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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

John A. Burt	:	
	:	Civil Action
v.	:	
	:	File No. 90-295
Standard Register Company, Inc.	:	
Dean McLaughlin	:	

OPINION AND ORDER

Plaintiff John A. Burt ("Burt") brings this tort and contract action against his former employer, Standard Register Company, Inc. ("Standard Register"), and Dean McLaughlin ("McLaughlin"), a Standard Register employee. Standard Register and McLaughlin have moved for summary judgment on each of Burt's claims. For the reasons that follow, Standard Register's motion on Counts II, IV, V, and VI of the complaint is granted and Standard Register's motion on Count I is denied. McLaughlin's motion on Count III is denied.

BACKGROUND[1]

Burt began work as a collator operator with Standard Register in May, 1986. At the time Burt began work, Standard Register outlined the terms of his employment and gave him an

[1] This background statement was gleaned from various representations set forth in the court's file. Its sole purpose is to assist in framing the issues before the court. It does not represent findings of fact, which must be established at trial in the customary manner.

employee handbook which contained a disclaimer in bold type reading: "NEITHER THIS HANDBOOK NOR ANY PROVISION OF THIS HANDBOOK IS AN EMPLOYMENT CONTRACT OR ANY OTHER TYPE OF CONTRACT." Burt signed a statement that he had read the handbook.

In early 1988, Standard Register adopted a smoking policy and thereby became a smoke-free workplace in accordance with the provisions of 18 V.S.A. Sections 1421-1428. Despite the company's adoption of the policy, which significantly reduced the freedom of its employees to smoke tobacco, many employees continued to smoke where and when they pleased. Burt made several attempts to get the company to enforce the policy, but, after being rebuffed, he became frustrated and reported Standard Register's noncompliance to the Vermont Department of Health. A Standard Register supervisor later told Burt the company knew Burt had "turned it in" to the Department of Health.

During the course of his employment, Burt and other employees regularly teased a co-worker, Shirley Pelletier, for greatly exceeding her production quotas. In August, 1990, Pelletier found that someone had destroyed the lock on her locker, which was the property of Standard Register. The company investigated the incident and elicited statements from employee Chris Scherer and defendant McLaughlin that each had seen Burt striking the lock with a hammer. Shortly after obtaining the statements of Scherer and McLaughlin, the company,

citing Burt's destruction of company property as well as his on-the-job harassment of Pelletier, fired Burt.

Burt denies destroying the lock and claims McLaughlin lied about Burt's involvement in the incident. According to Burt, McLaughlin had a motive to lie because Burt had once complained to Standard Register management about McLaughlin's allegedly substandard work practices. In support of his claim that McLaughlin lied, Burt maintains that Scherer has admitted to him not seeing Burt strike the lock and being coerced by Standard Register into signing a statement to the effect that he did. Burt also claims that someone[2] once told him that McLaughlin was out to "get him" for complaining about McLaughlin to management.

In October, 1990, Burt filed this action in Addison (Vermont) Superior Court, bringing claims of wrongful discharge, breach of contract, defamation, defamation by self-publication, and negligence against Standard Register. Standard Register removed the action to this court on diversity grounds. Burt amended the complaint to add a defamation claim against McLaughlin. Standard Register and McLaughlin moved for summary judgment on all counts. We consider these motions below.

DISCUSSION

I. Jurisdiction

A United States district court has jurisdiction over matters where the parties are citizens of different states and

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[2] Burt cannot remember the name of this person.

the amount in controversy exceeds $50,000. 28 U.S.C. § 1332(a). Standard Register is an Ohio corporation and its principal place of business is also Ohio. McLaughlin is a citizen of New York. Burt is a citizen of Vermont and seeks damages in excess of $950,000. Therefore, we have jurisdiction.

II. Standard of Review

We will grant summary judgment when there is no genuine issue of material fact and when, based upon facts not in dispute, the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552-53 (1986). In assessing the record, we must draw all reasonable inferences and resolve all ambiguities in favor of the non-moving party. Dister v. Continental Group, Inc., 859 F.2d 1108, 1114 (2d Cir. 1988). A dispute regarding a material fact is genuine if the evidence is such that a reasonable jury could return a verdict in favor of the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). However, we will enter judgment against a non-moving party who fails to make a showing sufficient to establish an element essential to that party's case on which that party will bear the burden of proof at trial. Celotex, 106 S. Ct. at 2552.

