

No. 1-11-1228

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAYDE PUGAS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 08 L 9218
)	
REST HAVEN ILLIANA CHRISTIAN)	Honorable
CONVALESCENT HOME, D/B/A, REST)	
HAVEN CHRISTIAN SERVICES,)	Honorable
)	Sanjay T. Tailor,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Epstein and Justice McBride concurred in the judgment.

ORDER

- ¶ 1 *Held:* Circuit court did not err in granting defendant's motion for summary judgment where plaintiff failed to present any evidence to establish element of causation to establish her retaliatory discharge claim.
- ¶ 2 Plaintiff Jayde Pugas, *pro se*, appeals from an order of the circuit court of Cook County granting summary judgment to defendant Rest Haven Central Convalescent Home (Rest Haven) on her claim of retaliatory discharge in violation of section 4(h) of the Workers' Compensation

Act (Act) (820 ILCS 305/4(h) (West 2006)). On appeal, plaintiff contends, essentially, that summary judgment was improperly granted.

¶ 3 The common law record filed in this case shows, in relevant part, that Rest Haven employed plaintiff as a licensed practical nurse from April 5, 2004, until her discharge on June 29, 2006. Plaintiff then filed a *pro se* complaint in the circuit court of Cook County claiming that she was discharged by Rest Haven in retaliation for filing a workers' compensation claim.

¶ 4 Plaintiff alleged, *inter alia*, that her workers' compensation attorney "filed a complaint with the industrial commission on December 5, 2005." On January 23, 2006, she received her first warning for giving the wrong medication to a patient, then received another for an incident on April 11, 2006, in which she allowed a patient's sister to feed her sibling a spoonful of pudding containing medication. On June 29, 2006, she was terminated after she failed to reinsert a patient's dislodged catheter which remained out for 32 hours and required the patient to be hospitalized. Plaintiff alleged that Rest Haven "continued to fight" her by disputing her claim for unemployment compensation on the grounds of misconduct.

¶ 5 Rest Haven moved for summary judgment, and filed a supporting memorandum of law asserting that plaintiff was discharged because she failed to reinsert a resident's catheter that had become dislodged, or to document the issue on the resident's chart as required by Rest Haven policy and federal law. Rest Haven primarily relied on plaintiff's deposition testimony in support of its assertions, and attached select questions and answers to its memorandum.

¶ 6 As pertinent to this appeal, plaintiff testified that nurses are required under federal and state law, as well as Rest Haven policy, to provide a "descriptive summary" of any incidents or accidents in the progress notes or nurses' notes of an affected resident. When the suprapubic catheter came out of the resident in question, however, she did not document it in the resident's notes, contact the resident's urologist, neurologist, or Rest Haven's medical director, or reinsert

the catheter. Plaintiff also testified that she had been written up twice in the six months prior to this incident. The first write-up concerned an incident in which she wrote down the wrong medication frequency when admitting a patient, and plaintiff admitted to making this error. The second write-up concerned an incident in which she allowed a resident's family member to spoon-feed medicine to the resident. At her deposition, plaintiff gestured how the family member had done this, and testified that she could not remember the name of any nurse who taught her that she should allow family members to spoon feed medication to residents.

¶ 7 Plaintiff subsequently filed a *pro se* response to Rest Haven's motion for summary judgment in which she, *inter alia*, took issue with the wording of her first write up, and provided her version of the catheter incident. She also attached documents that set forth the lifting requirements for her position and Rest Haven's wage and tardiness policies. Rest Haven replied that plaintiff failed to present any evidentiary materials to support a finding of retaliatory discharge.

¶ 8 Rest Haven's motion for summary judgment was set for a hearing on March 4, 2011. On that date, the circuit court continued the proceedings for the filing of additional evidentiary materials and a response. On March 15, 2011, plaintiff filed numerous documents, including, *inter alia*, her employment application, work certificates, and pay stubs. One document, a letter dated September 21, 2005, from a claims associate with ClaimsOne, a third-party administrator of Rest Haven's workers' compensation insurance policy, advised plaintiff that the back injury she sustained on June 20, 2005, was found to have "occurred while you were at home getting dressed," and that her "injuries sustained in this incident are denied as compensable under the Workers Compensation Statute." Another document dated December 8, 2005, is an "Application for Adjustment of Claim Application for Benefits" which had been filed by plaintiff's attorney with the Illinois Workers' Compensation Commission (Commission).

