

IN THE IOWA DISTRICT COURT FOR ALLAMAKEE COUNTY

JOSEPH W. TEKIPPE,

*

Plaintiff,

*

No. LACV024336

v.

*

THE STATE OF IOWA AND THE IOWA
DEPARTMENT OF CORRECTIONS,

*

Defendants.

*

DEFENDANTS' BRIEF IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

*

INTRODUCTION

This lawsuit is the story of a former correctional officer who never learned that he answered to management, rather than the other way around. Joseph TeKippe transferred from the Anamosa prison to the prison camp at Luster Heights in the fall of 2000. Even at the time of his transfer, it is clear from his own deposition testimony that he viewed his role at the Luster Heights facility as being one of monitoring, on behalf of the union, the activities of the camp commander, Harry Wood, and Wood's second-in-command, Denlinger. As TeKippe himself described his first meeting with Wood: "It was formal. He knew why I was there. I knew why I was there. It's-- it's kind of like when President Bush meets the Russian prime minister. I mean, you're polite, but you both know what side of the fence you're on." TeKippe deposition, page 14.

Consistent with TeKippe's attitude towards management, it is undisputed that even before his transfer to Luster Heights, his supervisors had commented (in writing) about the fact that he did not take direction well, and TeKippe himself had (also in writing) characterized people's constructive comments to him as "discriminatory" and "micromanagement". At Luster

Heights, at least one person reported that he resigned rather than work with TeKippe, and others described him as so difficult to work with that they made an effort to avoid him.

This lawsuit alleges constructive discharge in retaliation for TeKippe performing his “ethical and legal duty” by accusing Wood of theft of cigarettes from the camp commissary, but it is again undisputed that TeKippe’s problems with Wood predated the reporting of alleged theft. Even before then, for example, TeKippe had had a conversation with another officer about Wood being a “prick” (Deposition, pages 23-24), had had altercations with other personnel, and had charged Wood and von Denlinger with “workplace violence”.

TeKippe alleges that after he accused Wood of the theft of cigarettes in January 2002, defendants “retaliated” against him to the point where he ultimately resigned, alleging “constructive discharge”. The examples of “retaliation” that TeKippe alleges, however, range from such intangible things as dirty looks to disciplinary investigations, and, as will be seen below, these simply do not amount to anything remotely resembling a constructive discharge, and, moreover, cannot be causally related to the reporting of the alleged cigarette theft because similar friction had already existed between TeKippe and management even prior to this date— not surprising, of course, given TeKippe’s *self-described* relationship with management as being akin to a cold war.

Further facts will be stated as necessary in the remainder of this brief and are described in more detail in the Statement of Undisputed Facts that has been filed contemporaneously with this motion and brief.

LEGAL ARGUMENT

Count I: Discharge in Violation of Public Policy

Plaintiff alleges that he was “constructively discharged” in violation of Iowa public policy because he reported (in January 2002) that Wood, the camp commander, was stealing cigarettes. This argument fails, as a matter of law, for a number of independent reasons.

A. There is no public policy exception to at-will employment for accusations of theft.

The concept of “wrongful termination in violation of public policy” is a judicially-created exception to the common law rule of “employment at will”. Since the adoption of this exception about twenty years ago, the Iowa Supreme Court has identified and explained the elements of a cause of action under this theory, which are: the existence of a clearly defined public policy which protects the employee activity; the public policy would be jeopardized by discharge from employment; the employee engaged in the protected activity, and this conduct was the reason for his discharge; there was no overriding business justification for his termination. *Jasper v. H. Nizam, Inc.*, 2009 WL 151568, *4 (Iowa 2009); *Lloyd v. Drake University*, 686 N.W.2d 225, 228 (Iowa 2004). The determination of whether plaintiff’s conduct implicates a public policy sufficient to override employment at will is a matter of law for the court, and therefore “appropriately decided on a motion for summary judgment.” 686 N.W.2d at 228. As will be explained below, plaintiff’s purported “protected conduct” in this case, the reporting of theft, does *not* implicate such a public policy, and therefore plaintiff’s claim of discharge in violation of public policy fails at the very first step.

