IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION

RON THOMPSON, Plaintiff, vs. EATON CORPORATION, Defendant.	**No. 1:02-cv-40029** **ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Defendant's Motion for Summary Judgment (Clerk's No. 12). A hearing was not requested on the motion, and the Court finds oral argument is not necessary. Attorneys for the Plaintiff are Patrick M. Flood and Richard D. Crotty; attorneys for the Defendant are Mark D. Swenson, John J. Doyle, Jr., and Jill Stricklin Cox. The Court considers the motion fully submitted and ready for ruling.

PROCEDURAL HISTORY

The Plaintiff, Ron Thompson ("Thompson"), commenced this action against the Defendant, Eaton Corporation ("Eaton" or "the Company"), in the Iowa District Court for Fremont County on June 10, 2002. Defendant then properly removed the action to this Court on July 9, 2002. Thompson's Complaint asserts one claim against Defendant. Jurisdiction is proper pursuant to 28 U.S.C. § 1332, as there is complete diversity between the parties, and the amount in controversy exceeds the statutory amount.

In his Complaint, Plaintiff asserts a claim against his former employer, Eaton, for wrongful discharge in violation of public policy. Specifically, Thompson alleges that Eaton terminated his employment because he filed a workers' compensation claim. On December 3, 2003, Defendant filed a Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56. Thompson resists this Motion. Discovery has been completed, and a trial date has been set.

BACKGROUND FACTS[1]

Eaton is an Ohio corporation with its principal place of business in Cleveland, Ohio. Eaton operates a manufacturing facility in Shenandoah, Iowa. The Company fabricates medium-duty and heavy-duty transmissions for tractor trailer trucks. Thompson, a citizen and resident of Iowa, was employed by Eaton and worked at the Shenandoah plant ("the Plant") from April 26, 1976, until April 18, 2001. Thompson was an at-will employee and held a variety of hourly production jobs throughout his employment with Eaton.

On June 12, 2000, Thompson allegedly injured his right hand while he was working. After seeking medical treatment for this injury, Thompson initially returned to

[1] The Court's recitation of the facts coincides with Defendant's statement of the facts in its summary judgment brief. Plaintiff does not object to the facts as laid out; rather, he denies the facts entitle Eaton to summary judgment. Plaintiff has not presented any additional facts.

his regular job duties. While Thompson experienced some difficulties with his hand at that time, he was able to perform his job duties with minimal assistance from his co-workers.

On June 26, 2000, Thompson was restricted to sedentary work by occupational health nurse Jana Whitton. Whitton also limited the use of Thompson's right hand at work as follows: 10-pound lifting limitation with occasional lifting/carrying objects weight up to five pounds; no forceful pinching, pulling, or grasping; no fine manipulation; and repetitive motions of no more than 15 repetitions per hour. As a result of these restrictions, Thompson was unable to perform his regular job duties for a complete shift. Eaton subsequently assigned Thompson to a modified light-duty position consistent with the June 26 work restrictions. Specifically, Thompson spent part of his work shift operating a mechanized sweeper and part of his shift performing his regular job duties.

On July 20, 2000, Dr. Tiemann issued modified work restrictions for Thompson. Specifically, Thompson was limited to pushing or pulling a maximum of five pounds. Thompson was still unable to perform his regular job duties within Dr. Tiemann's July 20 restrictions. Consequently, Thompson continued to work in his modified light-duty assignment.

On August 18, 2000, Thompson was evaluated by Dr. McCarthy. Based on this evaluation, Dr. McCarthy issued new work restrictions for Thompson. These work

restrictions included a 10-pound lifting limitation, alternating every two hours between his regular job duties and light duties, and no forceful gripping or grasping. Thompson was not able to perform his regular job duties within the August 18 restrictions issued by Dr. McCarthy. Eaton accommodated Thompson's work restrictions by assigning him to another light-duty job. Thompson's new light-duty assignment entailed alternating every two hours between performing his regular job duties and running computerized data reports (or "cheat sheets") at the Plant's test stand. The "cheat sheet" function was typically performed by quality control employees.

