JUDITH A. ECKENROD,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 02-01,787
	:	
	:	
	:	
WAT FEDERAL CREDIT UNION,	:	
Defendant	:	MOTION FOR SUMMARY JUDGMENT

Date: March 23, 2005

OPINION and ORDER

Before the court for determination is the Motion for Summary Judgment of Defendant WAT Federal Credit Union (hereafter "WAT") filed November 18, 2004. The court will grant in part and deny in part the motion.

Background

WAT is a federally chartered credit union that maintains an office at 445 Elmira Street, Williamsport, Pennsylvania. Judith A. Eckenrod (hereafter "Eckenrod") was an employee of WAT. She began her employment with WAT as a part-time secretary/teller in 1979. In 1983, Eckenrod achieved full time status. Eventually, she was promoted to head teller, a position she would hold until her termination.

In 1999, WAT distributed an employee handbook to Eckenrod. She signed an acknowledgement that she received it on June 25, 1999.

Donna Hauke (hereafter "Hauke") was also an employee of WAT. She began her employment with WAT in 1981 as a full-time teller/loan officer/data entry personnel. In 1998,

Hauke was promoted to manager of the Elmira Street office. In this capacity, she was Eckenrod's supervisor.

Eckenrod's sister had been diagnosed with cancer. In July 1999, Eckenrod requested to be placed on part-time status with an hourly pay of $10/hour and medical benefits, so that she would be able to spend time with her ailing sister who lived in Altoona, Pennsylvania. WAT offered Eckenrod part-time status at $8.50/hour and no medical benefits. Despite the request and counter, Eckenrod did not revert back to part-time status.

On March 21, 2000, Eckenrod's sister died. Her sister's passing greatly impacted Eckenrod. But even before her sister's death, Eckenrod was having a difficult time dealing with her sister's illness. The emotional impact from her sister's illness and death necessitated Eckenrod taking time off from work. She sought and was granted requests for vacation and medical leave during the year 2000.

Eckenrod also sought medical leave in 2000 for a broken jaw she suffered. Starting on October 16, 2000, she was out on medical leave because of this injury. Her treating physician authorized her to return to work with a "no talking" restriction effective October 30, 2000. On October 25, 2000 Eckenrod submitted to WAT a note from her treating physician, Dr. Rekhala, that due to her emotional problems she could not return to work "until further notice". WAT responded to this on November 3, 2000 with a written request for a written physician's report specifying the medical reason for her absence and the anticipated length of time she would be off work. WAT then terminated Eckenrod's employment, notifying her of this termination via a letter dated November 8, 2000. The foremost reason set forth in the termination letter was

excessive absenteeism; Eckenrod had missed at least 32 days of work in 2000 for medical reasons.

Eckenrod has brought the present suit against WAT. In the complaint filed October 1, 2002, Eckenrod has alleged breach of contract and intentional infliction of emotional distress claims against WAT.[1] As to the breach of contract claim, Eckenrod contends that the employee handbook distributed by WAT set forth the contractual terms and conditions of her employment relationship with WAT. Eckenrod alleges that WAT breached this contract in two ways. First, WAT failed to provide her with the long-term medical leave benefit due her under the terms of the handbook. Second, WAT impermissibly terminated Eckenrod's employment for absenteeism in contravention of the sick leave provisions expressed in the handbook.

As to the intentional infliction of emotional distress claim, Eckenrod has focused on Hauke's conduct. Eckenrod contends that Hauke engaged in a course of extreme and outrageous conduct that was designed and intended to force Eckenrod to resign. Eckenrod asserts that Hauke's conduct caused her severe and serious emotional distress.

With regard to both of Eckenrod's claims, WAT argues that it is entitled to summary judgment. WAT argues that Eckenrod cannot prevail on her breach of contract claim because the employee handbook is not an enforceable contract. WAT contends that the handbook does not evidence a clear intent on its part to be bound by the terms and provisions contained therein. Even so, WAT also argues that if the handbook is determined to be an enforceable contract, Eckenrod has failed to establish that WAT violated the sick leave provisions.

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[1] Eckenrod had also alleged claims for breach of implied contract and wrongful discharge in her complaint. In an order dated June 30, 2003, the Honorable Kenneth D. Brown granted WAT's demurrers to those claims and dismissed them.

Regarding the intentional infliction of emotional distress claim, WAT contends that this claim fails for two reasons. First, WAT argues that Eckenrod's intentional infliction of emotional distress claim is barred as being within the exclusive jurisdiction of the Worker's Compensation Act. Second, if the claim is not covered by the Worker's Compensation Act and the court has jurisdiction to hear the claim, WAT argues that the alleged conduct of Hauke does not rise to the level of extreme and outrageous conduct that must be proven to establish the cause of action.

