IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION

FARON SNOW,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 6:23-CV-03249-BCW
	)	
HUTCHENS INDUSTRIES, INC.,	)	
	)	
Defendant.	)	

ORDER

Before the Court are Defendant Hutchens Industries, Inc.'s motion for summary judgment. (Doc. #35). The Court, being duly advised of the premises, denies said motion.

BACKGROUND

On August 11, 2023, Plaintiff Faron Snow ("Snow") filed a complaint against Defendant Hutchens Industries, Inc., ("Hutchens"). (Doc. #1). Snow alleges Hutchens violated the Family and Medical Leave Act by terminating Snow's employment in retaliation for Snow exercising his rights under FMLA.

On July 1, 2024, Hutchens filed the instant motion arguing that there are no genuine issues of material fact, and it is entitled to judgment as a matter of law against Snow. (Doc. #35). Specifically, Hutchens argues it would have terminated Snow for violation of its "no call no show" policy even if he had not exercised his FMLA rights. Additionally, Hutchens argues that Snow cannot establish his FMLA claim based on the evidence of record.

UNCONTROVERTED FACTS

Hutchens is a Missouri corporation engaged in the business of designing and manufacturing trailer suspensions and the component parts of those suspensions, as well as the fabrication of other metal products. (Doc. #38-1). Snow was employed by Hutchens in its Mansfield, Missouri plant as an hourly employee, from March 31, 2014 to April 11, 2023. (Doc. #38-2).

On February 20, 2023, Snow requested FMLA leave for February 20 to March 20, 2023. (Doc. #38-1). Along with his request, Snow submitted to Hutchens' Human Resources Office a Certification of Health Care Provider signed by his doctor, Kathy Domiano. Id. The certificate dated February 20, 2023, states Dr. Domiano's opinion that Snow was unable to work from February 20 to March 20, 2023, and is in need of medical leave. (Doc. #38-6). Kevin Dobson, Hutchens' Human Resources Director, approved Plaintiff's February 20 request for FMLA leave. (Doc. #38-1).

Hutchens' policy is that employees on a medical leave of absence, including FMLA leave, must provide a doctor's note to extend a leave of absence. Id. Snow was aware of this policy. (Doc. #38-2). On March 20, 2023, the day Snow's approved FMLA leave was to expire, Plaintiff submitted a note from Dr. Domiano to extend his FMLA leave for two additional weeks, from March 20, 2023 to April 3, 2023. (Docs. #38-4; #38-11). Hutchens approved Snow's request to extend his FMLA leave to April 3, 2023. (Doc. #38-4).

Hutchens also has a three-day "no call no show" policy, whereby employees who are absent from work for three consecutive working days without notifying the company will be considered to have voluntary quit. (Doc. #38-1). Snow was aware of Hutchens' three-day no call no show

policy, and he knew that employees would be terminated if they violated that policy. (Doc. #38-2). Snow did not return to work nor contact Hutchens on April 3 or April 4, 2023. (Doc. #38-1).

On April 5, 2023, Snow obtained a new doctor's note from Dr. Domiano to extend his FMLA leave for two additional weeks from April 3, 2023 to April 17, 2023.[1] (Doc. #41-2). The doctor's note was signed and dated by Dr. Domiano on April 5, 2023. On the same day, Snow came to Hutchens's Human Resources Office. (Doc. #38-2). Snow first met with Chasity Skaggs, the receptionist on duty in the HR office. (Doc. #36-5). Snow did not provide the doctor's note to extend his FMLA leave to Skaggs. Id. While Snow was in the HR office, Skaggs informed Dobson that Snow wanted to speak with him. Id. Dobson and Snow then had a discussion in the HR office. (Docs. #38-1; #38-2). The parties dispute whether Snow gave Dobson the doctor's note to extend his FMLA leave. (Docs. #41; #42).

After Snow left the HR office, Dobson sent an e-mail to other Hutchens employees indicating that he counted Snow's appearance at the HR office as a "check in" (Doc. #36-7). Consequently, Snow's visit to the HR office on April 5, 2023, restarted the time for application of Hutchens' three-day "no call no show" policy. (Doc. #38-1). Snow did not work at Hutchens the next three workdays (April 6, April 10 and April 11, 2023). Id. At the end of the day on April 11, 2023, three days had passed when Plaintiff was scheduled to work at Hutchens but did not appear for work or contact Hutchens. (Docs. #36-8; #38-1). Snow was terminated from his employment effective April 11, 2023. (Doc. #38-3).

[1] While the doctor's note does not say April 3, it excuses Snow for an "additional 2 weeks" until "April 17, 2023" (Doc. 41-2 at 4). There are fourteen days in two weeks and fourteen days from April 3 is April 17. Hutchens does not dispute this fact.

LEGAL STANDARD

A moving party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A party who moves for summary judgment bears the burden to establish that there is no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). When considering a motion for summary judgment, the court evaluates the evidence in the light most favorable to the nonmoving party and the nonmoving party is entitled to "the benefit of all reasonable inferences." Mirax Chem. Prods. Corp. v. First Interstate Commercial Corp., 950 F.2d 566, 569 (8th Cir. 1991); White v. McKinley, 519 F.3d 806, 813 (8th Cir. 2008).

ANALYSIS

In order to be granted summary judgment, the movant must not only establish that it is entitled to judgment as a matter of law, but also that there are no genuine disputes as to any material facts. See Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505, 2510 (1986). To be material, the disputed facts must be facts which, under the substantive law governing the issue, might affect the outcome of the suit. Id. "Summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

To determine whether there is a genuine dispute of any material fact, the Court looks to the substantive law governing the issue in the instant case. Congress enacted the FMLA to balance the demands of the workplace with the needs of families. 29 U.S.C. § 2601(b)(1); see also, Hernandez v. Bridgestone Ams. Tire Operations, LLC, 831 F.3d 940, 945 (8th Cir. 2016). Under the FMLA,

an eligible employee is entitled to up to 12 work weeks of leave during any 12-month period for their own medical reasons or to care for close family members with serious health conditions. 29 U.S.C. § 2612(a)(1). The FMLA makes it unlawful for an employer to deny or to interfere with these rights, 29 U.S.C. § 2615(a)(1), and to discriminate against employees for asserting them, 29 U.S.C. § 2615(a)(2).

There are two type of claims that can be brought under FMLA: (1) interference claims, in which the employee "alleges that an employer denied or interfered with his substantive rights under the FMLA"; and (2) retaliation claims, in which the employee "alleges that the employer discriminated against him for exercising his FMLA rights." Stallings v. Hussmann Corp., 447 F.3d 1041, 1050 (8th Cir. 2006). "The difference between the two claims is that the interference claim merely requires proof that the employer denied the employee his entitlements under the FMLA, while the retaliation claim requires proof of retaliatory intent." Id.

Here, Snow clarifies in his response to the instant motion that he is asserting both claims in his complaint. (Doc. #41). In Snow's complaint he alleges that Hutchens terminated his employment "in retaliation for [Snow] exercising his rights under the FMLA." (Doc. #1 at 2). The Court finds that Snow does assert both interference and retaliation claims in his complaint as he does assert that Hutchens denied him his entitled leave under FMLA, and that Hutchens had retaliatory intent behind it.

Hutchens argues that regardless of if both claims are asserted, Hutchens is entitled to summary judgment on both claims because Snow cannot establish a causal connection between his FMLA leave and his termination. (Docs. #36; #41). Specifically, Hutchens argues it terminated Snow's employment because he was no longer on FMLA leave and failed to work for three consecutive days in violation of its three day "no call no show" policy.

An employee who requests FMLA leave has no greater protection against termination for reasons unrelated to the FMLA. Estrada v. Cypress Semiconducter (Minn.) Inc., 616 F.3d 866, 871 (8th Cir. 2010). Thus, an employee's failure to comply with their employer's policies regarding FMLA leave or unauthorized absences is a permissible ground for termination. Bacon v. Hennepin Cnty. Med. Ctr., 550 F.3d 711, 716 (8th Cir. 2008); see also Ruble v. Am. River Transp. Co., 799 F. Supp. 2d 1017, 1026 (E.D. Mo. 2011).

