IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

RICHARD W. BECKWITH-ADAMS v. STATE OF TENNESSEE

Claims Commission for Middle Divison
No. 97005468

No. M1999-00041-WC-R3-CV - Decided - May 2, 2000

JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by appellant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

RICHARD W. BECKWITH-ADAMS Plaintiff/Appellant	))	NO. M1999-00041-WC-R3-CV
VS.	)	CLAIMS COMMISSION (MIDDLE DIVISION) BAKER
STATE OF TENNESSEE Defendant/Appellee	))	NO. 97004368

FOR THE APPELLANT:
Richard W. Beckwith-Adams
Pro Se

FOR THE APPELLEE:
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MEMORANDUM OPINION

Mailed March 22, 2000
Decided May 2, 2000

MEMBERS OF PANEL

Frank F. Drowota, III, Associate Justice
Samuel L. Lewis, Special Judge
Tom E. Gray, Special Judge

AFFIRMED

Tom E. Gray, Special Judge

MEMORANDUM OPINION

This Workers' Compensation Appeal has been referred to the Special Workers' Compensation Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for a hearing and reporting of findings of fact and conclusions of law.

The Tennessee Claims Commission granted the motion for summary judgment filed by the State of Tennessee. The Claims Commission found that the Workers' Compensation Claim should be denied because it did not allege a compensable accident. In addition, the Claims Commission denied plaintiff/appellant's motion to amend the claim to include retaliatory discharge for attempting to file a Workers' Compensation claim in 1995 and a motion to amend the claim to include allegations of wrongful discharge, ADA violations, and violation of the whistle blower's act.

For reasons stated below the Claims Commission's dismissal is affirmed.

Richard W. Beckwith-Adams filed an application for state employment on February 3, 1992; on April 10, 1992 he again signed the application stating all information was true.

An impressive resume' was submitted in support of the application for state employment, and Richard W. Beckwith-Adams stated in writing that he held a bachelor's degree (BGE) in business/general engineering from the University of Omaha (now University of Nebraska at Omaha). He was given employment on May 11, 1992 as environmental engineer now titled environmental protection specialist with the division of air pollution control in the Tennessee Department of Environment and Conservation.

In June, 1997 Mr. Beckwith-Adams was asked by his department to resubmit proof of his educational qualifications. He provided in response to the request a copy of a Bachelor of Science Degree in Environmental Studies awarded January 8, 1995 from Atlantic Union College. He also submitted a Master of Science degree dated January 5, 1995, from Columbia Southern University and a Doctor of Science Degree in Environmental Engineering dated August 10, 1994 from the University of Environmental Science.

On or about June 26, 1997 Mr. Beckwith-Adams met with his supervisors, and he was placed on administrative leave pending determination if Mr. Beckwith-Adams possessed the minimum qualifications for the position of an environmental protection specialist. The meeting was conducted in a professional and collegial manner. Mr. Beckwith-Adams was allowed input; no one raised his

voice. Several professionally conducted teleconferences followed the June 26, 1997 meeting.

It was determined that Richard W. Beckwith-Adams did not hold a general engineering degree from the University of Omaha. Columbia Southern University and the University of Environmental Sciences were found to be non-accredited, independent studies institutions, and no credence was given to their degrees by the Tennessee Department of Environment and Conservation.

By letter dated the 14th day of July, 1997 Richard W. Beckwith-Adams was informed that he had misrepresented his educational background when he indicated he held a bachelor's degree in business/general engineering from the University of Omaha in February, 1992 and April, 1992 on his application for state employment. He was reminded that by his signature he certified that the information contained in the application was correct and that he acknowledged that any falsification would result in dismissal. The letter stated that the information available indicated that Mr. Beckwith-Adams did not meet the minimum qualifications for a position as environmental protection specialist and that falsification of official state documents relating to employment were cause for dismissal from state service. He was advised that before a decision of dismissal would be made that he had the opportunity to rebut the allegations and to present any information at a pre-decision, due process meeting.