Discussion

Before beginning the analysis of the issues before the court, it is appropriate to state the standard of review for a summary judgment motion. A party may move for summary judgment after the pleadings are closed. Pa. R.C.P. 1035.2. Summary judgment may be properly granted "… when the uncontraverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law." ***Rauch v. Mike-Mayer***, 783 A.2d 815, 821 (Pa. Super. 2001); ***Godlewski v. Pars Mfg. Co.***, 597 A.2d 106, 107 (Pa. Super. 1991). The movant has the burden of proving that there are no genuine issues of material fact. ***Rauch***, 783 A.2d at 821. In determining a motion for summary judgment, the court must examine the record " '… in the light most favorable to the non-moving party, accepting as true all well pleaded facts in its pleading and giving that party the benefit of all reasonable inferences ….'" ***Godlewski***, 597 A.2d at 107 (quoting ***Banker v. Valley Forge Ins. Co.***, 585 A.2d 504, 507 (Pa. Super. 1991)). Summary

judgment will only be entered in cases that are free and clear from doubt and any doubt must be resolved against the moving party. ***Garcia v. Savage***, 586 A.2d 1375, 1377 (Pa. Super. 1991).

Summary judgment may be properly entered if the evidentiary record "… either (1) shows that the material facts are undisputed or (2) contains insufficient evidence of facts to make out a *prima facie* cause of action or defense." ***Rauch***, 783 A.2d at 823-24; *See also*, Pa.R.C.P. 1035.2. If the defendant is the moving party under Pa.R.C.P. 1035.2(2), then "… he may make the showing necessary to support the entrance of summary judgment by pointing to material which indicates that the plaintiff is unable to satisfy an element of his cause of action." ***Rauch***, 783 A.2d at 824. "Conversely, the [plaintiff] must adduce sufficient evidence on an issue essential to [his] case and on which [he] bears the burden of proof such that a jury could return a verdict favorable to the [plaintiff]." ***Ibid***. If the plaintiff fails to establish a prima facie case, then summary judgment is proper as a matter of law. ***Ack. v. Carrol Township***, 661 A.2d 514, 516 (Pa. Cmwlth. 1995).

1. Breach of Contract Claim

The first issue before the court is whether WAT's employee handbook is an enforceable contract between WAT and Eckenrod. To resolve this issue, the court must first be mindful of some general principles governing employment relationships. Pennsylvania is an at-will employment state. Generally, all non-contractual employment relationships are presumed to be at-will employment relationships. ***McLaughlin v. Gastrointestinal Specialists, Inc.***, 750 A.2d 283, 287 (Pa. 2000); ***Luteran v. Loral Fairchild Corp.***, 688 A.2d 211 (Pa. Super. 1997), *app. denied*, 701 A.2d 578 (Pa. 1997). This presumption is an extremely strong one. ***McLaughlin***,

750 A.2d at 287. This presumption is so strong that except in rare instances discharges will not be judicially reviewed. ***Scott v. Extracorporeal, Inc.***, 545 A.2d 334, 336 (Pa. Super. 1988).

Under the at-will doctrine, an employee may be fired for any or no reason. ***Luteran***, 688 A.2d at 214; ***Ruzicki v. Catholic Cemeteries Ass'n of Pittsburgh***, 610 A.2d 495, 497 (Pa. Super. 1992). Similarly, an employee may leave a job for any or no reason. ***Reilly v. Stroehmann Bros. Co.***, 532 A.2d 1212, 1213 (Pa. Super. 1987), *app. granted*, 549 A.2d 137 (Pa. 1988). The burden of overcoming the presumption and establishing that one is not an at-will employee is upon the employee. ***Luteran***, 688 A.2d at 214. An employee can rebut the presumption by establishing one of the following: (1) an agreement for a definite duration; (2) an agreement specifying that the employee will be discharged for just cause only; (3) sufficient additional consideration; or (4) an applicable recognized public policy exception. ***Grose v. P & G Paper Prods.***, 2005 Pa. Super. 8, 10; ***James v. AMP, Inc.***, 856 A.2d 140, 144 (Pa. Super. 2004).

In order to carry this burden and overcome the presumption, employees have tried to use handbooks issued by their employers as enforceable contracts. An employee handbook may be found to have legally binding contractual significance that alters the at-will relationship. ***Martin v. Capital Cities Media, Inc.***, 511 A.2d 830, 841 (Pa. Super. 1986), *app. denied*, 523 A.2d 1132 (Pa. 1987). In determining the contractual significance of a handbook, the threshold question is, "With the distribution of the handbook, does the at-will employee reasonably understand that the employer intended to alter the pre-existing at-will status?" ***Id.*** at 837.

To answer this question, our appellate courts have said:

> 'A handbook is enforceable against an employer if a reasonable person in the employee's position would interpret its provisions as evidencing the employer's intent to supplant the at-will rule and be bound legally by its representations in the handbook. The handbook must contain a clear indication that the employer intended to overcome the at-will presumption. We have held that it is for the court to interpret the handbook to discern whether it contains evidence of the employer's intention to be bound legally.'

