NO. 4-10-0560 Order Filed 5/13/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

MARY A. SUAREZ, Plaintiff-Appellant, v. HERITAGE ENTERPRISES, INC., and BARTON W. STONE-JACKSONVILLE, LLC, Defendants-Appellees.	)))))))	Appeal from Circuit Court of Morgan County No. 07L19 Honorable Richard T. Mitchell, Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Pope concurred in the judgment.

ORDER

Held: (1) In a motion for summary judgment, a defendant may assert a defense not raised in its answer.

(2) In a retaliatory-discharge action, the former employee cannot challenge the employer's policies that served as a basis for discharge by asserting the reason is an illegal one.

(3) Where, *inter alia*, the employer discharged the employee shortly after receiving a workers' compensation award and the employer did not follow its own policies on permanent restrictions and modified-duty work, a genuine issue of material fact existed as to causation.

In August 2007, plaintiff, Mary A. Suarez, filed a complaint for retaliatory discharge against defendants, Heritage Enterprises, Inc., and Barton W. Stone-Jacksonville, LLC, her former employers. In March 2010, the parties filed cross-motions for summary judgment. After a June 2010 hearing, the trial court granted defendants' summary-judgment motion and denied plain-

tiff's.

Plaintiff appeals, asserting (1) defendants were not entitled to summary judgment because (a) they did not plead an affirmative defense and (b) their policies that served as a basis for her discharge violated the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2006)) and the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.* (West 2006)), and (2) she was entitled to summary judgment based on the undisputed facts. We affirm in part, reverse in part, and remand.

I. BACKGROUND

In September 2000, plaintiff began her employment with the Barton W. Stone Christian Home (Christian Home) in Jacksonville, Illinois, which is not a party to this lawsuit. The Christian Home hired plaintiff as a licensed practical nurse (LPN). When plaintiff started working for the Christian Home, she signed a job description for a charge nurse. On March 6, 2003, plaintiff injured her neck and upper back at work. In December 2003, plaintiff filed a workers' compensation claim with the Industrial Commission based on the March 2003 injury. She notified the Christian Home of her claim in a January 6, 2004, letter.

From November 2003 to June 2004, plaintiff underwent three surgeries to treat the March 2003 injury. Plaintiff could not recall exactly when she returned to work, but it was sometime between August and December 2004. In September 2004, her treating physician, Dr. Timothy Van Fleet, stated plaintiff could

assist residents in feeding. In October 2004, Van Fleet continued the same work restrictions. In November 2004, Van Fleet continued the same restrictions and noted four hours a day. In January 2005, Van Fleet stated plaintiff could return to work for four hours a day with no lifting greater than 25 pounds.

When plaintiff first started back to work after the surgeries, she only fed residents in the dining room. Once plaintiff got mobile, she (1) transported residents to and from the dining room and the doctor, (2) covered other nurses on the floor, (3) thinned charts, (4) assisted with admissions and readmissions, (5) assessed residents in their rooms, (6) did treatments, (7) did incident reports on the computer, and (8) helped others learn how to use the computers. One of Heritage's employees described the latter job as a ward clerk.

Heritage purchased the Christian Home and removed "Christian" from its name. Heritage already owned several other nursing-home facilities. Plaintiff had to apply to work for Heritage. On her February 2005 application, plaintiff stated that, due to an injury, she was currently working as a feeder and noted her doctor's restrictions. Plaintiff also declared her intention to return to work as an LPN. In April 2005, Heritage started managing the now Barton W. Stone Home.

The timing of when plaintiff moved from the feeder position to the ward-clerk position is unclear. In her deposition, plaintiff testified it was Heritage, not the Christian Home, who created the special position for her. In their briefs,

both parties assert it was the Christian Home and not Heritage that created the new position. Plaintiff also testified Heritage was the employer that sent her to computer classes and had her train other employees on the computer. Computers had not been used before plaintiff went to the classes. While in the ward-clerk position, plaintiff had a little room right off of the nurse's station in one of the wings. Plaintiff continued in that position until her termination.

While plaintiff was employed by Heritage, the relevant Heritage employees were the following: (1) Pamela "Katie" Watts, director of nursing; (2) Mignon Goodpasture, the administrator of the Barton W. Stone Home; (3) Paula Williamson, Heritage's benefits manager; (4) Connie Hoselton, Heritage's senior vice-president of human resources; (5) Lori Lehmkuhl, Barton W. Stone Home's business manager; (6) Nina Kathleen Contratto, Heritage's nursing field supervisor; and (7) Donna Hannagan, Heritage's director of operations for the region.

When Heritage took over the facility, it gave all of the employees at the Barton W. Stone Home a Heritage employee handbook. The handbook contained a policy regarding returning to work and modified duty. The policy limited modified-duty assignments to work-related injuries and illnesses. It further emphasized the modified-duty assignments were temporary and limited such assignments to 90 days. In her deposition, Williamson explained that, if the person still had restrictions at the conclusion of the 90 days, then they would be terminated.

Hoselton testified that, if the person still had leave available at the end of the 90-day period, he or she could take a leave of absence. If the restrictions still existed at the conclusion of the leave of absence, then the person would be terminated. Lehmkuhl testified Heritage had a policy of not employing anyone with permanent restrictions.

Heritage also had a job description for LPNs. Plaintiff admitted a person with a 25-pound weight restriction could not perform the job of LPN as listed in Heritage's LPN job description. Plaintiff testified she never received Heritage's LPN job description while an employee. In the record on appeal, the copy of Heritage's LPN job description is unsigned.

On June 10, 2005, Van Fleet concluded plaintiff had reached her maximum medical improvement and had a permanent 25-pound lifting restriction. In July 2005, Hannagan sent Williamson an e-mail regarding plaintiff. Hannagan inquired into plaintiff's status. Hannagan indicated her belief plaintiff was on permanent light duty and they did not need her.

On August 26, 2005, Watts sent Williamson an e-mail regarding plaintiff. Watts explained plaintiff's injury and treatment and noted plaintiff's permanent weight restriction and chronic pain that was controlled with medication. Watts expressed plaintiff's desire to return to being a unit nurse and explained plaintiff was currently performing the paperwork duties of a nurse. That same day, Williamson replied that, if plaintiff had a permanent lifting restriction, they could never return her

to being a floor nurse because the job description calls for activities that require lifting in excess of 25 pounds. The only way they could return her to the floor would be to send her for a functional-capacity evaluation. Williamson then asked if Watts (1) had the paperwork from the doctor that determined the permanent restriction and (2) knew if plaintiff had received a settlement from the workers' compensation company for the permanent restriction. Williamson noted she wanted to review the workers' compensation file before making a final decision on how to proceed and instructed Watts not to return plaintiff to the floor.

On October 10, 2005, Lehmkuhl sent Williamson an e-mail, noting workers' compensation was "battling it out" with plaintiff's attorney and had questioned why Heritage was only giving her 60 hours of work per pay period. Two days later, Williamson replied and noted plaintiff's permanent restrictions had been issued a few months earlier. Since plaintiff had an attorney and was battling with workers' compensation, they could not do anything at that time, including getting another medical opinion to return plaintiff to full duty. Williamson further noted that, if plaintiff had a compensable claim, she would probably get some sort of settlement for permanency from the workers' compensation company. Williamson asked if plaintiff thought she could do the work of a full-duty LPN and what was she doing now. Lehmkuhl asked Watts to answer Williamson's questions. On October 28, 2005, Watts indicated plaintiff would very

much like to work full time as a nurse. Watts described plaintiff's current tasks and noted plaintiff's limited mobility in her neck and the need for prescription pain control. In Watts' opinion, plaintiff would not be able to function on a busy floor as a charge nurse.

On October 31, 2005, Williamson replied to Watts and opined plaintiff's chances of ever getting back to full duty were slim to none. Williamson again noted plaintiff had received permanent restrictions earlier in the summer and appeared to be at maximum medical improvement. Williamson further stated the following:

> "This is a very tricky situation. If I understand correctly she has an attorney and they are negotiating with AIG (through your old employer) and this could go on for a long time. With the doctor's declaration of 'permanent restrictions' her attorney is most definitely looking for a fairly large settlement for 'permanency.' Part of the settlement may be what they call 'vocational rehab' in which [plaintiff] would be offered training to learn a new skill since she cannot function as a nurse."

Additionally, Williamson noted Heritage's policy did not permit an injured worker to remain on modified duty for an indefinite period of time and her need to talk to Hoselton about plaintiff's

situation.

On December 12, 2005, an arbitrator found plaintiff's March 2003 injury caused "the permanent and partial loss of use of a person as a whole to the extent of 50% thereof." (Underlining omitted.) The Christian Home was ordered to pay plaintiff (1) medical expenses, (2) mileage, and (3) $361.01 per week for 250 weeks. The order stated that, if an appeal was not filed within 30 days, the arbitrator's decision would be entered as the Industrial Commission's decision. The record on appeal contains no evidence an appeal was filed. Hoselton, Williamson, Goodpasture, and Lehmkuhl denied knowing when plaintiff's workers' compensation case was resolved.

Heritage terminated plaintiff on February 8, 2006. Williamson testified the decision to terminate plaintiff was made by her in late January 2006 after Hoselton concurred with the decision. The termination letter noted plaintiff had a permanent weight restriction of 25 pounds that left her unable to meet the physical demands identified in Heritage's job description. Since Heritage could not provide modified duty with restrictions on a permanent basis, it terminated plaintiff's employment. According to plaintiff, she received the termination letter in the presence of Goodpasture and Lehmkuhl.

Williamson could not recall what happened between October 31, 2005, and February 8, 2006, that led to plaintiff's termination. As for the delay, Williamson explained she did not rush to terminate plaintiff's employment as she wanted to make

sure she had all of the information she needed. Hoselton testified Barton W. Stone Home had very high expenses when Heritage took it over. The first year Heritage owned the home was a busy one as it was aggressively trying to get the employees on its insurance and serviced on policies and procedures and getting expenses in line. Hoselton agreed it would have made sense to terminate plaintiff in October 2005.

In August 2007, plaintiff filed her one-count, retaliatory-discharge complaint, alleging she was discharged because she chose to exercise her rights under the Workers' Compensation Act. Plaintiff attached the arbitrator's December 2005 decision to her complaint. That same month, defendants filed an answer to the complaint, denying they discharged plaintiff due to her exercise of rights. The answer did not contain any affirmative defenses.

On March 1, 2010, plaintiff filed a motion for summary judgment, alleging (1) defendants did not affirmatively plead a valid reason for discharging plaintiff, and (2) discovery revealed defendants' articulated reason for discharging plaintiff violated the Illinois Human Rights Act. Plaintiff submitted a memorandum in support of her motion, to which she attached (1) her affidavit, (2) a portion of Heritage's employee handbook, (3) e-mails between defendants' employees regarding plaintiff, (4) Heritage's termination letter to plaintiff, (5) defendants' answer, (6) plaintiff's attorney's letter notifying the Christian Home of the workers' compensation claim. Plaintiff also included

portions of the following individuals' depositions: (1) plaintiff, (2) Goodpasture, (3) Williamson, (4) Hannagan, (5) Contratto, (6) Lehmkuhl, and (7) Hoselton.

On the same day, defendants filed their motion for summary judgment, asserting plaintiff failed to show her termination was causally related to her workers' compensation case. Defendants argued plaintiff was fired because she was unable to perform the duties of an LPN due to her permanent restriction and defendants' employment policies did not provide permanent modified-duty work. With their motion, defendants included the complete depositions, including exhibits, of the following people: (1) plaintiff, (2) Williamson, (3) Lehmkuhl, (4) Hannagan, (5) Hoselton, and (6) Goodpasture. They also attached (1) Van Fleet's four notes and (2) plaintiff's Heritage employment application.

The parties filed responses to each other's motions. Plaintiff included a copy of Heritage's job description for LPNs, and defendants submitted Watts' affidavit. In June 2010, the trial court held a hearing on the motions for summary judgment. On June 28, 2010, the court entered a written order granting defendants' motion and denying plaintiff's motion. The court found (1) no genuine issues of material fact existed and (2) plaintiff's physical inability to perform the requirements of the job was the cause of her termination.

On July 26, 2010, plaintiff filed a notice of appeal in compliance with Illinois Supreme Court Rule 303 (eff. May 30,

2008), and thus this court has jurisdiction under Supreme Court Rule 301 (eff. Feb. 1, 1994).

II. ANALYSIS

A. Standard of Review

This court reviews a trial court's grant of summary judgment *de novo*. *A.B.A.T.E. of Illinois, Inc. v. Giannoulias*, 401 Ill. App. 3d 326, 330, 929 N.E.2d 1188, 1192 (2010), *appeal allowed*, 237 Ill. 2d 551, 938 N.E.2d 518 (2010). Summary judgment is proper when the pleadings, depositions, admissions, and affidavits demonstrate no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2008); *A.B.A.T.E.*, 401 Ill. App. 3d at 330, 929 N.E.2d at 1192. "'The purpose of summary judgment is not to try a question of fact, but to determine whether one exists.'" *A.B.A.T.E.*, 401 Ill. App. 3d at 330, 929 N.E.2d at 1192 (quoting *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 421, 781 N.E.2d 249, 254 (2002)). Generally, when the parties file cross-motions for summary judgment, they request the court to determine the issues as a matter of law. *A.B.A.T.E.*, 401 Ill. App. 3d at 330, 929 N.E.2d at 1192. However, the mere filing of cross-motions for summary judgment does not establish the absence of any question of material fact. Thus, even with cross-motions for summary judgment, a reviewing court may reverse a grant of summary judgment if the record demonstrates a material question of fact exists. *Zale Construction Co. v. Hoffman*, 145 Ill. App. 3d 235, 240, 494 N.E.2d 830,

833 (1986).

B. Retaliatory Discharge

Under Illinois law, an employer can discharge an at-will employee at any time and for any reason. *Grabs v. Safeway, Inc.*, 395 Ill. App. 3d 286, 291, 917 N.E.2d 122, 126 (2009). However, in *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 182-85, 384 N.E.2d 353, 357-59 (1978), our supreme court recognized a limited exception to the aforementioned rule when it held a plaintiff who was terminated for pursuing workers' compensation benefits could bring an action for retaliatory discharge against the former employer. The Workers' Compensation Act now specifically provides "[i]t 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 2006). To state a cause of action for retaliatory discharge, a plaintiff must show the following: (1) he or she was an employee of the defendants before or at the time of the injury, (2) he or she exercised some right granted by the Workers' Compensation Act, and (3) his or her discharge was causally related to the exercise of his or her rights under the Workers' Compensation Act. *Grabs*, 395 Ill. App. 3d at 291, 917 N.E.2d at 126; see also *Clemons v. Mechanical Devices Co.*, 184 Ill. 2d 328, 335-36, 704 N.E.2d 403, 406 (1998). We note the tort of retaliatory discharge does not require the workers' compensation claim and the discharge involve

the same employer. See *Darnell v. Impact Industries, Inc.*, 105 Ill. 2d 158, 161, 473 N.E.2d 935, 937 (1984).

The last element is the only one at issue here. Our supreme court has found a plaintiff does not meet the causation element if the employer had a valid, nonpretextual basis for discharging the employee. *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 160, 601 N.E.2d 720, 728 (1992). To prove a discriminatory pretext, the plaintiff does not have to provide direct evidence. *Gomez v. The Finishing Co.*, 369 Ill. App. 3d 711, 719, 861 N.E.2d 189, 198 (2006). In fact, with retaliatory discharge, the plaintiff "will often be required to rely heavily upon circumstantial evidence of the employer's intent, and the timing of the discharge in relation to other events will virtually always be a critical circumstance." *Hugo v. Tomaszewski*, 155 Ill. App. 3d 906, 910, 508 N.E.2d 1139, 1141 (1987). Additionally, we point out the issue of an employer's motive or intent in dismissing the plaintiff is "a question of material fact, not normally subject to summary judgment." *Palmateer v. International Harvester Co.*, 140 Ill. App. 3d 857, 860, 489 N.E.2d 474, 476 (1986); see also *Hugo*, 155 Ill. App. 3d at 909, 508 N.E.2d at 1141.

On appeal, plaintiff separates her arguments into the following two sections: (1) defendants were not entitled to summary judgment and (2) she was entitled. To get to the core of this appeal, *i.e.*, whether a genuine issue of material fact as to causation exists, we first address plaintiff's argument regarding

defendants' entitlement to summary judgment.

1. *Defendants' Summary-Judgment Motion*

As to defendants' summary-judgment motion, plaintiff alleges the trial court should have denied their motion because (1) defendants failed to plead their reason for her discharge as an affirmative defense in their answer, and (2) defendants' policy it relied upon in discharging her violates the Workers' Compensation Act and the Illinois Human Rights Act.

a. Affirmative Defense

Citing *Bragado v. Cherry Electrical Products Corp.*, 191 Ill. App. 3d 136, 142, 547 N.E.2d 643, 646 (1989), *overruled in part by Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill. 2d 12, 23, 694 N.E.2d 565, 570 (1998), plaintiff argues defendants' reason for her discharge is an affirmative defense. Assuming *arguendo* the reason was an affirmative defense, the requirement an affirmative defense be included in an answer "does not place a restriction on motions for summary judgment." *Salazar v. State Farm Mutual Automobile Insurance Co.*, 191 Ill. App. 3d 871, 876, 548 N.E.2d 382, 385 (1989). A party may assert an affirmative defense in its summary-judgment motion even though the party did not raise it first in an answer. *Medrano v. Production Engineering Co.*, 332 Ill. App. 3d 562, 570, 774 N.E.2d 371, 379 (2002). Thus, no error occurred by defendants raising their reason for plaintiff's discharge for the first time in their summary-judgment motion.

b. Alleged Illegal Defense

Plaintiff claims that, since the Workers' Compensation Act is remedial in nature and intended to promote the general welfare (see *Wright v. St. John's Hospital of Hospital Sisters of Third Order of St. Francis*, 229 Ill. App. 3d 680, 689, 593 N.E.2d 1070, 1076 (1992)) and the Illinois Human Rights Act seeks to secure freedom from discrimination based on physical or mental disability (775 ILCS 5/1-102(A) (West 2006)), both acts require an employer to try to accommodate a disabled employee. Thus, plaintiff argues defendants' absolute policy that it would not retain any person with a physical restriction violates both of the acts.

Our supreme court has rejected a plaintiff's argument an employer cannot contest the causation element by asserting an alleged illegal defense. See *Clemons*, 184 Ill. 2d at 336-37, 704 N.E.2d at 407. In *Clemons*, 184 Ill. 2d at 336, 704 N.E.2d at 406-07, the plaintiff argued the defendant's reason for his discharge violated the Illinois Wage Payment and Collection Act (820 ILCS 115/1 *et seq.* (West 1994)). Our supreme court explained the alleged illegality of the defendant's reason for the plaintiff's discharge is irrelevant and does not preclude the employer from raising that defense. *Clemons*, 184 Ill. 2d at 336, 704 N.E.2d at 407. The *Clemons* court declined to (1) limit the defense a defendant may offer to a plaintiff's retaliatory-discharge claim or (2) find the allegedly illegal nature of the defense somehow relieved the plaintiff of his or her burden of establishing the elements of the cause of action. Moreover, the

court noted "[o]ther remedies may exist for the other violation, but the burden still rests on plaintiff to prove the elements of the action he has pleaded." *Clemons*, 184 Ill. 2d at 337, 704 N.E.2d at 407.

Here, plaintiff's complaint only alleged defendants discharged her because she chose to exercise her rights under the Workers' Compensation Act. Plaintiff did not raise a violation of either act based on defendants' failure to accommodate her restriction. Since our supreme court has found a defendant may raise an alleged illegal defense, plaintiff's arguments regarding violations of the Workers' Compensation Act and the Illinois Human Rights Act are irrelevant to whether the trial court properly ruled on the cross-motions for summary judgment. Thus, we decline to address them.

Our analysis does not end here. While the trial court properly considered defendants' reason for plaintiff's discharge, plaintiff can still demonstrate causation by showing her discharge was related to her exercise of rights under the Workers' Compensation Act and defendants' proffered reason was a pretext. Thus, we will next address plaintiff's arguments regarding her own summary-judgment motion.

2. *Plaintiff's Summary-Judgment Motion*

Plaintiff asserts she proved causation based on (1) defendants' failure to follow its own policies, (2) the short time span between her award from the Industrial Commission and her discharge, and (3) her deposition testimony that Goodpasture

and Watts told plaintiff she was let go due to her award.

The facts of this case are unique due to the change in ownership of the nursing home after plaintiff's injury. Heritage required the Christian Home's employees to reapply for employment. In her February 2005 application to Heritage, plaintiff noted she (1) was working as a feeder due to an injury, (2) had weight restrictions of 25 pounds, and (3) hoped to return to work as an LPN. Despite its modified-duty policy, it employed plaintiff in April 2005 when she had work restrictions and had not been working as an LPN at the facility for more than 90 days. After the change in management, plaintiff continued to work at the facility and not as an LPN. The record contains no evidence plaintiff was informed by Heritage her job was a temporary modified-duty position. Defendants also did not treat her position as a temporary modified-duty one under their policy as the 90-day period after Heritage took over the Barton W. Stone Home would have expired at the end of July 2005.

