UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LARRY BRADSHAW,	:	
	:	
Plaintiff,	:	CIVIL NO. 4-98-CV-20344
	:	
vs.	:	ORDER AND RULING ON
	:	MOTION FOR SUMMARY JUDGMENT
BROWN GROUP, INC.,	:	
d/b/a FAMOUS FOOTWEAR,	:	
	:	
Defendant.	:	

This matter comes before the Court on Defendant's Motion for Summary Judgment, (Clerk's No. 15), filed October 8,1999, relating to Plaintiff Larry Bradshaw's claims for breach of employment contract and promissory estoppel[1] based on his discharge on March 24, 1997, from Defendant Brown Group, Inc. ("Brown Group"), d/b/a Famous Footwear ("Famous"), an unincorporated division of Brown Group. Bradshaw alleges Famous employed him under a contract that required good cause to discharge an employee and use of progressive discipline before termination, and that Famous fired him in breach of the employment contract. Bradshaw seeks compensatory damages, including past lost and future wages and benefits; equitable relief; costs; and fees. Famous argues that Bradshaw was an at-will employee, and that as a matter of law, Bradshaw has produced insufficient evidence to support his claim. Bradshaw contends genuine issues of material fact exist that preclude summary judgment.

A hearing was held February 2, 2000. This matter is fully submitted.

I. SUMMARY JUDGMENT STANDARD

A court shall grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to

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[1] Bradshaw requested dismissal of his claim for promissory estoppel, based on the Iowa Supreme Court's opinion in *Alderson v. Rockwell Internat'l Corp.*, 561 N.W.2d 34 (Iowa 1997). (Pl.'s Mem. Res. Mot. Summ. J. at 12.) Defendant did not resist. The Court will dismiss the promissory-estoppel claim.

judgment as a matter of law." Fed. R. Civ. P. 56(c); *see, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986);*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986); *Fast v. Southern Union Co., Inc.*, 149 F.3d 885, 889 (8th Cir. 1998). On a motion for summary judgment, a court must consider the facts and the inferences to be drawn from them in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

To preclude the entry of summary judgment, the nonmovant must make a showing sufficient to establish the existence of every element essential to his case, and on which he has the burden of proof at trial. *Celotex*, 477 U.S. at 322-23; *Reed v. ULS Corp.*, 178 F.3d 988, 989 (8th Cir. 1999). The quantum of proof the nonmoving party must produce is not precisely measurable, but it must be enough evidence so that a reasonable jury could return a verdict for the nonmovant. *Anderson*, 477 U.S. at 248; *Reed*, 178 F.3d at 990.

When a motion is made and supported as required in Federal Rule of Civil Procedure 56(a), the adverse party may not rest upon the mere allegations or denials in its pleadings, but must set forth specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(e).

II. MATERIAL FACTS

The following facts either are not in dispute or are viewed in a light most favorable to Bradshaw, the nonmoving party.

In 1966, Wohl Shoe Company ("Wohl"), another unincorporated division of Brown Group, hired Bradshaw to work in customer sales. Eventually, Wohl promoted him to supervisor of various retail stores.

Sometime before 1981, Barbara Haltenhoff, Brown Group's personnel administrator, instructed Bradshaw regarding the progressive disciplinary and termination process used at Brown Group and Wohl. (Bradshaw Aff. at 4.) In approximately 1985, Wohl's Vice President of Human Resources, Fred Zarf, gave Bradshaw a copy of a manual entitled, "Personnel Policy and Procedure Manual," (Pl.'s Ex. 1), and told him the policies applied to all Wohl employees, including Bradshaw and other supervisors.

Under the heading "Guidelines for Employee Conduct/Work Rules," the manual outlined progressive disciplinary action, including verbal and written warnings and separation, for employees' failure to comply with 35 rules. *Id.* at 10-14. For some of the rules violations, the disciplinary action ranged, "From verbal warning to separation," depending on the circumstances or the nature of the violation. *Id.* at 10, 13-14. The manual's second page, under the heading "Purpose of Manual," stated, "Policies are subject to change, and updated pages are easily inserted into this manual as it becomes appropriate." *Id.* at 2.[2]

Bradshaw worked at Wohl until 1994, when the company was dissolved and its assets and inventory were sold. A former Wohl employee, Rick Stoner, who was then working for Famous, offered Bradshaw a job at Famous. On January 1, 1994, Bradshaw began work for Famous in a troubleshooting position. When discussing the job offer, Stoner told Bradshaw that all Wohl's policies would continue to apply to him in the same way at Famous. (Bradshaw Aff. at 5.)