Luteran, 688 A.2d at 214 (quoting ***Small v. Juniata Coll.***, 682 A.2d 350, 353 (Pa. Super. 1996)). When analyzing the handbook, a court "… should neither presume that the employer intended to be bound legally by distributing the handbook nor that the employee believed that the handbook was a legally binding instrument." ***Ibid***. The ultimate guide is the intentions of the parties, and " '… to ascertain the intention the court may take into consideration the surrounding circumstances, the situation of the parties, and the objects they apparently have in view ….'" ***Ibid***. (quoting ***Martin***, 511 A.2d at 839). Language in an employee handbook, which stated that no contractual obligations were being established and that the at-will employment doctrine was being preserved, has been held to reserve an employer's right to terminate without following a handbook's progressive discipline procedures. *See*, ***Ruzicki***, 610 A.2d at 497-98.

In ***Ruzicki***, the defendant had employed the plaintiff for thirteen years. 610 A.2d at 496. The defendant terminated the plaintiff because he allegedly lacked the interpersonal skills required to deal with the individuals he supervised. The defendant had issued a handbook in which it stated that it believed in progressive discipline and that certain enumerated offenses would result in punishment that would increase in severity. ***Ibid***. The handbook also had a

separate list of offenses that would result in termination without resorting to the progressive discipline scheme. The handbook contained a section entitled "Purpose," which stated:

> 'This handbook is designed to be used as an informational guide to certain employment policies of the Catholic Cemeteries Association. It is not intended to give rise to any contractual obligations or to establish an exception to the employment-at-will doctrine.'

Ibid. The defendant informed the plaintiff that his job performance was unsatisfactory and that his job was on the line, but the progressive discipline provisions enumerated in the handbook were not followed before the defendant terminated the plaintiff. The plaintiff filed a suit against defendant alleging, inter alia, a breach of contract based on the employer's failure to follow the progressive discipline procedures before terminating him.

The defendant filed a motion for summary judgment, which the trial court granted. The trial court determined that no contract existed between the plaintiff and defendant and that the plaintiff was an at-will employee subject to termination at any time. ***Ruzicki***, 610 A.2d at 496. The plaintiff appealed arguing that the handbook was a legally enforceable implied contract that modified his at-will employment status. The Superior Court disagreed and affirmed the decision of the lower court. ***Id***. at 497.

The Superior Court held that the handbook did not act to modify the plaintiff's at-will status when the handbook had an explicit disclaimer stating that it did not modify the at-will relationship. The clear language of the disclaimer would not allow a reasonable employee to conclude that the defendant intended to overcome the at-will presumption and be bound by the progressive discipline procedures in the handbook before firing an employee. *See*, ***Ruzicki***,

610 A.2d at 497-98. The Superior Court called the explicit disclaimer "an insurmountable burden" for the employee to overcome in his attempt to establish that his at-will status had been modified by the handbook. ***Id***. at 498. The Superior Court found that the disclaimer clearly set forth the employer's intent as would relate to the at-will status of its employees.

The Superior Court took a bit of a different approach then it did in ***Ruzicki***, a decision dealing solely with termination, when confronted with the employee benefit provisions of a handbook in the case of ***Bauer v. Pottsville Area Emergency Medical Services***, 758 A.2d 1265 (Pa. Super. 2000). Still, the Superior Court retained the traditional handbook analysis. As a premise, the Superior Court set forth the clear intent standard stated in ***Luteran***, *supra*, and ***Matrin***, *supra*, and quoted above in this opinion. But the Superior Court then cited to Judge Beck's concurring opinion in ***Darlington v. General Electric***, 504 A.2d 306, 320 (Pa. Super. 1986) and stated:

> 'Provisions in a handbook or manual can constitute a unilateral offer of employment which the employee accepts by the continuing performance of his or her duties. A unilateral contract is a contract wherein one party makes a promissory offer which calls for the other party to accept by rendering a performance. In the employment context, the communication to employees of certain rights, policies and procedures may constitute an offer of an employment contract with those terms. The employee signifies acceptance of the terms and conditions by continuing to perform the duties of his or her job; no additional or special consideration is required.'

Bauer, 758 A.2d at 1269. Based on this reasoning, the Superior Court held that the handbook was the employer's unilateral offer to enter into a contract with its employee to provide benefits. The employee accepted the offer and made it binding upon the employer by providing his services to the employer. *See*, ***Ibid***. The Superior Court reached this conclusion

despite the fact that the handbook contained explicit statements that the employer was an at-will employer and that the employer and employee reserved the right to terminate the employment relationship at any time. ***Ibid***.

In ***Bauer***, an employee had filed a breach of contract action against his employer based upon an employee handbook. The employee had been hired as an emergency medical technician. The employee had worked for thirty-six hours a week for a period of more then two hundred days. Based upon a provision in the handbook, the employee contended that his work record entitled him to the benefits given a full time employee. ***Bauer***, 758 A.2d at 1267. The handbook stated:

> Pottsville Area E.M.S., (herein referred to as PAEMS), is an "at-will" employer. This means that employment may be offered or denied at any time for any reason. Both PAEMS management and the employee reserve the right to terminate employment at any time for any reason.
>
> ***
>
> STATUS CLASSIFICATIONS
>
> Full Time- Any employee scheduled for at least 36 hours per week for a period of 90 consecutive days will be treated as a full time employee.

