



Issue Date: 03 September 2013

Case No.: 2013-FRS-51

In the Matter of:

James Green
Complainant

v.

Grand
Trunk Western
Railway Co.,
Respondent

**ORDER GRANTING RESPONDENT'S MOTION TO COMPEL
AND DENYING COMPLAINANT'S MOTION FOR PROTECTIVE ORDER**

The hearing in this matter is scheduled to begin on November 5, 2013, in Detroit, Michigan. On July 16, 2013, the Complainant filed his Motion for Protective Order, seeking to protect his health records from discovery. On August 12, 2013, the Respondent filed its Motion to Compel, and Opposition to Complainant's Motion for Protective Order. Finally, on August 22, 2013, the Complainant filed his Response to the Respondent's Motion to Compel and Opposition to Complainant's Motion for Protective Order.

In his Motion for Protective Order, the Complainant argued that his personal medical records were protected by his right to medical privacy under HIPPA, ADA, GINA, and State Law. He argued that his claim was not for any "actual physical injury" he suffered, but was based on retaliation for engaging in protected activity, and any claim for an actual physical injury would fall under the Federal Employers Liability Act, and not with OSHA. The Complainant asked for a protective order barring the Respondent from obtaining his "Protected Health Information," and limiting the scope of any other discovery to his "statement of facts" set out in his Motion.

The Respondent argued that the requested information and documents are relevant to the Complainant's underlying claim, and that the Complainant has placed his medical condition squarely at issue.

DISCUSSION

This case involves the Complainant's claim that he was dismissed in retaliation for requesting medical treatment for chest pain after he was requested to undergo a drug and alcohol

test. When the Complainant reported to work on April 16, 2012, he was asked to submit to a drug and alcohol test, based on a report by his supervisor and others that he showed signs of being under the influence of alcohol. The Complainant claimed that he could not undergo the test, and complained of tightness and pain in his chest; an ambulance was called to take him to the hospital. The Respondent advised the Complainant that his failure to submit to the drug and alcohol test was deemed a refusal to test, and he was disqualified from service. The Respondent also advised the Complainant that he was required to submit medical documentation detailing the nature of the medical emergency, if he claimed that it prevented him from taking the test. The Complainant did not submit any such documentation, and he was terminated for a refusal to take the drug and alcohol test.

The Respondent is correct, that the Complainant has clearly put his medical condition at issue in this claim. That the Complainant is not seeking to recover damages for any “actual physical injury” is irrelevant. The Complainant’s case is grounded in his claim that he engaged in protected activity by reporting a medical condition on the job, and that he was dismissed for doing so. The Respondent’s defense hinges on its implicit claim that the Complainant’s emergency medical condition was contrived, and was an excuse to avoid undergoing the drug and alcohol test.

If the Complainant’s claim of a medical emergency was a sham, then he did not engage in any protected activity. Clearly the medical records from his treatment at the hospital are relevant on this issue, as are any other medical records that would indicate whether the Complainant had any pre-existing conditions that could have resulted in his medical emergency. The Respondent is entitled to discovery on this issue, which is the crux of the Complainant’s claim.

The Complainant is not entitled to withhold his responses or documentation on the grounds that the requests violate his rights to medical privacy. He has put his medical condition squarely at issue, and the Respondent is entitled to documentation that may bear on the truth or falsity of the Complainant’s report of a medical emergency that prevented him from undergoing a drug and alcohol test. The Respondent has provided the Complainant with HIPAA-compliant authorizations for the release of the requested medical information. As the Respondent notes, these authorizations specifically provide that the providers may not disclose any information protected by the Genetic Information Nondiscrimination Act of 2008.

I note that Respondent’s Interrogatory No. 12 requests the identity of any health care provider that the Complainant has seen, as well as authorizations for release of medical records for the past ten years; Document Request No. 12 requests documents for his treatment by such providers. As the Complainant is seeking damages in the form of lost wages, despite his claim that he suffers from a pre-existing cardiac condition for which he was awarded a Railroad Retirement Disability Annuity in February 2013, the Respondent is entitled to discovery on the issue of his actual ability to work, as well as the issue of whether he had an underlying condition that could have resulted in a bona fide medical emergency on April 16, 2012. However, the Complainant will be required to authorize production of only those records related to treatment by physicians, as opposed to mental health or social services providers. The Complainant’s

mental health status is not implicated in this claim, and discovery of these records could not lead to any information relevant to the issues in this claim.

I find that the Respondents Interrogatories No. 5 and No. 12 (limited to treatment by physicians), and its Document Requests No. 9, 10, 11, and 12 (again, limited to treatment by physicians), focus specifically on information and records relating to the Complainant's claim that he suffered a medical emergency on April 16, 2012, on which he bases his argument that he engaged in protected activity, and his claim for damages.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED that the Complainant's request for a protective order is DENIED, and the Respondent's motion to compel is GRANTED. The Complainant will respond to the Respondent's Interrogatories No. 5 and No. 12 (limited to treatment by physicians), and its Document Requests No. 9, 10, 11, and 12 (limited to treatment by physicians) forthwith. The Complainant is reminded that a failure to cooperate in discovery can result in sanctions, including dismissal of his claim.

SO ORDERED.

LINDA S. CHAPMAN
Administrative Law Judge