In *Jasper*, the Iowa Supreme Court, reviewing the cases in which a public policy was, and was not, found to exist, reiterated that a sufficient public policy will *not* be found to exist based

merely on “generalized concepts of socially desirable conduct”, and will also not be found to exist based on internal employer policies. 2009 WL 151568 at *5. The Court also emphasized that a sufficient public policy should be rooted in something like a statute, and the public policy doctrine should be construed as a “narrow exception to the employment-at-will doctrine”. *Id.* at *6. In fact, in the *Lloyd* case, the Court had specifically rejected the claim of a security guard that his termination, for attempting to subdue a person he thought was guilty of assault, stated a claim. “Even assuming that Lloyd was fired simply for upholding the law, we think his claim still fails because the public policy against discharge that Lloyd asserts is neither clearly defined nor well recognized.” 686 N.W.2d at 229.

In reaching this conclusion, the Court acknowledged that there is a “general public policy against crime”, *id.* at 230, but found that general policy to be “far too generalized to support an argument for an exception to the at-will doctrine. In short, the public policy is not *clearly defined*. Apart from a vague reference to the whole of the criminal law, Lloyd cites no statute or constitutional provision to buttress his claim. Divorced from any such provision or equivalent expression of public policy, we cannot find a well recognized and clearly defined public policy in such vague generalizations.” *Id.* (original emphasis). The Court noted that allowing such a general statement of public policy to suffice to create an exception to at-will employment would result in an elimination of the at-will doctrine itself. *Id.*

Lloyd is dispositive of this issue and mandates summary judgment on behalf of defendants. The public policy alleged to have been violated here (retaliation based on accusations of a crime) is precisely one that the Iowa Supreme Court has specifically and unambiguously

stated does not state a cause of action for its violation. Just as was summary judgment granted and affirmed in *Lloyd*, it must be granted here, for exactly the same reasons.

B. There is no public policy favoring disruption of work by an employee

Even if there were some public policy allowing a cause of action for termination based on reporting of a crime, it is clear that in this case Plaintiff did more than just report a crime. He took it upon himself to *investigate* the alleged crime, even to the point of hiding state documents and bringing documents from the institution to his home. He in effect seized for himself the prerogatives of management and disrupted the efficient functioning of the institution by doing so.

The “way in which an employee presses complaints ... can be so disruptive or insubordinate that it strips away protections against retaliation.” *Matima v. Celli*, 228 F.3d 68, 79 (2d Cir. 2000). Thus, for example, in *Buchanan v. Hilton Garden Inn Westbury*, 2008 WL 858986 (E.D. N.Y. 2008), the court granted summary judgment on a retaliation claim when the alleged protected conduct (including reporting a supervisor and co-worker to the police) was found to be “accusatory, confrontational and insubordinate”. *Id.* at *12. The court noted that an employer has a right to “preserve a workplace environment that is governed by rules, subject to chain of command, free from commotion, and conducive to the work of the enterprise.” *Id.*, quoting *Matima*, 228 F.3d at 79. See also *O’Day v. McDonnell Douglas Helicopter Co.*, 79 F.3d 756, 763-64 (9th Cir. 1996)(conduct is protected only if it is reasonable in view of the employer’s interest in maintaining a harmonious and efficient operation); *Rollins v. State of Florida Dep’t of Law Enforcement*, 868 F.2d 397, 401 (11th Cir. 1989)(woman who had “earned the reputation as a disruptive complainer who antagonized her supervisors and colleagues and

impaired the morale of her unit” could be “held to fall outside the protection” of anti-retaliation laws “even when associated with complaints of discrimination”).

