

STATE OF MICHIGAN
COURT OF APPEALS

TERRY BAILEY and GLINDA BAILEY,

Plaintiffs-Appellants,

v

AMERITECH, INC.,

Defendant-Appellee.

UNPUBLISHED

August 17, 2004

No. 245837

Wayne Circuit Court

LC No. 01-124418-NZ

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendant's motion for summary disposition in this retaliatory discharge action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Terry Bailey was employed by defendant. He injured his back at work and underwent two surgeries for spinal fusion. Following the second surgery in October 1998, he remained off work for several months. In March 1999, he filed a claim for worker's disability compensation benefits. Plaintiff returned to work with restrictions in July 1999. He aggravated his back injury in August and went out on leave shortly thereafter. His employment was terminated in March 2000. Plaintiff claimed that both his termination and two incidents that occurred in August 1999 were the result of retaliation for having filed the worker's compensation claim. The trial court found no causal connection between the filing of the claim and the other events and dismissed the complaint. We review the trial court's ruling de novo on appeal. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

An employer is prohibited from discharging or otherwise discriminating against an employee because that employee filed a claim for worker's disability compensation benefits. MCL 418.301(11).

To establish a retaliation claim, the plaintiff must prove that: (1) he asserted a right for worker's compensation benefits; (2) the defendant knew that plaintiff asserted a right for worker's compensation benefits; (3) the defendant took an employment action adverse to the plaintiff; and (4) there was a causal connection between the plaintiff's assertion of his right to worker's compensation benefits and the adverse employment action. *DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997). See also *Chiles v Machine Shop, Inc*, 238

Mich App 462, 470; 606 NW2d 398 (1999); *Chisholm v Michigan AFSCME Council 25*, 218 F Supp 2d 855, 873-874 (ED Mich, 2002).

Plaintiff claims that two events that occurred in August 1999 were taken in retaliation for his having filed the worker's compensation claim. One was a prank pulled by some of his coworkers, wherein they dismantled plaintiff's work station and hid the components. Another was his supervisor's refusal to allow plaintiff to attend a golf outing. These incidents, neither of which affected plaintiff's duties, salary, or other benefits, do not constitute objectively and materially adverse employment decisions. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 311-312; 660 NW2d 351 (2003). Thus, neither incident is sufficient to constitute a retaliation claim.

Plaintiff's discharge was an adverse employment decision, *id.*, and it was taken after defendant had learned that plaintiff had filed a worker's compensation claim. To prove that the two events were causally connected, plaintiff must show something more than a mere temporal connection between them. *West v General Motors Corp*, 469 Mich 177, 186; 665 NW2d 468 (2003). Plaintiff presented no evidence apart from the temporal connection that the filing of the claim for benefits was causally connected to his discharge. He filed the claim for benefits approximately a year before his discharge, despite having filed the claim, he returned to work and defendant created a new position that accommodated his work restrictions, and defendant ultimately settled the claim and agreed to pay benefits. Even assuming plaintiff had shown a causal connection between the two events, defendant offered a legitimate nonretaliatory reason for plaintiff's discharge, which was that he refused to return to work after his claim for accident and sickness disability benefits was denied on appeal, and plaintiff offered no evidence to show that the stated reason was a mere pretext. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 134; 666 NW2d 186 (2003); *Feick v Monroe Co*, 229 Mich App 335, 343; 582 NW2d 207 (1998). Therefore, the trial court did not err in granting defendant's motion.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly