

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

BRIAN K. HARRIS,	:
	: C.A. No. K13C-02-040 WLW
Plaintiff,	:
	:
v.	:
	:
PERDUE FARMS, INC.,	:
	:
Defendant.	:

Submitted: July 11, 2015

Decided: July 23, 2015

ORDER

Upon Plaintiff's Motion *In Limine*
Regarding Plaintiff's Prior Employment Activities.
Denied.

William D. Fletcher, Jr., Esquire of Schmittinger & Rodriguez, P.A., Dover,
Delaware; attorney for Plaintiff.

Richard D. Abrams, Esquire of Mintzer Sarowitz Zeris Ledva & Meyers, LLP,
Wilmington, Delaware; attorney for Defendant.

WITHAM, R.J.

1. Brian K. Harris (hereinafter “Plaintiff”) comes before this Court, filing a motion *in limine*, requesting that Perdue Farms, Inc. (hereinafter “Defendant”) be prohibited from presenting testimony, documents, or any other information concerning Plaintiff’s prior employment activities.

2. On March 16, 2011, Plaintiff was at Perdue Farms’ facility when he slipped and fell on a wet and greasy portion of the facility’s floor. Plaintiff’s fall caused his safety helmet to break and he subsequently sought treatment for shoulder pain, a cervical strain, knee contusions, and is still receiving treatment. Plaintiff claims past medical expenses totaling \$66,914.35 and lost wages totaling \$1,178.65 as special compensatory damages. Plaintiff also claims that Defendant’s conduct has caused him “significant physical, mental and emotional pain, anxiety and stress.” Plaintiff also states he has been diagnosed with “Major Depressive Disorder.”

3. Plaintiff’s fall was immediately preceded by another Perdue employee placing flattened cardboard boxes on the area of the floor that was wet or covered in grease in an effort to stop people from stepping in the grease. Plaintiff accuses Defendant of tortious interference with contractual relations against the Defendant for barring him from performing his job and also claims compensatory and punitive damages.

4. Defendant argues that Plaintiff had ample opportunity to view the cardboard on the floor, and avoid falling over it. Defendant also claims that Plaintiff’s injuries are not as severe as he is claiming, and argues that many of the treatments or procedures that Plaintiff underwent were unnecessary.

5. Plaintiff filed his motion *in limine* on June 24, 2014. The motion seeks to

preclude Defendant from offering any evidence of the circumstances surrounding why Plaintiff left his prior places of employment. During Plaintiff's deposition, Defense Counsel inquired as to Plaintiff's prior employment history and accompanying job applications. Plaintiff asserts that this information is irrelevant and inadmissible at trial. It is claimed that the employment history does not relate to any prior medical condition or worker's compensation claim, or any other category that would aid the trier of fact in making its determination with the sole purpose of casting the Plaintiff in a negative light.

6. Defendant's position is that Plaintiff's employment file contains terminations from two different companies, both of which either wrote memos or termination warnings regarding Plaintiff's job performance. The Defendant declares its intent to use the employment history is not to paint Plaintiff in a negative light, but rather to impeach his credibility. Defendant cites to Delaware Rule of Evidence 608(b) as allowing for the cross examination of a witness based on their credibility. Defendant notes for the Court's consideration, that Delaware Courts have not considered whether misrepresentations on job applications are admissible.

7. Both the Plaintiff and Defendant cite a four factor test applied by the Delaware Supreme Court to determine whether impeachment evidence is proper on cross examination, they are:

- 1) Whether the testimony of the witness being impeached is crucial;
- 2) The logical relevance of the specific impeachment evidence to the question of bias;
- 3) The danger of unfair prejudice, confusion of issues, or undue delay and;

4) Whether the evidence is cumulative.¹

8. The Court determines that the testimony of the witness being impeached is crucial, as that witness is the Plaintiff. As the party filing suit, Plaintiff's testimony is important to the case.² Second, impeachment evidence regarding the Plaintiff is logically relevant for several reasons. As the Defense is alleging that Plaintiff was responsible for maintaining a lookout as to possible hazardous conditions in the facility, testimony speaking to Plaintiff's truthfulness is relevant to the case. "Circumstances surrounding a witness' misconduct which go directly to truthfulness are important in assessing admissibility."³ Third, the danger of unfair prejudice, confusion of issues, or undue delay is not enough to warrant this Court barring impeachment testimony of the Plaintiff at this stage. Although evidence of conflicting reasons why Plaintiff is no longer in the employ of previous employers may cast some amount of prejudice on the Plaintiff, this is outweighed by the evidence's probative value. For the purposes of this motion, the impeachment evidence of Plaintiff based on his prior employment history is only admissible if Plaintiff testifies inconsistently. Lastly, the evidence is not cumulative, as no other negative credibility evidence is in dispute.

¹ *Garden v. Sutton*, 683 A.2d 1041, 1043 44 (Del. 1996), corrected (Aug. 28, 1996) citing *Snowden*, 672 A.2d at 1025 (*quoting Weber*, 457 A.2d at 681).

² *Garden v. Sutton*, 683 A.2d 1041, 1044 (Del. 1996), corrected (Aug. 28, 1996) *See Weber*, 457 A.2d at 682 ("jury [must be] ... exposed to facts sufficient for it to draw inferences as to the reliability of the witness").

³ *Id.*

9. It is at the trial Court's discretion whether or not to allow this type of cross-examination.⁴ However "[t]o properly evaluate a witness, a jury must have sufficient information to make a discriminating appraisal of a witness's motives and bias.

10. In keeping with the Supreme Court's holding that Delaware Rule of Evidence 608(b) may be used to analyze testimony in a civil trial, this Court will follow suit.⁵ Defendant argues that Plaintiff's testimony during his deposition showed him to be unreliable and inconsistent. Plaintiff gave different reasons for why he no longer worked at Defendant's place of business, of which many are contradictory. The Court finds that during trial, such testimony could be elicited from Plaintiff, and that "counsel must possess a 'good faith, reasonable basis' to believe that the conduct, in fact, occurred."⁶

11. Based on Plaintiff's deposition, should Defense Counsel believe that impeachment evidence exists, Defendant may reference Plaintiff's prior work history. The Court notes that "if Rule 608(b) is the proffered vehicle by which the witness is to be discredited, the past instances of misconduct must be directly 'probative of truthfulness or untruthfulness.'"⁷ Lastly, if Defendant's sole purpose for introducing such evidence is to show that Plaintiff's behavior was "improper, illegal or immoral,"

⁴ *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S.Ct. 1431, 1435, 89 L.Ed.2d 674 (1986).

⁵ *Garden v. Sutton*, 683 A.2d 1041, 1044 (Del. 1996), corrected (Aug. 28, 1996).

⁶ *State v. Watson*, 846 A.2d 249, 253 (Del. Super. 2002).

⁷ *Id.*

Harris v. Perdue Farms, Inc.

C.A. No. K13C-02-040

July 23, 2015

then such evidence is not admissible pursuant to Delaware Rule of Evidence 608(b).⁸

12. Plaintiff's motion is **denied**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr. _____
Resident Judge

WLW/dmh

⁸ *Id.* Citing *United States v. Sellers*, 906 F.2d 597, 602 (11th Cir.1990); *Crimm v. Missouri P.R. Co.*, 750 F.2d 703, 707–08 (8th Cir.1984); *United States v. McNeill*, 887 F.2d 448, 452–54 (3d Cir.1989); *United States v. Dickens*, 775 F.2d 1056, 1058 (9th Cir.1985).