TeKippe’s behavior in this case, as noted, went beyond merely reporting his suspicion of theft. He took it upon himself to investigate the allegations himself, even though the prison was conducting its own investigation. He hid documents from the subject of the investigation, both within the institution and at his home. He did not accept the prison’s conclusions about whether theft had occurred and continued to pursue the matter in a confrontational manner. His behavior towards his superiors was insubordinate and disruptive. His constant complaining and “us versus them” mentality alienated not only his superiors but also people who worked with him, one of whom was actually quoted as saying that TeKippe’s behavior was instrumental in his decision to resign. This is not protected conduct, and certainly there is no “public policy” prohibiting an employer from dealing with this kind of behavior.¹

C. Plaintiff was not constructively discharged.

It is also undisputed that plaintiff was not terminated. His employment ended because of a decision on *his* part to have it end, a decision which his employer viewed as a voluntary resignation. Plaintiff attempts to argue, however, that he was constructively discharged. Of course, “constructive discharge” is not itself an actionable tort; it is actionable only when an actual discharge would have been. *Balmer v. Hawkeye Steel*, 604 N.W.2d 639, 643 (Iowa

¹ TeKippe’s single-minded devotion to making life difficult for his employers extended to him communicating with other people outside state government. “At one point I sent out an e-mail to about everybody I could think of from the Republican National Committee to Bill O’Reilly.” TeKippe deposition, page 472. The purpose of the email was to discuss “this whole ball of wax”, *id.*, and the “status of...Corrections.” *Id.* at 473. TeKippe himself assumes that these emails “didn’t pass the spam filter.” *Id.*

2000). Since it has already been argued that termination for allegedly reporting a crime is not illegal, it follows that merely announcing that one has been “constructively discharged” does not resurrect the claim. Moreover, however, on the undisputed facts of this case, no constructive discharge has been shown.

A constructive discharge occurs when working conditions are “so intolerable that the employee is forced into an involuntary resignation.” *Van Meter Industrial v. Mason City*, 675 N.W.2d 503, 511 (Iowa 2004). Isolated acts of the employer do not suffice to establish a constructive discharge. *Id.* The working conditions must be unusually aggravated or amount to a “continuous pattern” before the situation will be deemed intolerable. *Id.* Plaintiff’s mere belief that his employer was trying to make life difficult for him will not defeat summary judgment. *See, e.g., Abel v. City of Algona*, 2008 WL 4542428 (D. Wash. 2008)(plaintiffs’ assertion that defendants “made it crystal clear that [they] did not have a future with the city” insufficient to defeat summary judgment). Factors to consider in determining whether a constructive discharge has occurred are whether the employee faced demotion; reduction in salary; reduction in job responsibilities; reassignment to menial or degrading work; badgering, harassment or humiliation designed to encourage resignation; or offers of early retirement that would make the employee worse off whether the offer was accepted or not. *Chandler v. La Quinta Inns, Inc.*, 264 Fed. Appx. 422, 425 (5th Cir. 2008). Summary judgment is appropriate on a claim of constructive discharge when the evidence demonstrates, as a matter of law, that the plaintiff cannot satisfy the elements of constructive discharge. *Smithburg v. J&B Plastics, Inc.*, 2008 WL 141166, *3 (Iowa App. 2008).

Judged by these standards, it is apparent that no “constructive discharge” has occurred here. It is undisputed that TeKippe was not demoted, did not have his job duties changed, and did not have his salary lowered. The “harassment” that he claims he received amounts to nothing more than the kind of altercations with a supervisor that are common in workplaces, particularly where (as is undisputedly the case here; witness, for example, the discipline for not charging inmates to watch a movie) an employee thinks he can do things his way rather than management’s way. TeKippe also incurred discipline which he no doubt thinks was unfair, but this discipline – a handful of instances over a period of several years – is neither severe nor pervasive enough to support a claim for constructive discharge, and, in any event, “feelings of being unfairly disciplined or criticized are insufficient to support a claim of constructive discharge.” *Devin v. Schwan’s Home Service, Inc.*, 491 F.3d 778, 790 (8th Cir. 2007). “The evidence shows only that he felt unfairly criticized and that his work conditions, particularly his encounters with Schneider, were unpleasant to him. Such conditions are not ‘so intolerable as to compel a reasonable person to resign’... and [plaintiff’s] constructive discharge claim fails.” *Elnashar v. Speedway SuperAmerica, LLC*, 484 F.3d 1046, 1058 (8th Cir. 2007). The world is full of employees who think they know more than their supervisors, and sometimes they even do, but they are still subordinate to, and must follow the directions of, their bosses. TeKippe never learned this lesson. He was told, for example, not to allow inmates to watch a movie for free, but based on his lay understanding of copyright law, decided to ignore these instructions. This is a perfect illustration of his approach to his job, a job where he felt entitled to monitor