On September 15, 2000, Thompson was again evaluated by Dr. McCarthy. Dr. McCarthy issued a statement indicating that Thompson should continue under the same work restrictions. Consistent with Dr. McCarthy's work status statement, Eaton continued to accommodate Thompson's work restrictions by allowing him to alternate in the light-duty job assignment with his regular job duties. These work accommodations were continued until October 17, 2000.

In mid-October 2000, Dr. McCarthy continued Thompson's work restrictions. He further recommended that Thompson undergo a bone scan and surgery on his right wrist. Thompson underwent the bone scan on October 20, 2000, and the surgery on October 30, 2000.

During this same time period, production levels at the Plant had dramatically declined. In fact, both employment and production had reached an "all-time 30-year low." Eaton instigated major lay-offs at the Plant, and the total number of employees at the Plant was reduced by more than half. Additionally, in the fall of 2000, Eaton implemented "lean manufacturing" processes at the Plant. As a result, production jobs at the Plant were consolidated, and employees were required to rotate among various job functions instead of being assigned to just one job function.

Jason Neutzling ("Neutzling"), the Plant safety manager, determined that the Company would no longer be able to provide light-duty work that met Thompson's work restrictions of no lifting over 10 pounds and alternating between regular duties and light-duty work every two hours. The increased physical demands of jobs in the assembly area and the diminished number of jobs at the Plant made it much more difficult for the Company to provide light-duty work to employees with medical restrictions. Moreover, due to the newly implemented lean manufacturing processes, the need for "cheat sheets" was eliminated.

Also in mid-October 2000, Eaton's workers' compensation insurance carrier, GAB Robins, notified Neutzling that it had determined Thompson's June 12, 2000, injury was related to a prior workplace injury that had been settled. Consequently, GAB Robins was

denying workers' compensation benefits coverage for Thompson's June 12 injury. It was GAB Robins, not Eaton, that determined Thompson's injury was not compensable.

As a matter of practice, Plant employees unable to work due to medical conditions not covered by workers' compensation are automatically placed on short term disability ("STD") leave under an Eaton sponsored STD plan. On October 18, 2000, Neutzling called a meeting with Thompson and supervisor Terry Regan to discuss Thompson's work status. At this meeting, Neutzling informed Thompson that workers' compensation coverage for his June 12 injury had been denied. Neutzling further informed Thompson that Eaton was no longer able to accommodate the doctor's restrictions and that Thompson would be placed on STD leave so that his medical benefits would be continued.[2] Thompson's last active day of work for Eaton was October 17, 2000. He began receiving STD benefits through an Eaton-sponsored plan on October 18, 2000.

During his STD leave, Thompson regularly hand-delivered to Neutzling the doctor's statements regarding his work status. The doctor's statements Thompson submitted to Neutzling are as follows:

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[2] Previously, Thompson's medical expenses in connection with his treatment for the June 12 injury had been covered by Eaton's workers' compensation insurance. However, it is unclear as to when and if Thompson ever indicated his intention to file a workers' compensation claim against Eaton involving the June 12 injury. Plaintiff alleges he filed for workers' compensation in December 2001, well after the termination of his employment.

- Dr. McCarthy's work status report dated November 8, 2000, indicated that Thompson was to be out of work for four weeks.
- Dr. McCarthy's work status report dated December 8, 2000, indicated that Thompson's lifting limitation was three to five pounds with no forceful use of his right arm.
- Dr. McCarthy's work status report dated January 10, 2001, indicated that Thompson's restrictions included no lifting over 10 pounds and no forceful use of his right arm. This status report also stated that Thompson was to wear a brace on his right arm the majority of the time.
- Dr. McCarthy's work status report dated February 19, 2001, indicated that Thompson's restrictions were as follows: no lifting over 10 pounds with the right arm; no forceful grasping; no pushing or pulling over 15 pounds; no twisting over 10 pounds; and forceful pinching, pulling, and grasping limited to 50 percent of the time.
- Dr. McCarthy's work status report dated March 23, 2001, indicated that Thompson was not to work in any capacity for a period of four weeks.

Essentially, the doctor's statements submitted to Eaton indicated that while Thompson was on STD leave, his work restrictions were never diminished in any significant manner. Based upon the work status reports, Neutzling determined that

Thompson's work restrictions prevented him from being able to perform a regular job or any other work that the Company would be able to provide during the time Thompson was on STD leave.