The parties differ as to the circumstances under which Bradshaw began working for Famous. The company states that all Wohl employees, including Bradshaw, lost their jobs when Wohl was dissolved, and Famous had complete discretion as to whether or not to hire Bradshaw and other former Wohl employees. Bradshaw, on the other hand, maintains that Wohl employees were considered Brown Group employees. He asserts his employment by Famous was explained to him as a lateral move not involving cessation of employment with Brown Group.

From early 1995 until he was fired on March 24, 1997, Bradshaw worked at Famous as a regional sales manager. Bradshaw supervised district managers, who in turn supervised store managers. Bradshaw asserts that after he began working at Famous, the company's Human Resources Department director, Jan Hardyman, told Bradshaw to follow the policies and procedures of the Wohl manual. Bradshaw continued to follow the Wohl personnel policy

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[2] The manual includes sections entitled "Performance Appraisal" and "Employee Separation," but these sections are not part of the summary judgment record. (Pl.'s Ex. 1 at 4.)

manual in supervising district managers.

When Famous hired Bradshaw, the company had an employee handbook. Bradshaw asserts the handbook applied not to him, but only to Famous' store managers and employees supervised by store managers. Famous, in contrast, alleges its handbooks applied to Bradshaw.

Famous' handbooks in effect both when Bradshaw was hired and when he was fired contained disclaimers stating employment was on an at-will basis and could be ended at any time with or without notice or reason, and that only the company president had the authority to change the employee's at-will employment status. (Hardyman Aff.; Pl.'s Ex. 2 at 16; Pl.'s Ex. 3 at 41.) The 1991 and 1992 handbooks stated, "changes [in the handbook] may be made without prior notice and without the handbook being rewritten." (Pl.'s Ex. 2 at 9; Pl.'s Ex. 3 at 33.)

Sales volume dropped in most of Famous' regions, including Bradshaw's. His region, he contends, was not performing the poorest. (Bradshaw Aff. at ¶ 17.) Although, Bradshaw maintains, he performed his job in an exemplary way, Famous fired him without notice or progressive discipline. In her affidavit, Hardyman states Bradshaw was fired because his overall performance as Regional Sales Manager was unacceptable; he "failed to conduct himself in a manner consistent with company directives." (Hardyman Aff. at 2.)

III. DISCUSSION

Bradshaw claims that Famous employed him under a contract that required good cause to discharge an employee and use of a progressive disciplinary system, and that Famous fired him in breach of the employment contract. As evidence of such an employment contract, Bradshaw relies on provisions of the Wohl handbook and alleged oral statements by Famous employees that the Wohl handbook applied to him. He also states that the Famous handbooks, while not applying to him, contained the same progressive disciplinary system and policies as the Wohl handbook, thus providing further evidence of the asserted employment contract.

Famous argues Bradshaw was an at-will employee, and no enforceable contract

required Famous to show good cause and use progressive discipline before firing him. Famous contends its own handbooks, not the Wohl handbook, governed the terms of Bradshaw's employment.

"Employment relationships in Iowa are presumed to be at-will." *Phipps v. IASD Health Services Corp.*, 558 N.W.2d 198, 203 (Iowa 1997); *accord*, *French v. Foods, Inc.*, 495 N.W.2d 768, 769 (Iowa 1993); *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 455 (Iowa 1989). Absent a valid employment contract, an employer may fire an employee at any time, for any reason, or for no reason at all. *Phipps*, 558 N.W.2d at 198; *French*, 495 N.W.2d at 769. Two recognized exceptions to this general rule exist: (1) when the discharge is in clear violation of a well-recognized and defined public policy of the State; and (2) when an employer's handbook or policy manual creates a unilateral contract. *Phipps*, 558 N.W.2d at 202; *Fogel*, 446 N.W.2d at 455.

Under the second exception, the one on which Bradshaw relies, an employee handbook may create a unilateral contract if (1) the handbook is sufficiently definite in its terms to create an offer; (2) the handbook has been communicated to and accepted by the employee so as to create an acceptance; and (3) the employee has continued working, so as to provide consideration. *Kartheiser v. American Nat'l Can Co.*, 84 F. Supp. 2d 1008, 1011 (S.D. Iowa 1999); *Jones v. Lake Park Care Ctr., Inc.*, 569 N.W.2d 369, 375 (Iowa 1997); *Phipps*, 558 N.W.2d at 203; *Anderson v. Douglas & Lomason Co.*, 540 N.W.2d 277, 286 (Iowa 1995).