management in what he himself characterized as a kind of cold war mentality.² Under these circumstances, friction with management would not only not be illegal, it would be inevitable.

Likewise, the allegation that TeKippe was temporarily transferred back to Anamosa for retraining does not support a claim of constructive discharge. This transfer was for a relatively short duration and did not result in a demotion or loss of salary. His job title and benefits remained the same. All that happened is that for a short period of time he was given a work assignment that was not to his liking and less convenient to where he lived. This is not sufficient to establish a claim of constructive discharge. *Duhe v. U.S. Postal Service*, 2004 WL 439890, *10 (E.D.La. 2004)(“Changes in work schedule, purely lateral transfers, transfers requiring additional commuting time, and the assignment of extra work are neither tangible employment actions nor changes in employment sufficient to support a claim of constructive discharge.”). Moreover, the temporary transfer to Anamosa took place in October 2002, almost two full years before TeKippe tendered his letter of resignation in August 2004; since that incident had already happened and was no longer an issue at the time of the resignation, it could not possibly have contributed to a constructive discharge: plaintiff could not have felt his current working conditions were intolerable based on a one-time incident that occurred years ago.

² Other illustrations of TeKippe’s relationship with his superiors were given by TeKippe in his deposition. A correctional officer named Hess, who had resigned, heard a rumor that TeKippe had made an assertion about him, and had complained about it. Asked by a superior officer whether he made the statement (which in his deposition he denied making), TeKippe could not simply say “no” but instead asked whether he was under investigation, demanded a union representative, and refused to answer the question. TeKippe deposition, pages 220-21. In another case, TeKippe declined to order a two-day lockup for an inmate that Denlinger wanted imposed. Deposition at 229-32. TeKippe justified his actions by saying that the officer, Huinker, who conveyed the message only said that Denlinger “recommended” a two-day lockup and did not order it. It is hardly surprising that an employer would lose patience with a

subordinate who engages in such semantic word-parsing.

D. There is no causation.

Even assuming that the conduct of his employers in occasionally disciplining or criticizing him amounted to behavior that would support a claim of constructive discharge, TeKippe must, in order to get this case to a jury, offer some evidence that the behavior complained of was caused by TeKippe's reporting of the alleged cigarette theft. No substantial evidence of this exists, however.

As has been previously observed, TeKippe had, by his own admission, a relationship with his employers that he himself saw as comparable to that of countries in a cold war. With this kind of adversarial mindset – which he had as soon as he arrived at the Luster Heights facility – it is of course hardly surprising that there would be friction with management. The various discipline that TeKippe received also had an undisputed factual basis: there is no dispute that TeKippe did allow inmates to watch a movie for free despite having been told not to, there is no dispute that TeKippe's family did visit him at work, etc. TeKippe may believe that this discipline was unwarranted, but that kind of allegation is simply not cognizable in this kind of proceeding. *Luks v. Baxter Healthcare Corp.*, 467 F.3d 1049, 1056 (7th Cir. 2006) (“the relevant question is not whether the criticisms of his performance were right or wrong but whether his supervisor honestly believed them.”); *Lahrichi v. Lumera Corp.*, 2006 WL 521659 (W.D. Wash. 2006) (evidence that raised a genuine issue of fact concerning the quality of plaintiff's work was not material to the issue on summary judgment, which was the employer's perception of that work). A person claiming retaliatory discipline must, to defeat summary judgment, provide some evidence from which a finder of fact could conclude that the discipline was motivated by the employee's participation in protected conduct. If, by contrast, the employer was motivated

