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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0030**

Bradley Yde,
Appellant,

vs.

Viking Coca-Cola Bottling Company,
Respondent.

**Filed July 2, 2018
Affirmed
Rodenberg, Judge**

Stearns County District Court
File No. 73-CV-16-1021

Arlo H. Vande Vegte, Arlo H. Vande Vegte, P.A., Long Lake, Minnesota (for appellant)

Holly M. Robbins, Alice D. Kirkland, Littler Mendelson, P.C., Minneapolis, Minnesota
(for respondent)

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and Hooten,
Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Bradley Yde appeals from the district court's order granting summary judgment to respondent Viking Coca-Cola Bottling Company and dismissing appellant's retaliatory-discharge claim. We affirm.

FACTS

Appellant worked as a delivery driver for respondent from April 11, 2012 to May 13, 2015. Appellant received and signed a copy of respondent's Vehicle Safety Policy as part of his training for this position, and agreed to abide by its guidelines. The Vehicle Safety Policy provides for a Driver Safety Committee to "review incidents and accidents regarding any company-owned motorized vehicle." This committee assigns "points" to drivers for accidents or driving infractions. In the event of an accident, the Vehicle Safety Policy requires drivers to complete an accident report form and report the accident to the company within 12 hours. Failure to report an accident "may result in further disciplinary action up to and including termination," and any points charged to the driver for the accident are doubled for failure to timely report. When a driver accumulates eight or more points within a three-year period, the driver is deemed an unacceptable risk and will no longer be employed as a driver.

Appellant's Driving History

Appellant was involved in multiple accidents with his company vehicle during his employment with respondent. The Vehicle Safety Committee sent appellant a letter on January 24, 2013, after reviewing reports of accidents on September 14, 2012, December 11, 2012, and December 19, 2012. The committee determined that the two December incidents were preventable. Appellant was assigned four points for those accidents. The letter also reminded appellant that if he received eight points or was involved in more accidents in the next three years, his ability to drive a company vehicle would be jeopardized. Appellant signed this letter. The Vehicle Safety Committee sent

appellant another letter on September 25, 2013, assigning him three points for an accident in which he was involved on September 7, 2013. The letter again reminded appellant that if he received eight points or was involved in more accidents in the next three years, his ability to operate a company vehicle would be jeopardized. Appellant signed this letter to acknowledge receipt. The committee also sent appellant another letter that same day stating that appellant had acquired a total of seven points. Appellant also signed this letter to acknowledge receipt.

Appellant's On-the-Job Injuries

Appellant notified respondent of on-duty injuries on five separate occasions. Appellant filed a first-report-of-injury form¹ on August 3, 2012, after a pallet-jack handle hit him in the leg. Appellant reported another injury on November 24, 2012, after falling while walking to his truck in the parking lot. He reported a third injury on August 20, 2013, when a loaded product cart ran over his foot. Appellant reported a fourth injury on November 8, 2013, after his left knee painfully popped when he stood up at work. He pursued and settled a workers' compensation claim for this fourth injury.

Appellant's fifth injury report involved an injury to his left arm. Appellant had previously reported a nonwork-related left-arm injury to his supervisor, Dean Dufner. Appellant reported that he injured his elbow on November 1, 2014 on his personal time, not at work. He went to the emergency room promptly. Dufner forwarded the personal-

¹ The first-report-of-injury form is one submitted by the injured employee to notify the employer of a work-related injury for workers' compensation purposes. Minn. Stat. § 176.141 (2016).

injury report to human resources. Later, appellant reported to Dufner that he fell and injured the same arm while working on November 25, 2014. Appellant told Dufner on December 3 that he was injured while trying to catch falling Coke products.