¶ 9 On April 12, 2011, the circuit court granted Rest Haven's motion for summary judgment, noting "[t]here is no evidentiary basis to find for plaintiff." In its memorandum opinion filed a few days later, the court found it undisputed that Rest Haven had legitimate bases for discharging plaintiff, and that plaintiff failed to present evidence sufficient to create an inference that she was the victim of retaliation, or that Rest Haven's grounds for discharge were pretext. In addition, the court noted that plaintiff offered no evidence, in that she "did not file an affidavit or offer any foundation for the documents she submitted," and that "the only evidence properly before the Court is the defendant's deposition testimony," an apparent reference to plaintiff's deposition testimony which it then discussed. Ultimately, the court found that "no rationale [*sic*] person could find that the reasons for her discharge were pretext, especially considering that her pay was increased after her injury and shortly before her discharge." This appeal followed.

¶ 10 We note initially that plaintiff has failed to comply with the supreme court rules governing appellate court briefs in numerous respects (Ill. S. Ct. R. 341(h) (eff. Jul. 1, 2008)), and that her *pro se* status does not relieve her of the burden of complying with those rules (*Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001)). Although that failure, alone, warrants dismissal of her appeal (*Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005)), we nonetheless elect to address the merits where the issue is apparent and we have the benefit of the cogent brief filed by defendant (*Twardowski*, 321 Ill. App. 3d at 511).

¶ 11 Plaintiff contends that the circuit court improperly granted summary judgment to defendant on her retaliatory discharge claim. Summary judgment is proper where, viewing the pleadings, depositions, admissions, and affidavits on file in the light most favorable to the nonmoving party, there is no genuine issue of material fact such that the moving party is entitled to judgment as a matter of law. *Bovan v. American Family Life Insurance Co.*, 386 Ill. App. 3d 933, 938 (2008), citing *General Casualty Insurance Co. v. Lacey*, 199 Ill. 2d 281, 284 (2002).

Our review of a motion granting such is *de novo*. *Sardiga v. Northern Trust Co.*, 409 Ill. App. 3d 56, 61 (2011).

¶ 12 To state a cause of action for retaliatory discharge in this case, plaintiff was required to show: (1) that she was employed by defendant at the time of her injury; (2) that she exercised a right granted by the Act; and (3) that her discharge was causally related to the exercise of that right. *Grabs v. Safeway, Inc.*, 395 Ill. App. 3d 286, 291 (2009). The element of causation is not established if the employer has a valid, nonpretextual reason for the discharge. *Grabs*, 395 Ill. App. 3d at 291, citing *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 160 (1992). Here, there is no dispute that plaintiff established the first two elements of a claim of retaliatory discharge; but there is no evidence from which to infer causation.

¶ 13 Viewed in the light most favorable to plaintiff, the record shows that plaintiff submitted a claim with Rest Haven's workers' compensation insurance carrier for a back injury she sustained on June 20, 2005. That claim was denied on September 21, 2005, and plaintiff's attorney then filed an "Application for Adjustment of Claim Application for Benefits" with the Commission on December 8, 2005.

¶ 14 On January 23, 2006, Rest Haven issued plaintiff a written warning because of a medication error which plaintiff admits she made. Rest Haven then issued plaintiff another written warning after an incident on April 11, 2006, in which she allowed a family member to spoon-feed medication to a resident. Plaintiff similarly acknowledges this incident occurred, and cannot identify any nurse who taught her that family members should be allowed to do this. Finally, on June 29, 2006, Rest Haven terminated plaintiff because she failed to reinsert a resident's catheter which had become dislodged, or to document the incident as required by law and Rest Haven policy. Plaintiff admits to this behavior as well.

¶ 15 Sequentially, the record shows that plaintiff was disciplined and discharged after she sought workers' compensation for a back injury. However, the timing of her discharge, alone, is insufficient to show a retaliatory discharge (*Davis v. Times Mirror Magazines, Inc.*, 297 Ill. App. 3d 488, 496 (1998)); she was also required to present evidence that her discharge was causally related to that exercise of her rights (*Grabs*, 395 Ill. App. 3d at 291). Here, defendant failed to do so.

¶ 16 It is undisputed here that plaintiff allowed a resident's catheter to remain dislodged and did not properly document the incident as required by law and Rest Haven policy, and that she was subsequently discharged on those grounds. It is also undisputed that during the six months prior to this incident, plaintiff incurred two separate written disciplinary warnings for infractions related to her duties. The only reasonable inference to be drawn from this record, therefore, is that plaintiff was properly discharged by Rest Haven for disciplinary reasons which were not connected to her seeking workers' compensation benefits (*Austin v. St. Joseph Hospital*, 187 Ill. App. 3d 891, 897 (1989)); and, accordingly, we conclude that defendant was entitled to judgment as a matter of law (*Grabs*, 395 Ill. App. 3d at 291).

¶ 17 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.