Under the Eaton-sponsored STD plan, eligible employees may receive STD benefits for a maximum of six months. If a Plant employee is unable to return to work at the end of the six-month STD, he or she may then apply for long term disability ("LTD") benefits. In 2001, the process for transferring employees from STD to LTD was handled by the claims administrator for the Eaton-sponsored plans, Kemper National Services ("Kemper").

In March 2001, Thompson signed an application form for LTD benefits through an Eaton-sponsored plan. Also in March, Thompson underwent a second surgical procedure on his right hand. The surgery was performed by Dr. McCarthy on March 13, 2001. On April 18, 2001, Thompson's LTD claim was approved by Kemper. Thompson was out of work on LTD leave and received LTD benefits from April 18, 2001, through October 2002.

On May 1, 2001, Jack Branigan ("Branigan") became the human resources manager at the Plant. Shortly thereafter, Branigan received an e-mail from Eaton's corporate benefits group regarding the payment of health insurance premiums for employees who were on leave. Attached to this e-mail was a form letter to be sent to

employees who were eligible for LTD benefits informing them their employment was terminated. This was consistent with Eaton's practice at that time, which was to automatically terminate employees who became eligible for LTD benefits.

Upon receiving the aforementioned e-mail, Branigan instructed his administrative assistant, Dianne Addy, to prepare form letters of termination to all employees who were eligible for LTD at that time. Thompson was on the list along with eleven other employees. On May 9, 2001, Branigan sent a letter to Thompson informing him that because he had been approved for LTD benefits, his employment with Eaton was terminated. The termination was effective April 18, 2001, the date Thompson's LTD benefits were approved by Kemper.

Also on May 9, 2001, Branigan sent an identical letter to the other eleven employees on LTD leave. In all, seventeen employees (including Thompson) who were on LTD leave between May 1, 2001, and December 2001 were terminated effective the date on which they became eligible for LTD benefits.

Branigan was responsible for the discharge decision concerning Thompson. In May 2001, Branigan was not aware that Thompson had injured his hand in June 2000 or that Thompson had ever pursued or received workers' compensation benefits. At that time, Branigan had never met Thompson and knew him by name only. Furthermore, Branigan did not know anything about the circumstances of Thompson's disability leave,

he did not discuss Thompson's leave situation or his discharge with anyone else at the Company, and he did not review Thompson's employment records or those of the other employees on LTD leave who were discharged at that time.

In the present lawsuit, Thompson alleges that Eaton terminated his employment because he had filed a workers' compensation claim and that such a discharge violated public policy in Iowa. Thompson testified at his deposition that he believed Eaton terminated his employment due to his workers' compensation claim because he could understand no other reason for the termination. Thompson further admitted that this was the only fact that substantiated his belief that the Company discharged him because of his workers' compensation claim.

ANALYSIS

Eaton asserts two arguments as the bases for its motion for summary judgment. First, Eaton contends that Thompson cannot establish any causal connection between his workers' compensation claim as required to prevail on a claim of wrongful discharge against public policy under Iowa state law. Second, Eaton asserts that even if Thompson were able to establish the requisite causal link, Eaton has demonstrated that it terminated Thompson's employment for a legitimate, nondiscriminatory reason which, in rebuttal, Thompson is unable to refute by showing the proffered reason was pretext.

A. Standard for Summary Judgment

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment should be rendered

> if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). To avoid summary judgment, the nonmoving party must make a sufficient showing on every essential element of its case for which it has the burden of proof at trial. See Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Wilson v. Southwestern Bell Tel. Co., 55 F.3d 399, 405 (8th Cir. 1995).

The nonmoving party must go beyond the pleadings, and by affidavits, depositions, answers to interrogatories, and admissions on file, designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Celotex, 477 U.S. at 324; see also Landon v. Northwest Airlines, Inc., 72 F.3d 620, 624 (8th Cir. 1995) (finding that in employment discrimination cases, "the plaintiff's evidence must go beyond the establishment of a prima facie case to support a reasonable inference regarding the alleged illicit reason for the defendant's action."). While the quantum of proof that must be produced to avoid summary judgment is not precisely measurable, it

must be enough evidence for a reasonable jury to return a verdict in the nonmovant's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986).

In considering a motion for summary judgment, the Court must view all the facts in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences that can be drawn from the facts. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986) (citations omitted); Rifkin v. McDonnell Douglas Corp., 78 F.3d 1277, 1280 (8th Cir. 1996). The question before this Court is whether the record, when viewed in a light most favorable to the nonmoving party, shows there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. See Mansker v. TMG Life Ins. Co., 54 F.3d 1322, 1326 (8th Cir. 1995) (citing Celotex, 477 U.S. at 322-23, and Anderson, 477 U.S. at 249-50). In addition, the Court notes that "because discrimination cases often depend on inferences rather than on direct evidence, summary judgment should not be granted unless the evidence could not support any reasonable inference for the nonmovant." Crawford v. Runyon, 37 F.3d 1338, 1341 (8th Cir. 1994).

B. Wrongful Discharge Against Public Policy Under Iowa State Law

Thompson has filed a claim for wrongful discharge against public policy against his former employer, Eaton. Thompson claims that Eaton terminated his employment in retaliation for his filing for workers' compensation benefits. He argues that termination

in retaliation for seeking workers' compensation benefits violates the public policy in the state of Iowa, and as a result, Eaton's action constitutes a wrongful discharge for which Thompson is owed damages.

Under Iowa law, generally an employer may discharge an at-will employee at any time and for any reason. Huegerich v. IBP, Inc., 547 N.W.2d 216, 219-20 (Iowa 1996); Borschel v. City of Perry, 512 N.W.2d 565, 566 (Iowa 1994). The Iowa Supreme Court has recognized an exception to this general rule if the discharge violates a "well-recognized and defined public policy of the state." Borschel, 512 N.W.2d at 566 (internal citations omitted); see also Lockhart v. Cedar Rapids Cmty. Sch. Dist., 577 N.W.2d 845, 846 (Iowa 1998). When an employee is terminated in contravention of well-established public policy, that employee may bring an action for damages against the employer. Teachout v. Forest City Cmty. Sch. Dist., 584 N.W.2d 296, 299 (Iowa 1998).

Iowa courts have further held that it is a violation of public policy to terminate an employee for filing a workers' compensation claim. Springer v. Weeks & Leo Co., 429 N.W.2d 558, 560 (Iowa 1988). Therefore, claims of wrongful discharge in retaliation for seeking workers' compensation benefits are cognizable under Iowa law. Id.; see also Napreljec v. Monarch Mfg. Co., 2003 WL 21976024, at *7 (S.D. Iowa May 27, 2003) ("The public policy recognized in Springer I and its progeny is an employee's right to

seek compensation for workplace injuries without facing retaliatory conduct from his or her employer."); Niblo v. Parr Mfg., Inc., 445 N.W.2d 351, 352-53 (Iowa 1989) (recognizing claim of wrongful discharge when termination is retaliation for the employee's pursuit of workers' compensation benefits).

Iowa uses the burden-shifting analysis applied in other employment discrimination contexts when analyzing a retaliatory discharge claim. See, e.g., Newkirk v. State, 669 N.W.2d 262, 2003 WL 21459704, at *4 (Iowa Ct. App. June 25, 2003) (table). To prevail on a claim for wrongful discharge, a plaintiff must prove the following: (1) he was engaged in a protected activity; (2) he was subject to an adverse employment action; and (3) there is a causal connection between the two. Teachout, 584 N.W.2d at 299; see also Hulme v. Barrett, 480 N.W.2d 40, 42 (Iowa 1992) (delineating elements of prima facie case for statutory retaliatory discharge claim under Iowa's civil rights law). The employee bears the burden of making out a prima facie case. Newkirk, 2003 WL 21459704, at *4.

If the plaintiff is able to make out a prima facie case on the elements of a wrongful discharge claim, the burden shifts to the employer to state a legitimate, nondiscriminatory reason for the discharge. Yockey v. State, 540 N.W.2d 418, 422 (Iowa 1995). The employee must then respond by showing the proffered reason is a pretext for discrimination. Id.

Eaton does not dispute for purposes of the present motion that Thompson pursued and collected workers' compensation benefits, a protected activity, and that his employment was terminated, an adverse employment action. Eaton does, however, argue that Thompson cannot demonstrate any causal connection between these two events.