Appellant visited a doctor for his arm injury. On December 8, 2014, the doctor wrote a note taking appellant off of work until he completed further tests. The doctor diagnosed appellant with a torn left biceps tendon. On December 19, 2014, after determining that the injury was nonwork related, based on evidence that appellant had received ongoing medical treatment since injuring his arm at home, respondent's insurance company denied appellant's claim for workers' compensation benefits. On December 22, 2014, appellant's doctor approved his return to work with some restrictions. Appellant had a surgery to repair his biceps tendon on January 14, 2015. Appellant's doctor approved his return to work without restrictions on March 10, 2015. Appellant filed a claim petition for workers' compensation benefits for these injuries on March 26, 2015.²

The April 25 Accident and Investigation

Employee Charles Booth told appellant's supervisor, Dufner, that Booth saw appellant back his trailer into another trailer on April 25, 2015. Appellant denied doing so. Steve Wright, another employee, also told Dufner that he heard two trailers rub together, but did not see the accident occur. Dufner looked at the trailers and noticed what he determined to be a fresh scratch along the left side of the trailer that appellant allegedly backed into. He reported the incident to branch manager Dan Jacobs.

² Appellant ultimately prevailed on this claim petition. The outcome of that workers' compensation dispute is not at issue in this appeal.

Lisa Zolin, the human-resources manager for respondent, investigated the April 25 accident after it was reported. She stated that she generally handwrites her interview notes and then types summaries later, filling in more detailed information. Zolin and Jacobs interviewed appellant about the incident and appellant denied causing the damage. Zolin and Jacobs also interviewed Wright and Booth. Wright told Zolin that he was inside the building and on the phone with Booth when Booth said that appellant was going to hit the trailer. Wright also told Zolin that he talked with appellant after the accident and took pictures of the damage. Booth told Zolin that he saw appellant hit a trailer in the docking area at the end of the day on April 25. Booth said that after he, Wright, and appellant looked at the trailer, Wright told appellant to report it and appellant said “I can’t. I’m at seven points and I will get fired.”

Zolin and Jacobs also reviewed surveillance video from April 25, taken from two different surveillance cameras. Zolin testified at her deposition that they “watched the driver, who [they] later determined to be [appellant] attempt to back in and out of the spot several times unsuccessfully. At one point, you could see a trailer move as if there was some activity.” Zolin stated that, after reviewing the footage multiple times, she and Jacobs were able to see the trailer move or shake for a few seconds as if it had been hit before the striking trailer was parked at the loading dock. From the video and review of drivers’ route assignments, Zolin concluded that the striking trailer was assigned to appellant that day.

Zolin testified that it did not occur to her at the time that the video should have been preserved.³

Zolin also testified in her deposition that she reports monthly to the CEO concerning open workers' compensation claims. She stated that the only concerns the CEO has ever expressed concerning appellant were over the number of appellant's workplace accidents and whether appellant can perform his job safely. Zolin testified that she informed the CEO that she did not believe there were any concerns about appellant's ability to safely do his job other than the safety concerns about his driving. Zolin expressed that she had her own concerns about the validity of appellant's November 2014 arm-injury claim, given its temporal proximity and similarity to a reported nonwork injury.

Jacobs testified that a fleet manager notified him of the April 25 accident, stating that appellant hit a trailer. Jacobs stated that he watched the surveillance video and saw appellant enter the premises and back his rig into a parked trailer. Jacobs saw the other trailer move, and then watched appellant finish docking his trailer. Jacobs further testified that he spoke to Wright, who told him that he had watched appellant back into a trailer. Jacobs later submitted a written correction stating that Wright had told Jacobs that he *heard* the trailers scrape together but did not see it firsthand. Jacobs testified that he was unaware of appellant's workers' compensation claims; he knew only that appellant had some work restrictions based on injuries. Jacobs stated that the decision to terminate appellant's

³ Respondent's technology manager testified in his deposition that he would have been able to download the video if he had been requested to do so, but no such request was made. The relevant recording was recorded over a few weeks after the accident, based on the company's retention schedule.

employment was based on the number of points on appellant's driving record. Jacobs explained that, under company policy, "it's . . . pretty black and white. Once you're over a certain threshold . . . it's not really up for debate at that point in time."

