IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

HARRINGTON KERSHNER, IV, Plaintiff,	:	NO. CV-2023-00982
vs.	:	CIVIL ACTION - LAW
LECLERC FOODS USA, INC., Defendant.	:	Motion for Summary Judgment

OPINION AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I. Introduction:

This matter came before this Court on December 22, 2025, for oral argument on Defendants' Motion for Summary Judgment, filed November 14, 2025. Plaintiff filed a Complaint on August 28, 2024, and an Amended Complaint on September 8, 2023, which assert a single cause of action pursuant to the Pennsylvania Criminal History Record Information Act. Simply stated, that Act provides at 18 Pa.C.S.A. Section 9125(b) that, whenever an employer is in receipt of information which is part of an employment applicant's criminal history record information file, it may use that information for the purpose of deciding whether or not to hire the applicant "only to the extent to which they relate to the applicant's suitability for the employment position for which he has applied." For the reasons more fully set forth herein, that Motion will be granted.

II. The Test for Summary Judgment:

In Pennsylvania, a party may move for summary judgement "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action…" Pa.R.C.P. No. 1035.2(1). In response, the adverse party may not rest on denials but must respond to the motion. Pa.R.C.P. No. 1035.3(a). The non-moving party can avoid an adverse ruling by identifying "one or more issues of fact arising from evidence in the record" P.R.C.P.1035.3(a)(1).

In considering a motion for summary judgment, it is not the Court's function to decide issues of fact. Rather, is it our function to decide whether an issue of fact exists. *Fine v. Checcio,* 582 Pa. 253, 273, 870 A.2d 850, 862 (2005).

> Summary judgment is appropriate only when the record clearly shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. The reviewing court must view the record in the light most favorable to the nonmoving party and resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Only when the facts are so clear that reasonable minds could not differ can a trial court properly enter summary judgment.
> *Hovis v. Sunoco, Inc.,* 2013 Pa.Super. 54, 64 A.3d 1078, 1081, quoting *Cassel-Hess v. Hoffer*, 44 A.3d 84-85 (Pa.Super. 2012).

In the matter of *Accu-Weather, Inc. v. Prospect Commc'ns, Inc.*, 435 Pa. Super. 93, 644 A.2d 1251 (Pa. Super. Ct. 1994), the Court described the proper test for a grant of summary judgment as follows:

> First, the pleadings, depositions, answers to interrogatories, admissions on file, together with any affidavits, must demonstrate that there exists no genuine issue of fact. Pa.R.C.P. 1035(b). Second, the moving party must be entitled to judgment as a matter of law. *Id.* The moving party has the burden of proving that no genuine issue of material fact exists. *Overly v. Kass,* 382 Pa.Super. 108, 111, 554 A.2d 970, 972 (1989). However, the non-moving party may not rest upon averments contained in its pleadings; the non-moving party must demonstrate that there is a genuine issue for trial. The court must examine the record in the light most favorable to the non-moving party and resolve all doubts against the moving party. *Stidham v. Millvale Sportsmen's Club,* 421 Pa.Super. 548, 558, 618 A.2d 945, 950 (1992), *appeal denied,* 536 Pa. 630, 637 A.2d 290 (1993) (citing *Kerns v. Methodist Hosp.,* 393 Pa.Super. 533, 536–37, 574 A.2d 1068, 1069 (1990)). Finally, an entry of summary judgment is granted only in cases where the right is clear and free of doubt. *Ducko v. Chrysler Motors Corporation,* 433 Pa.Super. 47, 48, 639 A.2d 1204, 1205 (1993) (citing *Musser v. Vilsmeier Auction Co., Inc.,* 522 Pa. 367, 370, 562 A.2d 279, 280 (1989)). We reverse an entry of summary judgment when the trial court commits an error of law or abuses its discretion. *Kelly by Kelly v. Ickes,* 427 Pa.Super. 542, 547, 629 A.2d 1002, 1004 (1993) (citing *Carns v. Yingling,* 406 Pa.Super. 279, 594 A.2d 337 (1991).

