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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MICHAEL K. WALLACE,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 13 L 2141
)	
CHICAGO TRANSIT AUTHORITY,)	The Honorable
)	Raymond W. Mitchell,
Defendant-Appellee.)	Judge, presiding.
)	

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Retaliatory discharge claims provide a narrow exception to the general rule that employees are at-will in Illinois. Thus, if an employer offers a valid, nonpretextual reason for an employee's discharge and the trier of fact believes it, the element of causation in a retaliatory discharge claim cannot be met. Accordingly, because the trial court found the former employer's reason for discharging plaintiff to be valid and nonpretextual, plaintiff did not prove the element of causation and the trial court properly granted summary judgment in the employer's favor.

¶ 2 Plaintiff Michael Wallace filed a claim for retaliatory discharge alleging the Chicago Transit Authority discharged him for filing a worker's compensation claim. The trial court

granted defendant CTA's motion for summary judgment, finding Wallace did not prove a *prima facie* case for retaliatory discharge.

¶ 3 The CTA maintained it terminated Wallace's 17-year employment for his failure to disclose two criminal convictions on his employment application. The CTA learned of Wallace's misrepresentations during an investigation triggered by his failure to provide documentation supporting his leave under the Family and Medical Leave Act (FMLA) (29 U.S.C.A. § 2601 *et seq.*).

¶ 4 The trial court found Wallace failed to present a genuine issue of material fact as to any causal connection between his termination and the filing of his workers' compensation claim. The trial court concluded the CTA presented a valid and legitimate reason for discharging Wallace, which Wallace failed to show was pretextual. Accordingly, the trial court properly granted summary judgment. We affirm.

¶ 5 **BACKGROUND**

¶ 6 Wallace submitted an employment application for a part-time position with the CTA in October 1990. The CTA hired Wallace on a probationary basis and he worked part-time until he was promoted to a full-time position in March 1991. Wallace was asked on the application, "Have you ever been convicted for any offenses other than a traffic violation? If yes, please complete the investigation record." There were two boxes next to the question, one indicating "yes" and the other "no." Wallace checked "no." Directly under the question, an italicized statement read, "*a conviction does not automatically disqualify you from employment. The nature of the offense and when it occurred are taken into consideration when evaluating your application.*" At the bottom of the employment application, the following statement appeared:

"I affirm that to the best of my knowledge, the information given on this application is true and correct. I realize that any misrepresentation or omission of facts required is ground for rejection of my application or possible termination of my employment at the Chicago Transit Authority."

On October 29, 1990, Wallace signed his employment application reflecting he understood and agreed with the application terms.

¶ 7 Contrary to his response, on September 9, 1982, Wallace was convicted of criminal damage to property and just eight weeks before Wallace completed his CTA employment application, he was convicted of battery.

¶ 8 The CTA's general rule book, which applies to all employees, specifically prohibits "falsifying any written or verbal statement." The CTA's corrective action guidelines, which apply to all bargained-for CTA employees, including Wallace, provides, "[m]aking untrue, dishonest, or misleading reports (falsification) is grounds for discharge."

¶ 9 Applying these rules, the CTA has discharged employees after discovering they falsified or omitted information on their employment application. Before the events leading to Wallace's termination, he worked for the CTA for 17 years and was promoted on four different occasions.

¶ 10 On June 10, 2008, Wallace injured his back while performing his job duties. The next day, Wallace's primary care physician established his return-to-work date and Wallace began his FMLA leave. Three months after his injury, Wallace filed a worker's compensation claim on September 5 (his fifth one against the CTA; the previous four claims for alleged injuries in 1996, 2004, 2006, and 2007, all settled). During Wallace's follow-up visits with his physician, his return date was delayed four times. Then, during Wallace's appointment on September 23, his physician set his return-to-work date as "undetermined."

¶ 11 Wallace's Discharge

¶ 12 On July 14, 2008, the CTA's office of inspector general (OIG) was contacted regarding suspicions that Wallace had been abusing his sick and FMLA leave. (It is unclear who contacted the OIG). It was suggested that Wallace may have failed to maintain proper medical documentation to justify his failure to return to work. The CTA's OIG launched an investigation, including a background check. On August 12, 2008, the OIG informed senior management that Wallace's background check revealed two criminal convictions that he failed to disclose on his 1990 employment application.

¶ 13 On September 16, 2008, the CTA's manager of employee relations issued a memorandum to Wallace's supervisor recommending termination of Wallace's employment based on the falsifications of his employment application. The CTA discharged Wallace on September 30, 2008.

¶ 14 Procedural History

¶ 15 On February 27, 2013, Wallace filed a one-count complaint against the CTA alleging retaliatory discharge in violation of section 4(h) of the Illinois Workers' Compensation Act (Act). Section 4(h) provides:

"It shall be unlawful for any employer *** to discharge or to threaten to discharge, or to refuse to rehire or recall to active service in a suitable capacity an employee because of the exercise of his or her rights or remedies granted to him or her by this Act." 820 ILCS 305/4(h) (West 2008).

Wallace alleged the CTA began its July 2008 investigation, and subsequently terminated his employment based on the results, in retaliation for his filing of a worker's compensation claim.

¶ 16 The CTA moved for summary judgment, arguing Wallace failed to present a *prima facie* case of retaliatory discharge because he could not establish the necessary causal connection between his discharge and the exercise of his rights under the Worker's Compensation Act. Specifically, the CTA argued no evidence showed that the unidentified CTA employees who decided to discharge Wallace knew he had filed a worker's compensation claim and used his filing as a factor in their decision. The CTA also argued it had a valid, nonpretextual reason for Wallace's discharge—he falsified his employment application.

¶ 17 Wallace responded that the brief timeframe between the filing of his worker's compensation claim and his discharge, as well as the investigation into the legitimacy of his FMLA leave, raised questions of fact concerning the CTA's motive in discharging him.

¶ 18 Following briefing and oral argument, the court granted the CTA's motion for summary judgment, holding Wallace failed to offer evidence of a retaliatory motive to counter the CTA's evidence that the CTA terminated him because he had falsified his employment application.

¶ 19 ANALYSIS

¶ 20 As a preliminary matter, the CTA argues Wallace's brief should be stricken for failure to comply with Illinois Supreme Court Rule 341 (eff. February 6, 2013). We agree that his brief fails to comply with several requirements of Rule 341. (Supreme Court Rule 341 requires an appellant's brief contain contentions and reasons, accompanied by citation of authorities and pages of the record.) Contentions, without argument or citation to authority, do not merit consideration on appeal. *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991). "A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research." *Id.* That Wallace appears as a *pro se* litigant does not entitle him to leniency under the case law; a

party choosing to represent him or herself must comply with the same rules and are held to the same standards as licensed attorneys. *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009) ("*pro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys.")

¶ 21 Wallace's brief violates Rule 341(h) (6) and (h)(7) (Ill. S. Ct. Rule 341 (h)(6); (h)(7) (eff. Feb. 6, 2013)), which require an appellant's brief to include "appropriate references to the pages of the record on appeal" in both the facts and argument sections. Wallace rarely cites to the record and when he does provide citations, some are inaccurate.

¶ 22 Notwithstanding the deficiencies, we choose to address the merits of Wallace's appeal because we have the benefit of the record before us, as well as the CTA's proper citation to the record. See *Burmac Metal Finishing Co. v. West Bend Mutual Ins. Co.*, 356 Ill. App. 3d 471, 478 (2005) (choosing to review plaintiff's arguments despite noncompliance with Rule 341 because defendants provided summary of relevant evidence and issues simple).

¶ 23 **Retaliatory Discharge Claim**

¶ 24 Wallace argues he raised disputed issues of material fact concerning his retaliatory discharge claim and, therefore, the trial court improperly awarded summary judgment in the CTA's favor.

¶ 25 Summary judgment entails no genuine issues of material fact and as a matter of law, the moving party is entitled to judgment. 735 ILCS 5/2-1005 (West 2012). The trial court may grant summary judgment after considering "the pleadings, depositions, admissions, exhibits, and affidavits on file in the case" and construing that evidence in favor of the nonmoving party. *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). Summary judgment should be granted only "when

the right of the moving party is clear and free from doubt." *Id.* We review the trial court's decision to grant summary judgment *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 26 In Illinois, an at-will employee may be discharged by the employer at any time and for any reason. *Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill. 2d 12, 17-18 (1998). Under a limited exception to this general rule, a plaintiff who was terminated for pursuing workers' compensation benefits can bring an action for retaliatory discharge against his or her former employer. *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 181-82 (1978). A discharge gives rise to a retaliatory discharge when it violates a "clear mandate of public policy." *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 160 (1992). An employer "may not present the employee with a choice between his job and his legal entitlement to compensation" under the Worker's Compensation Act. *Id.* at 166.

¶ 27 To state a cause of action for retaliatory discharge, a plaintiff must show: (1) employment with defendant before or at the time of the injury; (2) exercise of some right granted by the Act (820 ILCS 305/1 *et seq.* (West 2008)); and (3) discharge causally related to the exercise of his or her rights under the Act. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 500 (2009). The third element, causation, is at issue here.

¶ 28 Causal Connection of Discharge to Worker's Compensation Claim

¶ 29 Neither side disputes that Wallace exercised his rights under the Worker's Compensation Act and that the CTA terminated his employment. The question is whether an issue of material fact exists that would preclude summary judgment. Wallace contends an issue of material fact concerns the causal connection between his termination and the filing of his workers' compensation claim.

¶ 30 The employee bears the burden of establishing causation. *Siekierka v. United Steel Deck, Inc.*, 373 Ill. App. 3d 214, 221 (2007). When deciding causation, the ultimate issue involves the employer's motive in discharging the employee. *Clemons v. Mechanical Devices Co.*, 184 Ill. 2d 328, 336 (1998). Causation does not exist when the employer has a valid, nonpretextual basis for discharging the employee and the employee is unable to refute the employer's assertion with some evidence that the proffered reason is pretextual. *Vill. of Oak Lawn v. Human Rights Comm'n*, 133 Ill. App. 3d 221, 225 (1985). To prove a retaliatory discharge claim, an employee must "affirmatively show" that he or she was discharged for exercising his or her rights under the Worker's Compensation Act. *Heldenbrand v. Roadmaster*, 277 Ill. App. 3d 664, 668 (1996).

¶ 31 The CTA offered a valid nonpretextual basis for its termination of Wallace's employment—his failure to properly document his FMLA leave, which led to an investigation and background check, which revealed he falsified his employment application. And a falsified employment application creates grounds for termination under CTA policy. The CTA offered its policies and evidence of other employees being terminated for the same reason to support this assertion.

¶ 32 In response, Wallace argues the evidence supports an inference that the CTA set in motion a process, a sort of "fishing expedition," as a pretext for his termination. He also argues the evidence supports his position that the OIG, anticipating he would file a worker's compensation claim, sought to retaliate against him by launching an investigation to find a reason to fire him.

¶ 33 Based on the CTA's "full-scale background check after nearly two decades of full-time employment," Wallace maintains that the factfinder could "reasonably infer" falsification on his employment application to be mere pretext for terminating him before he could file a worker's

compensation claim. Wallace argues the timing and circumstances show the CTA launched its investigation into his FMLA leave during "the window before he could file an actual claim" as a means of improperly terminating him without liability, having occurred only after he reported his work-related injury, took medical leave, and contemplated filing a worker's compensation claim but at no other time during his 17 years of employment with several different job titles and promotions. On at least four separate occasions, a background check could have been conducted and revealed his convictions. First, in 1990 when Wallace was hired as a probationary employee, again in 1991 when he was initially promoted to a fulltime position, for a third time in 1995 when Wallace was promoted to trackman for the rail division, and in 1997, when he was promoted to truck chauffeur.

¶ 34 Wallace relies on *Hugo v. Tomaszewski*, 155 Ill. App. 3d 906 (1987), to underscore his contention that the timing of his discharge in relation to the exercise of his rights under the Worker's Compensation Act constitutes persuasive evidence of the impropriety of his discharge and, therefore, he has met his burden to defeat summary judgment. *Hugo*, 155 Ill. App. 3d at 910 ("*prima facie* case of retaliatory discharge may be established by showing a short time span between the exercise of the employee's rights under the Worker's Compensation Act and the employer's action discharging the employee.")

¶ 35 The CTA replies that Wallace failed to carry his burden to show the causal connection between the discharge and his exercise of his rights. The CTA argues the timing is not persuasive evidence of pretext because Wallace failed to show the decision-maker responsible for his termination was aware of Wallace having filed a worker's compensation claim at the time he was discharged.

¶ 36 To survive summary judgment, the employee must offer some evidence that the individual who made the decision to terminate his or her employment knew the employee filed a worker's compensation claim or that the employee intended to. *Marin v. Am. Meat Packing Co.*, 204 Ill. App. 3d 302, 308 (1990). Wallace failed to even identify the decision-maker in his discharge and, therefore, did not and could not meet his burden of showing that the decision-maker knew he had filed a worker's compensation claim and used it as a factor in terminating Wallace's employment.

¶ 37 The CTA replies that even if we assume the decision-maker was aware of Wallace's worker's compensation claim, Wallace's retaliatory discharge claim still fails. To prove causation, Wallace was required to show the employer's proffered reason for the discharge was invalid and pretextual. *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 160 (1992). Pretext is "a purpose or motive alleged or an appearance assumed in order to cloak the real intention or state of affairs." *Marin*, 204 Ill. App. 3d at 307 (quoting *Wayne v. Exxon Coal USA, Inc.*, 157 Ill. App. 3d 514, 518 (1987)).

¶ 38 The CTA argues Wallace failed to rebut its claim that it launched the investigation into Wallace's background for a valid, nonpretextual reason—because he failed to properly document his medical leave. The CTA maintains it discharged Wallace because of the falsifications on his employment application, an action that occurred years before he filed his worker's compensation claim. The CTA contends Wallace offered no evidence from which the court could conclude otherwise. The mere fact that the CTA did not learn about the falsifications on Wallace's application until after he had filed his worker's compensation claim does not establish that the CTA's reasons for discharging him were pretextual. See *Clark v. Owens-Brockway Glass Container, Inc.*, 297 Ill. App. 3d 694, 698 (1998) (noting employer may discharge employee who

filed worker's compensation claim "as long as the reason for the discharge is wholly unrelated to the employee's claim for benefits under the Worker's Compensation Act.").

¶ 39 Wallace relies on *Sierkierka* as support for his claim that the CTA set in motion a process after Wallace filed his worker's compensation claim, or in anticipation of his filing of a claim, to create a justification to fire him and, therefore, its stated reason was pretextual. *Siekierka*, 373 Ill. App. 3d 214 (2007).

¶ 40 We agree with the CTA that the facts are not analogous to *Siekierka*. In *Siekierka*, the plaintiff met his burden by showing that his employer "set in motion a process" to keep him from returning to work after an injury by declining to accommodate a surgery that would have allowed the employee to return to work quicker. The employer claimed it discharged the plaintiff for excessive absenteeism, a valid reason, and not because the plaintiff filed a worker's compensation claim. The court found, however, the employer's failure to accommodate the surgery suggested that the excessive leave justification was merely pretext. *Siekierka*, 373 Ill. App. 3d at 222.

¶ 41 The CTA argues the timing of Wallace's termination does not support his claim for retaliatory discharge. The CTA points out that Wallace filed multiple workers' compensation claims during his career without provoking an investigation and, therefore, "dispels any notion that the CTA investigated Wallace's background for a reason other than the leave documentation issue." The CTA offered evidence that Wallace was treated no differently than previous employees who violated the CTA's policies against employee falsification. Wallace acknowledges this is true. The CTA discharged Wallace because of his falsifications on his employment application, which occurred years before he filed his worker's compensation claim.

¶ 42 We find persuasive the CTA's contention that the facts are similar to those in *Shah v. Illinois Human Rights Commission*, 192 Ill. App. 3d 263 (1989). In *Shah*, this court dismissed the plaintiff's claim for his failure to satisfy his burden of proof that the employer's justification for his termination was pretextual. *Id.* at 273. The plaintiff of Asian Indian origin filed a claim of employment discrimination after his employer terminated him. *Id.* at 265. The plaintiff claimed the employer discharged him because of his national origin and an alleged physical disability. *Id.* The plaintiff's claim that he could not work because of a disability triggered the employer to examine his employment application form, which led to the discovery of the falsifications and the plaintiff's discharge. *Id.* The court noted that the employer's same "legitimate" justification—an employee's falsification on the employment application—had been used before by the employer to discharge employees of different national origin. *Id.*

¶ 43 The CTA offered a legitimate, nonpretextual reason for discharging Wallace—falsification of his employment application—a reason underlying the discharge of other employees. The record shows that when suspicions arose concerning Wallace's FMLA and sick leave, specifically his documentation, the CTA launched an investigation, which included a background check. The investigation revealed Wallace falsified his answers on his employment application concerning the convictions. Following its established rules concerning employee falsification, the CTA terminated Wallace's employment, an action consistent with how it had handled similar situations.

¶ 44 Based on the evidence of record, we reject Wallace's contention that an inference can be made that his discharge was related to the filing of his worker's compensation claim. Accordingly, Wallace has failed to meet his burden of establishing causation.

¶ 45

CONCLUSION

¶ 46 The CTA offered evidence that in discharging Wallace it followed established company rules that require disciplinary action against any employee who falsifies information. Wallace failed to offer any substantive evidence to rebut the CTA's proffered legitimate motive and create a genuine issue of material fact as to whether his termination was in retaliation for filing a worker's compensation claim. Accordingly, the trial court properly entered summary judgment in favor of the CTA.

¶ 47 Affirmed.