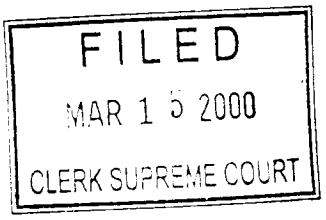
IN THE COURT OF APPEALS OF IOWA

No. 1999-585 (9-846) / 99-482
Filed March 15, 2000



BRYON L. COLEMAN,

Appellant,

vs.

SWIFT AND COMPANY; SWIFT INDEPENDENT PACKING CO.; CON AGRA; CON AGRA, INC.; and MONFORT, INC., and\or CON AGRA, INC. d\b\a: CON AGRA, and\or MONFORT, and\or SWIFT and COMPANY, and\or SWIFT INDEPENDENT PACKING CO., and\or MONFORT PORK; and MONFORT, INC.,

Appellees.

Appeal from the Iowa District Court for Marshall County, David R. Danilson, Judge.

Byron Coleman appeals the district court's grant of summary judgment in favor of the defendants in his employment discrimination action. **AFFIRMED.**

Philip F. Miller, West Des Moines, for appellant.

F. Richard Lyford and Rebecca Boyd Parrott of Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines, for appellee-Swift and Company.

Russell L. Samson of Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines, for appellee-Conagra, Inc.,

Heard by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ.

VAITHESWARAN, J.

Byron Coleman filed a disability discrimination claim against meat packer Swift and Company,[1] pursuant to the Iowa Civil Rights Act. The district court granted summary judgment in favor of Swift. On appeal Bryon asserts the court erred in concluding he did not suffer from a disability. We affirm.

I. Background Facts and Proceedings

On January 4, 1984, Coleman began working at Swift's Marshalltown pork plant. He worked various hourly jobs until his promotion to a quality control position in 1986. Coleman continued to receive promotions and became operations manager in 1993.

On July 28, 1994, work-related stress Coleman had been experiencing culminated in an episode during which he began shaking and could not speak to his co-worker. He later advised Swift's nurse he could not take the pressure anymore. Coleman took two weeks of paid sick leave, saw a psychologist, then returned to work. At that time, Swift granted his request for a transfer, and he began filling in for supervisors who were gone. Several months later, Coleman requested another transfer, which Swift granted, and he began working as a break-up table supervisor.

On March 26, 1997, Coleman visited Swift's nurse a second time, with complaints of stress. The nurse advised Coleman to see his physician that day. Coleman did so. Coleman reported that his physician diagnosed his condition as anxiety, prescribed a medication, and suggested he take two or three days off work.

[1] The defendants referenced in the caption collectively will be referred to as "Swift".

Coleman began taking the prescription drug a few days later but did not take any days off work because he feared he might lose his job.

At about the same time, Coleman's father was diagnosed with cancer. On April 3, 1997, Coleman's father suffered a heart attack and was hospitalized. Coleman contacted his supervisor and told him he would not be in the following day. Coleman also maintains he had previously advised his supervisor he might need time off to help his parents and his supervisor had approved this request. Swift denies any time off was approved beyond April 4, 1997. Coleman took the following week off. On April 10, 1997, he went to work to pick up his check and was informed he no longer had a job.

Coleman filed a complaint with the Iowa Civil Rights Commission, obtained a right-to-sue letter, and filed suit against Swift on January 20, 1998. Swift moved for summary judgment, which the district court granted. This appeal followed.

II. Standard of Review

Our review of a summary judgment ruling is for errors of law. *Bennett v. MC # 619, Inc.*, 586 N.W.2d 512, 516 (Iowa 1998). Summary judgment is appropriately granted 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 moving party bears the burden of proving no genuine issue of material fact exists. *Lewis v. AALFS Mfg., Inc.*, 489 N.W.2d 47, 50 (Iowa App. 1992). The evidence is viewed in the light most favorable to the nonmoving party. *Id.* A material fact exists when reasonable minds could differ on how the issue should be resolved. *Id.* A factual dispute will preclude summary judgment only if the disputed facts would affect the outcome of the suit. *Howell v. Merritt Co.*, 585 N.W.2d 278, 280 (Iowa 1998). If a

conflict in the record is a legal question arising from undisputed facts, summary judgment is proper. *Lewis*, 489 N.W.2d at 50.

III. Disability Claim

A. Source of Claim

Coleman's brief alludes to a disability claim under the Americans with Disabilities Act as well as the Iowa Civil Rights Act, and also refers to retaliatory discharge. Coleman conceded at oral argument, however, that the only claim he is pursuing in this appeal is his disability claim under the Iowa Civil Rights Act. Therefore, we need not address Swift's contention Coleman waived argument and failed to preserve error with respect to the retaliatory discharge and ADA claims.

B. Framework for Analysis

As a preliminary matter, we must determine the appropriate framework for analysing this disability claim. Coleman suggests Swift's reason for discharging him was pretextual. This assertion would implicate a mixed motive framework for analysis. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). Swift, however, argues the reason Coleman severed his employment is immaterial. The company suggests we must apply the framework for disability discrimination claims set forth in *Boelman v. Manson State Bank*, 522 N.W.2d 73 (Iowa 1994).

