retaliation for his filing a claim for workers' compensation. The jury returned a verdict in plaintiff's favor and awarded him $101,500 in damages. Defendant contends the district court erred (1) in excluding evidence of a grievance procedure initiated by plaintiff's union following defendant's termination of plaintiff from his employment; (2) in admitting evidence defendant violated plaintiff's work restrictions prior to his discharge; (3) in failing to grant defendant's motion for judgment notwithstanding the verdict on grounds the evidence was insufficient to support the verdict; and (4) by failing to grant defendant's motion for new trial on grounds the verdict was the result of passion and prejudice. We affirm.

Plaintiff was employed by defendant corporation from May of 1986 until he was fired in January of 1994. During the course of this employment, plaintiff made claims for carpal tunnel injury, trigger finger, and a right shoulder injury. Plaintiff received workers' compensation benefits on these claims. Plaintiff again claimed he was injured on October 23, 1993, and filed a worker's compensation claim that same day.

Defendant terminated plaintiff's employment in January of 1994. Defendant asserts the termination was the result of plaintiff's absences from work, excluding

time he was absent for work-related injuries. Plaintiff's union filed a grievance because of his termination. The grievance was never arbitrated.

Plaintiff sued claiming his termination was in retaliation of his filing for workers' compensation benefits, and he was terminated because he refused work he contended he was restricted by medical limitations from performing, and he was unable to perform certain duties because defendant failed to provide correct medical care.

Defendant first contends the district court should not have excluded evidence concerning plaintiff's grievance. Plaintiff filed a motion in limine asking the district court to exclude the evidence. The district court found plaintiff's motion not to be a motion in limine but, rather, a motion seeking an advanced ruling on the admissibility under Iowa Rule of Evidence 104(a).[1] The district court excluded the evidence finding it had marginal probative value that was outweighed by unfair prejudice.

Defendant advances the district court abused its discretion in excluding the evidence. Defendant argues it was prejudiced by the exclusion of the evidence because it was limited in its ability to show it had valid reasons to discharge plaintiff. Specifically, defendant claims the excluded evidence supported its claim plaintiff had

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[1] Iowa Rule of Evidence 104(a) provides as follows:

> **(a) Questions of Admissibility Generally.** Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision "b." In making its determination it is not bound by the rules of evidence except those with respect to privileges.

Iowa R. Evid. 104(a).

excessive absences and it attempted to accommodate restrictions on work plaintiff was deemed able to perform.

Plaintiff argues defendant failed to preserve error on this claim because it failed to make an offer of proof. Defendant contends the issue was preserved for appellate review because the district court's ruling on plaintiff's motion in limine was a final ruling on the evidence's admissibility. No offer of proof was made.

We agree with defendant a final ruling on the admissibility of evidence need not be questioned again during the trial. *See State v. O'Connell,* 275 N.W.2d 197, 202 (Iowa 1979). However, error is not preserved on a challenge to the exclusion of evidence unless the substance of the evidence is available through an offer of proof or otherwise. *See Committee on Prof'l Ethics & Conduct of the Iowa State Bar Ass'n v. Behnke,* 276 N.W.2d 838, 841 (Iowa 1979); *Strong v. Rothamel,* 523 N.W.2d 597, 599 (Iowa App. 1994). There being no offer of proof, error on this issue was not preserved. Therefore, we are unable to judge the admissibility of any statements or admissions made in other proceedings.

Defendant's second contention is the district court erred in allowing evidence it violated plaintiff's work restrictions. Defendant contends its violations of work restrictions, if they existed, are part of a workers' compensation claim for injuries and such evidence is irrelevant and prejudicial in the context of plaintiff's retaliatory discharge claim. Defendant contends this is an attempt by plaintiff to recover in tort when the dispute was exclusively within the jurisdiction of the Iowa Workers' Compensation Industrial Commissioner. Defendant contends plaintiff was trying to

claim the evidence he exceeded his work restrictions was evidence of a retaliatory discharge.

Plaintiff contends defendant failed to preserve error on this issue by failing to make the proper objections to the evidence at trial. Plaintiff also contends this evidence was relevant to establish a pattern of retaliatory conduct by defendant.