In his deposition, appellant identified two former coworkers who he claimed would say that he had not crashed into the trailer. He also identified a number of other people who he said were not present at the April 25 incident, but who believed that appellant did not crash into another trailer.⁴

Appellant testified that he knew that respondent required its drivers to report accidents. He also knew that he was responsible for calling his supervisor and filling out the initial paperwork. Appellant testified that, when he returned from taking his loads out on April 25, 2015, he started trying to back his truck into the docks. Appellant stated that he readjusted his trailer as he was backing up and, at some point, he could no longer see the back end of his trailer. He also testified that another employee had left a trailer parked crooked in the dock next to his spot. Appellant testified that he eventually got his trailer docked and was talking with other employees while Booth was docking another trailer. Wright came over and told appellant that appellant had hit the adjacent trailer. Appellant testified that Booth also said that he might have seen the trailer move. They walked over and looked at the trailer that appellant allegedly hit, which appellant testified had a number of preexisting scratches. Wright identified a scratch as fresh, but appellant stated that he did not think it looked new. Appellant said that Wright took pictures of the scratches.

⁴ None of the witnesses or persons who appellant stated would testify that he did not back into the trailer were deposed in this case.

There was no damage to appellant's trailer. Appellant stated that he was interviewed by Jacobs and Zolin, and was then terminated two days later. He further testified that Zolin told him that they had video proof that he hit the trailer, but refused to show him the video(s) when he asked.

Appellant is not aware of anyone who respondent has fired for being injured or seeking workers' compensation, but stated that Wright had once commented that appellant was going to be fired after his biceps injury. Appellant was assigned to work with Wright after returning from his biceps surgery. Zolin and Dufner pulled appellant aside after one shift and told him that Wright had said that appellant's work was "worthless." Appellant said that he told Zolin and Dufner that he was "not quite up to speed" since he was just returning from being off. Appellant also testified that Zolin told him that he needed to go back to see his doctor or would be replaced if he could not do his job. Appellant stated that this interaction took place in March of 2015, between the 25th and 28th. Appellant also testified that he had told other employees that he thought he was being "set up" at work and that some of the others, including Wright, were trying to get him fired. He claimed that a number of drivers had been asked to help find a way to get rid of him. The record contains no depositions or affidavits from any such drivers. Additionally, appellant stated that Zolin at one point told him that he needed to stop getting injured.

Respondent's Vehicle Safety Committee reviewed the April 25 accident and investigation. The committee sent appellant two letters on May 13, 2015 informing him that it assigned four points to his record as a result of the incident and informed appellant

that he would no longer be eligible to drive for respondent. Appellant testified that he was aware that other employees had also been fired for having too many driving-record points.

Appellant produced evidence of two other employees who were discharged for excessive driving points. One was terminated in July 2015, for “an accident or record of accidents.” Another was terminated in January 2015, after a positive drug test and multiple reported accidents in his driving record, with four points being assigned for the most recent.⁵

Appellant sued respondent, alleging that respondent terminated his employment in retaliation for his workers’ compensation claims. Respondent moved for and was granted summary judgment dismissing appellant’s claims.

This appeal followed.

D E C I S I O N

I. Respondent did not spoliage the surveillance video evidence of the April 25 accident.

Appellant argues that respondent spoliated the surveillance video of the loading dock by not preserving it as evidence for this litigation. Appellant claims that, because respondent knew appellant to be litigious from past workers’ compensation litigation, respondent should have known to save the video evidence of the April 25 incident. Appellant provides no legal support for this argument.

⁵ The record reflects that this employee “quit in anticipation of termination due to driving points/issues.”

Spoliation occurs when one party fails to preserve evidence for the other party's use as evidence in pending or future litigation. *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d 434, 436 (Minn. 1990). "The task of determining what, if any, sanction is to be imposed is implicated by the broad authority provided the trial court." *Patton v. Newmar Corp.*, 538 N.W.2d 116, 119 (Minn. 1995).

