

IN THE COURT OF APPEALS OF IOWA

No. 0-920 / 10-1137
Filed February 9, 2011

MICHAEL P. BUTTERFIELD,
Plaintiff-Appellant,

vs.

**CIVIL SERVICE COMMISSION
OF THE CITY OF AMES and
CITY OF AMES, IOWA,**
Defendants-Appellees.

Appeal from the Iowa District Court for Story County, Timothy J. Finn,
Judge.

Michael Butterfield appeals from the district court's order granting
defendants' motion for summary judgment. **AFFIRMED.**

MacDonald Smith of Smith & McElwain, Sioux City, for appellant.

Angela E. Dralle and David A. Tank of Dorsey & Whitney, L.L.P., Des
Moines, for appellees.

Heard by Sackett, C.J., and Potterfield and Mansfield, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

Michael Butterfield was employed by the City of Ames from February 1999 through April 30, 2009. At the time of his discharge, Butterfield worked as an instrument and control technician in the city's electrical services department. The job description gives examples of essential job functions and further states, "The work is performed inside and outside and includes being exposed to extreme heat, noise, vibration, mechanical hazards, electrical hazards, chemical hazards, [and] atmospheric conditions that affect the respiratory system"

During his employment with the City, Butterfield suffered from several chronic medical conditions including asthma, osteoporosis, degenerative arthritis, spinal stenosis, and sinusitis. Prior to December 2008, these conditions required only intermittent leave, and Butterfield had learned to obtain accommodations that allowed him to perform his job duties or he requested and received help from other employees. Toward the end of 2008, Butterfield had increasing issues with his degenerative arthritis and spinal stenosis. On December 19, 2008, Butterfield underwent surgery for a hernia repair. Butterfield has not worked since that time, and began receiving disability benefits in April 2009.

On December 15, 2008, Butterfield's physical therapist noted that based on Butterfield's job description and performance in physical therapy, she believed he would "have significant difficulty performing the physical components of his job description." She recommended that Butterfield undergo a full functional capacity examination to determine his potential for performing his work tasks.

On January 7, 2009, Butterfield's rheumatologist indicated that because of Butterfield's bone loss and back issues, he may not be able to lift more than twenty-five pounds and may need to be on light duty. Three other physicians, Dr. Ravinder Agarwal, Dr. Steven Goldstein, and Dr. Christopher Ronkar, evaluated Butterfield in January and again in February 2009, recommending various restrictions and sometimes conflicting opinions communicated to Butterfield and the City.

In a letter dated January 13, 2009, Dr. Agarwal, Butterfield's allergy and immunology physician, stated that, among other conditions, Butterfield's asthma, sinus disease, lung disease, osteoporosis, and joint disease significantly impaired his life activities, such as walking short distances, and would likely persist in the foreseeable future.

As of January 13, 2009, Dr. Goldstein, who performed Butterfield's hernia surgery, released him to return to work with limited lifting, bending, squatting, crawling, and climbing.

In a letter dated January 27, 2009, Dr. Ronkar stated that because of Butterfield's degenerative arthritis and spinal stenosis, "an increasing issue for him over the last 3 to 6 months," it was advisable for Butterfield not to lift more than twenty-five pounds or to crawl and to "only very occasionally" bend.

Shortly before Butterfield was to have his hernia surgery, his supervisor informed him that he needed to ask the City for accommodations if he wanted to continue to work. Accordingly, on January 28, 2009, Butterfield sent the City a letter asking for accommodations, including limited exposure to heat, cold, and chemicals; lifting only of items twenty-five pounds or less; and limited climbing,

balancing, stooping, kneeling, crouching, crawling, reaching, standing, sitting, walking, pushing, pulling, lifting, repetitive motions, and stairs.¹

On February 3, 2009, Dr. Goldstein released Butterfield to return to work with no restrictions.

On February 9, 2009, Dr. Agarwal released Butterfield to return to work with restrictions allowing only occasional lifting, bending, squatting, crawling, and climbing and limited exposure to cold and hot temperatures and chemicals.

On February 13, 2009, Dr. Ronkar released Butterfield to return to work with occasional lifting, squatting, and climbing and no bending or crawling.²

During his absence following his hernia surgery, Butterfield exhausted his sick leave benefits. His request for additional sick leave benefits was denied. On February 10, 2009, Butterfield applied for long-term disability benefits, representing that his health conditions rendered him unable to perform “each of the substantial and material duties” of his job. In response to a question on the application concerning when Butterfield planned to return to work, he stated, “When the city will let me. So far the city of Ames has refused to let me return to work. I have tried to return on light duty and the city refused this also.” In the attending physician’s statement, Dr. Agarwal stated Butterfield “should be able to work provided necessary accommodation made.” However, on April 15, 2009,

¹ The final version of this request specified: exposure to cold and heat should be limited to no more than ten minutes at a time; climbing stairs should be limited to no more than twenty to thirty stairs climbed per hour; climbing ladders and squatting should be required only occasionally; weight lifting should be limited to twenty pounds infrequently; repetitive motions should be limited to no more than ten per hour; crawling, bending, and exposure to chemicals should never be required; and rest during the course of physical activity may be necessary.

² Dr. Ronkar originally filled out the fitness to return to work form indicating Butterfield was unable to return to work indefinitely. However, a corrected copy of this form was later submitted indicating the restrictions listed above.

Butterfield was approved for thirty-six months of disability benefits, contingent on his continuing inability to perform each of the substantial and material duties of his regular occupation.

