IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

EDGAR T. CAMPBELL, Plaintiff, vs. KRAFT HEINZ FOOD COMPANY, Defendant.	**No. 3:19-cv-00044–JEG-HCA** **O R D E R**

This matter comes before the Court on Motion for Summary Judgment, ECF No. 21, brought by Defendant Kraft Heinz Food Company. Plaintiff Edgar Campbell resists. Neither party requested oral argument, and the Court finds none is necessary in resolving this motion. The matter is fully submitted and ready for disposition.

I. BACKGROUND

In March 2017, Campbell began working in the sanitation department of Kraft Heinz's plant in Scott County, Iowa. Campbell's responsibilities included using chemicals to clean production equipment. As a new hire, Campbell was subject to a sixty-day probationary period, as provided in the plant's collective bargaining agreement. Kraft Heinz's practice at the plant was to terminate probationary employees without issuing written warnings if they engaged in conduct that would result in any formal discipline for a non-probationary employee. Pursuant to this practice, Lisa Culberson—the plant's Operational Risk Manager—reports that the plant terminated four probationary plant employees in 2016 for violating Kraft Heinz's policies; relevant to this case, three of the four had not filed workers' compensation claims. See Def.'s App. 38–Culberson Decl. ¶ 3, ECF No. 21-3. Culberson further states, "Between January 2016 and June 2019, there were 34 Plant employees who suffered workplace injuries and who are either still employed, voluntarily quit, or retired." Id. at ¶ 4.

During his probationary period, Campbell was purportedly involved in two safety incidents. The first incident occurred on April 19, 2017, when Campbell became ill after exposure

to noxious fumes. As a result, the plant conducted a "near-miss" investigation, documented in a report. The report starts with a handwritten statement:

> Felt burning to the eyes due to strong chemical. Went to eye wash station, rinsed eyes out due to the burning sensation. Sat in office and started throwing up, shortness of breathe [sic]. Brought over to the office[.]

Def.'s App. 47–Culberson Decl. Ex. B, ECF No. 21-3.

The report contains a "Loss Causation Model" checklist. Id. The checklist categorizes causes into "Basic Causes" and "Immediate Causes," both of which contain two sub-categories with several checkboxes. Id. Under the Basic Causes category–Personal Factors sub-category, the marked checkbox was "New / In Training"; under the Basic Causes category–Job Factors sub-category, the marked checkbox was "Inadequate Work Standards"; and under the Immediate Causes category–Substandard Conditions, the marked checkbox was "Inadequate Ventilation." Id.

The report also contains a form with the caption "Root Cause – 5 Why Analysis." Id. at 48. In response to a question about which body part was injured, a handwritten answer states, "No body part injured, smell of the chemical." Id. The form then asks, "Why? What was the immediate action that hurt this body part?" Id. The first portion of the handwritten answer is crossed out and illegible, and it then says, "chemical mixture." Id. The form then asks, "Why did that action occur?" several times. Id. The handwritten answers are: "Getting ready to clean," "Nightly sanitation duties," and "Production just got done." Id.

The next section of the report is labeled "Recommendations for Preventative Action." Id. at 49. The first recommendation—assigned to Jessica Triphan, a manager at the plant—is, "Make sure chemicals are dispensed into proper containers," and it is marked as completed on April 23, 2017. Id. The next recommendation—assigned to "Team members"—is "New hires/transfers need to watch and understand the process of dispensing chemicals," which is marked as "ongoing." Id. Next, in a section for indicating the severity of the incident and probability of recurrence, the lowest levels are selected for both severity and probability of

recurrence. For severity, the incident is categorized as "Minor" (as opposed to "Major" or "Severe"), which is defined as, "Minor injury or illness without lost time. Non-disruptive property damage; or quality production or other loss less than $5000." Id. For probability of recurrence, the incident is categorized as "Seldom" (as opposed to "Occasional" or "Frequent"), which is defined as occurring approximately once per year. Id. The report has the signatures of several individuals, including Campbell. Attached to the report are five pages of handwritten notes and statements. The last page of the report is a document with Campbell's type-written name at the top and several photos of chemical containers and labels. According to Culberson, the photos were of Campbell's work cart and were "taken during the investigation to document the person who mixed acid and chlorine, and [they] indicate[] that Plaintiff mixed acid and chlorine." Def.'s Supp. App.–2nd Culberson Decl. ¶ 12, ECF No. 30-2.

The second safety incident occurred on April 25, 2017, when Campbell suffered chemical burns on both wrists. Kraft Heinz's policy on personal protective equipment (PPE), as explained during training sessions for new hires such as Campbell, required sanitation department personnel not to wear cotton gloves against the skin, but to instead wear a rubber glove in between. According to Kraft Heinz, Campbell violated this policy by wearing cotton gloves against the skin, which resulted in his chemical burns. Campbell, however, denies that he violated the policy and claims that his injury occurred because the gloves he wore had pinholes in them that allowed exposure to chemicals.