On July 22, 1997 a pre-decision discussion was conducted by conference call by agreement. Mr. Richie Patton of the Tennessee State Employees Association was present at the request of Richard Beckwith-Adams. Based upon all information presented, including testimony, documents, transcripts and acknowledgment by Mr. Beckwith-Adams that he did not in 1992, and did not on July 22, 1997 have the required college degree, Richard W. Beckwith-Adams was dismissed from state service due to his failure to meet the minimum qualifications of the position for which he was hired.

The action by the Department of Environment and Conservation did not preclude application by Richard W. Beckwith-Adams for positions for which he was qualified.

On or about September 8, 1997 Richard W. Beckwith-Adams, claimant, filed an accident report for stress-related health problems claiming that stress came from two areas of his employment (1) his termination and (2) a great deal of stress for 5½ years in the job. The Division of Claims Administration through its claims adjustor, Sedgwick James, denied the claim and advised claimant that he had the right to file an appeal to the Tennessee Claims Commission within 90 days.

Claimant filed Notice of Appeal from Denial of Claim by the Division of Claims Administration on December 16, 1997 stating:

> Applicant was put on administrative leave so as to determine if disabled applicant was qualified to do an environmental specialist III job that the State Personnel Dept. Rating Section had so rated and hired claimant on 5/92. This action caused applicant/claimant too much stress and caused diabetes and depression to the extent that the applicant is unable to do more than light duty for which job search for the last two months has proved that employers will not hire a one-eyed applicant/claimant thus if applicant is truly unqualified as per this dismissal then he worked under a great deal of stress for 5 ½ years with the defendant and that stress is what caused the loss of one eye 3+ years ago due to shingles caused by stress, and caused loss of ½ of 2nd eye since this erroneous layoff/administrative leave causing depression and diabetes on top of existing back injury (from Army) as this person was hired by State of Tennessee as handicapped veteran.

Discovery was conducted by Claimant and by the State of Tennessee, defendant. The deposition of claimant was taken by defendant.

The State of Tennessee filed a motion for summary judgment on the workers' compensation claim and claimant filed a response. The Claims Commissioner granted the motion finding that (1) the claimant did not allege a compensable accident, (2) the standard for summary judgment had been met, (3) claims for mental injury are compensable when the injury meets two requirements, (a) sudden in contrast to a build up of occurrence over a period of employment, and (b) the injury must be caused by an event such as fright, shock or even excessive, unexpected anxiety and the facts of the claim did not meet either of the requirements.

Summary judgment is appropriate if the movant can show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law. Tenn. R. Civ. P. 56.04. The non-movant is entitled to the strongest legitimate view of the evidence and is entitled to all reasonable inferences that may be drawn from the evidence, discarding all countervailing evidence. Shadrick v. Coker 963 S.W. 2d 726, 731 (Tenn. 1998) (citing Byrd v. Hall 847 S.W. 2d 208, 210 - 211 (Tenn. 1993)

An appeal from a summary judgment in a worker's compensation case is not controlled by the de novo standard of review provided by the Workers' Compensation Act but is governed by Rule 56, Tenn. R. Civ. P.; Downen v. Allstate Ins. Co. 811 S.W. 2d 523 (Tenn. 1991). No presumption of correctness attaches to decisions granting summary judgment because they involve only questions of law, thus, the reviewing court must make a fresh determination concerning whether the requirements of Rule 56 have been met. Gonzales v. Alman Const. Co. 857 S.W. 2d 42 (Tenn.

1993)

Claimant filed an answer to the defendant's motion for summary judgment denying that the motion should be granted asserting that "a simple examination of the competing parties statements of facts herein incorporating Claimant's Deposition should be enough to establish that there is, obviously, a dispute."

In addition to the answer Mr. Beckwith-Adams filed a writing titled, "Rule 56 Statement, Defeating Defendant's Motion for Summary Judgment" as follows:

1. Claimant seeks worker's compensation benefits for disability which arose from many varied occurrences over a 5 ½ year period of employment.
2. When placed on administrative leave claimant was threatened even though voices were never raised.
3. Subsequent meetings by telephone were very stressful due to their threatened consequences and claimant's bad health.
4. When a person is disabled, was hired as a disabled employee by the defendant, and is unable to get a job due to disabilities, then those meetings are more pronounced and fit the designation of an accident.
5. These 5 ½ years of employment are a build up to crises points which do fit the accident definition and worker's compensation rules.

