PLUNKETT COONEY

Workers' Compensation Petition not Required for Employee to File Retaliatory Discharge Claim

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It just got easier for a plaintiff to assert a retaliation claim under Michigan's Workers' Disability Compensation Act (the Act). Specifically, the Michigan Court of Appeals ruled that filing a petition for workers' compensation benefits is not a prerequisite to all retaliatory discharge claims under the Act.

In *Cuddington v United Health Services, Inc.* (Oct. 25, 2012), the plaintiff was involved in a vehicular accident while driving a company vehicle. Although he had a "fat lip and a bruised cheek from hitting the mirror," he informed the emergency responders that he did not need to go to the hospital.

However, overnight the plaintiff developed pain in his neck and shoulder. His wife called his employer at 9 a.m. and informed a secretary that he could not work due to soreness. Subsequently, an officer of the company called the plaintiff and asked why he was not at work. He responded that he was very sore from the accident and the officer stated: "you ain't hurt, if you were hurt you would have went in the ambulance to the hospital last night." The plaintiff was told that if he did not report to work he would be fired.

That same morning the plaintiff went to his doctor's office and was seen by a nurse because his doctor was called away on an emergency. He asked that his doctor's office contact his employer to verify the visit. When the plaintiff reported to work the following day, he was told he was fired.

The plaintiff filed a claim for workers' compensation benefits and commenced an action for retaliatory discharge pursuant to the Act. The trial court relied on *Griffey v Prestige Stamping* and *Wilson v Acacia Park Cemetery Ass'n,* which held there can be no retaliatory discharge claim predicated on the "anticipation of a future claim [for benefits]," and dismissed the plaintiff's complaint.

In a published opinion, the appellate court reversed, finding that the plaintiff had exercised a right under the Act when he indicated he needed to see a doctor. Therefore, his claim was not based on an anticipated exercise of a right under the Act as occurred in *Griffey* and *Wilson.*

The distinction between the instant facts and the appellate court's prior opinions is subtle. For example, in *Wilson*, the plaintiff was injured during the course of performing his duties and was unable to work; however he did not indicate that he needed to see a doctor. Therefore, the plaintiff in *Wilson* premised his right of discovery on the defendant's anticipation of his future claims. Because the plaintiff in *Cuddington* informed his employer he was going to see a doctor, his employment was not terminated

as a result of anticipated claim, but rather a current exercise of rights under the Act.

In the past, an employee had to actually submit a workers' compensation claim for a retaliatory discharge action, but now an employee can base a claim on his assertion that he needs to seek medical care. Employers are forewarned and caution should be taken whenever termination is considered for an employee who suffers a work-related injury. If you are faced with these circumstances, contact the author or any Plunkett Cooney employment attorney.