III. Defendants' Motions for Summary Judgment

A. Count I - Wrongful Discharge

In Count I of the complaint, Burt alleges Standard Register discharged him in retaliation for complaining to the

Department of Health about the company's failure to abide by its smoking policy and that this discharge was so contrary to public policy that it was wrongful. Standard Register moves to dismiss the count on the ground that it fails to state a claim upon which relief can be granted. In deciding such a motion to dismiss we are to presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the non-moving party. Miree v. DeKalb County, 433 U.S. 2490, 97 S. Ct. 2490, 2492 n.2 (1977).

Barring the existence of an employment contract for a specific term, an employer may dismiss an employee at any time, with or without cause, unless there is a clear and compelling public policy against the reason advanced for the discharge. Jones v. Keogh, 137 Vt. 562, 564, 409 A.2d 581 (1979). For purposes of the exception to the at-will employment doctrine, the definition of a clear and compelling public policy is very broad and need not be legislatively defined. Payne v. Rozendaal, 147 Vt. 488, 493, 520 A.2d 586 (1986). Public policy is the community common sense and common conscience, extended and applied throughout the state to matters of public morals, public health, public safety, public welfare, and the like. Id. at 492-93 (quoting Pittsburgh, Cincinnati, Chicago & St. Louis Railway v. Kinney, 95 Ohio St. 64, 68-69, 115 N.E. 505, 507 (1916)).

Viewing Burt's allegations as true, we infer Standard Register fired him because he reported the company's occupa-

tional safety and health law violations to state regulators. We believe that there exists a sufficiently strong public interest in enforcing and upholding the laws that an employer's discharge of an employee in retaliation for his or her efforts to bring that employer into compliance with health laws is so contrary to our society's concern for providing equity and justice that there is a clear and compelling public policy against it. See id. at 494. Accordingly, in Vermont, the public policy exception allows such an aggrieved individual to bring a wrongful discharge action against his or her employer.[3]

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[3] The following cases specifically establish a common law exception to the doctrine of employment at-will for whistle blowers: Harless v. First Nat. Bank, 162 W. Va. 116, 246 S.E.2d 270 (1978) (state and federal consumer credit and protection laws); Palmer v. Brown, 242 Kan. 893, 752 P.2d 685 (1988) (medicaid billing practices); Palmateer v. International Harvester Co., 85 Ill.2d. 124, 421 N.E.2d 876 (1981) (revealing criminal practices of fellow employee); Greeley v. Miami Valley Maintenance Contractors, Inc., 49 Ohio St. 3d 228, 551 N.E.2d 981 (1990) (public policy must be enunciated in statute). These cases may be distinguished from those that protect employees who are fired for refusing to perform illegal acts on their employers' behalf. See, e.g., Petermann v. International Brotherhood of Teamsters etc., 174 Cal. App. 2d 184, 344 P.2d 25 (1959) (refusal to commit perjury).

In addition, in Parker v. M & T Chemicals, Inc., 236 N.J. Super. 451, 566 A.2d 215 (1989) the court, in interpreting New Jersey's whistle blower statute as affording relief to a corporation's discharged in-house counsel, noted that the outcome would have been no different under the State's common law that pre-existed the whistle blower statute.

The courts in Balla v. Gambro, Inc., 145 Ill.2d 492, 584 N.E.2d 104 (1991) and Campbell v. Eli Lilly & Co, 413 N.E.2d 1054 (Ind. Ct. App. 1980) on the facts before them, specifically refused to create common law exceptions to the doctrine of employment at-will for whistle blowers. Like Parker, 566 A.2d at 215, Balla involved a corporation's discharged in-house counsel, but focused more on the attorney-client relationship than on the propriety of applying the public policy exception to

Standard Register argues the Smoking in the Workplace Law, 18 V.S.A. Sections 1421-1428, neither expressly nor impliedly gives Burt the right to bring a wrongful discharge claim. While we agree the law does not create either an express or implied private right to bring an action in court, we do not believe this extinguishes a dismissed whistle blower's common law right to bring a wrongful discharge claim. See id. at 493 (statutes may modify at-will employment doctrine but such modifications are separate from any public policy exception). Thus, unless the law preempts Burt's common law wrongful discharge claim, he is free to bring it here. See id. at 494 n.*.[4]

