

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KATHLEEN KOSMAL,

Plaintiff-Appellant,

v

SBC AMERITECH MICHIGAN,

Defendant-Appellee.

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UNPUBLISHED

October 6, 2005

No. 254144

Macomb Circuit Court

LC No. 02-005738-CD

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals from the trial court's order that granted summary disposition in favor of defendant in this retaliatory discharge action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Facts and Procedural History

Plaintiff began working for defendant as an operator on March 24, 1980. On October 20, 1999 plaintiff suffered a herniated disc in her back while adjusting her workstation. Plaintiff filed a workers' compensation claim related to that injury in December 1999.

Due to the injury, plaintiff was unable to work from February to November 2000. Upon her return, she worked part-time for two weeks and then returned to full-time status, but continued to work part-time hours as a result of taking personal time, vacation time, and e-time. Plaintiff was subject to disciplinary action in May 2001 for attendance issues, but all such discipline was rescinded at the end of May following an investigation.

Also at the end of May 2001, defendant offered plaintiff the option to accept a permanent part-time position of 25 hours per week, plus e-time. Plaintiff did not accept that offer, and instead kept her full-time status. As a result of her full-time status and inability to work full-time hours, disciplinary action was taken against plaintiff for not abiding by defendant's attendance policy.

Plaintiff received verbal and written notices as well as two different suspensions between July and September 2001. In October 2001, plaintiff was suspended pending termination. Following a Union-Management Review Board meeting, defendant terminated plaintiff's employment for unsatisfactory attendance effective November 16, 2001.

Plaintiff filed her complaint in December 2002, wherein she alleged that her termination was retaliation for exercising her rights under Michigan's Workers' Disability Compensation Act ("WDCA") workers' compensation provisions. The trial court granted summary disposition to defendant stating that plaintiff was not precluded from pursuing her workers' compensation claim, and that plaintiff was not entitled to special work above and beyond what her employer provided and what her employer offered, which she rejected.

## II. Standard of Review

We review a trial court's decision to grant summary disposition under MCR 2.116(C)(10) de novo. *DeFlaviis v Lord & Taylor, Inc.*, 223 Mich App 432, 435; 566 NW2d 661 (1997). Summary disposition is proper under MCR 2.116(C)(10) when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). In our review, we "examine the entire record, in a light most favorable to the nonmoving party, to determine whether a record could be developed that would leave open an issue on which reasonable minds could differ." *DeFlaviis, supra*, 223 Mich App 435.

## III. Analysis

The relevant statutory provision regarding retaliatory discharge, MCL 418.301(11), provides:

A person shall not discharge an employee or in any manner discriminate against an employee because the employee filed a complaint or instituted or caused to be instituted a proceeding under this act or because of the exercise by the employee on behalf of himself or herself or others of a right afforded by this act.

To establish a claim of retaliatory discharge, a plaintiff must prove: "(1) she was engaged in a protected activity, (2) the defendant knew of the protected activity, (3) the defendant acted adversely to the plaintiff, and (4) the protected activity caused the adverse employment activity." *Lamoria v Health Care & Retirement Corp*, 230 Mich App 801, 818; 584 NW2d 589 (1998), opinion vacated July 24, 1998; opinion reinstated in part by 233 Mich App 560; 593 NW2d 699 (1999). Plaintiff has the burden of showing a causal connection between the protected activity of filing a workers' compensation claim and the specific complained of adverse employment action. *Chiles v Machine Shop, Inc*, 238 Mich App 462, 470; 606 NW2d 398 (1999).

Here, plaintiff says, incorrectly, that the causation element is met by defendant's knowledge of her workers' compensation claim and the determination by defendant's Associate Director of Job Accommodations that plaintiff's injuries were permanent.

Plaintiff's discharge was effective in November 2001, approximately 23 months after plaintiff's December 1999, filing of her claim. Dispositively, plaintiff failed to produce any evidence that creates a causal connection between defendant's conceded knowledge of her workers' compensation claim and defendant's termination of plaintiff's employment nearly two years later.

Defendant provided temporary accommodations for plaintiff and rescinded certain disciplinary action following a formal investigation. Once it was determined that plaintiff's injury was permanent, defendant offered plaintiff a permanent part-time position with the use of e-time. Plaintiff did not accept that position.

Only after plaintiff's refusal of defendant's proposed permanent part-time job did plaintiff's absences begin to accrue, under defendant's absence policy, that eventually led to plaintiff's termination. Defendant gave plaintiff many notices, warnings and suspensions to advise and warn plaintiff that a positive change in her attendance was necessary to avoid termination. Plaintiff's status as a full-time employee, her absences and inability to fulfill the hours required for such full-time status provided defendant with a legitimate nonretaliatory reason for plaintiff's discharge. Moreover, plaintiff offered no evidence to support her claim that defendant's stated reasons were a mere pretext for her termination. Therefore, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Henry William Saad  
/s/ Kathleen Jansen  
/s/ Jane E. Markey