I certify that on this
date this was sent
to the Defendant's
attorney
RBA 2/18/99

Respectively
Richard Beckwith-Adams
1010 Burchwood Ave.
Nashville, Tn 37216-3600
615-228-3809 650-9981

In addition to the pleadings, defendant relied upon the claimant's testimony in his deposition taken on the 31st day of July, 1998.

On June 27, 1997, Mr. Beckwith-Adams met with several of his superiors and claimant was placed on administrative leave. That was the meeting that claimant alleged caused injury. In his deposition Mr. Beckwith-Adams testified (page 74, lines 1 -25; page 75 lines 1-22):

Q. At the meeting on June 27th, 1997, where was that meeting held?
A. It was in the L & C Tower. I want to say the conference room. It was probably 7th, 8th floor.
Q. In the conference room there?
A. Yes.
Q. Okay. Were you all seated around a table?
A. Yes.
Q. How did that meeting go?
A. I felt like it was just all planned out. You know, goodbye, go and pack up your stuff and leave.
Q. Did Mr. Walton ever raise his voice with you?
A. No.
Q. How about Mr. Culbertson?
A. Nobody raised their voice.
Q. Did anybody insult you during that meeting?
A. I felt it was insulting to be told that I wasn't qualified to do my job. I issued more permits than anybody else during the previous year. I issued 160. Some

people had issued 40, 60 permits.
Q. Did anybody act in any unprofessional manner toward you?
A. No.
Q. At that time?
A. No.
Q. Okay.
A. They presented it as a quandary.
Q. What type of quandary?
A. Well, as people that had worked together and supposedly as friends, that we were in this – this predicament. My degrees, my resumes, my transcripts, even with the courses I had taken, were in the file for the whole five years. They were in personnel. I carried them in when I had the interview to get this job. They had them in the file. They didn't have any problem with my education or experience until such time as I was identified as being somebody that wasn't willing to violate the law, and then they had to find a reason to get rid of me.

Following the meeting there were a number of teleconferences between Mr. Beckwith-Adams and department personnel about his education. As to those calls Mr. Beckwith-Adams testified in his deposition page 77 lines 12-16:

Q. In the course of the various teleconferences and other meetings that you had, were they conducted in a professional manner?
A. Yes, I think so.

In his accident report Mr. Beckwith-Adams referred to being placed on administrative leave under adverse conditions. He was asked in deposition about the adverse conditions. (page 79 lines 8-25; page 80 lines 1 -7):

Q. Referring back to your accident report, Mr. Beckwith-Adams, in the portion that is stated, "Description of the Injury," where it asks you to describe the injury in detail and state how it occurred, I'll read to you what I see, and if I'm wrong, correct me.
"Mr. John Walton, P.E., director of air pollution, E and C, put me on administrative leave under adverse conditions. This stress caused diabetes and loss of eye, blood sugar went to 495, one half of remaining eye and lost eye and urinary control, plus mental health problem." Is that correct?
A. Yes, ma'am.
Q. Okay. What were the adverse conditions that you are referring to in that description?
A. It's retaliation in dismissal, high levels of stress.
Q. Anything else?
A. Just normal stress a person would receive that they were erroneously disciplined and dismissed.

In support of his claim Mr. Beckwith-Adams submitted an assessment by Dr. Singh. When submitted, defendant objected and the Claims Commissioner overruled the objection. Assessment listed a number of diagnoses: (1) manic depression, (2) thoughts of suicide, (3) diabetic, (4) hemocromotoese. The assessment did not establish causation between the injury on the job claimed by Mr. Beckwith-Adams and diagnoses made by Dr. Singh. When Mr. Beckwith-Adams

was asked in his deposition if Dr. Singh advised that his mental health condition is a result of job stress, Mr. Beckwith-Adams answered that he was not asking for that:

Deposition, page 105, lines 3-6:

Q. Has Dr. Singh advised you that your mental health condition is a result of your job stress?
A. I'm not asking for that.