Id. at 1269. The handbook also set forth the employer's policy regarding attendance, vacation, paid sick time, and other benefits. ***Ibid***. When the employer refused to provide the full time employee benefits, the employee instituted his breach of contract action.

The employer filed preliminary objections to the employee's complaint. ***Bauer***, 758 A.2d at 1267. The trial court granted the preliminary objections and dismissed the employee's claims. The trial court determined that there was no contract between the employee and employer upon which the breach of contract cause of action could be based. ***Id***. at 1268, 1269.

The Superior Court reversed the trial court. It determined that there was a contract upon which to base the cause of action – the employee handbook. ***Bauer***, 758 A.2d at 1269. The Superior Court found:

> In this case, a reasonable person in appellant's position would understand that his continued performance would bear the fruits of his employer's policies. Appellant worked the requisite 36 hours per week for in excess of 90 days and received none of the benefits provided for in the handbook.

Ibid***. As such, the Superior Court held that the trial court abused its discretion when it concluded that the amended complaint failed to set forth a breach of contract cause of action.*** Id***. at 1270.***

Fairness is the theme of the ***Bauer*** opinion. The cornerstone paragraph of the opinion in which the Superior Court stated that a reasonable person in the employee's shoes would have understood that his continued performance would entitle him to the benefits promised by the employer in the handbook also stated that the employee had satisfied the terms of handbook's policies and still had not received the benefits. It is clear from reading this paragraph that the Superior Court was motivated by the belief that it was unfair for an employer to set forth policies which would encourage performance by the employee and then have the employer not live up to its end of the bargain despite getting the employee's performance.[2]

[2] This sense of fairness is echoed in a footnote responding to the concurring and dissenting opinion of Judge Cavanaugh. The Superior Court stated that, "As stated above, however, we find appellant can recover under the doctrine of quantum meruit based upon the facts averred in his complaint." ***Bauer,*** 758 A.2d at 1270, n.1. Quantum meruit is a form of restitution. ***Mitchell v. Moore,*** 729 A.2d 1200, 1202 (Pa. Super. 1999), *app. denied*, 751 A.2d 1952 (Pa. 2000). To be entitled to quantum meruit, one must first establish the elements of an unjust enrichment claim. ***Ibid.*** An unjust enrichment claim invokes the equitable powers of the court and can only be found where there is no written or express contract between the parties. ***Id.*** at 1203. In making this statement the Superior Court could not have been actually relying upon an unjust enrichment theory when it concluded that the amended complaint set forth a cause of action for breach of contract. The Superior Court could not in the same breath state that it disagreed with the trial court in that there *was* a contract upon to which base the cause of action then invoke a doctrine which arises when there is no contract.

The Superior Court reached opposite results despite marked similarities in handbook language to the effect that the at-will employment relationship was being retained in the ***Ruzicki*** and ***Bauer*** rulings. The different results indicate that what an employee may reasonably understand from a handbook depends upon the situations to which the handbook provisions are being applied. The court must now apply the legal principles of these two cases to the issue of whether WAT's employee handbook is enforceable as a contract in favor of Eckenrod. The undisputed facts create two distinct situations in which this question must be answered. The first is whether the handbook modified Eckenrod's at-will status such that WAT could not fire Eckenrod for any reason, including being absent, when she qualified for paid sick leave as set forth in the handbook. The second is whether Eckenrod is entitled to the long-term sick leave benefit expressed in the handbook.

a. At-will-employment status

Regarding the first issue, the court finds that the handbook did not modify WAT's ability to terminate Eckenrod at any time for any reason. For purposes of continuing or terminating employment, the handbook clearly intends to maintain the at-will employment relationship.

With regards to termination the handbook explicitly states as follows:

> A detail shall be maintained of all events leading to reprimand, probation, suspension or termination of an employee. **However, employees may be terminated without any written detail being maintained or prior warnings being given**.

Instead, the statement in the footnote must be interpreted as evidence of the Superior Court's desire to achieve fairness. Quantum meruit and unjust enrichment are equitable doctrines. The goal of equity is to achiever fairness and justice. The Superior Court attempted to do this by viewing the employee handbook as a unilateral offer, so that an employee who has rendered performance may get the promised benefit of his performance.