In *Boelman*, the Iowa Supreme Court stated, "[i]n cases where the employer relies on disability-related reasons for the discharge, courts require a plaintiff to prove that he or she (1) has a disability; (2) was qualified for the position; and (3) was discharged because of his or her disability." *Boelman v. Manson State Bank*, 522 N.W.2d 73, 79 (Iowa 1994). The Court held this analytical framework should

apply to "chapter 601A disability discrimination claims *where the employer admits reliance on disability-related reasons for discharge.*" *Id.* (emphasis added). We do not agree with Swift that this standard applies here. Swift did not rely on disability-related reasons to discharge Coleman. According to Coleman, Swift maintained he abandoned his job by failing to obtain approval before taking a week off to be with his parents. We accept this reason for discharge as Swift did not present evidence of a different reason for the separation. Because the record reflects mixed motives for the discharge, we must apply the *McDonnell Douglas* framework for analysis. *See Fuller v. Iowa Dep't of Human Servs.*, 576 N.W.2d 324, 328 (Iowa 1998).

C. Disability Discrimination

Under the *McDonnell Douglas* standard, an employee who asserts a discriminatory termination must first make out a prima facie case. *Fuller*, 576 N.W.2d at 328. A prima facie case of disability requires a showing that an employee: "(1) has a disability; (2) is qualified to perform the essential functions of the job with or without a reasonable accommodation; and (3) has suffered an adverse employment action under circumstances from which an inference of unlawful discrimination arises." *Id.* The employer then must articulate a legitimate non-discriminatory basis for the action. *Id.* If the employer does so, the burden shifts back to the plaintiff to prove the reason given by the defendant was a pretext and the real reason was discrimination. *Id.* Whether a person has a disability is a factual question to be decided on a case-by-case basis. *Bearshield v. John Morrell & Co.*, 570 N.W.2d 915, 918 (Iowa 1997).

The key issue here is whether Coleman suffers from a disability. The Iowa Civil Rights Act defines disability as: "a physical or mental condition of a person

which constitutes a substantial disability." Iowa Code § 216.2(5) (1997). Implementing rules further define "substantially handicapped person" as "any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment." Iowa Admin. Code r. 161-8.26(1) (1997). "Major life activities" include "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." Iowa Admin. Code r. 161-8.26(3). A person is substantially limited in performing these activities if the person is:

> (i) Unable to perform a major life activity that the average person in the general population can perform; or
> (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

Bearshield, 570 N.W.2d at 919 (quoting 29 C.F.R. § 1630.2(j)(l)).

A court should consider the following factors in deciding whether an impairment substantially limits a major life activity:

> (1) the nature and severity of the impairment;
> (2) the duration or expected duration of the impairment; and
> (3) the permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.

Fuller, 576 N.W.2d at 329 (quoting 29 C.F.R. § 1630.2(j)).

Coleman contends he is disabled because his employer regarded or perceived him as having a mental impairment that substantially limited his major life activities. *See* Iowa Admin. Code r. 161-8.26(1); *Howell*, 585 N.W.2d at 280-81. An employee must establish an employer perceived a person as disabled based on a

"myth, fear or stereotype" and made an employment decision on that basis. *Bearshield*, 570 N.W.2d at 923.

The district court found Coleman suffered from a "mental impairment", but concluded :

> Even if the employer perceived Mr. Coleman as an individual with stress and anxiety difficulties, there is insufficient evidence (to raise a genuine issue) that the employer regarded Mr. Coleman as an individual with a mental impairment which substantially limited one or more of his major life activities or which constituted a substantial handicap.

We agree with the court's conclusion. The on-site nurse's progress notes are the only records that might support a claim Swift regarded Coleman as disabled. Those notes detail a man struggling with on-the-job stress and fear of job loss as a result of the stress. However, there is no record evidence Swift determined from these nurse's visits that Coleman was unable to perform his job duties. His two documented episodes of stress-induced dysfunction occurred three years apart and appeared to resolve themselves almost immediately. After the first episode, Coleman requested and received two job transfers. Both were supervisory positions. After the second episode, Coleman's doctor advised him to take two or three days off but he declined to do so. Coleman contends he did not take the time off because of fear he would lose his job. Be that as it may, the evidence does not suggest Coleman had difficulty performing his job or other daily functions upon his immediate return. Indeed, he conceded he was able to perform the job. Therefore, the employer could reasonably have concluded the stress related episode of the previous day had resolved itself.

Coleman did not establish Swift perceived him as substantially limited in his ability to work. Therefore, he did not establish he had a disability. We conclude Coleman failed to make out a prima facie case and the district court correctly ruled that his claim must fail as a matter of law.

IV. Striking of Resistances

Coleman contends in his reply brief that the district court abused its discretion in striking supplemental resistances filed three days or less before hearing on the summary judgment motion. We will not consider arguments raised for the first time in reply briefs. *Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 642 (Iowa 1996).

We affirm the judgment of the district court dismissing Coleman's disability claim under the Iowa Civil Rights Act.

AFFIRMED.