The Tennessee Supreme Court has addressed on numerous occasions the issue of whether a mental disorder is a compensable accidental injury under the Tennessee Workers' Compensation Statutes. In Jose v. Equifax, Inc. 556 S.W. 2d 82 (Tenn. 1977) the plaintiff, an insurance adjuster alleged that his mental illness and alcoholism were attributable to on the job pressure and tension. Claimant was denied recovery of benefits on the grounds that the Tennessee Workers' Compensation Statute "does not embrace every stress or strain of daily living or every undesirable experience encountered in carrying out the duties of a contract of employment." Jose v. Equifax, supra, page 84.

Tennessee has established a threshold test that in workers' compensation cases, the mental stimulus causing a mental or physical injury must be fright, shock, or an acute sudden or unexpected emotional stress. Worry, anxiety or emotional stress of a usual nature in a particular occupation are not sufficient to establish an injury by accident. Galtin v. City of Knoxville 822 S. W. 2d 587 (Tenn. 1991).

We concur with the Claims Commissioner that the defendant's motion for summary judgment as to the workers' compensation claim of Richard W. Beckwith-Adams is well taken and that the claim should be dismissed.

On the 31st day of August, 1998 Richard Beckwith-Adams filed an amendment to his workers' compensation claim seeking to add wrongful discharge and whistle blower act violations and Americans with Disabilities Act (ADA) violation. Claimant on the 4th day of September, 1998 filed again a writing moving to include issues of wrongful discharge, whistle blower act violation and ADA violations and asking the Claims Commission to indicate what court claimant should use if the motions are denied. The State of Tennessee opposed the attempted amendments alleging that the Claims Commissioner lacked subject matter jurisdiction.

On the 13th day of October, 1998 the Claims Commissioner entered an order denying Richard Beckwith-Adams motions to amend his workers' compensation action to include wrongful discharge

and ADA violations citing lack of jurisdiction. As to the issue of whistle blower violations the Claims Commissioner held that claimant had not provided enough information for a determination of whether or not there was jurisdiction in the Claims Commission and the motion to amend alleging whistle blower violations was held under advisement.

At the request of defendant/appellee a telephone conference was held on the 22nd day of December, 1998 with the claimant, the state's attorney and the Middle Division Claims Comissioner. In that conference call there was discussion of claimant's circumstances as to the whistle blower allegations.

In his deposition on the 31st day of July, 1998 claimant contended that his discharge was retaliatory for being unwilling to issue a permit in 1996 or early 1997 to DSSI, a company with an incinerator that burns low level hazardous waste. John Walton with the Department of Environment and Conservation overruled the denial of the permit and directed that it issue. Richard Beckwith-Adams called EPA and the Tennessee Attorney General's office and stated that the permits should not have been issued.

It was contended by Mr. Beckwith-Adams that the meeting on June 27, 1997 and his termination was retaliation for being unwilling to issue the permit and that his education was just an excuse to get rid of him.

It was in the context of whistle blower allegations that a question of Claims Commission jurisdiction over retaliatory discharge was discussed during the teleconference on December 22, 1998. Responding to the circumstances alleging retaliatory discharge in the teleconference, the defendant/appellee filed on the 28th day of December, 1998 a Motion In Limine That Claims Commission Does Not have Subject Matter Jurisdiction Over Amendment to Claim To Add "Whistle Blower's " Act Allegation moving the commissioner to deny claimant's motion to amend to add the Whistle Blower's Act allegation and arguing in support of denial that the claim of retaliation is not for filing a worker's compensation claim in that claimant filed his worker's compensation claim after his discharge and the Claims Commission lacked subject matter jurisdiction.