> …
>
> **Employees voluntarily terminating service are requested to extend the courtesy to the Credit Union to give as much notice a possible** to permit the Credit union to adequately fill the vacancy. A minimum of two weeks is suggested.
>
> …

WAT Federal Credit Union Handbook, 2 (June 8, 1999) (emphasis added). The language contained in the termination section of the handbook is evidence of WAT's intent to maintain the at-will relationship with its employees. This provision explicitly states that employees may be terminated without supporting documentation or prior warnings given to the employee. In so many words, the handbook states that WAT has reserved the right to terminate its employees for any or no reason. The language of the handbook also evidences an intent to retain the employee's right to quit for any or no reason. The termination section requests that any employee quitting provide two weeks notice. This language implicitly recognizes the employee's right to terminate her employment. This language does not prevent an employee from leaving, and, in fact, it does not even require that notice be given. Notice is only requested as a courtesy. Therefore, the termination provision of the handbook has retained the traditional at-will employment relationship. As such, WAT was free to terminate Eckenrod irrespective of the paid sick leave provisions in the handbook.

Our conclusion is supported by the similarities between the termination provision's language of WAT's employee handbook and the employee handbook's disclaimer in ***Ruzicki***, *supra*. In ***Ruzicki***, the Superior Court held that the disclaimer's language was so clear a statement of intent that it could not have been understood differently. So too has the

termination language of the WAT handbook set forth such a clear statement of WAT's intent with regard to the at-will status of its employees. The termination provision clearly permits WAT to fire an employee for any or no reason and allows an employee to leave for any or no reason. By doing so, WAT has evidenced its intent to maintain the at-will relationship with its employees and the handbook was not an attempt to modify this relationship. A reasonable employee reading the handbook could not conclude otherwise. Thus, Eckenrod cannot maintain a breach of contract cause of action based upon WAT's termination of her employment.

b. Sick leave entitlement

The rights provided by the sick leave provisions of the handbook present a different situation than the right of termination. It must first be stated that the handbook's clear intent to allow WAT to terminate Eckenrod at any time for any reason is not clouded by the inclusion of sick leave provisions in the handbook. The sick leave provisions set forth WAT's policy with regard to providing its employees with the benefit of still receiving pay despite being absent from work. The handbook provisions determine who is eligible for and the extent of the benefit. The sick leave provisions use a fixed number of days to determine what sick leave benefit the employee will receive. However, there is no language in the sick leave provisions which states that the employee must exhaust these days before she may be terminated for absenteeism. The inclusion in the sick leave provisions of the fixed number of days did not establish a bank from which an employee could draw before WAT could terminate for absenteeism. Rather, WAT included these fixed numbers as benchmarks to limit its exposure on the sick leave benefit. Accordingly, a reasonable person in Eckenrod's position could not

conclude that WAT intended to modify the clear statement in the termination provision that the at-will relationship was to be maintained by providing its employees with the sick leave benefits.

The sick leave benefit provisions in the handbook do establish what Eckenrod might reasonably expect while an employee of WAT. The handbook sets forth four different sick leave provisions: Paid Sick Leave; Sick Days – Minor; Sick Days – Major; and Sick Days – Long Term. The court finds that Eckenrod has presented evidence which could establish a claim for breach of contract based on WAT's alleged failure to provide her with the sick leave benefit, a right which would have accrued prior to Eckenrod's termination.

Under ***Bauer***, the handbook may be found to be enforceable against WAT as a unilateral offer with respect to provisions unrelated to the termination of the employment relationship. The handbook states that:

> Employees who are continued after the 90 period are designated as "regular" employees, the consequence of which is that they shall receive benefits if working on a full-time basis. A full-time employee is defined as an employee who works on a regularly-scheduled basis for a minimum of 30 hours per week. Employees falling into this classification **are** entitled to the Credit Union's benefits package….

WAT Federal Credit Union Handbook 1, 2, 10 (June 8, 1999) (emphasis added). This language could permit a trier of fact to conclude that full time employees of WAT would receive the benefits offered by WAT, which were set forth in the handbook. In so doing, a trier of fact could determine that it was WAT's intent to provide its full time employees with certain benefits and enumerated those benefits in the handbook. As such, Eckenrod may proceed on

her claim for the long-term medical leave benefit premised on the handbook being a unilateral offer.

As to WAT's contention that Eckenrod has failed to establish that it violated the sick leave provisions of the handbook, the Court finds that Eckenrod has presented evidence sufficient to permit the issue to be resolved by the trier of fact. Eckenrod has produced evidence that she was a full time employee of WAT who provided her services for over twenty years. Under the clear language of the handbook, Eckenrod would be "entitled" to the benefits expressed therein as a full time employee. It is clear from the evidence that Eckenrod took in excess of 30 sick days in 2000. Therefore, Eckenrod has presented evidence that she was entitled to some type of sick leave benefit under the provisions of the handbook. Determining what sick leave benefit Eckenrod qualified for and the extent thereof involves an interpretation of the handbook's sick leave provisions and the relationship between them. This interpretation will require the resolution of disputed facts and legal issue not now before the court. These matters will be determined at trial.

2. Intentional Infliction of Emotional Distress Claim

The second major issue before the court is whether Eckenrod may bring her intentional infliction of emotional distress claim against WAT. Eckenrod has alleged that Hauke engaged in a course of conduct designed and intended to force Eckenrod to retire from WAT. Eckenrod has alleged that Hauke's conduct toward this end caused severe and serious emotional distress to her.