Eaton also offers a legitimate, nondiscriminatory reason for Thompson's termination. Eaton contends that even if Thompson can show a causal connection, he cannot rebut the Company's proffered reason by showing it was a mere pretext for discrimination. On these two bases, Eaton asserts its motion for summary judgment should be granted with respect to Thompson's claim of wrongful discharge against Eaton.

1. Causal Connection

"The causation standard in a common-law retaliatory discharge case is high." Teachout, 584 N.W.2d at 301. The employee's protected activity "must be the *determinative* factor in the employer's decision to take adverse action against the employee." Id. (citing Smith v. Smithway Motor Xpress, Inc., 464 N.W.2d 682, 686 (Iowa 1990), and Graves v. O'Hara, 576 N.W.2d 625, 628 (Iowa Ct. App. 1998)). A determinative factor is one "which tips the scales decisively one way or the other." Smith, 464 N.W.2d at 686. Proof of temporal proximity, such that the adverse action occurred after protected employee conduct, is insufficient on its own to create a fact question on the causation element. Weinzetl v. Ruan Single Source Transp. Co., 587 N.W.2d 809, 811

(Iowa Ct. App. 1998); see also Barrera v. Con Agra, Inc., 244 F.3d 663, 665-66 (8th Cir. 2001) ("Under Iowa law, the fact that [the plaintiff] was fired after filing a worker's compensation claim is not alone sufficient to prove causation . . . Iowa law demands, rather, that [the plaintiff] produce evidence demonstrating that his worker's compensation claim was the determinative factor in [the employer's] decision to terminate his employment.") (internal citations omitted).

Eaton maintains that Branigan, the sole decision maker, was completely unaware of Thompson's workplace injury, or his pursuit or receipt of workers' compensation benefits. As such, Eaton contends Branigan could not have been motivated by knowledge he did not have. See, e.g., Beal v. Rubbermaid Commercial Prods., Inc., 972 F. Supp. 1216, 1229 (S.D. Iowa 1997) (granting summary judgment in favor of employer where employee was terminated directly after her workplace injury, but supervisor who made the discharge decision was unaware of the injury), aff'd, 149 F.3d 1186 (8th Cir. 1998); Admire v. Cherokee County, 2000 WL 766157, at *3-4 (Iowa Ct. App. June 14, 2000) (finding evidence of an employer's knowledge of the injury and receipt of benefits is necessary to show causation). "An essential element of the claim is a showing concerning the employer's specific motivation in firing; it must appear that the discharge was prompted by the filing of the workers' compensation claim." Sanford v. Meadow Gold Dairies, Inc., 534 N.W.2d 410, 412 (Iowa 1995) (citing Smith, 464 N.W.2d at 685). It

is clear from the record that Branigan had no knowledge of the specific circumstances of Thompson's status. Rather, Branigan merely complied with the established company policy in terminating Thompson's employment.

Eaton argues further that the circumstances of Thompson's termination do not suggest retaliatory animus on Eaton's part. See Newkirk, 2003 WL 21459704, at *4 (finding lack of evidence of retaliatory motive weighs against finding a causal connection). The Company accommodated Thompson's medical restrictions by allowing him to work in light-duty assignments.[3] This lasted for over three months until new manufacturing methods and declining production rates made further accommodations infeasible. See id. at *5 (finding employer's decision not to accommodate plaintiff after second injury merely reflected the reality that plaintiff was unable to perform his job and was not circumstantial evidence of retaliatory motive).

In addition, Eaton argues that the temporal connection is far too remote to support an inference of retaliation. See Huey v. Swift-Eckrich, 1996 WL 33423406, at *8 (N.D. Iowa Jan. 3, 1996) (discussing temporal connection and finding six-month gap between protected activity and adverse employment action too wide to establish causation); see

[3] Whether the Company's accommodations were adequate has no bearing on the retaliatory discharge claim beyond the inference that the Company lacked a retaliatory animus. Newkirk, 2003 WL 21459704, at *5.

also Teachout, 584 N.W.2d at 302 (finding that fact that termination followed employee's engaging in a protected activity is not enough on it its own to generate a jury question on retaliation); Phipps v. IASD Health Servs. Corp., 558 N.W.2d 198, 203 (Iowa 1997) (same). Indeed, Thompson was discharged on April 18, 2001, *nearly ten months after* his June 12, 2000, workplace injury. Long intervals between the protected activity and the adverse employment action "tend to undermine" an inference of retaliation. Minnesota Ass'n of Nurse Anesthetists v. Unity Hosp., 59 F.3d 80, 83 (8th Cir. 1995).

