

STATE OF MICHIGAN  
COURT OF APPEALS

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ROBERT SUCHARSKI,

Plaintiff-Appellant,

v

HYGRADE FOOD PRODUCTS  
CORPORATION and THOMAS BAHL,  
Jointly and Severally,

Defendants-Appellees.

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UNPUBLISHED

April 15, 1997

No. 184656

Oakland County

LC No. 94-471471

Before: Doctoroff, P.J., and Michael J. Kelly and Young, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

On appeal, plaintiff argues that the trial court erred in granting summary disposition for defendants because there were genuine issues of fact concerning whether defendants terminated his employment because of his handicap, in violation of the HCRA. We disagree.

In reviewing a trial court's decision on a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court examines all relevant affidavits, depositions, admissions, and other documentary evidence and construes the evidence in favor of the nonmoving party. This Court then determines whether a genuine issue of material fact exists on which reasonable minds could differ. *Sanchez v Lagoudakis (On Remand)*, 217 Mich App 535, 539; 552 NW2d 472 (1996). We review de novo a trial court's grant of summary disposition. *Id.*

MCL 37.1202(1)(b); MSA 3.550(202)(1)(b) provides that an employer shall not discharge or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. To establish a prima facie case of discrimination under the HCRA, plaintiff must show that (1) the plaintiff is "handicapped" as defined by the Act, (2) the

handicap is unrelated to the plaintiff's ability to perform the duties of a particular job, and (3) the plaintiff has been discriminated against in one of the ways set forth in the statute. *Sanchez, supra* at 539.

A "handicap" is defined by the HCRA as:

a determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic

(A) For purposes of article 2, substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion. [MCL 37.1103(e)(i)(A); MSA 3.550 (103)(e)(i)(A).]

The only handicaps covered by the act, for purposes of employment, are those that are unrelated to the ability to perform the duties of the position, and an employer is not required to adjust or modify job duties otherwise required by the job description in order to accommodate a handicapped employee. *Hatfield v St Mary's Medical Center*, 211 Mich App 321, 326; 535 NW2d 272 (1995). Once the plaintiff presents evidence that he is "handicapped" and that the handicap does not affect his ability to perform the duties of a particular job, the burden of proof shifts to the defendant to show a legitimate, nondiscriminatory reason for its rejection of the plaintiff. If the defendant makes such a showing, then the burden shifts back to the plaintiff to show that the defendant's stated reason was a pretext for discrimination. *Crittenden v Chrysler Corp*, 178 Mich App 324, 331; 443 NW2d 412 (1989). Plaintiff does not have to show that defendant was motivated solely by a discriminatory intent, only that the discrimination was a determining factor in the defendant's conduct. *Id.*

Plaintiff suffers from multiple sclerosis, which is a physical characteristic that substantially limits one or more of his major life activities. In order to claim protection under the HCRA, plaintiff must establish that his M.S. is unrelated to his ability to perform his job. *Sanchez, supra* at 539. Defendants contend that plaintiff's M.S. affected his ability to perform the duties of his job because it caused his excessive absenteeism. However, plaintiff contends that his absence from work immediately preceding his termination was due to his back injury unrelated to his M.S., and that previous absences were due to an injury to his arm, and to receive counseling after his wife died. Viewing the evidence in a light most favorable to plaintiff, there is at least an issue of fact as to whether his excessive absenteeism was caused by his M.S. or by some other condition.

The burden of proof next shifts to defendants to show a legitimate, nondiscriminatory reason for their termination of plaintiff's employment. *Id.* Defendants contend that they discharged plaintiff due to excessive absenteeism and for failing to notify his supervisors that he was unable to work on April 3-5, 1991. In support of their motion for summary disposition, defendants submitted plaintiff's attendance record, which indicated that plaintiff was absent for a total of 1899 hours over the course of his employment, and for 239 hours during his last eight months of employment. They also submitted a "Change of Status" form which indicated that plaintiff was discharged for excessive absences. Defendant Bahl stated in his affidavit that he was not aware that plaintiff had M.S. Defendants also

submitted plaintiff's deposition testimony which indicated that he was aware of Hygrade's attendance policy, and that defendant Bahl, and other Hygrade management, had discussed his attendance problems with him, but he did not realize that his job was in jeopardy. Plaintiff also admitted that he spoke with the night operator rather than his supervisors about his inability to be at work. On these facts, defendants have met their burden of articulating a legitimate, nondiscriminatory reason for discharging plaintiff.

The burden now shifts back to plaintiff to show that defendants' stated reason was a pretext for discrimination. *Crittenden, supra* at 331. In a discrimination case, to avoid summary disposition after the defendant presents a legitimate, nondiscriminatory reason that rebuts the plaintiff's prima facie case of discrimination, a plaintiff must present specific facts allowing the inference that the defendant had a discriminatory reason that was more likely its true motivation, or that show the defendant's proffered reason was unworthy of credence. *Featherly v Teledyne*, 194 Mich App 352, 362-363; 486 NW2d 361 (1992). Mere conclusory allegations are insufficient to rebut evidence of nondiscriminatory conduct. *Id.* at 363.

Plaintiff argues that defendants' assertion that they discharged him due to excessive absenteeism is a pretext for discrimination. We find that plaintiff has not presented any specific factual allegations to support an inference that defendants' alleged discriminatory motive was a factor in their decision to discharge plaintiff, beyond his own speculation, unsupported by any evidence, that he was discharged in order to save insurance costs. In contrast, defendants have presented, by way of affidavit evidence, that defendant Bahl was not even aware that plaintiff suffered from M.S. Defendants also submitted plaintiff's attendance records which show excessive absenteeism, and also indicate that plaintiff had been warned about his absenteeism, and that plaintiff had been denied merit pay because of it. Therefore, plaintiff has not met his burden of coming forward with evidence of a genuine issue of material fact regarding his discrimination claim. Accordingly, the trial court properly granted defendants' motion for summary disposition.

Affirmed.

/s/ Martin M. Doctoroff  
/s/ Michael J. Kelly  
/s/ Robert P. Young, Jr.