The common law is changed by statute only if the statute overturns the common law in clear and unambiguous language, or if the statute is clearly inconsistent with the common law, or the statute attempts to cover the entire subject matter. Langle v. Kurkul, 146 Vt. 513, 516, 510 A.2d 1301 (1986) (citing E.B. & A.C. Whiting Co. v. City of Burlington, 106 Vt. 446, 464, 175 A. 35, 44 (1934)). In the instant case,

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whistle blowers. The Balla court, unlike the Parker court, was not able to reconcile the roles of whistle blower and attorney and ruled in the way it determined would maximize in-house counsel loyalty to clients. In Campbell, the court was faced with a legal landscape that did not recognize the existence of a public policy exception to the at-will doctrine. Thus, Campbell is factually distinct from the instant case, where the Vermont Supreme Court has already found the exception exists.

[4] At trial, it will be Burt's burden to prove that his firing was motivated by his efforts to force Standard Register to comply with the Smoking in the Workplace Law, not some other legitimate reason.

the statute does not contain any unambiguous language foreclosing a wrongful discharge claim and even if there were such an ambiguity, we would construe it in favor of the common law rule. In re S.B.L., 150 Vt. 294, 303, 553 A.2d 1078 (1988). Nor is the statute, which merely empowers the Commissioner of Health to institute a superior court action on the aggrieved employee's behalf, inconsistent with the employee's bringing a wrongful discharge claim. Where a statute provides a remedy that is analogous to that provided in the common law, such statutory remedy is merely cumulative and does not preempt the common law. Tucson Gas & Electric Co. v. Schantz, 5 Ariz. App. 511, 428 P.2d 686 (Ariz. Ct. App. 1967). Therefore, Burt's wrongful discharge claim is not preempted by 18 V.S.A. Section 1427. Standard Register's motion to dismiss Count I will be denied.

B. Count II - Breach of Contract

In Count II of the complaint, Burt alleges that Standard Register breached its express and implied employment contract with him when it failed to adhere to company termination procedures and acted with malice in firing him. An employer can, either by express language or clear implication, alter the usual at-will nature of its employment contracts. Benoir v. Ethan Allen, Inc., 147 Vt. 268, 270, 514 A.2d 716 (1986) (citing Drzewiecki v. H & R Block, Inc., 24 Cal. App. 3d 695, 703, 101 Cal. Rptr. 169, 174 (1972)). In determining whether there exists an implied-in-fact promise for something other than an at-will arrangement, courts have considered a

variety of factors, including the personnel policies or practices of the employer. Id. (quoting Pugh v. See's Candies, Inc., 116 Cal. App. 3d 311, 327, 171 Cal. Rptr. 917, 925 (1981)).

Burt argues that provisions in the personnel manual furnished him by Standard Register foreclosed the company's right to fire him without cause. In order for the terms of a personnel manual to alter the prevailing at-will nature of employee contracts, the relevant terms must be bargained for and the parties must have agreed to make those terms a part of the employee's employment agreement. Larose v. Agway, Inc., 147 Vt. 1, 3, 508 A.2d 1364 (1986). The evidence is that Burt did not receive the manual until after he was hired and had started work; he could not have bargained for any of the manual's provisions, nor could he and Standard Register have expressly agreed to any such terms. In addition, the personnel manual unequivocally disclaimed that it was contractual in nature. Therefore, Burt has not met his burden of proof with respect to whether the personnel manual created a contract.

Burt's argument that personnel policies and practices posted on Standard Register bulletin boards altered the at-will nature of his employment is similarly flawed. Burt has produced no evidence that such policies and practices were the basis of any bargain between him and the company. On the other hand, the company has produced evidence that it was free to, and in fact did, unilaterally modify these posted policies. Therefore,

these provisions cannot bestow contractual protections upon Burt. See id.

Finally, Burt argues that by firing him, Standard Register breached the implied covenant of good faith and fair dealing of its contract with him. An implied covenant of good faith and fair dealing prevails in every contract and operates to prevent the parties from doing anything to injure or destroy the rights of the other party to receive the benefits of the agreement. Shaw v. E.I. Du Pont de Nemours and Co., 126 Vt. 206, 209, 226 A.2d 903 (1966). In a pure at-will employment contract, where all the employee has bargained for is a relationship in which he or she can be terminated at any time, with or without cause, the implied covenant of good faith has little effect as there are few, if any, contractual benefits for the implied covenant of good faith to protect. Thus, barring a clear and compelling public policy against the discharge or a statutory exception to the at-will doctrine, no amount of bad faith, malice, and retaliatory motive on the part of the employer would afford relief to an aggrieved discharged at-will employee. Jones, 137 Vt. at 563-64.

