2015 IL App (1st) 141144-U

FIFTH DIVISION
June 19, 2015

No. 1-14-1144

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DEBRA PICKETT,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 11 L 11045
	)	
CHILDREN'S HOME AND AID SOCIETY,	)	
	)	Honorable
Defendant-Appellee.	)	Brigid Mary McGrath,
	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Palmer and Justice Gordon concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court's grant of summary judgment in favor of defendant in a retaliatory discharge action affirmed where there was no genuine issue of material fact as to defendant's motive in discharging plaintiff.

¶ 2 Plaintiff, Debra Pickett, filed a complaint against defendant, her former employer, Children's Home and Aid Society, claiming that she had been discharged in retaliation for filing a claim under the Illinois Workers' Compensation Act (the Act). 820 ILCS 305/1 *et seq.* (West 2010). The circuit court of Cook County granted defendant's motion for summary judgment, and

entered judgment in favor of defendant. Plaintiff now appeals, arguing that the trial court's grant of summary judgment was improper because a genuine issue of material fact existed as to defendant's motive in terminating her.

¶ 3 On October 24, 2011, plaintiff filed a retaliatory discharge action against defendant. After discovery was completed, defendant moved for summary judgment contending that there were no facts in that record that would give rise to an inference that plaintiff was discharged in retaliation for filing her workers' compensation claim. In support of its motion, it attached plaintiff's answers to discovery, transcripts from the discovery depositions of plaintiff and a number of employees for defendant, and copies of various correspondence from the time period surrounding plaintiff's termination. Those documents revealed the following factual background.

¶ 4 On June 29, 2009, plaintiff was hired by defendant, an Illinois not-for-profit corporation which provides comprehensive social service programs throughout Illinois. At the time of her employment, defendant operated a grant-funded community schools program under which it entered into partnerships with a number of Chicago public schools to provide educational and enrichment programming to students after school and during the summer.

¶ 5 Plaintiff was hired as a "Community School Manager" and was assigned to Copernicus Elementary School (Copernicus) in Chicago. She was the "lead staff person" at Copernicus, and her job duties included managing the daily operations of the Copernicus program, and supervising about 15 of defendant's staff members and consultants. Plaintiff was thought of as an excellent employee, and had a good relationship with her direct supervisor, Anya Wiley; the Vice-President of Clinical and Community Services for defendant, Anne Barclay; and the principal of Copernicus, Dr. Gardner.

¶ 6 On May 6, 2010, plaintiff sustained injuries to her left shoulder and arm, which occurred when she slipped and fell during the course of her employment. Plaintiff came to work the next day, but was in pain and left soon after her arrival. She contacted Ms. Wiley, who instructed her to contact her doctor. Plaintiff did so, and Dr. Senora Nelson told her to go to the emergency room.

¶ 7 Plaintiff testified that her injury left her in severe pain and she was unable to "freely use [her] left arm." Plaintiff did not return to work after May 7, 2010, and, on May 25, 2010, Ms. Wiley sent plaintiff an email asking her to provide a doctor's note excusing her from work. Ms. Wiley stated that it was "extremely important as if this is not received then you will be expected back as of *** June 1, 2010." In her deposition, plaintiff acknowledged her understanding that defendant's personnel policy "required employees who were off work due to an injury or illness to [provide] a doctor's note to excuse their absence."

¶ 8 The next day, on May 26, 2010, Dr. Nelson wrote a letter "To Whom It May Concern," stating that plaintiff had been "under my care since May 13, 2010 after presenting to my clinic following an acute work related injury. [Plaintiff] is still undergoing evaluation of the left shoulder secondary to persistent pain. At this time her projected return to work date will depend on my clinical evaluation following receipt of her pending diagnostic exam."

¶ 9 Although that note had been faxed to defendant, Ms. Wiley had not yet received it as of June 1, 2010. On that date, she wrote a letter to plaintiff which provided that "this letter serves as a final request for this documentation. *** Lack of submission of this documentation by [June 4, 2010,] will be considered a resignation of your position."

¶ 10 After receiving the doctor's note, Ms. Wiley emailed plaintiff on June 2, 2010, to apologize for the previous day's letter. She confirmed that plaintiff had "forwarded [the doctor's

note] expeditiously" but that there had been an "internal delay" in getting it to her. Ms. Barclay later emailed to "echo" Ms. Wiley's apology, and to express her hope that plaintiff "underst[oo]d why we must have documentation." Ms. Barclay then told plaintiff that they "certainly do not want to add any stress to your recovery and are very much looking forward to your return."