In the order entered on the 25th day of January, 1999 the Commission wrote:

> ...The argument in the State's motion in limine says, "This is a claim of retaliation for filing a workers' compensation claim. The claimant filed his worker's compensation claim after his discharge... the claimant ... is not contending that he

> was discharged for filing a worker's compensation claim." This Commission has jurisdiction over retaliatory-discharge claims only under Tennessee Code Annotated section 9-8-307(a)(1)(k) and 9-8-307(a)(1)(L) – that is in connection with workers' compensation or in connection with written contracts. This claimant does not show that he fits either of these laws, and the state argues persuasively that he does not fit either of these. Tennessee Code Annotated section 50-1-304(g) does not enlarge this Commission's jurisdiction; if the legislation had intended for the Claims Commission to have this enlarged jurisdiction it easily could have said so. The state argues, "As Tenn. Code Ann. § 50-1-304 is written, the state is included among the types of employers subject to its general provisions. Nothing in the statute requires that, when the state is the defendant employer, it be sued... in any different forum [from] any other covered employer." The claimant seems to agree: in item 1c he says, "If the Claims Commission determines not to have jurisdiction over the whistle blower claim, the claimant will be forced to file action in Davidson County Court and Federal Court."

The Commissioner denied the motion to amend to allege whistle blower act violation citing lack of jurisdiction.

On the 26th day of January, 1999 claimant filed with the Claims Commission a motion to amend "to include retaliation discharge for attempt to file a workman's compensation claim in 1995. Under Tn Code Ann. Sec. 9-8-307(a)(1)(k) and 9-8-307(a)(1)(l)." In support of his motion claimant alleged that in 1995 after loss of his right eye because of retina detachment caused by stress at work that defendant applied undue pressure on claimant not to file for workman's compensation but to accept continued employment with sick leave and medical insurance.

The Claims Commissioner denied claimant's January 26, 1999 motion to amend his claim to allege retaliatory discharge for attempt to file a workman's compensation claim in 1995 and gave reasons as follows:

1. Tenn. Code Ann. Section 9-8-307(a)(1)(L) is not applicable because the section deals with breach of a written contract and claimant does not allege a written contract and there appears to have been no such written contract.

2. There could be no retaliation for filing a worker's compensation claim in 1995 because no such claim was ever filed.

3. It appears that retaliation against claimant was connected with "whistle-blowing" activities and not with filing a worker's compensation claim and that connecting the retaliation with worker's compensation is simply a device to bring the retaliation allegation within Claims Commission jurisdiction.

4. Events referred to in claimant's motion happened in 1995 and are barred by the one-year statutory limitation on worker's compensation claims.

5. The motion to amend refers only to "undue pressure" and not to retaliatory discharge.

6. The amendment appears not to be just because there are no grounds to find that claimant was discharged in connection with a worker's compensation claim.

7. The Supreme Court has ruled as of the 1st of March, 1999 that this Commission has no jurisdiction over a claim by a former state employee against the state for retaliatory discharge for filing a worker's compensation claim.[1]

The Claims Commissioner denied the motion of Richard Beckwith-Adams to amend his claim to allege violation of T.C.A. 50-1-304, Discharge for refusal to participate in or remain silent about illegal activities, or for legal use of agricultural products – Damages - Frivolous lawsuits citing lack of jurisdiction. Upon initial consideration of the motion the Claims Commissioner found that movant had not provided enough information and that T.C.A. 9-8-307(a)(1)(L) might confer jurisdiction. This section provides that the commission or each commissioner has exclusive jurisdiction and provides:

> T.C.A. § 9-8-307(a)(1)(L)
> Actions for breach of written contract between the claimant and the state which was executed by one (1) or more state officers or employees with authority to execute the contract;...

Movant was allowed to present circumstances to support his motion. There was no written contract and the Claims Commissioner found T.C.A. 9-8-307(a)(1)(L) not to be applicable. Upon consideration of T.C.A. 9-8-307(a)(1)(A) through (U) none were found by the commissioner to confer jurisdiction. We affirm the declination by the Claims Commissioner to allow the amendment to allege violation of T.C.A. 50-1-304.

The Claims Commission has jurisdiction to hear only the claims specifically enumerated in T.C. A. § 9-8-307.