On the other hand, if the employer's motives for dismissing an employee are relevant either to the nature of, or the benefits received under, the contract the implied obligation of good faith comes into play. For instance, where an employee's continued employment is contingent upon "satisfactory performance," the employer is bound by a duty of good faith in

making the determination of whether or not the employee is performing satisfactorily. Ploof v. Brooks Drugs, Inc., Civ. No. 89-270, slip op. at 7 (D. Vt. August 28, 1991) (Coffrin, J.). Or, when an employee's pension benefits depend on whether or not cause existed for the employee's dismissal, the employer is bound by a duty of good faith in determining whether such cause exists. Ainsworth v. Franklin County Cheese Corp., 156 Vt. 325, 330, 592 A.2d 871 (1991); see also Fortune v. National Cash Register Co., 373 Mass. 96, 364 N.E.2d 1251 (1977).

Here, Burt has not produced sufficient proof that he was anything other than a pure at-will employee or that he did not receive all the benefits and protections he bargained for under his agreement with Standard Register. Accordingly, Standard Register's motion for summary judgment on Burt's contract claim, including its implied covenant of good faith and fair dealing portion, will be granted.

C. Counts III and IV - Defamation

Burt alleges that McLaughlin (Count III) and Standard Register managers (Count IV), defamed[5] Burt by publishing and republishing McLaughlin's statement that Burt had damaged company property and that a Standard Register supervisor also

[5] The elements of a defamation action in Vermont are: 1) a false and defamatory statement concerning another; 2) some negligence, or greater fault, in publishing the statement; 3) publication to at least one third person; 4) lack of privilege in the publication; 5) special damages, unless actionable per se; and 6) some actual harm so as to warrant compensatory damages. Crump v. P & C Food Markets, Inc., 154 Vt. 284, 291, 576 A.2d 441 (1990).

defamed Burt by calling Burt a liar. In support of their motions for summary judgment, defendants argue their statements either were not published or were conditionally privileged.

Otherwise defamatory statements published in order to protect one's legitimate business interests are conditionally privileged. Lent v. Huntoon, 143 Vt. 539, 548-49, 470 A.2d 1162 (1983). As noted, the privilege is only conditional: the privilege may be defeated by a showing by clear and convincing proof that the statement was uttered with either implied or actual malice or that defendants abused the privilege. Id. Implied malice means defendants published a statement knowing it was false or with reckless disregard for its truth. Actual malice means defendants' conduct manifested personal ill will, reckless or wanton disregard of Burt's rights, or that defendants acted under circumstances evidencing insult or oppression. Crump, 154 Vt. at 293. Burt concedes that both McLaughlin's and Standard Register's statements were conditionally privileged but argues defendants either acted with malice or abused the privilege.

The privilege notwithstanding, Burt may recover against McLaughlin for defamation if he proves McLaughlin made the statement, knowing it was false. The admissible evidence[6]

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[6] Burt's deposition testimony that Scherer reported having been coerced by Standard Register and an unknown person had stated McLaughlin was "out to get" Burt are hearsay and therefore inadmissible for purposes of summary judgment. Merrill Theater Corp. v. Sack Theaters, Inc., Civ. No. 86-273, slip op. at 14 (D. Vt. November 12, 1991) (Coffrin, J.).

on this claim consists of McLaughlin's testimony that he saw Burt hammering on the lock and Burt's sharply contrasting testimony that he did not hammer on the lock. Thus, the determination of the ultimate question is dependent on an assessment of the relative credibility of McLaughlin and Burt, a task that the jury, not the court in a motion for summary judgment, must undertake. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505, 2513 (1986). Therefore, McLaughlin's motion for summary judgment will be denied.[7]

To recover against Standard Register, Burt must prove company officials acted either with implied or actual malice, or abused the privilege. On the issue of implied malice, there is no evidence[8] that Standard Register officials knew Burt had not destroyed the lock, but there is evidence that Standard Register conducted a thorough investigation of the incident and elicited

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[7] McLaughlin, citing Newton v. National Broadcasting Co., 930 F.2d 662, 671 (9th Cir. 1990), cert. denied, 112 S. Ct. 192 (1991) argues a determination of actual malice requiring proof by clear and convincing evidence cannot be predicated on the fact finder's negative assessment of the speaker's credibility at trial. See also Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 104 S. Ct. 1949, 1966 (1984). We do not take this statement of the law to mean, however, that a jury, in weighing the relative credibility of two eye witnesses to the same event, cannot find the particular fact in question by clear and convincing evidence. See id. (quoting Time, Inc. v. Pape, 401 U.S. 279, 91 S. Ct. 633, 637 (1971)) (credibility assessment sufficient when alleged libel purports to be an eyewitness or other direct account of events that speak for themselves).