Campbell's safety performance is marked as "Less Than Acceptable" in an April 26, 2017 performance evaluation. Def.'s App. 57–Culberson Decl. Ex. C, ECF No. 21-3. That check-box is selected if the employee "[h]as exhibited on one or more than one occasion a failure to adhere to safe work instructions and procedures or not using appropriate PPE's, etc." Id. Campbell's overall performance is also marked as "Less Than Acceptable." Id. at 58. A handwritten comment on the evaluation form says, "Employee was injured not wearing the correct PPE during the sanitation cleaning process. Employee is expected to follow all safety

procedures and PPE requirements at all times." Id. Campbell's signature appears on the bottom of the document, along with the signatures of a manager and supervisor. Id. Campbell admits he signed a performance evaluation on or around April 26, 2017; however, he claims he never knowingly signed an evaluation stating that his safety or overall performance was less than acceptable. Campbell surmises that the document provided by Kraft Heinz "may have been altered."[1] Pl.'s App. 8, ECF No. 26-4.

After reporting the injury to the plant's medical staff, Campbell was placed on light-duty work status. Campbell was evaluated by medical staff at the plant on several occasions over the next few weeks, and he reported increasing pain in his right hand and wrist. According to Campbell, the medical staff told him not to seek treatment from a physician; Kraft Heinz denies they did so and reports that, in any event, the medical staff at the plant are employed by a third-party contractor.

On May 18, 2017, John Fleming, the plant's sanitation manager, wrote an email to Rodney Warhank, the plant's associate human resources manager, stating, "I will be releasing Edgar in the morning due to safety violations. Edgar has had a near miss and a potential recordable within his probation period and is not giving me a good feeling about his employment here. Any watch outs here?" Def.'s App. 65–Warhank Decl. Ex. A, ECF No. 21-3. Warhank reports, and Campbell concedes, that Fleming and Warhank then discussed Campbell's purported safety violations without mentioning the topic of workers' compensation. See Def.'s App. 62–Warhank Decl. ¶¶ 9-11, ECF No. 21-3; Pl.'s Resp.–Def.'s State. Facts Nos. 32-34, ECF No. 26-2. The next day, May 19, Fleming terminated Campbell and notified several Kraft Heinz employees about the termination. In response to a question from human resources employee Amy Matlick about why Campbell was terminated, Fleming replied, "Safety." Def.'s

[1] Culberson states in her affidavit that the plant's "longstanding consistent practice is that probationary employees sign 'New Hire Performance Evaluation' forms after the form has been completed by the employee's manager." Def.'s Supp. App.–2nd Culberson Decl. ¶ 12, ECF No. 30-2.

App. 67–Warhank Decl. Ex. B, ECF No. 21-3. Matlick replied that she would "process termination for safety violation." Id. Several days later, on May 22, Culberson forwarded an email in which a nurse manager reported that Campbell missed an appointment; Culberson commented that Campbell "was fired due to many safety violations in his probation and now he has missed appointment for medical care for his burn." Def.'s App. 60–Culberson Decl. Ex. D, ECF No. 21-3. Campbell later testified at his workers' compensation deposition that he was not given a reason for why he was fired.

On May 10, 2019, Campbell filed a lawsuit against Kraft Heinz, several other Kraft Heinz companies, and several Kraft Heinz employees in the Iowa District Court for Scott County. Campbell's single-count petition claimed wrongful discharge under Iowa state law, alleging that Kraft terminated him for pursuing workers' compensation benefits. Campbell later dismissed the claim as to all the defendants except Kraft Heinz and Culberson. Kraft Heinz removed to this Court on June 12, 2019, on the basis of diversity jurisdiction, asserting that Campbell's joinder of Culberson, an Iowa resident, was fraudulent and could not, therefore, defeat diversity between Campbell, an Iowa resident, and Kraft Heinz, a Pennsylvania corporation.[2] After Kraft

[2] Under 28 U.S.C. § 1445(c), "[a] civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States." Because like § 1445(a), § 1445(c) "does not involve subject matter jurisdiction," In re Norfolk S. Ry. Co., 592 F.3d 907, 912 (8th Cir. 2010), and Campbell has not objected to removal on this basis, Campbell has waived any § 1445(c) argument, see Bloom v. Metro Heart Grp. of St. Louis, Inc., 440 F.3d 1025, 1031 n.2 (8th Cir. 2006) (holding plaintiff waived objection to removal based on § 1445(c) "when she did not timely move for remand in the district court, on this ground" (citing Phillips v. Ford Motor Co., 83 F.3d 235, 236 n. 3, 237 n. 5 (8th Cir. 1996))).

In any event, Campbell's claim for wrongful discharge is a judicially-recognized tort for violation of Iowa public policy, see Berry v. Liberty Holdings, Inc., 803 N.W.2d 106, 109 (Iowa 2011), and his claim does not, therefore, arise under Iowa workers' compensation laws, see, e.g., Hanna v. Fleetguard, Inc., 900 F. Supp. 1110, 1118-23 (N.D. Iowa 1995) (analyzing Humphrey v. Sequentia, Inc., 58 F.3d 1238 (8th Cir. 1995), and Spearman v. Exxon Coal USA, Inc., 16 F.3d 722 (7th Cir. 1994), and finding that, "[b]ecause the Iowa legislature omitted this cause of action from its statutory scheme, the court concludes retaliatory discharge is not a civil action arising under Iowa's worker's compensation laws and is properly removable to federal court pursuant to 28 U.S.C. § 1441(a)"). Compare Humphrey, 58 F.3d at 1246 (distinguishing Spearman in holding Missouri retaliatory discharge claim arose under Missouri's workers' compensation laws for purposes of § 1445(c) when cause of action was created by Missouri workers'

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.