by its honest belief that the employee was not doing the job properly, then summary judgment is mandated. This is true even if this honest belief is later shown to be false or inaccurate. *Gates v. Caterpillar, Inc.*, 513 F.3d 680, 691 (7th Cir. 2008)(“it is not the court’s concern that an employer may be wrong about its employee’s performance”; the “only question is whether the employer’s preferred reason was pretextual, meaning that it was a lie.”); *Haughton v. Orchid Automation*, 206 Fed. Appx. 524, 532 (6th Cir. 2006)(where employer honestly believes in reason for employment decision, pretext cannot be established simply because the reason is ultimately shown to be incorrect; honest belief can be shown by reasonable reliance on particularized facts); *Varatharajan v. Parkdale Pharmaceuticals, Inc.*, 2006 WL 2385037 (E.D. Mich. 2006)(same).

The fact that the employer’s allegedly harassing behavior was not motivated by plaintiff’s reporting of alleged theft is established not only by the undisputed factual basis for the discipline but also by the fact that the alleged behavior commenced, according to TeKippe’s own testimony, *before* he alleged theft. As a glance at paragraph 2 of the Statement of Undisputed Facts makes clear, there are numerous examples of confrontations with management that occurred months before January 2002, when TeKippe reported alleged cigarette theft. Moreover, Plaintiff himself stated in his deposition that the alleged retaliation started before January 2002:

I pretty much told [Wood] at the end of November of ‘01 his day in the sun was over. I wasn’t going to take any crap. The union wasn’t going to take any more crap. And if there were things he was doing that weren’t appropriate, that those were going to come to a halt as well. That’s when Denlinger started leaning on me. If you want to call it intimidation, if you want to call it retaliation, label it either way. It was an effort by them to silence anything that was going to be forthcoming from me.

TeKippe deposition, page 87.

Conduct that occurs *before* an alleged protected activity obviously cannot be caused by it. *Strouss v. Michigan Dep't of Corrections*, 250 F.3d 336, 344 (6th Cir. 2001)(when transfer occurred prior to protected conduct, the “only reasonable inference” was that “there was no causal connection” between the two); *Hooven-Lewis v. Caldera*, 249 F.3d 259, 274 (4th Cir. 2001)(“In short, the evidence demonstrates that the majority of events that Hooven-Lewis alleges were acts of ‘reprisal’ and ‘retaliation’ occurred before Hooven-Lewis' October 7, 1994 contact with the EEO. These events could not be retaliatory, because Hooven-Lewis' contact with the EEO did not cause these acts of reprisal....”). Plaintiff cannot, as a matter of law, argue that he was the victim of retaliation for engaging in conduct in January 2002 when the record evidence shows that things occurring past that date are similar in nature to things that happened before it.

Count II: Whistleblower Claim

The second and last count of TeKippe’s petition alleges a violation of the Iowa whistleblower statute. For a number of independent reasons, this argument fails as a matter of law.

Insofar as is relevant here, Iowa Code section 70A.28 provides that a “person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a state employment system” in reprisal for “a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety.” This “provision

protects state employees who affirmatively disclose to those designated in the statute information evidencing” one of the violations enumerated therein. *Hegeman v. Koch*, 666 N.W.2d 531, 533 (Iowa 2003). As with Count I of this Petition, there are several independent reasons why plaintiff’s claim under this statute fails as a matter of law.

A. Plaintiff made no protected communication.

First, it is clear that under the undisputed facts of this case plaintiff did not make any disclosure that is protected by the whistleblower statute. Plaintiff says that the disclosure that caused his employer to “retaliate” against him (in various vague ways) was his disclosure to two union officials in January 2002 that he believed Major Wood was stealing cigarettes from the prison commissary, an assertion which ultimately was heard by the Warden. However, the two union officials to whom TeKippe “affirmatively disclosed” his accusations were not “public officials” as that term is used in the statute. The *Hegeman* case makes that abundantly clear.