Having denied McLaughlin's motion for summary judgment, there is no need to consider Burt's timeliness argument.

[8] As noted in note 6, supra, the evidence that Scherer's statement was coerced is inadmissible hearsay.

consistent statements as to Burt's culpability from two employees before it fired him. On the issue of actual malice, while there is evidence that Standard Register was displeased with Burt for revealing the company's smoking law violations to the State, this is not sufficient to prove by clear and convincing evidence that company officials harbored ill will towards Burt. As for the conduct of Standard Register management at Burt's exit interview, what was said reflected only the unpleasant aspects of dismissing an employee for what was reasonably perceived to be unacceptable behavior, and was not malicious. Finally, there is no evidence that company officials abused the privilege by publication outside the corporate organization. See Crump, 154 Vt. at 294. Therefore, Burt has not presented sufficient evidence of either malice or abuse of the privilege to carry his burden and Standard Register's motion for summary judgment on the defamation claim will be granted.

D. Count V - Defamation by Self-publication

In Count V, Burt brings a claim of defamation by self-publication. Defamation by self-publication results when a discharged employee is forced to reveal to prospective employers the reasons he or she was wrongfully fired by his or her previous employer. Standard Register moves to dismiss the count for failure to state a claim upon which relief can be granted.

The Vermont Supreme Court has not addressed the exact question of whether to recognize defamation by self-publication as a tort cause of action. However, the court refused to

recognize a cause of action for persons who, in inquiring as to whether another person has circulated a slanderous remark, themselves publish the slanderous remark. Crane v. Darling, 71 Vt. 295, 300, 44 A. 359 (1899). Although Crane is an old case and the facts differ slightly from the instant case, we believe it nevertheless fairly indicates how the Vermont Supreme Court would rule on defamation by self-publication. Accordingly, Burt's defamation by self-publication count will be dismissed for failure to state a claim upon which relief can be granted.[9]

E. Count VI - Personal Injury Claims

In Count VI, Burt asserts he received physical and emotional injuries as a result of being exposed to second-hand tobacco smoke while working at Standard Register. In opposition, Standard Register argues that Vermont's Worker's Compensation Law, 21 V.S.A. Sections 601-710, provides Burt's exclusive remedy for any such work-related injuries.

Vermont's Worker's Compensation Law provides that "[i]f a worker receives a personal injury by accident arising out of and in the course of his employment by an employer subject to this chapter, his employer or the insurance carrier shall pay compensation in the amounts and to the persons hereinafter specified...." 21 V.S.A. § 618. The rights and remedies afforded by the Worker's Compensation Law foreclose the right of

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[9] This court has in the past relied on Crane to dismiss a defamation by self-publication claim. See Moss v. Mutual of Omaha Insurance Co., Civ. No. 89-183, slip op. at 12 (D. Vt. April 9, 1990) (Billings, C.J.).

the injured employee to pursue other remedies against the employer, including common law personal injury claims. 21 V.S.A. § 622. The Worker's Compensation Law is remedial in nature, and as such, we must liberally construe it so that we exclude no injured employee unless the law clearly intends such an exclusion of benefits. Montgomery v. Brinver Corp., 142 Vt. 461, 457 A.2d 644 (1983). However, we cannot overlook the fact that the law is not intended solely to safeguard the rights of employees: while it gives employees a remedy that is both expeditious and independent of proof of fault, it also ensures employers limited and determinate liability. Petraska v. National Acme Co., 95 Vt 76, 113 A. 536 (1921); Kittell v. Vermont Weatherboard, Inc., 138 Vt. 439, 441, 417 A.2d 926 (1980) (citing Morrisseau v. Legac, 123 Vt. 70, 76, 181 A.2d 53, 57 (1962)).