According to Eckenrod, she and Hauke had been friends for fifteen years before their relationship took a turn. Deposition of Judith Eckenrod, 86 (December 8, 2003). The

deterioration of the relationship and Hauke's conduct must be viewed in light of two events. The first is an unemployment compensation hearing for a former WAT employee, Lori Condo. Eckenrod testified at the hearing on behalf of Condo. Eckenrod Deposition, 81-2. Eckenrod felt it was wrong for Hauke to tell Condo to shovel the sidewalks at the credit union and for WAT to have terminated Condo. Id. at 82. It was after testifying at this hearing that Eckenrod believes things changed between her and Hauke. Id. at 86.

At this time Eckenrod was the head teller and Hauke was her immediate superior. Eckenrod Deposition, 82, 83. Eckenrod testified that after the hearing she "… was questioned about everything she did." Id. at 82. That is, Hauke would question her on how she did her job. Id. at 83. For instance, if Eckenrod was dealing with a problem with one of the tellers Hauke would get involved and ask Eckenrod if she had done certain things. Id. at 83, 84. This had the effect of undermining her authority as head teller. Id. at 94. Eckenrod also testified regarding an incident concerning a discrepancy in the vault. Upon leaning of the discrepancy, Hauke talked to Eckenrod about it in front of the tellers and inquired if she had followed procedures. Ibid. Eckenrod was of the opinion that Hauke knew she had complied with the procedures, but Hauke was just out to embarrass her in front of the tellers. Ibid.

The second event was a letter from Eckenrod to Susan Shively, Chairman of the Board of Directors for WAT, dated January 25, 2000. In the letter, Eckenrod stated that her purpose was to inform Shively of her concerns regarding the way Hauke was running the office. Eckenrod stated that Hauke had failed to properly instruct the employees as to their duties, which in turn was having a detrimental effect on the operation of the office. Hauke's criticism of her failure to delegate authority to the tellers was unfounded since Hauke was uninformed as

to what was occurring at the teller stations. Eckenrod stated that she was satisfied with the teller's work and that they were doing more then their share since Condo's termination had increased everyone's workload. Eckenrod also stated that the employees did not have an opportunity to air their grievances. She said that no monthly meetings were held, and that when she personally tried to resolve these issue with Hauke she became defensive. Upon getting no satisfaction with Hauke, Eckenrod said she informed Hauke that she was going to write a letter to the Board advising it of the problems, and Hauke told her in a somewhat dismissive manner to do what she had to do.

Following this letter, Eckenrod testified that her relationship with Hauke significantly changed. Eckenrod Deposition, 86. Eckenrod testified that Hauke would no longer speak to her unless it was business related. Id. at 99. She testified that Hauke asked Sue Metzger, a loan officer with WAT, what Eckenrod's problem was. Id. at 99. Eckenrod stated that Hauke would also criticize her job performance a couple times a week without justification in front of the other employees. Id. at 100,101. Hauke had confronted Eckenrod concerning her husband claiming that he was a disruption to the office since he was calling her four to six times a day. Id. at 102. Eckenrod testified that he was not calling her four to six times a day. Ibid. Eckenrod also testified that Hauke inquired as to whether she considered retiring when Eckenrod came in to inform Hauke that she would be out of work because of her broken jaw in October 2000. Id. at 63, 100.

As would relate to Eckenrod's intentional infliction of emotional distress claim, WAT raises two issues. The first is that the claim is within the exclusive jurisdiction of the Worker's Compensation Act and may not be brought before this court. The second is that even if the

Worker's Compensation Act does not bar the claim, the alleged conduct of Hauke fails to establish, as a matter of law, a claim for intentional infliction of emotional distress.

The court will address the exclusivity argument first. Ordinarily, the Worker's Compensation Act (hereafter "the WCA"), 77 P.S. §1 et seq., is the exclusive means of compensation for injuries sustained in the workplace. ***Krasevic v. Goodwill Indus. of Cent. Pennsylvania, Inc.***, 764 A.2d 561, 564 (Pa. Super. 2000), *app. denied*, 788 A.2d 377 (Pa. 2001). The exclusivity provision of the WCA is set forth at 77 P.S. §481. It provides as follows:

> The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employees, his legal representatives, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of injury or death as defined in section 301(c)(1) and (2) or occupational disease as defined in section 108.

