

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 00-1373

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Richard E. Kulkey,

Appellant,

v.

Mark VII Distributors, Inc., a  
Minnesota corporation,

Appellee.

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\* Appeal from the United States  
\* District Court for the  
\* District of Minnesota.  
\* [UNPUBLISHED]  
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Submitted: October 16, 2000

Filed: January 30, 2001

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Before WOLLMAN, Chief Judge, BEAM, and MORRIS SHEPPARD ARNOLD,  
Circuit Judges.

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PER CURIAM.

Richard E. Kulkey brought this action against his former employer, Mark VII Distributors, Inc., alleging claims under the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Minnesota Human Rights Act. Kulkey, who was employed for approximately eight years as the custodian at Mark VII's St. Paul distribution warehouse, received a series of negative performance evaluations, culminating in his being placed on probation and having his hours temporarily reduced from forty to twenty per week on November 17, 1997. Kulkey had earlier suffered a

work-related shoulder injury, which he later aggravated off the job, resulting in his filing a worker's compensation claim on October 9, 1997. After being placed on probation, Kulkey quit his job at Mark VII. A younger worker has since performed at least some of Kulkey's old job duties.

Characterizing his probation and his subsequent resignation, which he contends was a constructive discharge, as adverse employment actions, Kulkey's complaint alleged that he had suffered retaliatory action for filing his worker's compensation claim and that Mark VII had discriminated against him because of his age and his actual or perceived disability. The district court<sup>1</sup> granted summary judgment in favor of Mark VII. Kulkey appeals both from that judgment and from the district court's prior order affirming the magistrate judge's<sup>2</sup> denial of Kulkey's discovery request and his imposition of sanctions in the amount of \$350.00.

The district court held that Kulkey had failed to demonstrate a causal connection between his age, any disability that he may have, or his filing a worker's compensation claim and the adverse employment action, that he had failed to demonstrate that Mark VII's proffered reason for the action (his poor work performance) was pretextual, and that he had failed to show that the magistrate judge's decision to impose sanctions and to deny the discovery request was either clearly erroneous or contrary to law. Accordingly, for the reasons set out in the district court's opinion and order, we affirm pursuant to Eighth Circuit Rule 47B.

Affirmed.

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<sup>1</sup>The Honorable David S. Doty, United States District Judge for the District of Minnesota.

<sup>2</sup>The Honorable John M. Mason, United States Magistrate Judge for the District of Minnesota.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.