In *Hegeman*, the plaintiff was an employee of the University of Iowa Hospitals and Clinics who made complaints about staffing and management to the Dean of the medical school, subsequent to which, he claimed, the university allegedly constructively discharged him. In stating that summary judgment on the whistleblower claim was appropriate, the Iowa Supreme Court noted that the Dean, although obviously a state employee, was not a “public official” within the meaning of the statute. The people to whom TeKippe “blew the whistle” in this case are even less so. As noted in *Hegeman*, the test for determining whether a state employee is a public official involves consideration of five factors: 1) the position must be created by the Constitution or legislature or through authority conferred by the legislature; (2) a portion of the sovereign power of the government must be delegated to the position; (3) the duties and powers

must be defined, directly or impliedly, by the legislature or through legislative authority; (4) the duties must be performed independently and without control of a superior power other than the law; and (5) the position must have some permanency and continuity, and not be only temporary and occasional. *Id.* at 534-35. All five of these factors point against a finding that the people to whom TeKippe “affirmatively disclosed” his accusations were public officials. They were employees of the Department of Corrections who most certainly answered to a higher authority, their duties were not defined by the legislature, their positions were not permanent and were not created by the legislature. They were not public officials, and anything TeKippe may have said to them was not a communication protected by section 70A.28. Just as summary judgment was appropriate in *Hegeman*, it is appropriate here.

It is true that plaintiff states that he also, in October 2002, spoke to a county attorney about his allegations of theft. However, his own deposition testimony demonstrates that the alleged acts of retaliation about which he now complains started in January 2002 or even earlier (such as November 2001, when TeKippe asserts that he “drew a line in the sand” with Wood). TeKippe deposition at 57-58 (“You could argue that it was in January when we had the meeting in camp, and I talked to the union people specifically about the cigarettes. I think the--- I think it started 11/30/01”); 78 (“like I said, when I drew my line in the sand on November 30th of ‘01 is when they started messing with me to get me to shut up, I guess.”); 80 (asked whether retaliation started after his November 30 letter, TeKippe responded “yeah, I think that’s when”); 110-11 (stating that acts of retaliation occurring between November and January were based on his letter of November 30 but acts occurring after January were based on the cigarette incident). So, *by his own testimony*, any retaliation that took place because of the cigarette reporting was

done as early as January and possibly as early as November. TeKippe certainly has not offered testimony that it started in or after October. Therefore, any conversations that TeKippe might have had with the county attorney did not, by his own testimony, result in the retaliation about which he now complains, and which he himself says was well underway before this conversation even took place.

Moreover, even if the county attorney is considered a “law enforcement official” and is therefore one of the people identified in the statute, accusations that TeKippe made to him do not trigger the protection of the whistleblower statute for yet another reason. The statute is only implicated if the person *reasonably* believes that he is reporting a violation enumerated in the statute. By the time TeKippe went to the county attorney in October (nine or ten months after he first raised the issue), the prison had already conducted an investigation which led it to conclude that Wood had not been stealing cigarettes. Likewise, the county attorney took no action with regard to TeKippe’s allegations, and, in fact, informed TeKippe that he believed TeKippe was biased, and had personal animosity, against Wood. TeKippe deposition, page 416. Therefore, it is clear that, as a matter of law, even if TeKippe honestly believed that Wood had been stealing cigarettes, that belief was not a *reasonable* one. *Compare Luckritz v. City of Camanche*, 2008 WL 2746322, *3-4 (Iowa App. 2008)(filing of complaint with state disciplinary board was not based on reasonable belief, and therefore did not trigger protection of whistleblower statute, since Attorney General had previously advised that no ethical violations had occurred).