Appellant agreed at oral argument that, at the time the surveillance videos had been erased pursuant to company policies unrelated to this case, he had not given respondent notice that he intended to sue for retaliatory discharge. The record shows that the surveillance cameras retained footage for two to six weeks before automatically erasing old footage as new footage was recorded. The accident in question is alleged to have occurred on April 25, 2015. In the ordinary course, the footage of the accident would have been retained until early June 2015 at the latest. Appellant sued respondent in October 2015. Respondent could have saved the footage, but respondent had no knowledge or reason to know that appellant intended to sue at the time that the footage was overwritten. The footage was erased in the ordinary course of business before litigation was commenced or threatened. This is not a case of spoliation.

II. The district court did not err in granting summary judgment to respondent.

Appellant argues that the district court erred in granting summary judgment to respondent dismissing appellant's claims.

Summary judgment is granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as

a matter of law.” Minn. R. Civ. P. 56.03. “On appeal from summary judgment, we must review the record to determine whether there is any genuine issue of material fact and whether the district court erred in its application of the law.” *Dahlin v. Kroening*, 796 N.W.2d 503, 504-05 (Minn. 2011). We view the evidence in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). “The party resisting summary judgment must do more than rest on mere averments,” but rather must identify specific facts that create a genuine issue for trial. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). Summary judgment is not appropriate “when reasonable persons might draw different conclusions from the evidence presented.” *Id.* at 69.

Minn. Stat. § 176.82, subd. 1 (2016) provides a cause of action for employees who are discharged or threatened with discharge for seeking workers’ compensation benefits. “The statute proscribes three forms of conduct: discharging an employee for seeking workers’ compensation benefits; threatening to discharge an employee for seeking benefits; and intentionally obstructing an employee seeking benefits.” *Schmitz v. U.S. Steel Corp.*, 831 N.W.2d 656, 665 (Minn. App. 2013), *aff’d*, 852 N.W.2d 669 (Minn. 2014).

Minnesota courts evaluate retaliatory-discharge claims using the burden-shifting formula articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05, 93 S. Ct. 1817, 1824-25 (1973). *Randall v. N. Milk Prods. Inc.*, 519 N.W.2d 456, 459 (Minn. App. 1994). First, an employee claiming retaliatory discharge must establish a prima facie case. *Schmitz*, 831 N.W.2d at 670. Once the employee has established a prima facie case, “[t]he burden then shifts to the employer to articulate legitimate reasons for the discharge.”

Randall, 519 N.W.2d at 459. “Once the employer articulates a legitimate reason for the discharge, the employee must show by a preponderance of the evidence that the discharge was for an impermissible reason.” *Id.*

A. Appellant met his burden of establishing a prima facie case of retaliatory discharge under step one of the *McDonnell Douglas* test.

Appellant argues that the district court erred in determining that he failed to establish a prima facie case of retaliatory discharge.

An employee establishes a prima facie case of retaliatory discharge by showing “(1) statutorily protected conduct by the employee[,] (2) adverse employment action by the employer, and (3) a causal connection between the two.” *Schmitz*, 831 N.W.2d at 670. The parties agree that appellant engaged in statutorily protected conduct by filing a workers’ compensation claim. Appellant’s conduct is indeed statutorily protected by Minn. Stat. § 176.82. The parties also agree that respondent took an adverse employment action against appellant by discharging him. The only element of the prima facie case at issue here is whether appellant has made a prima facie showing that his discharge is causally related to his workers’ compensation claim.

We are “mindful that retaliatory motive is difficult to prove by direct evidence and that an employee may demonstrate a causal connection by circumstantial evidence that justifies an inference of retaliatory motive.” *Cokley v. City of Otsego*, 623 N.W.2d 625, 632 (Minn. App. 2001), *review denied* (Minn. May 15, 2011). Speculation by the employee is not circumstantial evidence; rather, “[a] fact is proved by circumstantial

evidence when its existence can *reasonably be inferred from other facts proved in the case.*” *Id.* at 633.

