

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

SALLY M. KINNEY,

Plaintiff,

vs.

HOLIDAY COMPANIES, HOLIDAY
STATIONSTORES, INC., HOLIDAY
DIVERSIFIED SERVICES, INC.,
and HOLIDAY ALASKA, INC.,

Defendants.

Case No. 3:07-cv-0147-RRB

**ORDER DENYING MOTION
FOR RECONSIDERATION**

I. INTRODUCTION

Before the Court is Plaintiff Sally Kinney ("Kinney") with a Motion for Reconsideration at Docket 58. Kinney argues that in granting summary judgment to Defendants Holiday Companies, Holiday Stationstores, Inc., Holiday Diversified Services, Inc., and Holiday Alaska, Inc. (collectively "Holiday"), the Court "misconstrued" the relevant Family and Medical Leave Act ("FMLA") regulations. Kinney also claims that the Court "misconstrued the testimony of Holiday management."

Holiday opposes at Docket 65, arguing that Kinney's motion "rehashes arguments already considered and dismissed by the Court, and misconstrues deposition testimony in attempt to change the factual background of the matter."

II. LEGAL STANDARD

Local Rule 7.1(1) does not establish a standard for granting or denying motions for reconsideration. However, as a question of judicial efficiency, motions for reconsideration should only be sought or granted if the court has overlooked a material fact, misconceived a principle of law directly bearing upon the litigated issue, or if the court's initial decision was clearly erroneous or presents the risk of committing a manifest injustice.¹

III. DISCUSSION

Kinney's Motion for Reconsideration misapprehends the reasons for the Court's ruling on Holiday's Motion for Summary Judgment. Kinney claims that the Court "failed to address the legal

¹ See, e.g., Rodick v. City of Schnedctady, 155 F.R.D. 29, 29 (N.D. N.Y. 1994) (reconsideration only justified if there has been "an intervening change" in controlling law, new evidence is discovered which was not previously available, or it is necessary "to remedy a clear error of law or to prevent obvious injustice"); Martin v. Mapco Ammonia Pipeline, Inc., 866 F. Supp. 1304, 1308 (D. Kan. 1994) (reconsideration justified if there has been an intervening change in controlling law, new evidence has become available, or there is a need to correct a clear error or prevent a manifest injustice); see also Alaska R. Civ. P. 77(k)(2) (specifying grounds warranting reconsideration under state rules of procedure).

issue that Kinney had a chronic, serious health condition which was known by the employer.”² The Court did not “fail” to address this legal issue, but rather declined to rule on that issue because it was unnecessary for the Court to do so. The Court’s ruling was based upon Kinney’s failure to make a valid request for leave under the FMLA, a ruling that had nothing to do with Ms. Kinney’s actual condition nor Holiday’s knowledge of it. Kinney also claims that the Court erred in ruling that the request was invalid. According to Kinney, such a ruling “faults Kinney for not staying home, but going to work.”³ In reality, the Court has no interest in assigning “fault” in this case. For the purpose of the Court’s ruling, it does not matter whether Kinney’s decision not to call in sick shows that she has an admirable sense of duty and loyalty, or whether it shows that she was not sufficiently ill to take FMLA leave. What matters is that the FMLA does not impose upon employers a duty to make instantaneous decisions to approve or deny FMLA leave at the very moment that the employee requests such leave.

Kinney does cite two items of evidence to contradict the Court’s ruling that the FMLA does not impose a duty to make instantaneous determinations of leave. According to Kinney, two of

² Docket 58 at 2.

³ Docket 58 at 2.

Holiday's employees have admitted in depositions that "as soon as Kinney asked to be allowed to go home, it was the obligation of Holiday to allow Kinney to go home."⁴ However, the cited examples simply do not support this assertion. For example, Kinney cites the deposition of Holiday employee Joseph Gasik, Jr., who testified as follows:

Q: Okay. So if Sally Kinney told Sandra that she was - the cancer was back, she was taking medications, and actually showed the medications to Sandra, and then when she goes to work, tells the store manager I can't stay here, I feel too sick, too nauseous, I have to go home, does that invoke the Family Medical Leave issue, is she allowed to go home?

A: Generally speaking, if an employee came to a supervisor, my answer would be yes, let them go home. But again, that doesn't mean that she qualifies for Family Medical Leave if she just has been working and asked to go home for, say, half a day. That does not meet the requirements for Family Medical Leave.⁵

Clearly, Mr. Gasik did not admit that Holiday was obligated under the FMLA to make mid-shift decisions regarding approval of FMLA leave and, indeed, he testified to the contrary. As Holiday notes in its opposition, "the procedure for asking for and receiving

⁴ Docket 58 at 2.

⁵ Gasik Depo., Docket 58, Exhibit 1, at 22-23.

permission to take time off" does not necessarily "implicate the procedure for commencing the FMLA process."⁶

The Court is similarly unswayed by Kinney's citation of the deposition of Holiday employee Sandra Stewart. Kinney's counsel asked Stewart whether Kinney was "supposed to fill out any paperwork or anything" in the event that she told her manager "boy, I feel sick today, I don't feel well, can I go home?"⁷ Stewart answered, "No, that would be orally."⁸ Nowhere does Ms. Stewart concede that such a request falls under the ambit of the FMLA.

Kinney claims that the Court's ruling is "contrary to the mandates of the FMLA" because it "put[s] the burden on Kinney, rather than the employer."⁹ Kinney never actually says what "burden" she has in mind. However, if Kinney is referring to the "burden" of having to provide sufficient notice of intent to take FMLA leave, that burden is imposed not by the Court, but by the FMLA itself.¹⁰

⁶ Docket 65 at 5.

⁷ Stewart Depo., Docket 58, Exhibit 1, at 60.

⁸ Stewart Depo., Docket 58, Exhibit 1, at 60.

⁹ Docket 58 at 5.

¹⁰ 29 C.F.R. § 825.303.

The Court has already recited, in its Order Granting Summary Judgment, the legal authorities which justify its ruling that Ms. Kinney's request for time off on March 13, 2007, did not trigger the protection of the FMLA. Kinney's Motion for Reconsideration fails to cite any evidence or legal authority which would alter the Court's decision.

V. CONCLUSION

For the foregoing reasons, Kinney's Motion for Reconsideration at **Docket 58** is **DENIED**.

IT IS SO ORDERED.

ENTERED this 7th day of April, 2009.

S/RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE