STATE OF MICHIGAN

COURT OF APPEALS

THOMAS ALI ROBINSON,

Plaintiff-Appellant,

v

JCIM, LLC, and YANFENG US AUTOMOTIVE INTERIOR SYSTEMS II, LLC,

Defendants-Appellees,

and

YANFENG INTERIOR AUTOMOTIVE,

Defendant.

UNPUBLISHED
November 27, 2018

No. 342487
Kent Circuit Court
LC No. 17-01367-CD

Before: MURPHY, P.J., and O'CONNELL and BECKERING, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants under MCR 2.116(C)(10) in this action involving claims of religious discrimination and retaliatory discharge under Michigan's Elliott-Larsen Civil Rights Act (CRA), MCL 37.2101 *et seq.* This case arises out of plaintiff's desire to regularly attend congregational prayer at a local mosque at 2:00 p.m. on Fridays pursuant to his Muslim faith. Plaintiff, a first-shift factory worker, was provided accommodation for about 10 months, being allowed to leave work an hour early on Fridays. After plaintiff accepted a different position in the factory, he was no longer permitted to leave early on Fridays, purportedly because his new job entailed working in teams and it was effectively unworkable to continue accommodating plaintiff's religious practices by letting him leave early. Plaintiff, however, continued to leave early on Fridays, disregarding multiple warnings and accumulating attendance points for unexcused absences. Plaintiff rejected offers that would have returned him to his old position or that would have kept him in the same position but working third shift, such that he could have attended Friday prayer. Eventually, plaintiff accumulated the number of attendance points that called for his termination under the governing collective bargaining agreement, and he was terminated. We agree with the trial court that plaintiff's claims of religious discrimination and retaliatory discharge premised on the CRA fail as a matter of law, considering that there was no evidence, direct or otherwise, that his firing was motivated by religious animus or discrimination

or in retaliation for a union grievance that he had filed on the matter. Rather, the record is clear that his employment was terminated because of his unexcused absences. Plaintiff has also failed to develop a legal argument that the CRA creates an affirmative duty to accommodate religious practices and, assuming such a duty, plaintiff fails to argue or demonstrate that the rejected options to accommodate plaintiff's practices were not reasonable. Accordingly, we affirm.

I. THE COMPLAINT

In an amended complaint, plaintiff alleged that he began working for defendants on October 29, 2012, and "performed well by meet[ing] and excelling at all job standards."[1] Plaintiff, who is Muslim, claimed that defendants retaliated and discriminated against him on the basis of his religion, Islam. Plaintiff asserted that defendants forced him to abandon his religious practice of engaging in Friday congregational prayer, which is known as Jumu'ah, when defendants no longer accommodated him by allowing him to leave work an hour early on Fridays. Plaintiff alleged that in October 2015, he contacted the Department of Civil Rights to address the situation, and in November 2015, plaintiff filed a grievance about the matter with his labor union. According to plaintiff, defendants, in response to his union grievance, retaliated against him and terminated his employment. In count I, plaintiff alleged religious discrimination under the CRA, claiming that the discrimination materially affected the terms and conditions of his employment. In count II, also brought under the CRA, plaintiff alleged that he "was retaliated against and fired by [d]efendants for wanting to continue practicing his religion with the accommodation they had previously agreed upon."

II. MOTIONS FOR SUMMARY DISPOSITION AND DOCUMENTARY EVIDENCE

Plaintiff filed a motion for summary disposition under MCR 2.116(C)(9) and (10). Four days later, defendants filed a competing motion for summary disposition under MCR 2.116(C)(10). The documentary evidence attached to the motions revealed the facts discussed in this section of our opinion. Plaintiff began working for defendant JCIM, LLC, in October 2012. JCIM operated an automotive interiors business in Grand Rapids. In January 2015, plaintiff, a first-shift worker, requested permission to leave work at 2:00 p.m. on Fridays so that he could attend congregational prayer services in accordance with his Muslim faith.[2] JCIM allowed plaintiff to do so, given that he worked as a racker loader in JCIM's paint department, that the racker loader position involved plaintiff working independently racking parts, and that, therefore, there was some flexibility relative to his work schedule. We note that, in his deposition, plaintiff described the position as involving grabbing parts and loading them on racks as the racks moved by. He explained that five or six employees would find a spot on the paint line, from which point they would grab parts and rack them. In his view, racker loaders work as a team, although

[1] Throughout the lower court proceedings, and now on appeal, plaintiff has been representing himself, acting pro se.

[2] In his deposition, plaintiff testified that Muslim men are required to participate in Jumu'ah and that it must be done in a congregational setting at a mosque.

he acknowledged that when a racker loader was absent, half the time the remaining racker loaders would simply have to work harder, as the absent employee would not be replaced.

In July 2015, plaintiff became an employee of defendant Yanfeng US Automotive Interior Systems II, LLC, which took over ownership of the automotive interiors business upon purchasing it from JCIM.[3] Plaintiff continued his job as a racker loader for his new employer Yanfeng, who, like JCIM, allowed plaintiff to leave early on Fridays for Jumu'ah, until October 2015 when plaintiff accepted a different position as an assembler in the assembly department working first shift. According to Yanfeng personnel, as an assembler, plaintiff was required to work more closely with coworkers, doing so in teams and on a production line, and Yanfeng needed assemblers to work their full shifts in order to keep the production line in operation and to meet customer demands. Because of the nature of the new job, Yanfeng could no longer allow plaintiff to leave early for Friday prayer.[4] We do note that plaintiff testified that, as an assembler, he worked on a single-operator press by himself approximately two full days a week and that about fifty percent of the time he worked in teams of two or more employees.[5] Plaintiff

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[3] In plaintiff's original complaint, he solely named JCIM as defendant. In plaintiff's amended complaint, he named JCIM and "Yan Feng Interior Automotive" as defendants. In a subsequent stipulated order, the case caption was amended to replace Yan Feng Interior Automotive with Yanfeng US Automotive Interior Systems II, LLC (hereafter Yanfeng).

[4] In an affidavit, Yanfeng's human resources manager averred:

> 8. Yanfeng denied [plaintiff's] request to leave work early on Fridays in his job as an Assembler in the Assembly Department, after he began in that position in October 2015. I was involved in that decision. Yanfeng denied [plaintiff's] request because it needs all Assemblers to work their entire assigned shifts to meet production demands. In contrast to Racker Loaders, Assemblers work together in teams, known as "cells" which are typically composed of between four and six employees, throughout their shifts, and they usually need to work at the same time as each other to complete their work.
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> 9. When Assemblers are absent, Yanfeng may borrow employees who work in another area if necessary, or else the Company will operate short-staffed and may require workers to stay additional time (and pay them overtime) to make up for an individual's absence. Because Yanfeng's workforce is unionized, it needs to follow certain procedures when assigning work, and overtime is generally offered on the basis of seniority. The burdens imposed on Yanfeng when an Assembler is absent include costs for replacement workers (including overtime pay), efficiency losses, and the administrative burden of assigning work in accordance with the collective bargaining agreement.

[5] The formal job description for "assembler" provided: "The Assembly Associate is responsible for the safe and quality conscious operation of his/her machine. This person is charged with manning his/her work station in a defined work center, performing necessary manufacturing related tasks, reporting of production rates, product quality and work center safety."

also stated that when an assembler was absent, a replacement was generally found in order to keep the presses operating. Plaintiff testified that on October 30, 2015, he met one-on-one with a human resources supervisor, Moon Tran, who informed plaintiff that while he could leave at 2:00 p.m. that particular day, he would no longer be allowed to leave at 2:00 p.m. on Fridays.[6] Despite this meeting and Yanfeng's rejection of plaintiff's requests to continue leaving work early on Fridays for Jumu'ah, plaintiff simply disregarded Yanfeng's stance and left early on Fridays.[7]

By early November 2015, plaintiff had accumulated 19 attendance points for unexcused absences under the attendance policy contained in a collective bargaining agreement (CBA) covering plaintiff, and he was warned repeatedly that he would continue to accumulate attendance points if he kept leaving early without permission. Under the CBA, if an employee receives 21 attendance points, the employee is subject to termination.[8] In handwritten letters by Yanfeng's human resource manager dated November 10 and 19, 2015, he explained that he had met with plaintiff on those dates and informed him that he could not leave before the end of his shift on Fridays. The human resource manager also claimed to have given plaintiff the option to return to his old position as a racker loader, where he would be permitted to again leave early on Fridays, or plaintiff could retain his job as an assembler but work third shift, which would not interfere with Friday prayer. According to the human resources manager, plaintiff angrily refused both options, and he continued to leave early on Fridays for Jumu'ah. Plaintiff testified that the first time that he was offered a third-shift position as an assembler was on December 2, 2015, not earlier.

The record contains internal company e-mails from November 2015, reflecting plaintiff's ongoing conduct in leaving early without permission, his rejection of offers to work third shift or to return to his old job, the need to assess attendance points against plaintiff in light of his behavior, and Yanfeng's position that plaintiff could not leave early on Fridays in his job as an assembler. On November 23, 2015, plaintiff was given a final warning, indicating that he had

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[6] Plaintiff repeatedly frames or characterizes his interactions with Yanfeng personnel, including Moon Tran, as entailing demands by personnel that he stop practicing his religious beliefs, even though it is clear that all that was being requested of him—expressly— was to stop leaving on Fridays before his shift ended at 3:00 p.m. Plaintiff, of course, viewed those requests as effectively demanding him to stop participating in Jumu'ah.

[7] Plaintiff testified that his standard shift for all of 2015 was 7:40 a.m. to 3:00 p.m., except on Fridays when he would leave at 2:00 p.m. for congregational prayer, initially with permission and then without. He also testified that before January 2015, his scheduled shift ended in time to attend Jumu'ah and that he first sought accommodation in January 2015 when JCIM started scheduling him until 3:00 p.m.

[8] The CBA provided that one point was to be assessed for a tardy involving "leaving early 1 hour or less" and that "[e]mployees who accumulate 21 points will be terminated." It appears that plaintiff had accumulated a number of attendance points aside from those associated with his tardies on Fridays.

now accumulated 20 attendance points; plaintiff refused to sign the written notification. On November 25, 2015, plaintiff filed a grievance with the union, requesting that Yanfeng remove the accrued attendance points and return to accommodating his religious practices. Plaintiff complained that the company was no longer honoring the prior agreement that plaintiff could leave early on Fridays, nor had the company offered an alternative or new accommodation. Yanfeng rejected the grievance. On December 7, 2015, plaintiff, who again left early absent permission, accumulated his 21st attendance point, and his employment with Yanfeng was terminated pursuant to the CBA's attendance policy.

In plaintiff's motion for summary disposition, he argued that Yanfeng discriminated against him by demanding that he abandon his religious practices, which the company was effectively doing by refusing to allow him to leave early on Fridays. Plaintiff also maintained that there was no evidence showing that Yanfeng had offered him "an alternate accommodation." He further contended that he suffered adverse actions at the hands of Yanfeng when the company approved attendance points based on plaintiff merely observing his religion. Finally, plaintiff claimed that Yanfeng terminated his employment in retaliation for him filing the grievance with the union.[9]

In defendants' motion for summary disposition, JCIM argued that it was entitled to an order of dismissal because all of the complained of conduct occurred after JCIM sold the business to Yanfeng. Both defendants contended that employers have no duty to accommodate an employee's religious beliefs under the CRA. Further, defendants maintained that plaintiff could not make a prima facie case of discrimination, because Yanfeng simply followed the attendance policy in terminating plaintiff, considering that he had accumulated 21 attendance points due to repeated unexcused absences. Defendants additionally argued that plaintiff had not alleged or shown that similarly-situated, non-Muslim employees had been treated more favorably. Defendants also claimed that plaintiff could not make a prima facie case of retaliation, given that none of his activity relating to his religious accommodation request, including the grievance, was protected, and considering that there was no causal connection between the termination and any alleged protected activity.

III. TRIAL COURT'S RULING

The trial court issued a written opinion and order denying plaintiff's motion for summary disposition and granting defendants' summary disposition motion. The court first examined the facts based on the documentary evidence provided to it, followed by setting forth the standard of review and the tests applicable to motions for summary disposition brought under MCR 2.116(C)(9) and (10). The trial court then rejected plaintiff's argument under MCR 2.116(C)(9), concluding that defendants had pleaded valid defenses to plaintiff's claims in their answer and

[9] One of the documents attached to plaintiff's motion was a "statement" made by the "union chair." It is not in the form of an affidavit, and it consists of four typed questions, ostensibly drafted by plaintiff, followed by handwritten answers by the union chair. The union chair indicated that in January 2015, he had negotiated the religious accommodation for plaintiff, which accommodation allowed plaintiff to leave at 2:00 p.m. on Fridays.

that, moreover, plaintiff failed to timely file the motion under the scheduling order in regard to dispositional motions based on the pleadings alone. The trial court next proceeded to address the parties' competing motions under MCR 2.116(C)(10). The court first summarily dismissed JCIM as a defendant, considering that the CRA requires the existence of an employment relationship and that there was no genuine issue of material fact that JCIM was not plaintiff's employer at the time of the alleged discrimination and retaliation.

With respect to Yanfeng, the trial court noted that plaintiff is a member of a protected class, that he suffered an adverse employment action, and that he was qualified for his job as an assembler. The court, however, determined that plaintiff had failed to offer evidence giving rise to an inference of discrimination. The trial court also found that plaintiff had been held to the same standards applicable to all other Yanfeng employees. The court further explained that plaintiff was presented with options to accommodate his desire to participate in Friday prayer, but he declined to exercise any option. Based on the record, the trial court ruled that plaintiff had not presented a prima facie case of discrimination. Furthermore, assuming that plaintiff had made a prima facie showing, the court found that Yanfeng had proffered a legitimate, nondiscriminatory reason for the termination—plaintiff repeatedly left work early without permission in violation of policies, and that plaintiff had not presented evidence that the reason for termination was a mere pretext for unlawful discrimination.

The trial court moved on to plaintiff's retaliation claim. The court initially determined that the filing of the grievance was not clearly shown to constitute protected activity under the CRA, where the grievance did not mention discrimination but only requested removal of attendance points and reinstatement of the prior accommodation. Assuming that the activity was protected, the trial court found that dismissal was nonetheless warranted because plaintiff did not present evidence establishing a causal connection between the grievance and his firing beyond mere temporal proximity. Instead, according to the court, plaintiff had been advised, well in advance of the grievance, that he was no longer permitted to leave early on Fridays, having met with human resources at least twice to discuss attendance failures. Indeed, a final written notice that warned plaintiff of the prospect of termination should he continue to leave early on his own accord was received by plaintiff prior to plaintiff filing the grievance. Finally, assuming that plaintiff had satisfied his initial burden of proof, the trial court found that plaintiff had failed to rebut the legitimate, nondiscriminatory reason offered by Yanfeng for terminating plaintiff's employment, i.e., he repeatedly left work early on Fridays without permission, nor had plaintiff offered any evidence that the proffered reason for the firing was a mere pretext for unlawful retaliation. Plaintiff appeals as of right.

IV. PLAINTIFF'S APPEAL – ANALYSIS

A. STANDARD OF REVIEW AND SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162; 809 NW2d 553 (2011). We likewise review de novo any issues of statutory construction. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008). With respect to the well-established principles governing the analysis of a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court in *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 377; 836 NW2d 257 (2013), observed:

> In general, MCR 2.116(C)(10) provides for summary disposition when there is no genuine issue regarding any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. A motion brought under MCR 2.116(C)(10) tests the factual support for a party's claim. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. The trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). [Citations and quotation marks omitted.]

B. DISCUSSION AND RESOLUTION

As alleged in the complaint, both of plaintiff's causes of action are grounded in the CRA. Under MCL 37.2202(1)(a), an employer is not permitted to "discharge[] or otherwise discriminate against an individual . . . because of religion." And under MCL 37.2701(a), a person may not "[r]etaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act."

1. THE CRA AND DISCRIMINATION BASED ON RELIGION

In discrimination cases, when a plaintiff is able to produce direct evidence of religious bias, "the plaintiff can go forward and prove unlawful discrimination in the same manner as a plaintiff would prove any other case." *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001) (addressing a claim of racial discrimination). Direct evidence is evidence which, if believed, requires the conclusion that unlawful discrimination played at least a motivating factor with respect to the employer's adverse action. *Id.* When a plaintiff has no direct evidence of discrimination, the plaintiff must proceed through the steps outlined in *McDonnell Douglas Corp v Green*, 411 US 792, 802-803; 93 S Ct 1817; 36 L Ed 2d 668 (1973). *Hazle*, 464 Mich at 462. "The *McDonnell Douglas* approach allows a plaintiff to present a rebuttable prima facie case on the basis of proofs from which a factfinder could *infer* that the plaintiff was the victim of unlawful discrimination." *Hazle*, 464 Mich at 462 (quotation marks omitted).

With regard to establishing a prima facie case of discrimination, plaintiff was required to present evidence that (1) he belongs to a protected class, (2) he suffered an adverse employment action, (3) he was qualified for the position, and (4) he was fired under circumstances giving rise to an inference of unlawful discrimination. *Id.* at 463. A presumption of discrimination arises when a plaintiff adequately establishes a prima facie case. *Id.* "However, the fact that a plaintiff has established a prima facie case of discrimination under *McDonnell Douglas* does not necessarily preclude summary disposition in the defendant's favor." *Id.* at 463-464. A prima facie case under *McDonnell Douglas* does not describe the plaintiff's burden of production, but

merely establishes a rebuttable presumption. *Id.* at 464. Therefore, "once a plaintiff establishes a prima facie case of discrimination, the defendant has the opportunity to articulate a legitimate, nondiscriminatory reason for its employment decision in an effort to rebut the presumption created by the plaintiff's prima facie case." *Id.*

Our Supreme Court in *Hazle*, *id.* at 464-466, further explained the analytical process, stating:

> The articulation requirement means that the defendant has the burden of producing evidence that its employment actions were taken for a legitimate, nondiscriminatory reason. Thus, the defendant cannot meet its burden merely through an answer to the complaint or by argument of counsel. If the employer makes such an articulation, the presumption created by the *McDonnell Douglas* prima facie case drops away.
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> At that point, in order to survive a motion for summary disposition, the plaintiff must demonstrate that the evidence in the case, when construed in the plaintiff's favor, is sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor for the adverse action taken by the employer toward the plaintiff. . . . [A] plaintiff must not merely raise a triable issue that the employer's proffered reason was pretextual, but that it was a pretext for [unlawful] discrimination.
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> The inquiry at this final stage of the *McDonnell Douglas* framework is exactly the same as the ultimate factual inquiry made by the jury: whether consideration of a protected characteristic was a motivating factor, namely, whether it made a difference in the contested employment decision. The only difference is that, for purposes of a motion for summary disposition or directed verdict, a plaintiff need only create a question of material fact upon which reasonable minds could differ regarding whether discrimination was a motivating factor in the employer's decision. [Citations and quotation marks omitted; second alteration in original.]

Here, there was no direct evidence of religious bias. There is no dispute that plaintiff belongs to a protected class—he is a Muslim practicing Islam, that he suffered an adverse employment action—he was terminated, and that he was qualified for the position of assembler—Yanfeng does not question his skills as an assembler. Additionally, we cannot conclude that plaintiff presented evidence showing that he was fired under circumstances giving rise to an inference of unlawful discrimination. Although the reason he sought to leave early on Fridays was to go to his mosque and participate in Jumu'ah, Yanfeng's termination decision was based on the undisputed fact that plaintiff accumulated 21 attendance points for unexcused absences. Plaintiff defiantly ignored repeated warnings that he did not have permission to leave early on Fridays, that he would accumulate attendance points for continued unexcused absences, and that he would eventually be terminated if he kept failing to stay until his shift ended at 3:00 p.m. on Fridays. There is no evidence from which to infer that plaintiff was fired because he was practicing his Muslim faith. Furthermore, assuming the establishment of a prima facie case, Yanfeng articulated a legitimate, nondiscriminatory reason to terminate plaintiff, i.e., continuing

unexcused absences, and plaintiff presented no evidence that the proffered reason was a pretext for unlawful discrimination.

Plaintiff argues that the trial court confused two e-mails sent between Yanfeng personnel in November 2015, where the court attributed a November 21, 2015 e-mail as being central to plaintiff's claim of discrimination. In the trial court's opinion and order, it identified an e-mail as being sent on November 21, 2015, but it is clear from the court's discussion of its contents that the e-mail was one that was actually sent on November 6, 2015, and that the e-mail's sender was misidentified by the court. The e-mail sent on November 6, 2015, by Moon Tran to other company officials provided:

> There is no change in [plaintiff's] moving status. He will have to stay in Assembly and we can't accommodate his leaving early request every Friday. Union already aware of this decision.
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> Just wanted to let you know he has some disrespectful behavior and loud with Paint supervisor in the past, we may have to document his behaviors, and attitude for future discipline.

An e-mail sent by Truc Thanh Tran to company officials on November 21, 2015, simply stated, "[plaintiff] left early yesterday without let me know again. I just ask him today he said everybody know he left every week on Friday at 2:00 pm."

Plaintiff fails to explain the relevancy of the mix-up. Indeed, the trial court examined and considered the substance of the November 6, 2015 e-mail, which plaintiff believed supported his case; the court simply misidentified its date and author. Plaintiff contends that the November 6, 2015 e-mail constituted direct evidence of religious discrimination, indicating that Moon Tran had no intention of accommodating plaintiff's religious practices. First, we see nothing in the e-mail that even remotely reflects religious bias on the part of Moon Tran. Furthermore, the options presented to plaintiff by the human resources manager, i.e., return to his old position or work third shift as an assembler, were made after the November 6th e-mail but before his termination.[10] Plaintiff himself testified that he was offered a third-shift, assembler position prior to his termination. There is no language in the November 6, 2015 e-mail from Moon Tran that warrants reversal of the trial court's ruling.

In sum, we affirm the trial court's ruling that summarily dismissed the religious discrimination claim in count I of plaintiff's complaint.

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[10] Additionally, the record also contains a November 12, 2015 e-mail from Moon Tran to Truc Thanh Tran, wherein she stated, "Can you please talk to [plaintiff] about the accommodation of leaving early in Assembly, the other option is: if he consider moving to 3rd shift to fit his schedules he can use the shift preference form and submit to the supervisor, we will process his shift change based on the seniority." Truc Thanh Tran responded the same day by e-mail, stating, "I am already talk to him after you call me. Then he said, he will . . . think[] about that and let us know tomorrow."

2. THE CRA AND RETALIATORY DISCHARGE

In *Meyer v City of Center Line*, 242 Mich App 560, 568-569; 619 NW2d 182 (2000), this Court set forth the elements of a CRA-based retaliation claim under MCL 37.2701(a), explaining:

> To establish a prima facie case of retaliation under the Civil Rights Act, a plaintiff must show (1) that the plaintiff engaged in a protected activity, (2) that this was known by the defendant, (3) that the defendant took an employment action adverse to the plaintiff, and (4) that there was a causal connection between the protected activity and the adverse employment action. [See also *DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997).]

To establish the element of causation, a plaintiff must show that his or her participation in protected activity identified in the CRA was a "significant factor" in the employer's adverse employment action, not simply that a causal link existed between the two. *Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001). "A causal connection can be established through circumstantial evidence, such as close temporal proximity between the protected activity and adverse actions, as long as the evidence would enable a reasonable fact-finder to infer that an action had a discriminatory or retaliatory basis." *Rymal v Baergen*, 262 Mich App 274, 303; 686 NW2d 241 (2004).

Comparable to our discussion and resolution of the religious discrimination claim, the evidence quite clearly and as a matter of law established that plaintiff was terminated because of unexcused absences and not in retaliation for filing the grievance with the union. In fact, plaintiff's own testimony was that he was warned by Moon Tran on October 30, 2015, long before the grievance was filed, that he would not be allowed to leave work early on Fridays, yet he did so. And he continued to do so despite warning after warning and the accumulation of attendance points for unexcused absences. There is no evidence showing a causal connection between the grievance and plaintiff's firing, nor can a causal connection be reasonably inferred from the evidence. Although plaintiff's termination occurred just a couple of weeks after the grievance was filed, the firing at that point in time was because plaintiff had by then accumulated the number of attendance points for unexcused absences that justified termination under the CBA. And this is all assuming that the filing of the grievance constituted protected activity under MCL 37.2701(a).

Plaintiff returns to his previous focus on the November 6, 2015 e-mail by Moon Tran. Plaintiff argues that Moon Tran threatened future discipline in the e-mail, that the e-mail revealed retaliatory reasons for assessing attendance points, and that, on November 9, 2015, attendance points were in fact assessed against plaintiff. First, we fail to see how this argument has any relevancy to the allegation that Yanfeng terminated plaintiff's employment in retaliation for plaintiff filing the union grievance. To the extent that plaintiff is now contending that the assessment of attendance points was retaliatory as reflected in Moon Tran's e-mail, the e-mail simply supplies no support whatsoever for his position. Indeed, Moon Tran's reference to "future discipline" was simply for the purpose of indicating that plaintiff's "disrespectful behavior" needed to be documented so as to properly justify any subsequent discipline if the behavior continued. And we are not prepared to find that plaintiff's disrespectful behavior

constituted protected activity, assuming that Moon Tran was even speaking of unexcused absences. Moreover, as noted earlier, Moon Tran sent an e-mail on November 12, 2015, asking Truc Thanh Tran to speak to plaintiff about the possibility of working third shift, and Truc Thanh Tran responded by indicating that he had spoken to plaintiff about the option and that plaintiff was considering it.

Plaintiff additionally argues that the trial court erred in concluding that plaintiff did not file his grievance before receiving his final written warning, where the grievance procedure was initiated with the union chair on November 2, 2015, with the formal written grievance being submitted on November 24, 2015. Assuming that this is even a factually accurate claim—no citation to the record is provided by plaintiff, the retaliation claim still fails, because even if the grievance predated any final warning, there is nonetheless a dearth of evidence that the termination occurred in response to the grievance as opposed to being the result of the maximum-allowed unexcused absences.

In sum, we affirm the trial court's ruling that summarily dismissed the retaliation claim in count II of plaintiff's complaint.

3. THE CRA AND ACCOMMODATION OF RELIGIOUS BELIEFS

We recognize that plaintiff's case does not fit neatly into the category of a typical CRA discrimination or retaliation case. Rather, at its core, plaintiff's case concerns a claim that Yanfeng was required to accommodate his religious practices and failed to do so, thereby establishing religious discrimination. We are not aware of any published, or even unpublished, Michigan cases answering the question whether the CRA authorizes a religious-accommodation case. Defendants have directed us to a number of unpublished federal cases that indicate that the CRA does not include an affirmative duty to accommodate an employee's religious beliefs. One published federal opinion, *Wessling v Kroger Co*, 554 F Supp 548, 552 (ED Mich, 1982), states, without any reasoning, analysis, or explanation, that there is no requirement to accommodate religious practices under the CRA. We decline to resolve the question whether the CRA establishes a duty for employers to accommodate an employee's religious beliefs. Plaintiff fails to develop any legal argument or analysis whatsoever on the CRA's reach and whether it creates such a duty. Moreover, Yanfeng attempted to accommodate plaintiff by offering him the options of returning to his old position as a racker loader or to work third shift as an assembler. Plaintiff does not contend that these rejected attempts at religious accommodation were unreasonable. See *Ansonia Bd of Ed v Philbrook*, 479 US 60, 68; 107 S Ct 367; 93 L Ed 2d 305 (1986) (Under Title VII, any reasonable accommodation by an employer is sufficient to meet its accommodation obligation). Reversal is unwarranted.

Affirmed. We decline to award taxable costs under MCR 7.219.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Jane M. Beckering