¶ 11 That same day, plaintiff filed an application with the Illinois Workers' Compensation Commission seeking benefits for her injuries. Defendant did not dispute or object to that claim, and, once it received notice of it, Lois Butler, the administrative assistant to Lonnie Pearson, defendant's Senior Vice President of Human Resources, forwarded the relevant paperwork to Gallagher Basset, a third-party administrator. After the claim was transferred to Gallagher Bassett, defendant's personnel no longer communicated with plaintiff about her claim.

¶ 12 Maria Licoudis testified that she was employed as a claims adjuster by Gallagher Basset, which she described as "sort of like workers' compensation insurance." Ms. Licoudis was assigned to plaintiff's claim, and she was responsible for administering it. On June 3, 2010, the day after plaintiff filed her claim, Ms. Licoudis received a fax from plaintiff's attorney instructing her to "direct all future correspondence to [his] attention." Ms. Licoudis testified that she did not have any communications with plaintiff directly "because [plaintiff] was represented."

¶ 13 In the following weeks, Ms. Licoudis contacted plaintiff's doctor and attorney on a number of occasions in an effort to get updated medical information. On June 10, 2010, Ms. Licoudis requested updated medical records from Dr. Nelson, and, thereafter, she received a copy of a note dated June 9, 2010, stating that plaintiff had "been referred for further testing to the left shoulder to rule out a possible rotator cuff injury. Her projected return to work date will be determined by my clinical evaluation following the above mentioned diagnostic exam."

¶ 14 Meanwhile, Ms. Wiley and Ms. Barclay both testified that, because they considered plaintiff to be an excellent employee, they wanted to work out an arrangement for her to return to work after her injury. Ms. Barclay had a conversation with Mr. Pearson, and told him that they:

> "wanted her back and we'd make reasonable accommodations for her; whether that's her returning part time, whether it's returning full time, whether it's working part days, that we would make whatever type of reasonable accommodations that we could make."

¶ 15 On June 25, 2010, Mr. Pearson had a phone conversation with Ms. Licoudis to express that desire and to inform her that they had a "light duty" position available for plaintiff. On June 29, 2010, Ms. Licoudis prepared and faxed a letter to Dr. Nelson, advising her that defendant was "able to accommodate any work restriction. They have a position available in which [plaintiff] only will do school planning with management. There will be no physical work involved." Ms. Licoudis asked Dr. Nelson to "[k]indly advise if you are able to provide a return to work release and the date the release will be effective." Ms. Barclay also spoke directly to plaintiff's attorney and "made the same offer *** saying whatever accommodations we can do, we would like her back," but she did not receive "any communication back" in response.

¶ 16 After Ms. Licoudis did not receive a response from Dr. Nelson as to whether the "light-duty" position was acceptable, she called the doctor's office and left a message to follow up. Ms. Licoudis then contacted plaintiff's counsel and informed him that plaintiff's benefits were being suspended until they received updated medical records. She emailed Mr. Pearson on July 7, 2010, to inform him of her aforementioned efforts and the lack of response.

¶ 17 Ms. Licoudis called plaintiff's attorney again on July 13, 2010, to inform him that she was still waiting on plaintiff's updated medical records. She spoke to an employee at that office

who told her that they had been unable to get in contact with plaintiff, but that they would get back to her as soon as they did. Ms. Licoudis sent an email to Ms. Butler, informing her of the most recent efforts to get plaintiff's medical records, and asking if she had "any updates" on plaintiff.

¶ 18 On July 14, 2010, Ms. Licoudis received a phone call from plaintiff's attorney's office and was informed that they would be forwarding an "off work" doctor's note. However, the doctor's note that counsel subsequently faxed Ms. Licoudis was the June 9, 2010, note of which she was already in possession. Ms. Licoudis testified that this note was not sufficient to provide an update as to plaintiff's medical status at that time.