A causal connection between an employee’s statutorily protected conduct and discharge “may be demonstrated indirectly by evidence of circumstances that justify an inference of retaliatory motive, such as a showing that the employer has actual or imputed knowledge of the protected activity and the [discharge] follows closely in time.” *Hubbard v. United Press Intern., Inc.*, 330 N.W.2d 428, 445 (Minn. 1983). “A short interval between protected conduct and an adverse employment action ‘may occasionally raise an inference of causation,’ but, ‘in general, more than a temporal connection is required.’” *Otto v. City of Victoria*, 834 F.Supp.2d 912, 919 (D. Minn. 2011) (quoting *Freeman v. Ace Tel. Ass’n*, 467 F.3d 695, 697-98 (8th Cir. 2006)). “[T]he presence of intervening events undermines any causal inference that a reasonable person might otherwise have drawn from temporal proximity.” *Freeman*, 467 F.3d at 698.

In *Randall*, an employee was fired immediately after meeting with the company owner who told him that the company needed to “control the amount of money spent on workers’ compensation costs.” 519 N.W.2d at 460. The immediate firing was sufficient to establish that the employee’s termination was causally related to his workers’ compensation claim. *Id.* In *Hubbard*, an employee was fired two days after he filed a complaint, which the court found sufficiently close in time to establish causation. 330 N.W.2d at 445. In contrast, federal courts have held that longer gaps are insufficient to establish causation. The Eighth Circuit has stated that an “interval of two months between the [protected conduct] and [the employee’s] termination so dilutes any inference of

causation.” *Kipp v. Mo. Highway & Transp. Comm’n*, 280 F.3d 893, 897 (8th Cir. 2002). That court has also stated that without other evidence, “a one-month or two-month lag is too long.” *Ebersole v. Novo Nordisk, Inc.*, 758 F.3d 917, 925 (8th Cir. 2014).⁶

There was some confusion at oral argument concerning which event—the first report of injury or the filing of the claim petition—is the appropriate measuring point from which to consider temporal proximity. Filing a first report of injury with the employer is not generally considered a formal claim for workers’ compensation benefits. See *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 805 (Minn. 2002) (stating that the purpose of the reporting requirement is to enable the employer to furnish immediate attention and to investigate the claim soon after the injury). Notice of injury to an employer is required by statute. Minn. Stat. § 176.141 (2016). Employees must report injuries to the employer to allow the employer to determine whether the injury is compensable. *Schmidgall*, 644 N.W.2d at 805. Denial of compensation after a report of injury does not mean that the employee will pursue a claim. Therefore, an employee’s submission of a first report of injury does not provide the employer with any reason to retaliate. In our view, the correct measuring point from which to determine whether causation can be inferred is the employee’s filing of a claim petition.

⁶ Appellant cites to *Tretter v. Liquipak Intern., Inc.*, 356 N.W.2d 713, 715 (Minn. App. 1984), stating that a three-month gap between the employee reporting sexual harassment and her demotion followed by an additional six-month gap between the demotion and her being laid off (for a total of nine months) is sufficient to show causation. However, it appears that in *Tretter* this court also considered the fact that the employee was the only person with her level of seniority terminated and that the company made no attempt to rehire her when it needed an employee in her former department as significant in inferring causation. *Tretter*, 356 N.W.2d at 715.

Appellant filed a claim petition challenging the denial of workers' compensation benefits on March 26, 2015. He was discharged on May 13, 2015. The seven-week gap between appellant's protected conduct and his discharge could reasonably support an inference that respondent terminated appellant because he filed a workers' compensation claim.