77 P.S. §481(a). " 'Thus, an injured employee cannot maintain a tort action against his or her employer if the injury is compensable under the provisions of the [WCA].'" ***Albright v. Fagan***, 671 A.2d 760, 762 (Pa. Super. 1996) (quoting ***Gertz v. Temple Univ***., 661 A.2d 13, 15 (Pa. Super. 1995)).[3]

Conversely, if the injury is not within the scope of the act, then the WCA does not bar an employee's common law tort claim against his employer. ***Urban v. Dollar Bank***, 725 A.2d 815, 818 (Pa. Super 1999), *app. denied*, 742 A.2d 172 (Pa. 1999). The WCA defines "injury" at 77 P.S. §411 as follows:

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[3] Under the WCA, an employer has exchanged immunity from suit by an injured employee for payment of compensation without regard to fault. ***Krasevic***, 764 A.2d at 564. The employee has made an exchange too under the WCA. The employee has exchanged the right to sue his employer for an injury he received in the course of his employment for the right to compensation without the burden of establishing fault. ***Snyder v. Specialty Glass Prods.***, 658 A.2d 366, 369 (Pa. Super. 1995).

> The terms “injury” and “personal injury,” as used in this act, shall be construed to mean an injury to an employee, regardless of his previous physical condition, arising in the course of his employment and related thereto, and such disease or infection as naturally results from the injury or is aggravated, reactivated or accelerated by the injury; …. The term “injury arising in the course of his employment,” as used in this article, shall not include an injury caused by the act of a third person intended to injure the employee because of reasons personal to him, and not directed against him as an employee or because of his employment; …but shall include all other injuries sustained while the employee is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer’s premises or elsewhere, and shall include all injuries caused by a condition of the premises or affairs thereon, sustained by the employee, who, though not so engaged, is injured upon the premises occupied by, or under the control of the employer, or upon which the employer’s business or affairs are being carried on, the employe’s (sic) presence thereon being required by the nature of his employment.

77 P.S. §411(1). “The determination of whether an employee is within the course of his or her employment at the time an injury occurs is a conclusion of law to be determined on the basis of facts subject to the court's review.” ***Vosberg v. Connolly***, 591 A.2d 1128, 1130 (Pa. 1991) (per curiam). “In conducting such a review, the court must bear in mind that ‘[t]he Act does not say that the injury must 'occur' or 'be manifested' or 'be consummated' in the course of employment. It merely says that it must 'arise . . . in the course of employment.' 'Arising' connotes origin, not completion or manifestation.’” ***Ibid***. (quoting ***Krawchuck v. Philadelphia Electric Co.***, 439 A.2d 627, 632 (Pa. 1982)).

A two-step analysis has been used to determine whether the WCA applies. An employee will have suffered an injury arising in the course of his employment: (1) where the employee is injured while actually engaged in furtherance of the employer's business or affairs; or (2) where the employee is injured on the premises of the employer even though not actually

engaged in furtherance of the employer's business or affairs, but only if the nature of his or her employment requires the employee's presence. ***Vosberg***, 591 A.2d at 1130. Using this analysis, the court finds that Eckenrod's injury arose during the course of her employment.

The injury Eckenrod claims to have suffered is severe emotional distress. The alleged cause of this injury is Hauke's alleged extreme and outrageous conduct. As such, the origin of Eckenrod's injury is her employment. Hauke's alleged conduct occurred on WAT's premises and while Eckenrod was performing her job. Therefore, Eckenrod's injury arose during the course of her employment and is covered by the WAC.

However, this does not dispose of Eckenrod's intentional infliction of emotional distress claim against WAT. An employee may still assert a tort claim against her employer for an injury suffered at work under the third party attack exception, which is derived from the definition of injury in the WCA. ***Vosberg***, 591 At 1131. " 'Under that exception, an employee is permitted to maintain a common law action against his employer whenever his or her injury is the result of an attack or assault by a third person or fellow employee for reasons that are *personal* to the attacked and *not connected with the victim's employment*.'" ***Ibid***. (quoting ***Mentzer v. Ognibene***, 559 A.2d 79, 82 (Pa. Cmwlth. 1989)) (emphasis in original). A plaintiff is not required to establish a prior personal animus between him and the attacker to invoke the exception. ***Krasevic***, 764 A.2d at 565. However, there is a presumption that an attack was work related when it occurs on the employer's premises and there is a lack of previous personal animus. ***Id***. at 566. In any event, a plaintiff must demonstrate that he was attacked for purely personal reasons unrelated to employment to invoke the exception. ***Id***. at 565.

Eckenrod has failed to produce any evidence in support of her alleged emotional distress which would support a finding that it resulted from conduct perpetrated by Hauke for purely personal reasons. Firstly, Hauke's alleged conduct occurred on WAT's premises. Secondly, there is no evidence of a prior personal animus between Eckenrod and Hauke. Eckenrod testified that she and Hauke had been friends for fifteen years before the problems arose following her testimony at the Condo unemployment compensation hearing. Eckenrod Deposition, 86. Eckenrod did testify that a personality conflict had developed between her and Hauke. Id. at 93. The rancor of this conflict is suspect. Eckenrod testified that Hauke granted all of her requests for time off. Id. at 58. Specifically looking at Eckenrod's July 10, 2000 vacation request, which followed the two watershed events that gave rise to this personality conflict, a serious doubt would exist that this was a blood feud. Hauke commented on it stating, "Aug 14th to 18th is no problem. Have a good time! Donna." Id., Eckenrod Exhibit 10. These are hardly the words of one's mortal enemy. The civility between Eckenrod and Hauke can further be seen when Eckenrod broke her jaw. Eckenrod testified that Hauke inquired as to how she was when it was obvious that Eckenrod was in substantial pain. Id. at 60, 61. Eckenrod further testified that when she came in to inform Hauke that she would be out from work Hauke again asked her how she was doing. Id. at 63. Thus, the evidence presented would not indicate a personal animus between Eckenrod and Hauke.

