

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Cliff Styles,

Complainant,

vs.

Paragon Cable,

Respondent.

ORDER DENYING RESPONDENT'S
MOTION FOR SUMMARY
DISPOSITION

The above matter is pending before the Administrative Law Judge Barbara L. Neilson pursuant to a Notice of and Order for Hearing issued on January 19, 1996, and the Respondent's Motion for Summary Judgment which was filed on July 19, 1996. The Complainant filed his Memorandum in Opposition to the motion on August 2, 1996. The Respondent filed its Reply Memorandum on August 16, 1996, on which date the record with respect to the motion closed.

Donald E. Horton and Malcolm P. Terry, Attorneys at Law, Horton and Associates, 700 Title Insurance Building, 400 Second Avenue South, Minneapolis, Minnesota 55401-2402, appeared on behalf of the Complainant. Charles O. Lentz, Attorney at Law, Robins, Kaplan, Miller & Ciresi, 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, Minnesota 55402-2015, appeared on behalf of the Respondent.

Based upon all of the records, files, and proceedings herein, IT IS HEREBY ORDERED as follows:

The Respondent's Motion for Summary Judgment is DENIED.

Dated this 16th day of September, 1996.

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

The Complainant, Cliff Styles, filed a discrimination charge against Paragon Cable with the Minnesota Department of Human Rights on or about June 19, 1995. On or about December 21, 1995, he requested that the matter be scheduled for hearing pursuant to Minn. Stat. § 363.071, subd. 1a (1994), and a Notice of and Order for Hearing was issued thereafter. In his complaint in this matter, Mr. Styles alleges that Paragon Cable discriminated against him on the basis of race and disability in violation of the Minnesota Human Rights Act ("MHRA") during the course of his employment and particularly with respect to his termination. Paragon Cable has filed a Motion for Summary Judgment in which it argues that (1) the Complainant is not a person with a disability within the meaning of the MHRA and thus fails to state a prima facie case of disability discrimination; (2) the Complainant has offered no evidence in rebuttal of Paragon's legitimate, nondiscriminatory reason for his termination; and (3) the Complainant has offered no admissible evidence of race discrimination.

Summary disposition is the administrative equivalent to summary judgment. Minn. Rules pt. 1400.5500(K) (1995). Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Sauter v. Sauter, 70 N.W.2d 351, 353 (Minn. 1955); Louwagie v. Witco Chemical Corp., 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R. Civ. P. 56.03. The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested cases. See Minn. Rules pt. 1400.6600.

It is well established that, in order to successfully resist a motion for summary judgment, the non-moving party (here, the Complainant) must show that specific facts are in dispute which have a bearing on the outcome of the case. Hunt v. IBM Mid America Employees Federal Credit Union, 384 N.W.2d 853, 855 (Minn. 1986). The existence of a genuine issue of material fact must be established by the non-moving party by substantial evidence; general averments are not enough to meet the non-moving party's burden under Minn. R. Civ. P. 56.05. Id.; Murphy v. Country House, Inc., 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (1976); Carlisle v. City of Minneapolis, 437 N.W.2d 712, 715 (Minn. App. 1988). Summary judgment may be entered against the party who has the burden of proof at the hearing if that party fails to make a sufficient showing of the existence of an essential element of its case after adequate time to complete discovery. Id. To meet this burden, the party must offer "significant probative evidence" tending to support its claims. A mere showing that there is some "metaphysical doubt" as to material facts does not meet this burden. Id. The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial. Carlisle, 437 N.W.2d at 715 (citing Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986)).

The non-moving party has the benefit of that view of the evidence which is most favorable to him or her, and all doubts and inferences must be resolved against the moving party. See, e.g., Celotex, 477 U.S. at 325; Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988); Greaton v. Enich, 185 N.W.2d 876, 878 (Minn. 1971); Thompson v. Campbell, 845 F.Supp. 665, 672 (D. Minn. 1994). If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51 (1986). The U.S. Court of Appeals for the

Eighth Circuit has cautioned that “[s]ummary judgments should be sparingly used [in cases alleging employment discrimination] and then only in those rare instances where there is no dispute of fact and where there exists only one conclusion All the evidence must point one way and be susceptible of no reasonable inference sustaining the position of the non-moving party.” Johnson v. Minnesota Historical Society, 931 F.2d 1239, 1244 (8th Cir. 1991), relying upon Hillebrand v. M-Tron Industries, Inc., 827 F.2d 363, 3264 (8th Cir. 1987), cert. denied, 488 U.S. 1004 (1989), and Holley v. Sanyo Manufacturing, Inc., 771 F.2d 1161, 1164 (8th Cir. 1985).

