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Workers' Compensation Legal Alert

Onderko v. Sierra Lobo, Inc., 2016-Ohio-5027

February 16, 2017

Retaliatory discharge pursuant to R.C. §4123.90 does not require proof that the Plaintiff actually suffered a workplace injury

On August 9, 2012, the Plaintiff, Michael Onderko ("Plaintiff"), was working as an engineer tech with Sierra Lobo, Inc. ("Employer"), when he alleged pain in his right knee. As a result of the pain, the Plaintiff left work and went home. On his way home, he stopped at a gas station and his knee gave out as he stepped off of a curb. He continued home, and his wife took him to the emergency room. He did not tell the emergency room that his knee pain started at work. He only told the emergency room doctor about the incident at the gas station.

The Plaintiff was referred to an orthopedic surgeon for treatment. A thorough history was obtained from the Plaintiff, which indicated he had injured his knee six weeks prior and that he had self-treated, resolving the injury over several weeks. The orthopedic surgeon noted that the Plaintiff went on with activities of daily living until his knee completely let out as he was climbing the gas station curb. On the same day that the Plaintiff visited with the orthopedic surgeon, he called the Employer and requested light duty work due to his knee injury. An HR Generalist from the Employer asked him whether the injury occurred at work. According to the HR Generalist, the Plaintiff told her that the injury did not occur at work and that he had been having problems with his knee for a while. The Plaintiff asserted that he never told the Employer that his injury did not occur at work.

The Plaintiff ultimately filed a First Report of Injury ("FROI") with the Ohio Bureau of Workers' Compensation ("BWC") alleging that his right knee had been injured while lifting and pushing equipment while at work for the Employer. The Plaintiff was told by the Employer that it did not believe that the injury was work-related. At the request of the BWC, an orthopedic surgeon reviewed the Plaintiff's medical file. The BWC doctor opined that the right knee injury was directly related to the injury that occurred on August 9, 2012 while at work for the Employer. The BWC doctor further opined that the August 9th injury was separate from the injury that the Plaintiff suffered six weeks before, and there was no evidence that an earlier injury was aggravated by the August 9th incident. The BWC ultimately allowed the Plaintiff's claim based upon the physician review. The Employer appealed the BWC's order allowing the claim.

A District Hearing Officer for the Ohio Industrial Commission vacated the BWC's order and denied the Plaintiff's claim in its entirety, finding that the Plaintiff did not sustain an injury in the course of his employment on August 9th. The Plaintiff did not appeal this decision, because by that time he was already back to work and he wanted the ordeal to be over, as he needed to keep his job. Thereafter, the Plaintiff was terminated for his "deceptive" attempt to obtain workers' compensation benefits for a non-work-related injury.

The Plaintiff ultimately filed a Complaint in the Erie County Court of Common Pleas asserting that the Employer violated Ohio Revised Code §4123.90 when it terminated his employment for pursuing a workers' compensation claim. The Complaint alleged that the Plaintiff sustained a work-related injury while employed by the Employer, and as a result, filed a workers' compensation claim. Further, the Plaintiff alleged that the Employer retaliated against him for filing the workers' compensation claim by terminating his employment.

In a Motion for Summary Judgment filed by the Employer, it argued that to establish a *prima facie* case of retaliation under Ohio Revised Code §4123.90, the Plaintiff must demonstrate that the underlying claim for benefits involved a work-related injury. The Employer further asserted that because the District Hearing Officer of the Ohio Industrial Commission determined that the Plaintiff's injury was not work-related, *res judicata* prevented the Plaintiff from re-litigating whether his injury was work-related. Thus, according to the Employer's position, the Plaintiff's retaliation claim must fail as a matter of law.

The Ohio Supreme Court ruled in the Plaintiff's favor and held that the plain language of Ohio Revised Code §4123.90 did not require the Plaintiff to prove that the injury occurred on the job. Because proof of a work-related injury is not an element of a *prima facie* case of retaliatory discharge, failure to appeal the denial of a workers' compensation claim does not foreclose a claim for retaliatory discharge under Ohio Revised Code §4123.90.

In its decision, the Ohio Supreme Court noted that it was undisputed that the Plaintiff filed a workers' compensation claim for benefits. Further, the Court also noted that the Plaintiff's claim was denied, then allowed, and then denied again. Thereafter, the Plaintiff was terminated. It was also undisputed that the Plaintiff was fired for pursuing workers' compensation benefits. However, the Employer asserted that the Plaintiff's retaliation claim must fail as a matter of law because the Plaintiff's workers' compensation claim was not allowed. The Ohio Supreme Court disagreed.

The Employer's argued that to have a successful retaliation claim under R.C. 4123.90, the workers' compensation claim must be successful. The Ohio Supreme Court disagreed and found such an interpretation would ignore the language of the statute, as well as its import. The plain language of R.C. 4123.90 prohibits "any punitive action against an employee because the employee filed a claim or instituted, pursued or testified in any proceedings under the Workers' Compensation Act for any injury or an occupational disease which occurred in the course of and arising out of his employment with that employer." The language of the statute hinges on the employer's response to the Plaintiff's pursuit of benefits, not the award of benefits. Hinging recovery under R.C. 4123.90 on proof of "an injury or occupational disease which occurred in the course of and arising out of the plaintiff's employment" would have the effect of reading the phrase "filed a claim or instituted, pursued or testified in a proceeding" completely out of the statute. As such, the Court held that the compensability of an injury is not a required element in a retaliatory discharge case.

If you have any questions, please contact: Matthew R. Hunt, Esq.
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NOTE: This general summary of the law should not be used to solve individual problems since slight changes in the fact situation may require a material variance in the applicable legal advice.