But more importantly, Hauke's alleged conduct was job related. Hauke was the office manager and Eckenrod's superior. Hauke was therefore responsible to ensure that the office ran smoothly and that everyone was doing her job, including Eckenrod. As such, it was well within Hauke's job description to ask Eckenrod if she complied with procedures and if anyone

was creating a disturbance in the office. Therefore, the conduct of Hauke cannot be considered to be personal and unrelated to employment.

An argument can be made that Hauke's conduct was not work related, but personal in that it was in retaliation for Eckenrod testifying at Condo's unemployment compensation hearing and Eckenrod's letter to Shively criticizing her management of the office. However, a similar retaliation type argument was rejected by the Superior Court in ***Shaffer v. Proctor & Gamble***, 604 A.2d 289 (Pa. Super. 1992), *app. denied*, 616 A.2d 986 (Pa. 1992).

In ***Shaffer***, the defendant had employed plaintiff as a line worker for ten years. 604 A.2d at 290. During that time, plaintiff sustained a job related injury to her arm. The plaintiff received different treatment regimens for her injury. While undergoing treatment, the plaintiff was able to return to work, but did miss time. ***Ibid***. This missed time was deducted from her vacation time and was eventually regarded as a disciplinary matter that resulted in her termination. The plaintiff alleged that in retaliation for her lack of responsibility the defendant changed her shift, which interfered with her ability to obtain medical treatment and to share transportation at a time when operating a vehicle herself was difficult, threatened her with termination, and harassed her for demonstrating an uncooperative attitude. ***Ibid***. Further, the plaintiff alleged that while she was receiving worker's compensation benefits, the payments were sporadic. The plaintiff also alleged that the defendant employer denied bills submitted by her medical care providers. ***Ibid***.

The plaintiff filed suit against her employer alleging, inter alia, an intentional infliction of emotional distress claim. ***Shaffer***, 604 A.2d at 290. The defendant employer filed preliminary objections, which were granted by the trial court. The trial court determined that it

was without jurisdiction to hear the case because the WCA was the plaintiff's exclusive remedy. ***Ibid***.

The Superior Court begrudgingly affirmed the trial court. While calling the defendant employer's alleged conduct appalling, the Superior Court nonetheless determined that it was job related. ***Shaffer***, 604 A.2d at 293. The Superior Court stated that the alleged facts "…demonstrate that it was appellant's injury, her subsequent medical treatment, and her eventual refusal to cooperate with [the defendant employer's] unreasonable demands which resulted in the vindictive, malicious and persecutory treatment she received." ***Ibid***. The employer's alleged vindictive behavior grew out of a job related incident; therefore, it was job related conduct and not done for personal reasons.

The same result must be reached in this case. Even if one were to agree with Eckenrod and find that following the Condo hearing and Shively letter Hauke engaged in a vindictive course of conduct toward Eckenrod, that course of conduct had its genesis in work related issues. Underlying both the Condo hearing and the Shively letter is Eckenrod's criticism of how Hauke was running the office. At the hearing, she was critical of the decision to have Condo shovel the sidewalks and of her eventual termination. In the letter, Eckenrod was critical of Hauke's lack of instruction to the employees, failure to conduct regular staff meetings, and dismissive attitude. As such, any vindictiveness on the part of Hauke would have grown out of a work related issue – her management of the office. Therefore, the WAC bars Eckenrod's intentional infliction of emotional distress claim.

Having so determined, the court need not decide whether Hauke's alleged conduct could be classified as extreme and outrageous.

Accordingly, the motion for summary judgment is granted in part and denied in part.

ORDER

It is hereby ORDERED that the Motion for Summary Judgment of Defendant WAT Federal Credit Union filed November 18, 2004 is GRANTED IN PART and DENIED IN PART.

The motion is GRANTED IN PART in that Plaintiff has failed to establish her claim for breach of contract based on the Defendant terminating her employment. Plaintiff's breach of contract claim in this regard is DISMISSED.

The motion is GRANTED IN PART in that Plaintiff's intentional infliction of emotional distress claim is barred by the Worker's Compensation Act, 77 P.S. §1 et seq., and is DISMISSED.

The motion is DENIED IN PART in that Plaintiff has produced evidence which could establish a claim for breach of contract based on Defendant's alleged failure to provide her with the sick leave benefits.

BY THE COURT:

William S. Kieser, Judge

cc: Jason Fetter, Esquire
Adam R. Long, Esquire
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Judges
Christian J. Kalaus, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)