In his resistance, Thompson asserts that while the written termination letter sent by Eaton culminated in Thompson's formal termination, the adverse employment action actually occurred much sooner. Thompson contends the adverse employment action was placing Plaintiff on disability, against his will, which would later result in termination under Defendant's policies. Thompson points out this occurred "on the very day" that Eaton informed Thompson that Eaton's workers' compensation carrier had determined Thompson's injury was not compensable.

Thompson maintains that the carrier's decision would lead him to file a claim for benefits, and this was the reason Eaton placed him on STD leave. He further points to the timing of his STD leave as indicative of the motive behind the action. According to Thompson, inasmuch as he was placed on leave on the same day Eaton informed him

that his injury was not compensable, Eaton abruptly determined it could no longer accommodate Plaintiff's work restrictions, though the restrictions had not been a problem for the preceding four months. Given Eaton's policies with regard to employees on disability leave, Thompson argues he was effectively terminated when he was forced on disability leave, and the Company's motivation is a question for the jury.

Eaton contends this argument by Thompson constitutes a brand new theory of recovery. According to Eaton, in Thompson's original allegations of wrongful discharge he claimed he was terminated in April 2001 in retaliation for pursuing workers' compensation benefits. In essentially abandoning this claim, Thompson now argues he was forced to go on STD leave in October 2000 because the Company anticipated he would file a workers' compensation claim. Even though Eaton maintains this allegation was not contained in his Complaint nor disclosed during discovery, Eaton argues Thompson has still not presented any evidence substantiating his claim.

As Eaton argues, Thompson's contention that being placed on STD leave is "akin to termination" is completely unfounded. In actuality, an employee on *STD leave* is not irreversibly destined for discharge under Eaton's established practice of terminating employees who have qualified for *LTD benefits*. Indeed, Thompson could have returned to work any time during his six-month STD leave. However, his work restrictions prevented him from performing any work available at the Plant.

Moreover, Thompson does not cite any evidence that there was a sudden realization in October that Thompson would seek workers' compensation benefits. While GAB Robins notified Eaton in October 2000[4] that workers' compensation benefits for the June 12, 2000, injury would be denied, Thompson's injury had long since been reported to the workers' compensation carrier, and Thompson had been receiving benefits for the previous four months. Eaton was on notice of Thompson's protected activity as early as June 2000, and the record does not support that Thompson did anything to suggest he would continue to pursue workers' compensation benefits after GAB Robins denied his claim.

Furthermore, Thompson points to no evidence that he was forced to go on STD leave against his will. Thompson never protested or otherwise voiced an objection to going on STD leave. Moreover, while Eaton did accommodate Thompson's work restrictions for a time, Eaton stopped providing light-duty work due to a change in circumstances at the Plant. The implementation of lean manufacturing processes and the consolidation of jobs due to a downturn in production made it more difficult for Eaton to provide any light-duty work at the Plant. There is no indication that similarly situated

[4] Eaton was notified in mid-October by GAB Robins that the carrier was denying Thompson's claim. Nothing in the record before the Court indicates this occurred on October 18, 2000, the same day of the meeting between Neutzling and Thompson where Thompson was informed he was going on STD leave.

employees were treated differently than Thompson. Additionally, in mid-October, Dr. McCarthy recommended Thompson undergo a bone scan and surgery on his right wrist, which would further limit his ability to perform any type of work for a certain time period.