In early 2009, the City informed Butterfield that it had concerns about his ability to perform his job based on the medical information it had received from his physicians. The City scheduled a fitness for duty examination, which was conducted by Dr. Charles Mooney. Dr. Mooney reviewed Butterfield's medical records and job description and concluded that Butterfield's "current restrictions are incompatible with his return to work to the position described." Mooney also stated that in his opinion, Butterfield was only capable of returning to work if the City made all of the accommodations requested by Butterfield.

After receiving the results of this examination, the City established a disability review committee in accordance with section 3.7 of its personnel policies and procedures document. This section states that the committee shall review the facts of the case and "determine whether the . . . employee has a disability within the meaning of the Americans With Disabilities Act or the Iowa Civil Rights Act and is otherwise qualified; and, whether an accommodation requested by the . . . employee is reasonable." The committee determined that Butterfield was unable to perform the essential functions of his job and that no reasonable accommodations would allow him to do so. The committee also explored other jobs available within the city and determined Butterfield could not fill any of those positions. Based on the committee's recommendation, the City terminated Butterfield's employment effective April 30, 2009.

Butterfield appealed the City's termination decision. After a hearing on August 27, 2009, the Civil Service Commission (Commission) affirmed Butterfield's termination. Butterfield appealed the decision of the Commission to the district court. The City and the Commission moved for summary judgment. The district court granted the defendants' motion for summary judgment on June 15, 2010, finding "Defendants' decision to terminate Butterfield was not arbitrary, but instead was based on an individualized determination based on the totality of the medical evidence available."

Butterfield appeals from the district court's order granting summary judgment, arguing the district court applied the wrong standard by focusing on the question of arbitrariness and failed to consider whether factual disputes existed under the correct standard, including Butterfield's request for accommodations.

II. Standard of Review

We review rulings on motions for summary judgment for the correction of errors at law. *City of Cedar Rapids v. James Props., Inc.*, 701 N.W.2d 673, 675 (Iowa 2005). "Summary judgment is appropriate only when the entire record demonstrates that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007). We examine the record in the light most favorable to the nonmoving party and draw all legitimate inferences the evidence bears in order to establish the existence of questions of fact. *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349, 353 (Iowa 2005). "A party resisting a motion for summary judgment cannot rely on the mere assertions in his pleadings but must

come forward with evidence to demonstrate that a genuine issue of fact is presented.” *Stevens*, 728 N.W.2d at 827.

III. Summary Judgment

Butterfield argues on appeal that the district court erroneously considered only whether the City’s termination decision was arbitrary and erred in failing to consider whether the City could have made reasonable accommodations as required by section 3.7 of its policy.

We believe the district court applied the correct standard in its review of the Commission’s decision. Butterfield’s petition on appeal asserts the City’s termination of his employment and the decision of the Commission “violated Iowa Code Sections 400.18 and 400.19 . . . and other rights of Butterfield as a civil service employee.”

Iowa Code section 400.18 (2009) “establishes by express language a civil service review of discharges based on failure to properly perform the person’s duties.” *Smith v. Des Moines Civil Serv. Comm’n*, 561 N.W.2d 75, 78 (Iowa 1997). Section 400.18 provides:

No person holding civil service rights as provided in this chapter shall be removed . . . arbitrarily, except as otherwise provided in this chapter, but may be removed . . . after a hearing by a majority vote of the civil service commission, for neglect of duty, disobedience, misconduct, or failure to properly perform the person’s duties.

“[T]he civil service chapter was intended to prevent discharges for any arbitrary reason” *City of Des Moines v. Civil Serv. Comm’n of City of Des Moines*, 540 N.W.2d 52, 59 (Iowa 1995). “The clearly established standard for assessing the appropriateness of any civil service employee’s discharge is for

the commission to determine whether the action was arbitrary.” *Id.* Thus, we review the district court’s decision regarding Butterfield’s section 400.18 claim to determine whether the district court correctly concluded the discharge was not arbitrary. See Iowa Code § 400.18. To the extent to which we must consider section 3.7 of City’s personnel policies and procedures, we do so in the context of whether the City’s application of those policies was arbitrary.

We determine the district court properly granted summary judgment in favor of the defendants. Upon receiving numerous and conflicting job restrictions from several of Butterfield’s treating physicians during the end of 2008 and beginning of 2009, the City requested a fitness for duty evaluation. This evaluation found that Butterfield’s “current restrictions are incompatible with his return to work to the position described.” This evaluation was consistent with the conclusions of Butterfield’s own doctors: Butterfield’s physical therapist indicated he would have significant difficulty performing the physical components of his job description; and Butterfield’s doctors released him to work only with restrictions that prevented Butterfield from performing the duties listed in his job description.

The City established a committee that assessed all of the relevant evidence and heard testimony from Butterfield. This committee specifically considered whether the requested accommodations would allow Butterfield to perform the essential functions of his job. After concluding no reasonable accommodations existed, the committee explored employing Butterfield in another available position within the city. The committee then relayed its findings to the City. The committee’s conclusion that no reasonable accommodation would allow Butterfield to perform his job was the basis for the City’s termination

decision. While Butterfield contends that he had been performing his job with accommodations before his hernia surgery, the record demonstrates that his conditions had worsened to the extent that he qualified for disability benefits.

It is clear from the record that the City conducted an individualized determination regarding Butterfield's ability to perform the essential duties of his job based on his restrictions and medical conditions, including medical evidence of his new and worsening conditions. Butterfield's restrictions would render him unable to perform many of the required physical activities in the environmental conditions listed in his job description. We do not believe reasonable minds could differ on how this issue should be resolved. See *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007) ("A question of fact exists 'if reasonable minds can differ on how the issue should be resolved.'"). We agree with the district court's conclusion that the City's termination decision was not arbitrary and affirm its grant of summary judgment.

AFFIRMED.