IN THE COURT OF APPEALS OF IOWA

No. 0-113 / 09-0539
Filed April 21, 2010

JOHN SIX,
Plaintiff-Appellant,

vs.

DES MOINES COLD STORAGE CO., INC.
d/b/a Marshall Cold Storage,
Defendant-Appellee.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge.

John Six appeals the grant of summary judgment. **AFFIRMED**.

Theodore Hoglan of Marshalltown and Joanie Grife of Steffens & Grife, Marshalltown, for appellant.

James Ellefson, Marshalltown, for appellee.

Heard by Vogel, P.J., Eisenhauer, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VOGEL, P.J.

John Six appeals the grant of summary judgment in favor of his former employer, Des Moines Cold Storage Company, Inc. d/b/a Marshall Cold Storage (Cold Storage). He asserts he was wrongfully terminated in retaliation for pursuing a workers' compensation claim. We affirm.

I. Background Facts and Proceedings

Six began working for Cold Storage in December 1990, and became a supervisor in early 1999. Six sustained a work-related injury to his right hand on June 6, 2000. He initially received temporary total workers' compensation benefits of $427.26 per week from June 6 – July 16, 2000. In September 2001, with no confirmed impairment rating, Cold Storage voluntarily offered Six a five percent permanent partial disability rating, and continued his weekly benefits. He received several lump sum payments in addition to weekly compensation. The voluntary benefits concluded in December 2002. Six filed a petition in arbitration seeking workers' compensation benefits in September 2003.

On December 19, 2002, plant manager Jim Heintz informed Six that he was no longer employed at Cold Storage. In his deposition, Six testified that at the time of his termination, Heintz informed him that he was being overpaid by eight or nine dollars per hour, and had been for the majority of his employ at Cold Storage. Six alleged these criticisms were tied to his receiving both workers' compensation and regular pay. He further attributed his termination to his having left work early the day before his employment ended. Ultimately, Six asserts his termination was in retaliation for his filing a workers' compensation claim.

Six conferred with his attorney immediately following his termination. While Six was present, the attorney phoned Chuck Muelhaupt, the owner of Cold Storage. Muelhaupt informed Six's attorney that Six's employment was terminated because he was taking too much time off of work. The attorney's notes reflected that Six would not be rehired because his work absences had been a "long term problem." Mike Watkins, the plant manager before Heintz, had also criticized Six for his absenteeism, even prior to the work injury.

Mediation of the workers' compensation claim was held in October 2004, resulting in Six receiving a final payment of $40,000. In total, starting in June 2002, Six received $2441 in temporary total disability payments, $93,590 in permanent partial disability payments, and an additional $31,437 in medical benefits. On December 18, 2007, Six filed a petition and jury demand claiming he had been wrongfully discharged for pursuing a workers' compensation claim. Cold Storage filed a motion for summary judgment, with supporting statement and memorandum. Following a hearing on March 4, 2009, the district court granted Cold Storage's motion for summary judgment. Six appeals.

II. Standard of Review

We review the grant or denial of summary judgment for errors at law. *Harvey v. Care Initiatives, Inc.*, 634 N.W.2d 681, 683 (Iowa 2001). Summary judgment is appropriate

> if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.

Iowa R. Civ. P. 1.981; *Dudden v. Goodman*, 543 N.W.2d 624, 626 (Iowa Ct. App. 1995). We review the record in the light most favorable to the party against whom the summary judgment was granted. *Lloyd v. Drake Univ.*, 686 N.W.2d 225, 228 (Iowa 2004).

III. Summary Judgment

Six contends the district court erred in granting Cold Storage's motion for summary judgment, asserting that evidence was presented which demonstrated Cold Storage's termination of Six was a product of retaliatory discharge. Therefore, he asserts summary judgment was inappropriate as a material fact was in dispute.

Iowa follows the common-law employment-at-will doctrine. *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 280 (Iowa 2000). This means the employment relationship is terminable by either party "at any time, for any reason, or no reason at all." *Id.* However, the employment-at-will doctrine contains exceptions whereby an employer may not discharge an employee in violation of recognized public policy. *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 761 (Iowa 2009). In order to recover under this exception, the employee must engage in conduct protected under the public policy exception, and that conduct must be the determining factor behind the firing. *See Smith v. Smithway Motor Xpress, Inc.*, 464 N.W.2d 682, 686 (Iowa 1990) (explaining a "determinative factor . . . need only be the reason which tips the scales decisively one way or the other").

While it is against public policy for an employee to be fired in retaliation for seeking workers' compensation benefits, an employee can be fired for excessive

absenteeism, even if caused by a work-related injury. *Springer v. Weeks & Leo Co., Inc.*, 429 N.W.2d 558, 560 (Iowa 1988) (stating that an employee cannot be fired in retaliation); *Graves v. O'Hara*, 576 N.W.2d 625, 629 (Iowa Ct. App. 1998) (stating that an employee can be fired for absenteeism).

> An employer should be permitted to take reasonable steps to secure a steady, reliable, and adequate work force . . . . The absence of a public employee from his position for a prolonged period unduly impairs the efficiency of an office or agency. In many cases, the duties of the absent employee must be absorbed by the remaining staff because temporary replacements are difficult to obtain. Continued performance of the business of government necessitates that there be a point at which the disabled officer may be replaced. These concerns are not diminished by the circumstance that the employee was injured on the job, rather than off. To forbid absolutely any detrimental treatment of an injured worker would transform [the workers' compensation law] into a job security clause, which is contrary to the Legislature's intent.

Yockey v. State, 540 N.W.2d 418, 421 (Iowa 1995).

The district court found, "Six is relying on speculation and conjecture when he asserts that he was terminated by Cold Storage for pursuing a workers' compensation claim." We agree. The evidence demonstrates that Cold Storage voluntarily paid Six substantial workers' compensation benefits, and Six's termination occurred over nine months prior to his filing a workers' compensation claim. The district court found, "Six has acknowledged that he was told his termination was as a result of excessive absenteeism caused by his work-related injury." He failed to dispute this or show he was fired for reasons beyond those given to him by his employers. Six testified in his deposition, "I think I was fired because Jim Heintz didn't like me and I think he just wanted me out of the plant." He also testified that Heintz had told him "many times" that he was making too much money. While he speculated the reason he was fired was because of his

hand injury, he admitted the complaints against him were lodged prior to his injury. No evidence was presented which demonstrated Cold Storage's termination of Six was a product of retaliatory discharge.

Finding no material facts in dispute, we affirm the judgment of the district court, finding summary judgment was appropriate.

AFFIRMED.