

IN THE COURT OF APPEALS OF IOWA

No. 9-329 / 08-1160
Filed May 29, 2009

ERIC KHOUNLO,
Plaintiff-Appellant,

vs.

**PRINCIPAL FINANCIAL
GROUP, INC. and DEB INGRAM,**
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

A former employee appeals the district court's grant of summary judgment on his discrimination and retaliation claims against his former employer.

AFFIRMED.

Eric Khounlo, Des Moines, pro se.

Michael Giudicessi, Des Moines, for appellees.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

MANSFIELD, J.

Eric Khounlo, a native of Laos who came to the United States as a child, appeals the district court's grant of summary judgment to his former employer, Principal Financial Group, Inc., and his former supervisor, Deb Ingram. Khounlo alleges that the defendants engaged in unlawful discrimination and retaliation when they terminated his employment on May 31, 2005. For the following reasons, we affirm the judgment of the district court.

The undisputed summary judgment record shows the following. Khounlo was hired by Principal on September 20, 2004, to work as a marketing database analyst. Ingram personally hired Khounlo and served as his direct supervisor. Khounlo's job was to extract data and create reports for marketing projects.

By November 2004, concerns were surfacing about Khounlo's job performance. On December 3, 2004, Ingram met with Khounlo and sent him an e-mail confirming changes that he needed to make. Similar concerns were raised regarding the quality of Khounlo's work at a meeting with him on December 28. As the concerns continued, Khounlo received a formal written warning on February 7, 2005. The warning mentioned, among other things, Khounlo's failure to listen to others, mathematical and statistical errors in work product, lack of personal attention to details, and failure to complete his work in a timely manner.

Khounlo had previously complained at various times about his cell phone being turned on by someone else when he left his desk, about being "tapped" on the shoe by other persons during meetings, and about being kicked and touched by a female coworker who worked in the same "pod" with him when she was

exiting the pod. With respect to the female coworker's conduct, Khounlo lodged a formal complaint. Principal looked into the matter but was unable to confirm that the incident had occurred.

After receiving the February 7 warning, Khounlo wrote a lengthy response to Ingram. While the response disagreed with some of the criticisms of his job performance, Khounlo did not suggest he was being discriminated against because of race or national origin or retaliated against for having made complaints.

Later that month, in meetings with Principal's human relations personnel (HR), Khounlo for the first time alleged that he was being retaliated against. HR reviewed Khounlo's contentions and found them to be without merit. Khounlo did not assert race or national origin discrimination. Meanwhile, concerns about Khounlo's work performance continued. On April 24, 2005, Khounlo was given a written "final" warning. Due to ongoing deficiencies in Khounlo's work, Principal terminated his employment on May 31, 2005, less than nine months after he had started.

Khounlo filed a discrimination complaint with the Iowa Civil Rights Commission, which transferred the complaint to the U.S. Equal Opportunity Commission (EEOC). He alleged discrimination and illegal retaliation. The EEOC closed its investigation and provided Khounlo with a "right to sue letter." Thereafter, Khounlo filed both federal and state claims in the U.S. District Court for the Southern District of Iowa. The federal district court dismissed the federal claims as untimely and remanded the state law claims to the Polk County District Court. Shortly before the deadline for completion of discovery, Principal and

Ingram filed a motion for summary judgment. The district court granted their motion, and Khounlo appeals.

We review summary judgment rulings for correction of errors at law. *Baker v. City of Iowa City*, 750 N.W.2d 93, 97 (Iowa 2008). Summary judgment is proper only when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Smidt v. Porter*, 695 N.W.2d 9, 14 (Iowa 2005).

Upon our review, we agree with the district court's grant of summary judgment. Khounlo has not provided any direct or circumstantial evidence that Principal and Ingram terminated his employment because of his race, national origin, or prior complaints about harassment. See *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99-101, 123 S. Ct. 2148, 2154, 156 L. Ed. 2d 84, 94-95 (2003). Principal and Ingram, by contrast, have provided a large volume of evidence that Khounlo was terminated because of his poor work performance.

Additionally, as the district court found, Khounlo cannot prevail on a discrimination or retaliation claim under the *McDonnell Douglas* burden-shifting framework, either. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-03, 93 S. Ct. 1817, 1824, 36 L. Ed. 2d 668, 677-78 (1973). The defendants have provided ample evidence that they terminated Khounlo's employment for legitimate, nondiscriminatory reasons and Khounlo has not provided evidence from which a reasonable fact-finder might conclude that those reasons were pretextual. See *Smidt*, 695 N.W.2d at 15; *Carrington v. City of Des Moines*, 481 F.3d 1046, 1050 (8th Cir. 2007).

For the foregoing reasons, we affirm the well-reasoned opinion of the district court pursuant to Iowa Court Rule 21.29(1)(a), (d), and (e).

AFFIRMED.