The party seeking recovery on the basis of a unilateral contract bears the burden to prove the contract's existence. *Phipps*, 558 N.W.2d at 203. Except when there is ambiguity, the question of whether a written instrument such as an employee handbook binds the parties in contract is a question of law. *French*, 495 N.W.2d at 768-70; *Fogel*, 446 N.W.2d at 456.

The threshold legal question here is whether the terms of the Wohl handbook are sufficiently definite to constitute an offer of continued employment.

In determining whether a handbook is sufficiently definite to constitute an employment

offer, courts require a high standard of definiteness. *Fogel*, 446 N.W.2d at 456. The handbook's language, “must be sufficiently definite in its offer of continued employment that a fact finder is not left adjudicating the alleged breach of a 'contract' for which the fact finder has supplied its own terms.” *Id.*

To determine whether the language of a handbook is objectively definite enough to create a contract, the Iowa Supreme Court looks at the following factors: (1) whether the handbook in general and the progressive disciplinary procedures in particular are mere guidelines or statement of policy, or whether they are directives; (2) whether the language of the disciplinary procedures is detailed and definite or general and vague; and (3) whether the employer has the power to alter the procedures at will, or whether the procedures are invariable. *Phipps*, 558 N.W.2d at 203-04 (quoting *Anderson*, 540 N.W.2d at 286). The key to determining whether a contract has been created is whether a reasonable employee in reading the handbook would believe his employer had guaranteed certain protections. *Randall v. Buena Vista Co. Hosp.*, 75 F. Supp. 2d 946, 968 (N.D. Iowa 1999) (quoting *Jones*, 569 N.W.2d at 375).

In this case, provisions in the Wohl handbook suggested a procedure to be followed when employees violate certain rules. In some cases, the disciplinary procedure depended on the nature of the violation or the circumstances, which were unspecified. No procedures, for example, were listed for disciplining supervisors for failure to adequately manage or otherwise perform. The procedures were not directives, but constituted guidelines or a preferred approach as a matter of policy. *See Anderson*, 540 N.W.2d at 286.

Furthermore, the mere fact the Wohl handbook listed 35 rules and regulations, the violation of which could be cause for discipline or discharge, did not, without more, create a contractual offer to employees. *See Johnson v. McDonnell Douglas Corp*, 745 S.W.2d 661, 662 (Mo. 1988) (holding handbook was mere information statement of employer's self-imposed policy, providing nonexclusive list of 42 acts for which employee might be subject to discipline, when several rules were couched in general terms open to interpretation, and rules were subject to change at any time). The list of possible rules violations was nonexclusive and

appeared under the heading of a guideline. Several of the rules were described in general terms and were open to discretion and interpretation. For example, Rule 6 prohibited, “Excessive socializing at work . . . or any unbusinesslike activity is not permitted”; Rule 9 stated, “Personal appearance must be neat, businesslike and in accordance with current dress standards”; Rule 29 forbade, “Repeated tardiness and/or absenteeism”; and Rule 33 prohibited, “Malicious gossip or the spreading of rumors.” (Pl.'s Ex. 1 at 10-11, 13-14.) Bradshaw asserts his discharge was covered under Rule 1, which stated, “Selling and non-selling responsibilities are to be shared by all employees,” another general description. *Id.* at 10. Further, Wohl included in its handbook the right to make changes, and changes were in fact made.

The Court concludes that no reasonable employee reading these handbook provisions would believe he had been guaranteed that progressive disciplinary procedures would be followed prior to termination for any cause. *See Randall*, 75 F. Supp. 2d at 969; *Jones*, 569 N.W.2d at 375. The same holds true for Famous' handbooks. Because of the Court's holding, the parties' factual dispute over whether the Wohl handbook governed Bradshaw's employment is immaterial. *See Anderson*, 477 U.S. at 248.

No genuine issue of material fact remains in this case. Famous could fire Bradshaw at will, and the company was not required to follow a particular process before firing him. Famous is entitled to summary judgment as a matter of law on Bradshaw's claim.

IV. CONCLUSION

No material questions of fact exist as to whether Bradshaw was an employee at will. Plaintiff has failed to raise a genuine issue for trial by adducing specific facts sufficient to support the essential elements of his claim for breach of contract. The Court therefore **grants** Defendant's Motion for Summary Judgment, (Clerk's No. 15), and it is ordered that all Plaintiff's claims against Defendant be dismissed.

IT IS SO ORDERED.

Dated this ____ day of April, 2000.

CELESTE F. BREMER
UNITED STATES MAGISTRATE JUDGE