As a general rule, an at-will employee may be discharged at any time, for any reason, or for no reason at all. *French v. Foods, Inc.*, 495 N.W.2d 768, 769 (Iowa 1993). The Iowa Supreme Court has recognized two exceptions to this rule.[2] The first is if the discharge is in clear violation of a defined and recognized public policy of the State of Iowa. *See id.* at 770; *see also Springer v. Weeks & Leo Co.*, 429 N.W.2d 558, 560 (Iowa 1988). Discharging an employee for filing a workers' compensation claim is considered a retaliatory or wrongful discharge action. *See Springer v. Weeks & Leo Co.*, 475 N.W.2d 630, 633 (Iowa 1991).[3] Thus, the public policy exception is based on the theory the law should not allow employees to be fired for reasons that violate public policy. *Borschel v. City of Perry*, 512 N.W.2d 565, 567 (Iowa 1994).

We agree with defendant work restriction violations are within the jurisdiction of the Iowa Workers' Compensation Industrial Commissioner. *See Bearce v. FMC*

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[2] Iowa has not recognized an implied good faith and fair dealing exception to the at-will doctrine. *Porter v. Pioneer Hi-Bred Int'l, Inc.*, 497 N.W.2d 870, 871 (Iowa 1993); *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 456-57 (Iowa 1989).

[3] A second exception, not at issue here, is if there is a contract created by an employer's handbook or policy manual. *French v. Foods, Inc.*, 495 N.W.2d 768, 770 (Iowa 1993).

Corp., 465 N.W.2d 531, 536-37 (Iowa 1991). We also agree evidence of an employer's conduct in a retaliatory discharge case should generally be limited to events occurring after the claim is filed or after the employer is made aware a claim may be filed. As plaintiff argues, though, evidence of a pattern of an employer firing employees for making workers' compensation claims may well be admissible. A review of the record shows the challenged evidence of plaintiff's medical restrictions was admitted without objection. Defendant failed to preserve error on this issue. *Rothamel*, 523 N.W.2d at 599.

Defendant next contends the district court should not have overruled its motion for judgment notwithstanding the verdict because there was not substantial evidence to support the verdict. Defendant specifically contends there was not substantial evidence to support a finding plaintiff was discharged in retaliation for filing a workers' compensation claim. Defendant claims there was no evidence it forced plaintiff to violate his work restrictions. Defendant contends for it to retaliate against plaintiff it had to first be aware plaintiff got or was attempting to get workers' compensation benefits.

Reviewing a ruling on a motion for judgment notwithstanding the verdict, we view the evidence in the light most favorable to the verdict. *American Family Mut. Ins. v. DeGroot*, 543 N.W.2d 870, 871 (Iowa 1996); *Watson v. Lewis*, 272 N.W.2d 459, 461 (Iowa 1978).

Public policy is violated if an employee is discharged as a result of seeking workers' compensation benefits. *See In re Sanford v. Meadow Gold Dairies, Inc.*, 534

N.W.2d 410, 412 (Iowa 1995). There was evidence plaintiff was fired at or near the time he made known he claimed to be injured during the course of his employment. There was a letter written to defendant corporation's doctor by defendant corporation's nurse, as well as a letter written by defendant corporation to its insurer indicating it wanted no further financial responsibility for plaintiff. Giving plaintiff every legitimate inference that can be reasonably made from this evidence, we find the verdict is supported by substantial evidence. *American Family Mut. Ins.*, 543 N.W.2d at 871.

Defendant also contends the motion should have been granted because the district court admitted a letter from its plant nurse that inflamed the jury. Plaintiff contends error was not preserved because defendant did not object to the letter's admission. The nurse wrote to plaintiff's doctor that plaintiff was a "health care provider abuser" and "received monies in excess of $90,000 in a court settlement." Defendant contends the letter should not have been admitted because the nurse was not involved in the decision to terminate plaintiff's employment, and there was no evidence defendant's management team was aware of or approved of the nurse's letter.

We review for an abuse of discretion. *Netteland v. Farm Bureau Life Ins. Co.*, 510 N.W.2d 162, 168 (Iowa App. 1993). The district court did not abuse its discretion.

We have considered defendant's other claims and find them to be without merit. We affirm.

AFFIRMED.