TeKippe's behavior in this case was simply part of an ongoing pattern of hostility against a supervisor that he did not get along with.³

B. Plaintiff was not terminated.

Even if plaintiff engaged in conduct protected by the whistleblower statute, he has failed to establish another prerequisite for invocation of that statute: some adverse action on the part of the employer. As previously noted in this brief, plaintiff resigned; he was not fired. Also as previously noted, his complaint of "constructive discharge" fails as a matter of law because the behavior of the employer simply does not rise to the kind of conduct which is necessary to constitute a constructive discharge. The discussion of this issue in part C of Count I of this brief applies directly here as well, and for the sake of economy will not be reproduced in detail. Suffice it to say that in the absence of any specific adverse employment action such as demotion, lowering of salary, change of job duties, plaintiff cannot make out a case of constructive discharge simply by arguing that he had a personality conflict with his supervisors which led to criticism and encounters that plaintiff found unpleasant. If he could, then any employee who has ever had an unpleasant boss could, on the strength of that alone, claim a constructive discharge. That is not, and never has been, the law. "[B]eing subject to a rude and demanding boss is not a sufficient tangible employment action...." *Duhe*, 2004 WL 439890 at *10.

³ Like the proverbial boy who cried wolf, TeKippe has a habit of making overwrought and unsubstantiated charges. Even before the allegations of cigarette theft, he brought "workplace violence" claims against Wood after he refused Wood's instructions to attend a meeting with Wood and Denlinger and Wood raised his voice at him. TeKippe deposition, pages 395-398. TeKippe had also previously filed a criminal complaint against Denlinger, based on Denlinger's taping a sticky-note to his jacket while he was wearing it. Deposition, page 405. TeKippe's obvious inability to distinguish between workplace disputes and workplace *violence* helps place the unreasonableness of his subsequent charges against Wood in context. TeKippe was out to get Wood, a fact which apparently everybody, even the county attorney, knew.

Additionally, as noted in the first part of this brief, TeKippe's temporary transfer to Anamosa for retraining does not amount to the kind of adverse action that would support any kind of retaliation claim. *Cooper v United Parcel Service, Inc.*, 2009 WL 2599231, *3 (“increasing the length of plaintiff’s commute is not sufficient to establish an adverse employment action.”); *Duhe*, 2004 WL 439890 at *10; *Montandon v. Farmland Industries, Inc.*, 116 F.3d 355, 359 (8th Cir. 1997)(employee who was required to move from Omaha, Nebraska to Denison, Iowa did not incur an adverse employment action sufficient to state retaliation claim because the action did not entail change in position, salary or benefits).⁴

C. There is no causation.

This issue, as well, has already been discussed at length in part D of Count I of this brief, and it would serve no point to simply reproduce the argument here. Suffice it to say that, just as argued in that section of the brief, the difficulties that TeKippe now refers to as “retaliation” are merely a part of a long-standing pattern of fractious interactions between TeKippe and management which actually started long before TeKippe made the accusations of theft that he now claims triggered the whistleblower statute. The various kinds of employer conduct about which TeKippe now complains (bad evaluations, glares, sarcastic remarks) all started before TeKippe complained about cigarette theft. Indeed, TeKippe, as previously noted, arrived at the Luster Heights facility under the impression that it was incumbent on him to check up on management. He told the camp commander in November that he and the union were not going to “take any crap” from him. This kind of disrespect and insubordination is precisely the kind of

⁴ While actions short of termination may in theory support a retaliation claim, a plaintiff can recover back pay as an element of damage only if he shows constructive discharge. *Van*

conduct that seems almost designed to lead to a less-than-friendly relationship with management, and any chill that may have developed is unquestionably the result of this kind of conduct rather than the reporting to the union of alleged cigarette theft.

CONCLUSION

The allegations made by TeKippe fail as a matter of law for several reasons. Although TeKippe prefers to think of himself as a “whistleblower”, what he really was, was a difficult and insubordinate employee who, in his desire to do things his way rather than his superior’s way, used repeated accusations as a way of scoring points against management. When management refused to play by his rules, he quit. He was not constructively discharged. In any event, there is no clearly defined public policy prohibiting even an actual termination here, and TeKippe does not meet the statutory definition of a whistleblower, so his lawsuit fails as a matter of law.

Respectfully submitted,

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Meter Indust. v. Mason City Human Rights Comm’n, 675 N.W.2d 503, 510-11 (Iowa 2004).

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