The alleged April 25, 2015 accident involving appellant is an intervening event which might undermine the causal inference. *Freeman*, 467 F.3d at 698. But the record also shows that respondent was both aware of appellant's potential workers' compensation claim and suspicious of its validity. Under Minnesota law, a discharge closely following an employee's protected activity of which the employer has knowledge can establish a causal connection between the two. *Hubbard*, 330 N.W.2d at 445. Given the short temporal gap between appellant's claim-petition filing and his termination, along with respondent's knowledge and candid skepticism of appellant's workers' compensation claim, appellant fairly met the requirements of the first *McDonnell Douglas* step of making a prima-facie showing of retaliation.

B. Respondent met its burden of producing a legitimate, nondiscriminatory reason for appellant's termination.

After the employee establishes a prima facie case of retaliatory discharge, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for terminating the employee. *Randall*, 519 N.W.2d at 459. The employer's burden to establish a legitimate reason for the termination is a burden of production. *Schmitz*, 831 N.W.2d at 670-71. The employer need only provide a legitimate reason; it "need not

persuade the court that it was actually motivated by the proffered reasons.” *Tex. Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 254, 101 S. Ct. 1089, 1094 (1981). For this step to be met, the court need only find that the record contains “evidence presented by the employer that its actions were related to some legitimate business purpose.” *Sigurdson v. Isanti County*, 386 N.W.2d 715, 720 (Minn. 1986).

Respondent claims that it terminated appellant’s employment because he accumulated 11 points on his driving record, exceeding the point limit allowed for remaining eligible to drive for the company. Once an employee accumulates eight or more points within three years, the employee is terminated. Appellant had 11 points after the April 25 accident. Respondent sufficiently articulated a legitimate and nondiscriminatory reason for terminating appellant’s employment.

C. Appellant failed to establish a genuine issue of material fact as to whether respondent’s reason for his termination was pretextual.

Appellant argues that his claim that the April 25 accident was fabricated raises a genuine issue of material fact as to whether respondent’s proffered reason for terminating his employment was pretextual.

Once the employer has produced a legitimate reason for the discharge, the employee must “show that the reason or justification stated by the employer is actually a pretext for discrimination.” *Id.* The employee “may meet the burden of showing pretext either directly by persuading the court that a discriminatory reason likely motivated the employer or indirectly by showing that the employer’s proffered explanation is unworthy of credence.” *Meads v. Best Oil Co.*, 725 N.W.2d 538, 542 (Minn. App. 2006) (quotation

omitted), *review denied* (Minn. Feb. 20, 2007). The employee does not sufficiently establish pretext by showing that the termination was “ill-advised or unwise, but rather must show that the employer has offered a phony excuse.” *Id.* at 542-43 (quotation omitted). The employee can also prevail if a discriminatory reason “more likely than not” motivated the termination, even when the employer has presented a legitimate reason. *McGrath v. TCF Bank Sav., F.S.B.*, 509 N.W.2d 365, 366 (Minn. 1993). The pretext inquiry looks to “whether the employer gave an honest explanation of its behavior” in light of the employee’s arguments. *Krenik v. County of Le Sueur*, 47 F.3d 953, 960 (8th Cir. 1995).

Appellant claims that respondent’s investigation of the April 25 accident was fraught with issues, such as a lack of eyewitnesses, Zolin’s typed summaries being more detailed than her handwritten notes, and respondent’s failure to preserve the April 25 video recording of the loading dock. Appellant essentially argues that the poor quality of the investigation raises a genuine issue of material fact concerning whether an accident qualifying him for termination even occurred. But, in context, the employer is not required to prove that the April 25 accident occurred. Rather, the question is whether there is an issue of material fact concerning whether respondent believed in good faith that appellant was involved in an accident on April 25.