¶ 19 In addition to the testimony regarding plaintiff's failures to submit updated medical records, Ms. Wiley, Ms. Barclay, and Mr. Pearson testified to the various difficulties defendant experienced in its Copernicus program during plaintiff's absence. Ms. Barclay testified that the Copernicus program was grant-funded and that part of her responsibility was to "make sure that the programming was ongoing and we were delivering the requirements of our grant." She explained that the program required a "tight partnership" between defendant and the school principal, and that Dr. Gardner, specifically, was one of defendant's longest-standing partners. Dr. Gardner was a "strong advocate for her school" and was "one of [the] most difficult principals to keep happy."

¶ 20 At the time of plaintiff's injury, defendant was preparing for the summer program at Copernicus, which provided "enrichment programs" including field trips and longer programming. Had plaintiff been available to work during that time, she would have played "the primary role" in putting the programming together, including enrolling students and handling the required paperwork. Instead, Ms. Wiley attempted to "cover" some of plaintiff's responsibilities,

and "pulled people" from other school programs to "fill [in the] gap[s]." Ms. Wiley stated, however, that they "simply didn't have the capacity or the time to provide what needed to be provided. *** [W]e did the best that we could, but I don't think it was adequate. And it was indicated to us that it wasn't adequate."

¶ 21 Ms. Barclay testified that during plaintiff's absence, Dr. Gardner "was extremely unhappy with *** not having [plaintiff] there, and felt that [defendant was not] able to provide the level of services that she requires for her school. She was very concerned about whether we'd be able to implement the summer programming required." Ms. Wiley testified that she was "getting pressured from the school, threatened that the partnership would be dissolved, grant monies would be lost, services wouldn't be provided." Because Dr. Gardner had previously been "very intolerant of any sort of vacancies in positions," and had "threatened to terminate the partnership" in similar circumstances, Ms. Barclay understood Dr. Gardner's threat to be credible. She did not want the situation to escalate to the point where Dr. Gardner would terminate the partnership or express her dissatisfaction with defendant to the Office of Extended Learning in Chicago Public Schools, because defendant was "highly reliant" on its relationship with Chicago Public Schools and "any sort of threat to an individual partnership threatens the entire relationship."

¶ 22 Ms. Barclay testified that, at some point thereafter, she and Ms. Wiley discussed:

> "the issues that were ongoing, the fact that we didn't have somebody in a school, that we had a principal that was getting very upset with us and threatening to terminate the partnership[.] ***
>
> We also discussed the fact that [plaintiff] hadn't been responding with the paperwork that was needed to maintain her worker's comp [*sic*], and that

> she hadn't responded to any sort of request for a timeline of when she might be ready to come back to work. "

¶ 23 Ms. Barclay explained that "[i]f there had even simply been, I'm considering your [return-to-work] offer, or I'm going to try to get doctor's approval, or any sort of communication back to us, we might have made a different decision. But we were really placed in a very difficult spot with pressures that would result in damage to our reputation, damage to our grants as well as potential loss of other people's employment that we needed to make a decision."

¶ 24 Ms. Barclay discussed "a recommendation for termination" with Mr. Pearson, and a termination notice was sent to plaintiff on July 19, 2010. The notice indicated that defendant's "Worker's Compensation Insurance Company has requested documentation regarding the injury and to date has not received the required documentation." It further informed plaintiff that holding her position had led to:

> "a significant number of unattended responsibilities which has put this partnership with Chicago Public Schools and our funding in jeopardy. These include planning and preparation for school-needs-specific programs for the upcoming year, adequate parent and community outreach, appropriate budget and grant compliance management, and daily supervision of summer program needs. The school Principal has become more vocal about her dissatisfaction with the level of service being offered [at] her school and has threatened to call the Office of Extended Learning to dissolve the partnership. The high risk children and families at the school are in urgent need of a fully functioning program that addresses their needs.

> Due to this lack of compliance with proper documentation and the urgency of the program needs, your employment with Children's Home + Aid is being terminated effective immediately."

¶ 25 During her deposition testimony, plaintiff maintained that she was not aware of defendant's return-to-work offers. She speculated that Dr. Nelson may not have informed her of the offer because she "was not able to go back to work at the time, [so] it would have made no difference." She did not doubt that defendant actually had the position outlined in the letter available, but stated that she could not have returned to work in any capacity. Plaintiff further stated that her understanding was that "the reason for [her] termination" was that she was "unavailable for work." When she was asked whether it was her understanding that defendant "terminated [her] because [she] brought a Worker's compensation claim," she stated, "I'm not sure if I should say yes to that. I know it had to do with my injury."

¶ 26 After reviewing the above described evidence, the trial court granted defendant's motion for summary judgment on November 19, 2013, and denied plaintiff's motion to reconsider on March 24, 2014. Plaintiff appealed, and in this court, she maintains that the trial court erred in granting summary judgment in defendant's favor, because a genuine issue of material fact existed as to whether defendant terminated her in retaliation for filing a claim under the Act.

¶ 27 Summary judgment is a drastic means of disposing of a case which should only be granted when the right of the moving party is clear and free from doubt. *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 305-06 (2005). After a court reviews the pleadings, depositions, admissions and affidavits on file in the light most favorable to the nonmoving party, summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 305.

We apply a *de novo* standard of review to the trial court's order granting summary judgment motion. *Id.* at 305.

¶ 28 While the opposing party need not prove her case at the summary judgment stage, she must present a factual basis that would arguably entitle it to a judgment in its favor. *Chatham Corporation v. Dann Insurance*, 351 Ill. App. 3d 353, 358 (2004). If the party moving for summary judgment provides material evidentiary facts which are not contradicted by the nonmoving party, those facts are accepted as true for purposes of a summary judgment motion. *Carruthers v. B. C. Christopher & Co.*, 57 Ill. 2d 376, 381 (1974). Where the uncontradicted facts would entitle the moving party to summary judgment, an opposing party cannot rely on her pleadings alone to raise issues of material fact (*Harris v. Bethlehem Steel Corp.*, 124 Ill. App. 3d 449, 453-54 (1984)), nor can she rest on mere general denials unsupported by any evidentiary facts (*Lavat v. Fruin Colnon Corp.*, 232 Ill. App. 3d 1013, 1023 (1992)). Such denials are insufficient to raise a triable issue. *Id.* at 1023, citing *Purdy Co. of Illinois v. Transportation Insurance Co.* 209 Ill. App. 3d 519, 529 (1991).

¶ 29 The general rule in Illinois is that an at-will employee may be discharged by an employer at any time and for any reason. *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 189 (1978). However, in *Kelsay*, 74 Ill. 2d at 181-82, our supreme court recognized a limited and narrow exception to this rule, namely, that an employee may file a retaliatory discharge claim against her employer if she was fired for seeking workers' compensation benefits.

¶ 30 To sustain a cause of action for the tort of retaliatory discharge based upon the filing of a workers' compensation claim, an employee must prove: (1) that she was an employee before the injury; (2) that she exercised a right protected by the Act; and (3) that she was discharged and that the discharge was causally related to her filing a claim under the Act. *Clemons v.*

Mechanical Devices Co., 184 Ill. 2d 328, 335–36 (1998). The burden rests with the plaintiff to prove the elements of the cause of action (*Id.* at 337), and, if she cannot provide any factual basis which would arguably entitle her to judgment in her favor, summary judgment is appropriate (*Chatham Corp.*, 351 Ill. App. 3d at 358; *Carruthers*, 57 Ill. 2d at 381). In this case, defendant does not contest the first two elements, and the only element at issue is whether plaintiff's discharge was causally related to her claim for benefits under the Act.

¶ 31 The ultimate issue concerning the causation element is the employer's motive in discharging the employee. *Clemons*, 184 Ill. 2d at 336. In order to prove the causation element, a plaintiff must affirmatively show that her discharge was "primarily to retaliate against the employee for exercising the protected right and not for a lawful business reason." *Dixon Distributing Co. v. Hanover Insurance Co.*, 244 Ill. App. 3d 837, 845 (1993), aff'd, 161 Ill. 2d 433 (1994) (citing *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 160 (1992)). As our supreme court has observed, the mere discharge of an employee who has filed a worker's compensation claim does not satisfy the requirement of causal relationship if the employer has a valid, nonpretextual basis for discharging the employee. *Hartlein*, 151 Ill. 2d at 160.