Moreover, in July or August 2005, defendants' employees knew plaintiff's restrictions were permanent based on her physician's June 2005 note. Despite having no permanent modified-duty positions, defendants did not terminate plaintiff in the summer 2005. They waited until February 8, 2006, which was shortly after plaintiff's workers' compensation award became final. Williamson admitted Heritage did not follow its policies with plaintiff.

Further, plaintiff testified Watts told plaintiff she

was "being let go within an hour because of [her] award." Plaintiff also testified Goodpasture and Lehmkuhl told her that she "had to be let go for [her] to get [her] award." While those statements were not made by Williamson, who testified she made the decision to terminate plaintiff, they are statements by defendants' managers and are relevant evidence regarding defendants' reason for discharging plaintiff. The e-mail exchanges between defendants' managers that discussed plaintiff's workers' compensation case are also relevant circumstantial evidence.

As stated, in retaliatory-discharge cases, the plaintiff "will often be required to rely heavily upon circumstantial evidence of the employer's intent, and the timing of the discharge in relation to other events will virtually always be a critical circumstance." *Hugo*, 155 Ill. App. 3d at 910, 508 N.E.2d at 1141. The evidence plaintiff's discharge was close to when her workers' compensation case was finalized, defendants did not follow their own policies regarding modified-duty work and permanent restrictions with plaintiff, and plaintiff was unable to perform the job of an LPN when they hired her are circumstantial evidence showing plaintiff's discharge may have been related to her workers' compensation award and defendant's proffered reason was a pretext. That evidence in addition to plaintiff's testimony regarding statements by defendants' employees linking the dismissal to her workers' compensation award is clearly sufficient to create a genuine issue of material fact as to causation.

We recognize defendants point out Watts, Goodpasture, and Lehmkuhl deny making the statements plaintiff testified they made regarding her workers' compensation award. Defendants also note plaintiff agreed a person with a 25-pound weight restriction could not perform the job of an LPN. Moreover, in their deposition, defendants' employees gave various reasons for the delay in plaintiff's termination, and Williamson denied knowing anything about plaintiff's workers' compensation case. Those assertions simply highlight the existence of a genuine issue of material fact as to causation in this case.

Moreover, this case is different from both *Wright,* 229 Ill. App. 3d 680, 593 N.E.2d 1070, and *LaPorte v. Jostens, Inc.*, 213 Ill. App. 3d 1089, 572 N.E.2d 1209 (1991), which were cited by defendants. In *LaPorte*, 213 Ill. App. 3d at 1091, 572 N.E.2d at 1210, the plaintiff admitted she knew she was being fired because of her injury but argued she could perform other positions within the defendant's plant. The *LaPorte* court noted "Illinois law does not obligate an employer to retain an at-will employee who is medically unable to return to his assigned position." *LaPorte*, 213 Ill. App. 3d at 1093, 572 N.E.2d at 1212. In *Wright*, 229 Ill. App. 3d at 684, 593 N.E.2d at 1073, the record established the defendant refused to rehire plaintiff as an LPN solely because of her inability to perform the physical tasks of an LPN. The reviewing court noted the hospital decision to not establish multiple categories of LPNs, *i.e.*, those who can do heavy lifting and those who cannot, was neither unreasonable

nor unlawful. *Wright*, 229 Ill. App. 3d at 688, 593 N.E.2d at 1075.

Unlike the employers in *Wright* and *LaPorte*, defendants hired plaintiff with an injury restriction and then accommodated plaintiff's restrictions for over nine months (six of which they knew the restrictions were permanent) before terminating her. The aforementioned actions were contrary to defendants' modified-duty and permanent-restriction policies. *Wright* and *LaPorte* did not contain evidence the employer-defendant acted contrary to its policies. Those cases also did not involve alleged statements by the defendant-employer's managers indicating the plaintiff's discharge was related to a workers' compensation award. The aforementioned additional evidence in this case along with the timing of plaintiff's discharge create a genuine issue of material fact as to causation in this case.

Accordingly, we find the trial court erred by granting defendants' summary-judgment motion but properly denied plaintiff's motion because a genuine issue of material fact exists as to causation.

III. CONCLUSION

For the reasons stated, we reverse the Morgan County circuit court's granting of defendants' motion for summary judgment, affirm its denial of plaintiff's motion for summary judgment, and remand the cause to the Morgan County circuit court for further proceedings.

Affirmed in part and reversed in part; cause remanded.