III. Factual Background

The facts in this matter are substantially undisputed. Defendant Leclerc Foods, USA, Inc. (hereinafter "Defendant") hired Harrington Kershner, IV (hereinafter "Plaintiff") for the position of 2nd Shift Line Operator, pursuant to terms set forth in correspondence dated April 28, 2023 (Motion for Summary Judgment, Exhibit 5). In his deposition testimony, Plaintiff testified that he was treated as a full-time employee effective May 8, 2023 (Notes of Testimony, hereinafter N.T. 58, Motion for Summary Judgment, Exhibit 1). He received day shift training for approximately two (2) weeks, then switched to his 2nd shift position (N.T. 58).

Prior to beginning his employment, he discussed a prior criminal conviction with a supervisory employee Ms. Benfer. That discussion did not prevent Defendant from hiring the Plaintiff (N.T. 58-59). Plaintiff was subsequently terminated on June 27, 2023, as a result of his prior criminal conviction. For purposes of this Motion, the Court will regard the crime which was the subject of the conviction as unrelated to Plaintiff's employment as a 2nd Shift Line Operator.

IV. Question Presented:

WHETHER DEFENDANT'S TERMINATION OF PLAINTIFF FIFTY (50) DAYS AFTER HE WAS HIRED, BASED UPON A PRIOR CRIMINAL CONVICTION WHICH WAS UNRELATED TO HIS SUITABILITY FOR HIS EMPLOYMENT POSITION, CAN SUPPORT A CAUSE OF ACTION UNDER PENNSYLVANIA'S CRIMINAL HISTORY RECORD INFORMATION ACT.

V. Answer to Question Presented:

UNDER THE CURRENT STATE OF PENNSYLVANIA LAW, DEFENDANT'S TERMINATION OF PLAINTIFF FIFTY (50) DAYS AFTER HE WAS HIRED, BASED UPON A PRIOR CRIMINAL CONVICTION WHICH WAS UNRELATED TO HIS SUITABILITY FOR HIS EMPLOYMENT POSITION, CANNOT SUPPORT A CAUSE OF ACTION UNDER PENNSYLVANIA'S CRIMINAL HISTORY RECORD INFORMATION ACT.

VI. Discussion:

It appears to the Court that the question presented by Defendant's Motion has been determined by our Superior Court in the matter of *Deal v. Children's Hospital of Philadelphia*, 2019 PA. Super. 346, 223 A.3d 705 (Pa.Super. 2019), where the Court observed that:

> The only provision of CHRIA that relates to employer use of information concerning arrests or criminal charges against an individual, Section 9125, applies to hiring decisions, not to decisions to discharge existing employees. 18 Pa.C.S. § 9125(a) ("Whenever an employer is in receipt of information which is part of an employment applicant's criminal history record information file, it may use that information for the purpose of deciding whether or not to hire the applicant**,** only in accordance with this section").
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> *Deal v. Children's Hospital of Philadelphia*, 2019 PA Super. 346, 223 A.3d 705, 713 (Pa.Super. 2019).

Counsel for Plaintiff cogently argues that this interpretation could easily lead to an absurd result. Where an employer contends that a job applicant's prior criminal conviction is related to prospective employment, the employer can refuse to hire the applicant, consistent with the language of the Act. Where it is not, the employer can hire the applicant, discharge them on the following day, and completely frustrate the spirit of the Act.

It is difficult to know with certainty whether the language of the Act was an oversight, or a "half measure" resulting from legislative compromise between competing interests. American poet John Godfrey Saxe is credited with the observation that "laws, like sausages, cease to inspire respect in proportion as we know how they are made."

ORDER

And now, this 22nd day of January, 2026, for the reasons more fully set forth above, Defendants' Motion for Summary Judgment, filed November 14, 2025, is granted and Plaintiff's Amended Complaint is dismissed.

BY THE COURT,

William P. Carlucci, Judge

WPC

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