¶ 32 Despite plaintiff's contentions to the contrary, this court has determined that a retaliatory discharge claim is "a proper subject for summary judgment." *Lavat*, 232 Ill. App. 3d at 1025. We have consistently affirmed the entry of summary judgment where the plaintiff failed to provide any facts which would give rise to an inference that his or her termination was causally related to the filing of a claim under the Act. See *id.* at 1023 (finding that there was no evidence to support the plaintiff's claim of retaliatory discharge where the employer came forward with uncontradicted evidence showing that he had been fired after it discovered that he had falsified his resume and that he did not qualify for his position based on his actual educational

background); *Austin v. St. Joseph Hospital*, 187 Ill. App. 3d 891, 897 (1989) (summary judgment affirmed where there was no evidence to show that the plaintiff was discharged for exercising her right to seek workers' compensation benefits, and instead, "the only inference which reasonably may be drawn from the record is that plaintiff was discharged after failing to return to work after it was determined that she was fit to do so"); *Davis v. Times Mirror Magazines, Inc.*, 297 Ill. App. 3d 488, 497 (1998) (discussed *infra*).

¶ 33 Plaintiff, however, contends that the "suspicious timing" of her termination, which occurred 48 days after she filed for benefits under the Act, is sufficient "in and of itself" to preclude a grant of summary judgment. We disagree. This court has previously held that the mere timing of an employee's termination is not enough to show retaliatory discharge. *Davis*, 297 Ill. App. 3d at 496 (citing *Marin v. American Meat Packing Co.*, 204 Ill. App. 3d 302, 308 (1990)); see also *Feldman v. American Memorial Life Insurance Co.*, 196 F.3d 783, 792 (7th Cir. 1999) (finding that a retaliatory discharge claim that "rests entirely on suspicious timing is insufficient to survive summary judgment.").

¶ 34 Although decisions of federal courts interpreting Illinois law are not controlling on this court (*Pokora v. Warehouse Direct, Inc.*, 322 Ill. App. 3d 870, 883 (2001)), we find *Walker v. Doctors Hospital of Hyde Park*, 110 F. Supp. 2d 704 (N.D. Ill. 2000) to be informative, as it is particularly analogous to the case at bar. The plaintiff in *Walker* filed a claim against her former employer contending that she had been terminated in retaliation for filing a claim under the Act. The court observed, however, that the employer offered evidence that her termination was based on plaintiff's failure to return to work or provide sufficient documentation regarding her injury, and that the plaintiff had offered no evidence, other than the mere timing of her termination, to demonstrate that the employer's stated reason was pretextual. *Id.* at 714, citing *McEwen v. Delta*

Air Lines, Inc., No. 87 C 10434, 1990 WL 6867, at *3 (N.D.Ill. Jan. 4, 1990). The court concluded that the timing evidence alone was insufficient to raise an inference of pretext, and granted summary judgment in favor of the employer. *Id.*

¶ 35 Similarly, in this case, the undisputed facts defeat any inference that plaintiff's discharge was causally related to her filing of a claim under the Act, and instead, they show that she was terminated for failing to comply with requests to provide an update as to her medical condition. While plaintiff alleges that defendant's stated reasons were pretextual because it "had all of the documentation it had requested" of her, her assessment of the record is clearly inaccurate. Although the witnesses testified that that they had all the information they had requested of plaintiff *as of June 9, 2010,* they specifically testified to their unsuccessful efforts to obtain updated medical records after that point.

¶ 36 The uncontradicted evidence showed that Ms. Licoudis, the claims adjuster for the third-party administrator who was handling plaintiff's claim, repeatedly sought an update on her medical condition from both her doctor and her counsel for a period of nearly six weeks. During that time, the only documentation she received in response to her requests was when plaintiff's counsel forwarded her a doctor's note on July 14, 2010. However, that note was, at that point, over one month old, and Ms. Licoudis already had it in her possession. As such, we find nothing in the record to show that plaintiff kept defendant updated on her medical status between June 9, 2010, and her termination almost six weeks later.

¶ 37 Even plaintiff's own testimony fails to support her claim of retaliation, as she acknowledged during her deposition that she believed "the reason for [her] termination" was that she was "unavailable for work." When further questioned about whether she believed that she

was terminated because she brought a worker's compensation claim, plaintiff answered, "I'm not sure if I should say yes to that. I know it had to do with my injury."