Finally, Thompson's placement on STD leave in October 2000 was automatic under the Company's established practice of placing employees who are unable to work due to medical restrictions not covered by workers' compensation on STD leave. Accordingly, Thompson cannot now credibly contend that Eaton stopped providing light-duty work to Thompson and placed him on STD leave for retaliatory reasons. See Newkirk, 2003 WL 21459704, at *4 (granting employer's summary judgment motion where plaintiff was terminated under established practice of automatically discharging employees who go on LTD leave, even where plaintiff was not told of automatic discharge policy when he was instructed to apply for LTD benefits and where employer was unable to continue to accommodate plaintiff's restrictions, as there was no evidence of causation and thus plaintiff was unable to make out a prima facie case).

Given the evidence on the record, Thompson's speculation that Eaton discharged him for filing a workers' compensation claim is wholly insufficient to defeat summary judgment. Indeed, to survive summary judgment, the nonmoving party must "substantiate his allegations with sufficient probative evidence [that] would permit a finding in

[his] favor based on more than mere speculation, conjecture, or fantasy." Wilson v. Int'l Bus. Machines Corp., 62 F.3d 237, 241 (8th Cir. 1995) (internal quotations omitted); see also Northwest Bank & Trust Co. v. First Illinois Nat'l Bank, 221 F. Supp. 2d 1000, 1003-04 (S.D. Iowa 2002) (finding bald assertions not enough to withstand properly supported summary judgment motion), rev'd on other grounds, 354 F.3d 721 (8th Cir. 2003).

Moreover, the nonmoving party must make a sufficient showing on every essential element of its case for which it has the burden of proof at trial, see Celotex, 477 U.S. at 322-23, and in so doing, *must go beyond* the pleadings, and by affidavits, depositions, answers to interrogatories, and admissions on file, designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Celotex, 477 U.S. at 324; see also Street v. J.C. Bradford & Co., 886 F.2d 1472, 1478 (6th Cir. 1989) (requiring nonmovant to come forward with specific evidence substantiating his claims). Indeed, Thompson cites little case law in support of his contentions. Furthermore, his brief is devoid of a single citation to the record. The mere existence of a scintilla of evidence in support of the nonmovant's position is not enough to survive summary judgment; instead, there must be sufficient evidence for a reasonable jury to find in his favor. Matsushita Elec. Indus. Co., 475 U.S. at 586; see also Anderson, 477 U.S. at 257. Such evidence is lacking here.

Thompson has failed to provide any specific probative evidence of causation and has thus failed to make out a prima facie case of wrongful discharge. See Teachout, 584 N.W.2d at 301. In fact, the sole decision maker was unaware that Thompson had even sustained a workplace injury or pursued workers' compensation benefits. The record is further devoid of any evidence of a retaliatory animus on the part of Eaton.

In sum, Thompson has not presented any direct evidence of retaliatory motive. Moreover, any circumstantial evidence of retaliatory motive is insufficient to create a jury question on the element of causation. Thompson has failed to show that his pursuit of worker's compensation benefits was the "determining factor" in Eaton's decision to terminate him. Therefore, the Court finds that Thompson's claim of wrongful discharge fails as a matter of law and Eaton's Motion for Summary Judgment should be granted.

While the Court may award summary judgment for the defendant without even considering the issue of pretext if the plaintiff is unable to even make out a prima facie case, see Newkirk, 2003 WL 21459704, at *4; see also Yockey, 540 N.W.2d at 422 (finding issue of pretext in employment discrimination cases arises only after plaintiff has made out prima facie case), the Court also analyzes the Defendant's second argument in support of summary judgment.

2. Burden Shifting Analysis

As recited above, if Thompson is able to establish a prima facie case on his wrongful discharge claim, the burden will shift to Eaton to state a legitimate,

nondiscriminatory reason for the discharge. Yockey, 540 N.W.2d at 422; Newkirk, 2003 WL 21459704, at *4. If the Company provides a legitimate, nondiscriminatory reason, Thompson must then show that the reason proffered is merely a pretext for discrimination. Yockey, 540 N.W.2d at 422; Newkirk, 2003 WL 21459704, at *4.

