

STATE OF MICHIGAN
COURT OF APPEALS

LISA DAWN WOOD,
Plaintiff-Appellant,

UNPUBLISHED
July 22, 2003

v

HURON CASTING, INC.,
Defendant-Appellee.

No. 239478
Huron Circuit Court
LC No. 00-001370-NZ

Before: Zahra, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff worked for defendant as a lab assistant. Her duties included running metal samples, cleaning the lab, and doing some clerical data entry work on a computer. Plaintiff began experiencing pain in her right arm, and consulted Dr. Uvas, a family physician to whom defendant referred employees. She told Dr. Uvas that she believed that her arm pain was work-related. Plaintiff requested that Dr. Uvas restrict her from doing clerical work; however, Dr. Uvas informed defendant that plaintiff was not in need of such a restriction. Shortly thereafter, defendant terminated plaintiff's employment. Subsequently, plaintiff filed a petition for worker's compensation benefits.¹

Plaintiff filed suit alleging that defendant terminated her employment in direct retaliation for her attempt to seek worker's compensation benefits for her arm condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that because plaintiff did not make a claim for worker's compensation benefits prior to being terminated, her discharge was not illegal. Defendant relied on an affidavit from Patsy Walsh, its Human Relations Director, who stated that plaintiff did not make a claim for worker's compensation benefits and that her case was never considered a worker's compensation case. The trial court granted defendant's motion, finding that the undisputed evidence showed that plaintiff did not make a request for benefits prior to her termination.

¹ The record before this Court does not reveal the disposition of that petition.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Under the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.*, an employer may not discharge an employee or in any manner discriminate against an employee based on the employee's act of filing a claim for worker's compensation benefits or exercising a right afforded by the WDCA. MCL 418.301(11). The burden of proof is on the employee to establish an illegal adverse employment action by the employer. *Chiles v Machine Shop, Inc*, 238 Mich App 462, 470; 606 NW2d 398 (1999). The plaintiff must show that the employer acted adversely in retaliation for his exercise of his rights under the WDCA, and that any legitimate reason for the action put forth by the employer was in fact merely a pretext for retaliation. *Lamoria v Health Care & Retirement Corp*, 230 Mich App 801, 817-818; 584 NW2d 589 (1998), vacated 230 Mich App 801; 584 NW2d 589 (1998), reasoning adopted by conflict panel 233 Mich App 560; 593 NW2d 699 (1999).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm the trial court's decision. Plaintiff consulted Dr. Uvas, who concluded that she was not impaired in any way and that she was not entitled to any restrictions on her work activities. Plaintiff's assertion that Walsh told her that her claim for worker's compensation benefits had been denied is not corroborated by any other testimony or documentary evidence. No evidence showed that defendant ever treated plaintiff's case as one involving a claim for worker's compensation benefits. Plaintiff's reliance on *Phillips v Butterball Farms Co, Inc (After Second Remand)*, 448 Mich 239; 531 NW2d 144 (1995), in which our Supreme Court held that the plaintiff was entitled to damages after she was terminated by claiming worker's compensation benefits in the form of medical bills for a work-related injury, is misplaced. Here, no evidence showed that plaintiff requested that defendant pay the bill that resulted from her visits to Dr. Uvas. Plaintiff simply assumed that her consultation with Dr. Uvas constituted a claim for worker's compensation benefits; however, she cites no authority for the proposition that an employee's act of consulting a physician for a condition that the employee subjectively believes to be work-related is tantamount to making a formal request for worker's compensation benefits. No evidence showed that prior to plaintiff's termination defendant had any notice that plaintiff was seeking or wished to seek worker's compensation benefits. Prior to her termination, plaintiff did not file a petition for benefits or make any request that defendant pay medical bills resulting from the treatment of a work-related injury. The trial court correctly concluded that plaintiff failed to produce sufficient evidence to create a question of fact as to whether defendant took illegal adverse action in retaliation for her exercise of her rights under the WDCA. *Chiles, supra*; *Lamoria, supra*; *Griffey v Prestige Stamping, Inc*, 189 Mich App 665, 668-669; 473 NW2d 790 (1991).

Affirmed.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Donald S. Owens