¶ 38 Moreover, the undisputed facts show that defendant was able to accommodate "any work restriction" in order to return plaintiff to work, and that it attempted to do so after it became aware of her worker's compensation claim. Both Ms. Licoudis and Ms. Barclay testified that they extended offers to accommodate plaintiff's injury through, respectively, her doctor and counsel, but those offers were ignored. Although plaintiff testified that she was not aware of the offers, she did not doubt that defendant actually had the offered position available, and stated that it would have "made no difference" if she had been informed of them because she was unable to return to work at all during that time.[1]

¶ 39 In *Marin*, 204 Ill. App. 3d at 308, this court made clear that an employer's efforts to return an employee to work are relevant to a causality determination, and reflect the employer's lack of a retaliatory motive. The plaintiff in that case brought a retaliatory discharge action against his employer when he was terminated after filing a worker's compensation claim following a back injury. *Id.* at 304-05. At the conclusion of a trial on his claim, the jury returned a verdict for plaintiff. *Id.* at 306. However, this court reversed and remanded the cause for a new

[1] We note that the record includes evidence of plaintiff's medical condition subsequent to her termination, including a note from her doctor to her counsel on July 20, 2010, and documentation and testimony showing that she was ultimately cleared to return to work in either November or December of 2010. However, because this evidence was not available to defendant at the time it terminated her, and there is no indication from the record that defendant was made aware that the information would be forthcoming, we find it irrelevant to the question of defendant's motive in terminating her.

trial, finding that the verdict was against the manifest weight of the evidence. *Id.* at 309. In so holding, we noted that the employer had presented evidence showing that it had attempted to accommodate the plaintiff's return to work, and concluded that such evidence "does not suggest a discharge motivated by retaliation, but rather reflects just the opposite: the company's desire to bring [the employee] *back to work*." *Id.* at 308.

¶ 40 In contrast to the facts provided by defendant through sworn testimony and documentary evidence, plaintiff has provided nothing to show that defendant's proffered reason for her termination was pretextual. She has not provided any evidence, in the form of deposition testimony, an affidavit, or otherwise, which would show that her doctor or lawyer actually provided the requested documents, that they did not receive the offers to accommodate her return to work, or that there is any other factual matter which would contradict the evidence provided by defendant. As previously stated, where a moving party provides material evidentiary facts which are not contradicted, those facts are accepted as true (*Carruthers*, 57 Ill. 2d at 381), and the nonmoving party may not rest on her complaint or mere denials to survive a summary judgment motion (*Myers v. Levy,* 348 Ill. App. 3d 906, 922 (2004); *Harris*, 124 Ill. App. 3d at 453-54; *Lavat*, 232 Ill. App. 3d at 1023; see also *Hannah v. Midwest Ctr. for Disability Evaluation, Inc.*, 181 Ill. App. 3d 67, 75 (1989) ("Surely, plaintiff as the burdened party, should not be permitted to avoid summary judgment and advance to trial under the facts in this case merely by suggesting that defendant's affidavits and sworn discovery testimony are false. Such a rule would make a mockery of the summary judgment procedure, for it would obviously increase delay and expense in the final disposition of litigation and would thus exacerbate the very problem the procedure was devised to solve")). Given the record in this case, including the

testimony of plaintiff herself, we find no evidence which would raise a genuine issue of material fact as to defendant's motive in terminating her.

¶ 41 In this respect, we find this court's decision in *Davis*, 297 Ill. App. 3d 488, instructive. In that case, the plaintiff brought an action against his employer claiming that he had been discharged from his sales position in retaliation for refusing to smoke marijuana with his coworkers and for reporting the incident. *Id.* at 489. The employer responded that the plaintiff's termination was unrelated to the "pot smoking incident" but was based on the plaintiff's poor work performance. The employer filed a motion for summary judgment, and included evidence of plaintiff's prior performance reviews, which showed that the plaintiff had been notified of "his need to improve his sales performance" and the deposition testimony from plaintiff's supervisor which showed that he had discussed plaintiff's poor performance with him on two occasions prior to the incident. *Id.* at 496-97. Although the plaintiff maintained that the employer's explanation was "a carefully crafted attempt to cover up defendants' retaliatory motivations," this court concluded that there was no basis in the record for finding retaliatory discharge where the only evidence of an improper motive was based on the plaintiff's "unsupported assertions, opinions and conclusory, self-serving statements that he made in his deposition testimony." *Id.* at 497.

¶ 42 Likewise, in this case, plaintiff has provided nothing which would contradict the evidence supplied by defendant showing that her termination was based on the failure to comply with requests to update medical records, or support the contrary inference that she was actually discharged for exercising her right to seek workers' compensation benefits. Because plaintiff failed to present a contradictory factual basis by affidavit, deposition or other suitable method,

summary judgment was properly entered for defendant. *Harris*, 124 Ill. App. 3d at 454 (citing *Bennett v. Raag*, 103 Ill. App. 3d 321, 327 (1982)).