Eaton argues that it has provided evidence that it discharged Thompson for a legitimate, nondiscriminatory reason. The Company further asserts that Thompson is unable to destroy the presumption that the proffered reason was the actual reason due to his failure to show it was a pretext for a discriminatory or retaliatory reason.

a. Defendant's Legitimate, Non-Discriminatory Reason

Eaton avers that Thompson was terminated because his claim for LTD benefits was approved. The Company further maintains that it has presented evidence that it followed a practice of automatically terminating employees who were approved for LTD leave. Eaton contends the record is devoid of evidence that this policy was not neutrally applied. In fact, Eaton has shown that 11 other individuals were terminated for the very same reasons and under the same circumstances as Thompson. In addition, Thompson's placement on STD leave was automatic under well-established company practice.

Iowa courts have held that when employees are terminated because they are unable to perform their jobs, they are precluded from recovering on workers' compensation retaliation claims. Weinzetl, 587 N.W.2d at 811 (citing Davenport v. Des Moines,

430 N.W.2d 405 (Iowa 1988)). This is true even where an employee is terminated pursuant to the employer's administrative policy because the employee is unable to return to work after the exhaustion of a designated leave period. Id. at 810-11 (affirming summary judgment in favor of employer when plaintiffs were terminated pursuant to its Family and Medical Leave Act policy, which provided that employees whose absence exceeded 12 weeks would be terminated and permitted to reapply for employment when they were ready to return to work).

In the instant case, Thompson's approval for LTD leave was directly tied to his inability to return to work at the conclusion of his six-month STD period. Thompson is unable to dispute that his termination resulted from his inability to return to work when his STD leave expired.

b. Evidence of Pretext

Thompson attempts to refute Eaton's proffered reason by again stating the Defendant focuses on the wrong time frame. According to Thompson, he was effectively terminated on October 18, 2000, the day on which Defendant first knew that Plaintiff would be seeking workers' compensation benefits. During the four-month time period between his June injury and the October benefits determination, Eaton accommodated Thompson's work restrictions. Thompson claims that it was not until it became clear that Plaintiff would engage in protected activity that Defendant determined that Plaintiff

could no longer perform his job and effectively terminated his employment, leading to an inference that Defendant's true motivation was retaliation.

In Newkirk, the plaintiff made a similar argument. See Newkirk, 2003 WL 21459704, at *4. The plaintiff argues he was told to apply for LTD benefits but was not told approval of his application would result in his termination. Id. Newkirk contended that a jury could find his employer was using the machinations of its established LTD process as a pretext to fire him as the employer knew it could not terminate his employment for filing a workers' compensation claim. Id. As the Iowa Supreme Court stated, "[w]hile appealing at first blush, this argument fails as a matter of law." Id.

Again, Thompson has failed to provide any probative evidence that the Defendant's proffered reason was pretextual. To the contrary, Eaton followed Company policy in terminating Thompson's employment, along with eleven others, when he was approved for LTD benefits. There is no indication that this legitimate, nondiscriminatory reason was a guise to hide actual discriminatory intent or retaliatory animus. Even if the Court were to give greater credit to the bald temporal proximity argument, the case would fail under the burden shifting analysis. Therefore, were the Court to find Thompson had made out a prima facie claim of wrongful discharge, the Court finds that Thompson's claim still fails as a matter of law, and Eaton's Motion for Summary Judgment should be granted.

CONCLUSION

Based on the foregoing, the Court dismisses Thompson's claim for wrongful discharge in violation of public policy. Thompson has failed to make out a key element of a prima facie case of wrongful discharge, namely that there was a causal connection between the protected activity engaged in by Thompson and the adverse employment action undertaken by Eaton. Thompson has presented no evidence whatsoever to give rise to the inference that his pursuit of workers' compensation benefits was the "determining factor" in Eaton's decision to terminate him.

Since Thompson is unable to make out a prima facie case, the Court need not even consider the issue of pretext. See Newkirk, 2003 WL 21459704, at *4; Yockey, 540 N.W.2d at 422. However, even if the Court were to find Thompson has made out a prima facie claim of wrongful discharge, the Court finds that Thompson's claim fails as a matter of law as he has provided no evidence that the legitimate, nondiscriminatory reason proffered by Eaton for Thompson's dismissal was pretextual. In conclusion, the Court **grants** Eaton's Motion for Summary Judgment (Clerk's No. 12). The case is **dismissed**.

IT IS SO ORDERED.

Dated this 15th day of March, 2004.

JAMES E. GRITZNER, JUDGE
UNITED STATES DISTRICT COURT