

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

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LAURIE MARIE O'CONNOR,

Plaintiff-Appellant,

v

VOPLEX CORPORATION,

Defendant-Appellee.

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UNPUBLISHED

April 15, 1997

No. 188466

Lapeer Circuit Court

LC No. 93-019762-CL

Before: McDonald, P.J., and Griffin and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). The trial court found no genuine issue of material fact as to whether defendant violated the Handicapper's Civil Rights Act in firing plaintiff for leaving work without permission. We affirm.

On July 1, 1990, plaintiff began working for defendant as a molding machine operator on an assembly line. The employee manual she received promulgates defendant's company policy that: "[a]ny employee leaving the company premises during work hours without authorization of a supervisor will [be] considered an automatic quit." On August 3, 1993, after discovering that she had bled into her pants, plaintiff left work without obtaining permission or telling anyone. More than an hour later, plaintiff telephoned her supervisor to inform him that she had left work. The supervisor then advised plaintiff that she had been discharged from employment for leaving her job without permission. Although plaintiff claims to suffer from "dysfunctional bleeding," she concedes that before this incident she never informed defendant of her specific physical condition.

Plaintiff first argues that the trial court erred in ruling that she failed to present a genuine issue of material fact whether her dysfunctional bleeding constitutes a "handicap" as the term is defined under Michigan's Handicappers' Civil Rights Act (HCRA), MCL 37.1101, *et seq.*; MSA 3.550(101), *et seq.* We disagree. We review the trial court's ruling on a motion for summary disposition pursuant to MCR 2.116(C)(10) de novo to determine whether the pleadings or the uncontroverted documentary evidence establish that defendant is entitled to judgment as a matter of law. MCR 2.116(I)(1);

*Kennedy v Auto Club of Michigan*, 215 Mich App 264, 266; 544 NW2d 750 (1996). The existence of either circumstance merits a grant of summary disposition. *Kennedy, supra* at 266; see also *Porter v City of Royal Oak*, 214 Mich App 478, 484; 542 NW2d 905 (1995); *Panich v Iron Wood Products Corp*, 179 Mich App 136, 139; 445 NW2d 795 (1989).

Section 202(1)(b) of the HCRA provides that an employer shall not “[d]ischarge or otherwise discriminate against an individual . . . because of a handicap that is unrelated to the individual’s ability to perform the duties of a particular job or position.” In establishing a prima facie case of discrimination under the HCRA, a plaintiff must first establish that she is handicapped as defined by the HCRA. *Tranker v Figgie International*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (1997) (Docket No. 188152, issued 1/3/97, slip op at 3); *Sanchez v Lagoudakis (On Remand)*, 217 Mich App 535, 539; 552 NW2d 472 (1996). Section 1103(e) of the HCRA defines “handicap” for purposes of this statute as “[a] determinable physical or mental characteristic of an individual . . . if the characteristic . . . 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.”

In *Stevens v Inland Waters, Inc*, 220 Mich App 212, 217-218; 559 NW2d 61 (1996), this Court established the following standard for determining whether an impairment substantially limits a major life activity under the HCRA:

For purposes of both the ADA [Americans with Disabilities Act, 42 USC 12101 *et seq.*] and the Rehabilitation Act [of 1973, 29 USC 701 *et seq.*], administrative regulations define “major life activities” as “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” 29 CFR 1630.2(i); *Dutcher v Ingalls Shipbuilding*, 53 F3d 723, 726 (CA 5, 1995); *Jasany v United States Postal Service*, 755 F2d 1244, 1248 (CA 6, 1985). Whether an impairment substantially limits a major life activity is determined in light of (1) the nature and severity of the impairment, (2) its duration or expected duration, and (3) its permanent or expected permanent or long-term effect. 29 CFR 1630.2(j)(2)(i)-(iii); *Dutcher, supra*, p 726. An impairment that interferes with an individual’s ability to do a particular job, but does not significantly decrease that individual’s ability to obtain satisfactory employment elsewhere, does not substantially limit the major life activity of working. 29 CFR 1630.2(j)(3)(i); *Dutcher, supra*, p 727; *Jasany, supra*, p 1248; see *E E Black, Ltd v Marshall*, 497 F Supp 1088, 1099-1101 (D Hawaii, 1980). We adopt these definitions and holdings for purposes of interpreting the HCRA.

In the present case, plaintiff presented no documentary evidence that her menstrual bleeding substantially limited her ability to perform any major life activity. See *Dotson v Electro-Wire Products, Inc*, 890 F Supp 982, 989-990 (D Kan, 1995). Nor did plaintiff provide evidence that her condition significantly decreased her ability to perform her job or obtain other suitable employment. See

*Stevens, supra* at 218. In fact, plaintiff conceded that she did not notify defendant during her pre-employment physical or on her application of her alleged gynecological condition because *she did not consider it to prevent her from working*. See *Chandler v City of Dallas*, 2 F3d 1385, 1390 (1993). Because plaintiff failed to establish that her menstrual problems substantially limits one or more of her major life activities, she is not handicapped as defined by the HCRA. See *Stevens, supra* at 216; *Chmielewski v Xermac, Inc*, 216 Mich App 707, 714; 550 NW2d 797 (1996). Accordingly, the trial court correctly granted summary disposition in defendant's favor. *Porter, supra* at 484.

Plaintiff also relies on *Rymar v Michigan Bell Telephone Co*, 190 Mich App 504; 476 NW2d 451 (1991), in arguing that because her disability was only temporary and could have been remedied within a reasonable time, she was discriminated against by defendant in contravention of the HCRA. The holding in *Rymar* is inapplicable to the present circumstances. In *Rymar*, the plaintiff based her discrimination claim on the fact that a "representation was made . . . that [the employer] denied [the] plaintiff the same leave time as other employees." *Rymar, supra* at 507. Here, plaintiff presented no evidence that she was treated differently than other employees. Rather, defendant treated plaintiff in accordance with its company rules, namely, that anyone who leaves the company premises during working hours without authorization of a supervisor is "considered an automatic quit."

Finally, plaintiff argues that the trial court erred in finding no question of fact regarding whether defendant was aware of her condition at the time of her discharge. Because we have concluded that plaintiff was not handicapped as defined by the HCRA, we need not reach this issue.

Affirmed.

/s/ Gary R. McDonald  
/s/ Richard Allen Griffin  
/s/ Richard A. Bandstra