¶ 43 We similarly conclude that plaintiff's additional complaints—namely that defendant ceased communicating with her directly, and that it did not give her a deadline to comply or a warning that her lack of compliance could result in termination—do not preclude a grant of summary judgment. Although subsequent requests for updated medical records were sent through plaintiff's counsel, the record shows that this was done at her counsel's request. During Ms. Licoudis's deposition, she testified that she "did not have any conversations with [plaintiff], *** because [she] was represented." Ms. Licoudis's testimony is supported by a copy of a fax cover sheet from plaintiff's counsel from the day following the filing of plaintiff's claim instructing Ms. Licoudis to "[p]lease direct all future correspondence to [his] attention."

¶ 44 Additionally, the undisputed facts show that plaintiff had been previously warned that her failure to provide the required documentation could result in her termination, and plaintiff acknowledged during her deposition that she was aware that defendant's personnel policy required an employee to provide a doctor's note to excuse an absence due to an injury. Nevertheless, as stated above, the general rule in Illinois is that an at-will employee may be discharged by an employer at any time and for any reason (*Kelsay*, 74 Ill. 2d at 189), and we find no genuine issue of material fact raised by defendant's alleged failure to provide a deadline or warning.

¶ 45 Although there are sufficient grounds for this court to affirm on this basis alone, we observe that defendant provided a second non-retaliatory reason for plaintiff's termination—namely, that plaintiff's absence caused an adverse impact on the Copernicus program, and

defendant was required to take action to prevent further harm. This reason is also supported by the record and uncontradicted by plaintiff.

¶ 46 The record shows that defendant operated a grant-funded program which was "highly reliant" on its relationships with individual school principals and on the Chicago Public School system. Due to plaintiff's absence, defendant had difficulties preparing for the summer program at Copernicus, and providing the level of services required by Dr. Gardner. As a result, Dr. Gardner threatened to terminate the partnership with defendant, or otherwise express her dissatisfaction with defendant's services, which would have put defendant's relationship with Chicago Public Schools as a whole in jeopardy. Defendant considered the effects that could occur if Dr. Gardner followed through on her threat, including "damage to our reputation, damage to our grants as well as potential loss of other people's employment" and decided to terminate plaintiff's employment.

¶ 47 Plaintiff similarly offers mere denials and uncorroborated challenges to the sworn testimony regarding the impact of her absence on defendant, but provides no factual basis from which a contrary conclusion could be inferred. She contends that defendant's "witnesses can't get their stor[ies] straight" and that the trial court "completely ignored the inconsistencies in the testimony" by Mr. Pearson, Ms. Barclay and Ms. Wiley. However, she does not specifically identify any of the inconsistencies of which she complains. The mere attack on the credibility of the opposing witnesses is insufficient to raise a genuine issue of material fact, where a party has provided no evidentiary support for such a claim. *Hannah*, 181 Ill. App. 3d at 75; see also *Carruthers*, 57 Ill. 2d at 381 (uncontested material facts are accepted as true for purposes of summary judgment).

¶ 48 Further, while plaintiff claims that Ms. Barclay testified that Dr. Gardner "never threatened to terminate the relationship" in this matter, this statement is incorrect. Ms. Barclay specifically testified that "we had a principal that was getting very upset with us and threatening to terminate the partnership." Ms. Wiley also testified extensively to Dr. Gardner's dissatisfaction during plaintiff's absence, and that she was "getting pressured from the school, threatened that the partnership would be dissolved, grant monies would be lost, services wouldn't be provided."

¶ 49 Finally, plaintiff maintains that defendant "disregarded its human resources procedures" in terminating her. However, she does not identify which "human resources procedures" were violated or how such a violation would create a genuine issue of material fact precluding summary judgment. An issue not clearly defined and sufficiently presented fails to satisfy the requirements of Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), and is, therefore, waived. *Vincent v. Doebert*, 183 Ill. App. 3d 1081, 1087 (1989). In light of defendant's failure to adequately present this issue, we conclude that it is waived. *Id.* at 1087.

¶ 50 Based on the foregoing, we conclude that plaintiff failed to establish any material facts which would arguably entitle her to judgment on her claim of retaliatory discharge. *Hartlein*, 151 Ill. 2d at 166–67. Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 51 Affirmed.