The Vermont Supreme Court has taken a broad view of what types of injuries are compensable under the law. The right to benefit under the law, and thus, the applicability of the exclusivity of remedy provision of 21 V.S.A. Section 622, depend on one single test: was there a work-connected injury? Kittell, 138 Vt. at 441. Any time the human frame breaks down under work-related strain the resulting condition is a covered injury. Campbell v. Heinrich Savelberg, Inc., 139 Vt. 31, 35, 421 A.2d 1291 (1980).

Burt alleges that he suffered irritation and is at a heightened future risk of contracting cancers and respiratory

illnesses as a result of exposure to second-hand smoke in the workplace. We infer, for purposes of this motion, that Burt contracted these conditions through his employment at Standard Register and that were it not for his exposure to tobacco smoke at work, he would not have suffered these alleged injuries. Therefore, whatever physical injuries the second-hand smoke caused are sufficiently connected to his work to be covered by worker's compensation.

The Vermont Supreme Court has not directly considered the question of whether emotional injuries are covered by worker's compensation. We recall that we are to liberally construe the law so that we exclude no injured employee unless the law clearly intends such an exclusion of benefits. Montgomery, 142 Vt. at 461. The statute extends coverage to "personal" injuries and does not distinguish those that are physical from those that are emotional. 21 V.S.A. § 618. Thus, there is no sign of intent to exclude emotional injuries from coverage. As stated above, an injury is covered if it is work-related, Kittell, 138 Vt. at 441, and Burt's emotional injuries appear to be no less related to his work than his physical injuries, which we have already determined to be compensable. Outside the context of worker's compensation cases, the Vermont Supreme Court has recognized the right of those who suffer emotional injuries to recover damages on the same terms as those who suffer physical injuries. See Sheltra v. Smith, 136 Vt. 472, 392 A.2d 431 (1978) (recognizing tort of intentional

infliction of mental distress). Therefore, viewing the text of the statute, the statute's construction by the supreme court, and the supreme court's treatment of emotional and physical injuries as similar outside the sphere of worker's compensation law, we see no valid distinction that would preclude such mental or emotional disorders, as opposed to physical injuries, from being compensable under worker's compensation. In re Fitzgibbons' Case, 374 Mass. 633, 637, 373 N.E.2d 1174, 1177 (1978). Therefore, we predict that the Vermont Supreme Court would rule that Burt's alleged mental injuries are compensable under the Worker's Compensation Law and, therefore, Burt is precluded from bringing an action in this court to recover damages relating to such injuries.[10] Standard Register's summary judgment motion on Count VI will be granted.

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[10] The compensability of mental injuries under worker's compensation laws is becoming widespread. Note, The Compensability of Mental Injuries, 8 Vt. L. Rev. 145, 150 (1983) (citing 1B A. Larson, The Law of Workmen's Compensation, §§ 42.00 at 7-575, 42.20 at 7-584, 42.22 at 7-597 and 7-611, and 42.23 at 7-624. See, e.g. Fitzgibbons, 374 Mass. at 633; DiSabatino Bros., Inc. v. Wortman, 453 A.2d 102 (Del. 1982); Smith v. Dexter Oil Co., 432 A.2d 438 (Me. 1981); Martin v. Ketchum, Inc., 523 Pa. 509, 568 A.2d 159 (1990); Rega v. Kaiser Aluminum & Chemical Corp., 475 A.2d 213 (R.I. 1984); Miller v. Lindenwood Female College, 616 F. Supp. 860 (E.D. Mo. 1985); Wolfe v. Sibley, Lindsay & Curr Co., 36 N.Y.2d 505, 369 N.Y.S.2d 637, 330 N.E.2d 603 (1975).

In a decision that may indicate how the Vermont Supreme Court would treat this issue, the court awarded worker's compensation benefits to a worker suffering from ongoing subjective pain after recovery from a physical injury. See Merrill v. University of Vermont, 133 Vt. 101, 329 A.2d 635 (1974)

CONCLUSION

For the foregoing reasons, defendant Standard Register's motion to dismiss or for summary judgment on Counts II (breach of contract), IV (defamation), V (defamation by self-publication), and VI (negligence) is granted. Standard Register's motion to dismiss Count I (wrongful discharge) is denied. Defendant McLaughlin's motion for summary judgment on Count III (defamation) is denied.

Dated at Burlington in the District of Vermont, this 19th day of June, 1992.

Albert W. Coffrin
Senior District Judge