Minnesota courts considering cases arising under the MHRA have often relied upon federal case law developed in discrimination cases arising under Title VII of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973. See, e.g., State by Cooper v. Hennepin County, 441 N.W.2d 106, 110 (Minn. 1989); Continental Can Co. v. State, 297 N.W.2d 241, 246 (Minn. 1980); Danz v. Jones, 263 N.W.2d 395, 398-99 (Minn. 1978); Fahey v. Avnet, Inc., 525 N.W.2d 568, 573 (Minn. App. 1994). In analyzing disparate treatment claims brought under the MHRA, the Minnesota courts have adopted the three-step analysis first set forth by the United States Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). See, e.g., Danz, 263 N.W.2d at 398-99; Schlemmer v. Farmers Union Central Exchange, 397 N.W.2d 903, 907 (Minn. App. 1986); Feges v. Perkins Restaurants, Inc., 465 N.W.2d 75 (Minn. App. 1991), aff’d in part, 483 N.W.2d 701 (Minn. 1992); Rademacher v. FMC Corporation, 431 N.W.2d 879, 882 (Minn. App. 1988). The outlines of the McDonnell Douglas analysis, as applicable to this case, were summarized in Rademacher as follows:

The McDonnell Douglas analysis consists of a prima facie case, an answer, and a rebuttal. First, plaintiff must present a prima facie case of discrimination by a preponderance of the evidence. Second, if plaintiff succeeds in proving a prima facie case, the burden shifts to defendant to articulate some legitimate, nondiscriminatory reason for the employer’s adverse employment decision. Third, should defendant carry this burden, plaintiff must then prove by a preponderance of the evidence that the legitimate reasons offered by defendant were merely a pretext for intentional discrimination. Texas Department of Community Affairs v. Burdine, 445 U.S. 248, 252-56, 101 S.Ct. 1089, 1093-95, 67 L.Ed. 207 (1981).

431 N.W. 2d at 882. The Rademacher decision also makes it clear that the McDonnell Douglas analysis should also be used with respect to motions for summary judgment. Id.

Based upon the memoranda, affidavits, and depositions submitted in connection with the pending motion, it is evident that genuine issues of material fact exist with respect to elements of the prima facie case, the reasons asserted by the Respondent with respect to the Complainant’s termination, and whether those reasons are pretextual. For this reason, the entry of summary judgment for the Respondent would be inappropriate.

For example, there are disputed issues of fact regarding whether the Complainant ever slept on the job, whether the Complainant was inattentive or had other performance problems, whether the Complainant called in a second time on November 11 to inform his supervisor that he would not be coming to work that day, and whether the Respondent in

fact perceived the Complainant as being disabled in early November. The Respondent merely provided unsworn memoranda from three senior service technicians reporting certain of these alleged shortcomings in the Complainant's performance. The Complainant denied during his deposition and in a sworn affidavit that he slept on the job or displayed any of the other alleged performance deficiencies. The Complainant also testified that he attempted to contact his supervisor several times on November 11, an assertion which may be supported by the fact that his supervisor apparently received a blank voice mail message that day. Although the Respondent has presented an affidavit indicating that the termination decision was not based upon the Complainant's back injury, a summary document that apparently was prepared by the Complainant's supervisor indicates that the Complainant was told during the termination meeting that the discharge was necessary at least in part because he had been "gone several days." Viewed in a light most favorable to the Complainant, this reference may relate to the days the Complainant had missed due to his back injury and cast doubt on the Respondent's contention that the Complainant's injury was not a factor in the decision.

There is also a genuine dispute of material fact regarding when the decision was made to terminate the Complainant and whether the Respondent failed to adhere to a promise to discuss any problems with the Complainant. Although the Respondent has provided affidavits supporting its position that the decision was made prior to the November 14 car accident, the Complainant has provided evidence that suggests that he was not called and told to bring Company property with him to work until after his chiropractor had informed his supervisor that he would require a lengthy period of light duty work after the accident. The Complainant further alleges that he was informed of the alleged performance deficiencies for the first time during his termination meeting, despite an earlier promise that any problems would be discussed with him and documented. He asserts that no co-workers or customers made any complaints about him during October and that he was told by his supervisor on several occasions prior to his discharge that he was performing well. In a summary apparently prepared by the Complainant's supervisor, his supervisor acknowledges that he told the Complainant "prior to the last two incident's [sic] of sleep on the job" that he was "doing fine" and "to just keep putting his best foot forward." Ex. 5 to Terry Affidavit at 3.

The Complainant has made allegations which, if proved at trial, may support a prima facie case of discrimination based on race and/or disability and may serve as evidence that the asserted nondiscriminatory reasons for his discharge were a mere pretext for discrimination. In light of the factual disputes between the parties, it will be important for the Administrative Law Judge to hear witness testimony at a hearing and gauge the credibility of the Complainant and other witnesses on these issues. Accordingly, the Respondent's Motion for Summary Disposition has been denied.

B.L.N.