

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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|-------------------|---|----------------|
| ROBERT J. CONTI | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| CSX INTERNATIONAL | : | NO. 02-cv-1658 |

MEMORANDUM

Baylson, J.

March 7, 2003

As this case is ready for trial, both sides have filed Motions in Limine. Plaintiff sues under the Family Medical Leave Act (“FMLA”) 29 U.S.C. § 2601 *et seq.* which makes it unlawful for an employer “to interfere with, restrain, or deny the exercise of or the attempt to exercise” any right secured by the Act. 29 U.S.C. § 2615(a)(1) (2002). Claims pursued under this provision are frequently referred to as “interference claims.”” *See Peter v. Lincoln Technical Institute*, 2002 U.S. Dist. LEXIS 17345 (E.D. Pa. Aug. 29, 2002).

There is a dispute as to whether Plaintiff took FMLA leave because of a bona fide health reason or to avoid a shift change. There are also disputes as to Plaintiff’s attempt to return to work, the content of phone calls he made to Defendant about his return to work and whether the calls were returned. There is a further dispute as to whether Plaintiff remained disabled on the date on which his FMLA leave expired, or whether he abandoned his job.

First, Plaintiff seeks to exclude any evidence to dispute the bona fides of Plaintiff’s FMLA leave, because by letter dated April 11, 2001, Defendant granted FMLA leave to Plaintiff and Plaintiff argues that because Defendant approved Plaintiff’s leave, the reasons for it are

irrelevant. The letter dated April 11, 2001 to Plaintiff from Defendant which approved Plaintiff's FMLA leave does not state there is any dispute about his entitlement. Also, Defendant's letter to Plaintiff dated August 8, 2001 concluded that Plaintiff had abandoned his job "because of your failure to return to work following the end of your FMLA benefits and to contact your supervisor of Human Resources Department on or before your return date. . . ." Defendant did not assert that Plaintiff's taking FMLA leave was bogus or disingenuous.

Defendant asserts that it should be allowed to introduce evidence as to Plaintiff's motivation because Plaintiff is required to prove, as part of his FMLA leave claim, that he suffered from a "serious health condition." Defendant is correct that Plaintiff must prove, as an element of his claim, that Plaintiff was entitled to leave.

To sustain on a claim of wrongful denial or interference with the right to take requested leave, a plaintiff must prove that he was an eligible employee; that the defendant was an employer within the meaning of the Act; that he was entitled to leave under the Act; and, that the employer interfered with plaintiff's right to take leave or otherwise wrongfully denied the request to leave.

Burch v. WDAS AM/FM, 2002 U.S. Dist. LEXIS 12290 (E.D. Pa. June 28, 2002). In this case, Plaintiff must prove Plaintiff had a "serious health condition."

Defendant alleged as its fifth affirmative defense that "Plaintiff did not suffer from a serious health condition entitling him to leave under the FMLA." The Defendant's evidence is relevant on Plaintiff's motivation to take leave and is thus admissible. The Plaintiff can argue to the jury that this defense is not credible.

The remaining two points for which Plaintiff seeks exclusion of evidence relate to circumstances surrounding the end of the FMLA leave period, whether Plaintiff desired to return

to work and if so, under what circumstances, or whether Plaintiff was still disabled.

Plaintiff seeks to preclude evidence that Plaintiff was still disabled on the ground Defendant never advised Plaintiff that this was a reason. Defendant is correct that part of Plaintiff's proof is that Plaintiff was able to perform the essential functions of his job at the expiration of his leave. *Rinehimer v. Cemcolift, Inc.*, 292 F.3d 375 (3d Cir. 2002). Thus, the Court will not exclude this evidence.

However, Plaintiff may develop evidence at trial and attempt to establish the elements of equitable estoppel to bar the jury from considering the above defenses, on the grounds that Defendant did not advise Plaintiff of Defendant's current contentions at or about the time of the events in question. *See Blankenship v. Buchanon General Hospital*, 999 F. Supp. 832 (W.D. Va. 1998).

Plaintiff's Motion to exclude evidence as to whether Plaintiff abandoned his job is denied because this contention was clearly part of the communications between the parties.

Concerning Defendant's Motion in Limine, the only unresolved issue concerns evidence of workplace misconduct by any of Plaintiff's supervisors employed by Defendant. Defendant's Motion will be denied because Plaintiff must be allowed to introduce evidence concerning conduct by Plaintiff's supervisors toward Plaintiff since Defendant is disputing the bona fides of Plaintiff's reasons for FMLA leave. However, the evidence on both sides must be on point, lest the trial become a long running rerun of Plaintiff's work history, which would not be relevant.

An appropriate Order follows.

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ORDER

AND NOW, this day of March, 2003, the Motions in Limine by Plaintiff and Defendant are DENIED.

BY THE COURT:

MICHAEL M. BAYLSON, U.S.D.J.