The record shows that respondent investigated the report of the April 25 accident in which appellant was alleged to have been involved. Zolin interviewed Booth, Wright, and appellant about the alleged accident, reviewed surveillance video from that day, and had the branch and fleet managers check the trailers for damage. On this record, it is evident

that respondent reasonably and honestly believed that appellant had been involved in such an accident.⁷ Appellant asserted that numerous other people were willing to testify that he was not involved in the April 25 accident. But appellant did not depose or otherwise obtain admissible evidence from any of these other people. Appellant also agreed that he was not aware of any similarly situated person—an employee who had been injured on the job—being terminated because of an injury or workers’ compensation claim. While appellant submitted evidence of two other employees who were fired for excessive driving-record points around the same time as he was, neither of those employees was pursuing workers’ compensation benefits. That evidence supports *respondent’s* position that any driver who receives excessive points is terminated without exception.

Appellant relies on *Sanchez v. Dahlke Trailer Sales, Inc.*, 897 N.W.2d 267 (Minn. 2017), to support his position that pretext can be inferred when an employee is terminated in the midst of workers’ compensation litigation. In *Sanchez*, the employer hired an

⁷ Even if respondent’s investigation of the alleged accident was not completed to the highest standards, we have routinely stated in unpublished opinions that it is not the courts’ role to question an employer’s investigation methods. See *McKee v. St. Paul Eye Clinic, P.A.*, No. A14-0681, 2015 WL 1757833, at *5 (Minn. App. Apr. 20, 2015) (“It is not [the court’s] province to determine whether the employer’s investigation of alleged employee misconduct reached the correct result, so long as it truly was the reason for the plaintiff’s termination.” (quotation omitted)), *review denied* (Minn. July 21, 2015); *Shirwa v. N. Star, Inc.*, No. A12-1467, 2013 WL 1092416, at *6 (Minn. App. Mar. 18, 2013) (“[C]ourts have no authority to sit as super-personnel departments reviewing the wisdom or fairness of the business judgments made by employers, except to the extent that those judgments involve intentional discrimination.” (quotation omitted)); *Suneson v. N. Tool & Equipment Co.*, No. A06-1844, 2007 WL 3076992, *3 (Minn. App. Oct. 23, 2007) (concluding that “although the documentation of respondent’s investigation . . . could have been clearer, the record does not indicate that the investigation and the decision to terminate appellant resulted from anything other than” the proffered legitimate reason).

undocumented immigrant who filed a workers' compensation claim eight years after his initial hiring. 897 N.W.2d at 270-71. The employer placed that employee on an indefinite unpaid leave of absence within a day or two of his deposition in the workers' compensation litigation, citing the employee's undocumented status as its reason. *Id.* at 271. The record in *Sanchez* contained evidence that the employer knew of the employee's undocumented status well before the employee was injured on the job. *Id.* at 270. The supreme court concluded that genuine issues of material fact remained concerning the employer's true motivation for placing the employee on unpaid leave. *Id.* at 275. In doing so, the supreme court relied on the employer's apparent willingness to employ the undocumented individual with knowledge of his immigration status right up until he filed a workers' compensation claim. *Id.* Here, in contrast, the reason given by respondent for terminating appellant's employment followed after the disqualifying event—accumulating eight points for driving mishaps—and only existed after the at-fault accident of April 25. Appellant did not pass the eight-point threshold until a month after he filed his workers' compensation claim. Therefore, *Sanchez* is not controlling.

Finally, we recognize that the supreme court has recently employed language suggesting that it is possible that the supposition of what facts might be proved at trial may be sufficient to survive a summary-judgment motion. *Buskey v. Am. Legion Post #270*, 910 N.W.2d 9, 10 (Minn. 2018) (stating that courts might infer knowledge of possible claims and potential claimants when a letter suggests that a party might be making a claim). But in order to avoid summary judgment here, appellant must identify and supply evidence from which to make the inferences for which he argues. Appellant did not provide a record

sufficient to permit a reasonable factfinder to conclude that respondent's reason for terminating appellant was pretextual. Therefore, the district court did not err in granting summary judgment to respondent and dismissing appellant's retaliatory-discharge claim.

Affirmed.