Here, Hutchens has a policy that employees on a medical leave of absence, including FMLA leave, must provide a doctor's note to extend a leave of absence. (Doc. #38-1). Hutchens also has a policy that employees who are inexcusably absent from work for three consecutive working days without notifying the company will be consider having voluntarily quit and be terminated from employment. Id.

In an affidavit, Snow testifies that he submitted to Dobson, the HR Director at Hutchens, his doctor's note that would not only extend his leave of absence but excuse the three consecutive days he missed without contacting Hutchens (April 6, April 10 and April 11, 2023). (Doc. #41-2). While Hutchens is correct to point out that a self-serving affidavit will not defeat an otherwise meritorious summary judgment motion, Smith v. Golden China of Red Wing, Inc., 987 F.3d 1205, 1209 (8th Cir. 2021), Snow does not rely solely on his affidavit. Snow also produced the doctor's note that was signed by his doctor and dated on April 5, 2023, the same day Snow went to the HR office and spoke to Dobson. (Doc. #41-2 at 4). The doctor's note states that Snow is under medical care and cannot return to work until April 17, 2023. While the doctor's note was dated April 5, 2023, two days after Snow's last doctor's note stated he would be excused until, the April 5 note includes April 3 in the extension of Snow's medical care and request for medical leave. Additionally, the record does not reflect that Hutchens had a deadline for when employees could

submit a doctor's note to extend their leave. Regardless, Snow did not use all 12 weeks of FMLA leave in which he was entitled to during 2023, such that the April 5 doctor's note would have entitled Snow to an approval of FMLA leave by Hutchens.

After evaluating the evidence in the light most favorable to Snow, a reasonable jury could find that Snow had a valid doctor's note to extend his FMLA leave and seeing no reason why he couldn't submit the note to Hutchens, decide to believe Snow's testimony that he did submit the April 5 doctor's note to Hutchens based on that probative evidence. Davidson & Assocs. v. Jung, 422 F.3d 630, 638 (8th Cir. 2005) ("A plaintiff may not merely point to unsupported self-serving allegations but must substantiate allegations with sufficient probative evidence that would permit a finding in the plaintiff's favor.").

Additionally, while challenging Snow's reliance on a self-serving affidavit, Hutchens also relies on a self-serving affidavit and testimony of Dobson and Skaggs, who testify that Snow did not submit to either of them his doctor's note extending his FMLA leave. (Docs. #36-5; #38-1). Hutchens also points to Snow's contradictory testimony where at his deposition he states he does not remember who he submitted his doctor's note to, but now files an affidavit clarifying that he knows he submitted it to Dobson. (Docs. #41-1 at 14; #41-2 at 1).

A "judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson, 106 S. Ct. at 2511; see also, Conolly v. Clark, 457 F.3d 872, 876 (8th Cir. 2006). Here, giving Snow the benefit of all reasonable inferences, there is a genuine dispute as to whether Snow submitted to Hutchens his April 5 doctor's note. If Snow gave Hutchens the April 5 doctor's note to extend his FMLA leave until April 17, 2023, then he would have complied with Hutchens's policy and, since Snow did not used all 12 work weeks of FMLA leave he was entitled to in 2023, should have been approved

for his extension. If Snow's FMLA was extended, then Hutchens would have been on notice regarding Snow's absences on April 6, April 10 and April 11, 2023. Consequently, Snow would not have called Hutchens on those days because he would have believed his FMLA leave was extended as would be required by law.

A reasonable jury could conclude that Hutchens terminating Snow's employment because he did not appear for work those three consecutive days, assuming Snow had extended his FMLA leave, would be terminating him because he took FMLA leave and not because of Hutchens' "no call no show" policy. Therefore, Hutchens has failed to show that there are no genuine disputes of a material fact. The instant case must go to a jury to weigh the evidence and determine whether or not Snow's absences were excused. Hutchens' motion for summary judgment is denied. Accordingly, it is hereby

ORDERED Defendant Hutchens Industries, Inc.'s motion for summary judgment. (Doc. #35) is DENIED.

IT IS SO ORDERED.

DATE: September 17, 2024

/s/ Brian C. Wimes
JUDGE BRIAN C. WIMES
UNITED STATES DISTRICT COURT