> Legislative Acts conferring jurisdiction upon this Board of Claims to adjudicate claims against the State of Tennessee are and must of necessity be strictly construed. This Board's jurisdiction is limited to the cases specified in the Act, and this limitation cannot be enlarged by implication. Hill v. Beeler 199 Tenn. 325, 238-29,

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[1] On March 22, 1999, the General Assembly enacted legislation that enlarged the Claim's Commission's jurisdiction to include claims based on termination of employment for filing a worker's compensation claim with the Claim's Commission. It became effective on April 17, 1999 and permitted retroactive application to all cases filed with the Claim's Commission on or after July 2, 1992. The opinion of the Supreme Court referenced by the claim's Commission is Morris v. State published in the Advance Sheet at citation 986 S.W. 2d 212 and was withdrawn from the bound volume because a second petition for rehearing was filed. On the 24th day of May, 1999 the Supreme Court issued an opinion substituted by the Court for withdrawn opinion of March 1, 1999.

286 S.W. 2d 868, 869 (Tenn. 1956). (Citations omitted).

In Brown v. State 783 S.W. 2d 567 (Tenn. App. 1989) the Middle Section Court of Civil Appeals at page 571 wrote:

> A statute permitting suit against the state must be strictly construed, and jurisdiction cannot be enlarged by implication. Stokes v. University of Tennessee Tenn. App. 1987, 737 S.W. 2d 545, cert. Den. 485 U.S. 935, 108 S. Ct. 1110, 99 L. Ed. 2d 271 (1988), Sweeney v. State Dept. of Transportation, Tenn. App. 1987, 744 S.W. 2d 905.

The final issue is whether the Claims Commissioner properly denied claimant's motion to amend his claim to allege retaliatory discharge for attempting to file a workers' compensation action in 1995. Rule 15.01 of the Tennessee Rules of Civil Procedure provides:

> A party may amend the party's pleadings once as a matter of course at any time before a responsive pleading is served... Otherwise a party may amend the party's pleadings only by written consent of the adverse party or by leave of Court, and leave shall be freely given when jurisdiction requires.

It is undisputed that the defendant/appellee filed a responsive pleading and that Richard Beckwith-Adams had been served a copy of that responsive pleading. The defendant/appellee did not consent to the amendment.

> In Tennessee, after a responsive pleading has been served, the denial of a motion to amend the pleadings lies within the sound discretion of the trial court. It will not be reversed absent a showing of an abuse of that discretion. Merriman v. Smith 599 S.W. 2d 548, 559 (Tenn. App. 1979); Welch v. Thuan 882 S.W. 2d 792, 793 (Tenn. App. 1994). There are several considerations a trial judge should evaluate in determining whether to grant order of a motion to amend. Among these factors are undue delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment. Merriman 599 S.W. 2d at 559 .

The Claims Commissioner gave reasons for his denial of the motion to amend the retaliation allegation for attempting to file a workers' compensation action in 1995. No workers' compensation action was filed by Richard Beckwith-Adams in 1995. The allegation of Mr. Beckwith-Adams was undue pressure in 1995 not to file such a claim and futility of the amendment was considered as the commissioner stated that there were no grounds to find that claimant was discharged in connection with a workers' compensation claim.

It was July 22, 1997 when Mr. Beckwith-Adams was discharged from state services. It was on or about September 8, 1997 when he filed his workers' compensation claim.

The Supreme Court of Tennessee in Anderson v. Standard Register Co. 857 S.W. 2d 55 (Tenn. 1993) clarified the elements to establish a cause for retaliatory discharge for making a

workers' compensation claim. In Anderson supra, at page 558 the Court stated:

> [2] Based on the principles stated in *Clanton v. Cain-Sloan Co.*, *Chism v. Mid-South Milling Co., Inc.*, and *Johnson v. Saint Francis Hosp., Inc.*, the following elements are found to establish a cause of action for discharge in retaliation for asserting a workers' compensation claim: (1) The plaintiff was an employee of the defendant at the time of the injury; (2) the plaintiff made a claim against the defendant for workers' compensation benefits; (3) the defendant terminated the plaintiff's employment; and (4) the claim for workers' compensation benefits was a substantial factor in the employer's motivation to terminate the employee's employment.

Based upon the considerations given by the commissioner to the motion and the undisputed facts we do not find the commissioner abused his discretion in denying claimant's motion to amend.

The Claims Commission is affirmed, and costs of appeal are assessed to the appellant.

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Tom E. Gray
Special Judge

Concur:

Frank F. Drowota, III, Justice

Samuel L. Lewis, Special Judge