

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DANIELLE R. NORWOOD,

Plaintiff,

v.

**MID SUSSEX RESCUE SQUAD,
INC.,**

Defendant.

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**C.A. No. S14C-12-007 RBY
In and For Sussex County**

Submitted: April 1, 2016

Decided: April 20, 2016

Upon Consideration of Defendant's Motion for Partial Summary Judgment

DENIED

OPINION

Noel E. Primos, Esquire, Schmittinger & Rodriguez, Dover, Delaware for Plaintiff.

Margaret M. DiBianca, Esquire and Lauren E. M. Russell, Esquire, Young, Conaway, Stargatt & Taylor, LLP, Wilmington, Delaware for Defendant.

Young, J.

SUMMARY

Danielle Norwood (“Plaintiff”) filed an action against Defendant Mid-Sussex Rescue Squad, Inc. (“Defendant”) alleging, inter alia, retaliation in violation of Delaware’s Workers’ Compensation Act, 19 *Del. C.* § 2365. Defendant filed a motion for partial summary judgment, arguing that Plaintiff had not established her *prima facie* case for a workers’ compensation retaliation claim. Because the burden of summary judgment is on the movant Defendant, and Plaintiff has alleged facts from which a jury could reasonably find in her favor, Defendant’s motion is **DENIED**.

FACTS AND PROCEDURE

_____Plaintiff was employed by Defendant continuously from 2008 to 2014 as an EMT. Although the Defendant is not subject to the Family and Medical Leave Act¹ it has a medical leave policy which grants up to 12 weeks of unpaid leave and job protection to employees. Defendant has granted at least two employees, including Plaintiff, medical leave periods of longer than 12 weeks with no resulting adverse employment actions in the past. Plaintiff first took medical leave due to work-related injuries from August 2009 to January 2010. She also took medical leave from February 2014 until her discharge in June 2014. She filed for workers’ compensation during both periods.

APPLICABLE LAW

The Delaware Workers’ Compensation Act, 19 *Del. C.* § 2301 et seq.,

¹ 29 U.S.C. § 2601 et seq. (1993).

disallows employers to retaliate against employees for exercising rights with respect to workers' compensation benefits. Where an employer violates the statutory mandate, an employee is entitled to certain relief pursuant to § 2365. The employee is not entitled to punitive damages under this section.

For a plaintiff to establish a *prima facie* case of workers' compensation retaliation, she must show three things: (1) that she exercised rights under the Workers' Compensation Act; (2) that she suffered an adverse employment action; and (3) a causal connection between her workers' compensation claim and the adverse employment action.² A plaintiff may show a causal connection by pointing to: "(1) antagonism or retaliatory animus toward plaintiff; (2) temporal proximity between the workers' compensation claim and the adverse employment action; or (3) the record as a whole showing an inference of retaliation."³

STANDARD OF REVIEW

____ Summary judgment is appropriate where the record exhibits no genuine issue of material fact so that the movant is entitled to judgment as a matter of law.⁴ "Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances."⁵ The court should consider

² *Santora v. Red Clay Consol. Sch. Dist.*, 901 F. Supp. 2d 482, 491 (D. Del. 2012) (applying the Title VII legal standard for retaliation to a workers' compensation retaliation case).

³ *Id.*

⁴ *Tedesco v. Harris*, 2006 WL 1817086 (Del. Super. June 15, 2006).

⁵ *Id.*

the record in the light most favorable to the non-moving party.⁶ The movant bears the initial burden of establishing no genuine issue of material fact exists.⁷ Once such a showing has been made, the burden shifts to the non-moving party to show evidence to the contrary.⁸

DISCUSSION

Here, Plaintiff and Defendant both agree that punitive damages are not available for the workers' compensation retaliation claim. Both parties also agree that the *McDonnell-Douglas Corp. v. Green*⁹ burden-shifting analysis for employment discrimination or retaliation claims under Title VII applies here. Under that analysis, a plaintiff bears the initial burden of establishing the *prima facie* elements of her claim. Then, the burden of production shifts back to the defendant to articulate a legitimate, non-retaliatory reason for the adverse employment action. Finally, the burden of production shifts back to the plaintiff to show that the defendant's articulated reason is pretextual.

Defendant concedes for purposes of the motion that Plaintiff has satisfied the first two prongs of her *prima facie* claim.¹⁰ The parties' primary dispute is over whether or not Plaintiff has met the third prong, establishing sufficient evidence of

⁶ *Id.*

⁷ *Ebersole v. Lowengrub*, 54 Del. (4 Storey) 463 (Del. 1962).

⁸ *Id.*

⁹ 411 U.S. 792 (1973).

¹⁰ *Santora*, 901 F. Supp. 2d at 491.

a causal connection between her workers' compensation claim and her discharge to survive summary judgment.

Defendant's summary judgment motion asserts that Plaintiff has failed to show a causal connection based on insufficient evidence of temporal proximity. Therefore, Defendant believes that the Plaintiff has not stated her *prima facie* case, thereby making summary judgment appropriate.

Plaintiff opposes the motion, arguing that there is record evidence supporting all three types of causal connection linking her workers' compensation claim to her eventual discharge. First, Plaintiff asserts circumstantial evidence of Defendant's antagonism or retaliatory animus towards her by pointing to allegedly excessive written warnings, which her co-worker had not received for identical behavior. When asked, Defendant could not recall having meted out similar warnings to any other employees. Moreover, the warnings were said to have been issued just two days after Plaintiff reported her most recent injury. Furthermore, circumstantial evidence exists implying that Defendant's discharge of Plaintiff was influenced by another employee, who knew of Plaintiff's return to work date, but concealed it from the Board voting on her proposed termination.

Second, by way of her perspective, Plaintiff has indicated circumstantial evidence of a temporal proximity between her initial reporting of her injury and the Defendant's written warnings to her two days later, as noted.

Third, Plaintiff has offered evidence to support the argument that the record as a whole supports an inference of retaliation. Defendant treated Plaintiff's current medical leave differently from her prior leave, and differently from another

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employee's multiple leaves, each of which exceeded 12 weeks. Additionally, Plaintiff argues that Defendant has offered implausible, inconsistent, incoherent, and contradictory explanations for Plaintiff's discharge, which a jury could reasonably discredit as pretext for unlawful retaliation.

Thus, for purposes of summary judgment, taking the facts in the light most favorable to Plaintiff, material issues of fact remain which preclude partial summary judgment at this stage.

CONCLUSION

For the foregoing reasons, the Defendant's motion for summary judgment is **DENIED.**

/s/ Robert B. Young

RBV/dsc
Via File & ServeXpress
oc: Prothonotary
cc: Counsel of Record