

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

CRAIG BRUNELLE,)
)
 PLAINTIFF)
)
 v.)
)
 CYRO INDUSTRIES, WILLIAM)
 BOURQUE, FLOYD PHILLIPS,)
 DREW SCOTT and MIKE)
 BLOKLAND,)
)
 DEFENDANTS)

CIVIL No. 01-292-P-H

ORDER TO SHOW CAUSE

The plaintiff Craig Brunelle claims that Cyro Industries, his employer, and the individual defendants unlawfully denied him leave and wrongfully terminated him in violation of the Family Medical Leave Act (“FMLA”), 29 U.S.C. § 2601, et seq., and the Maine Family Medical Leave Requirements law (“MFMLR”), 26 M.R.S.A. §843, et seq. On September 30, 2002, I affirmed the Recommended Decision of the Magistrate Judge granting the defendant Borque’s summary judgment motion in total and the remaining defendants’ summary judgment motion as to Count II (termination in violation of the FMLA) and that portion of Count III (violation of the MFMLR) alleging retaliatory job discrimination. The defendants now move to exclude all evidence that the plaintiff may present at trial regarding any wages or benefits that he lost subsequent to his termination from Cyro Industries on March 29, 2001.

An employee is entitled to recover damages from an employer who violates the employee's right to take leave. 29 U.S.C. §§ 2615(a), 2617(a)(1)(A)(i); 26 M.R.S.A. § 848.¹ If an employee is terminated for a legitimate, non-discriminatory reason, however, he is only entitled to recover damages for an employer's FMLA violation suffered prior to his discharge "because the valid termination . . . severs the employment relationship and the joint obligations which compose such a relationship." Hite v. Biomet, Inc., 53 F. Supp. 2d 1013, 1025 (N.D. Ind. 1999). Here, the Court granted summary judgment in favor of the defendants on the plaintiff's claim of retaliatory discharge, finding that the plaintiff had failed to overcome the legitimate, non-discriminatory reason for termination given by the defendants. As a result, the plaintiff is not entitled to lost wages or benefits after the date of his discharge from Cyro Industries.

In objecting to the defendants' motion to exclude evidence of damages, the plaintiff notes that this case should be dismissed if he cannot show that he could recover damages. Dawson v. Leewood Nursing Home, Inc., 14 F. Supp. 2d 828, 834 (E.D. Va. 1998). I find that the record is not clear whether the plaintiff incurred or seeks damages for any alleged violations prior to his

¹ As the defendants point out in their Motion in Limine (Docket No. 34), lost wages and benefits are not at issue with respect to the plaintiff's state law claim because remedies under the MFMLR are limited to equitable relief and liquidated damages in the amount of \$100 per day for each day the violation continues.

discharge.² Accordingly, I order the parties to show cause by January 3, 2003, why I should not dismiss this case.

SO ORDERED.

DATED THIS 16TH DAY OF DECEMBER, 2002.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

² It also appears that an employee is not entitled to recover emotional distress or punitive damages for an FMLA violation. Hite v. Biomet, Inc., 53 F. Supp. 2d 1013, 1024 n.13 (N.D. Ind. 1999).

U.S. District Court
District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 01-CV-292

CRAIG BRUNELLE
plaintiff

JEFFREY NEIL YOUNG, ESQ.
MCTEAGUE, HIGBEE, MACADAM, CASE,
WATSON & COHEN
P.O. BOX 5000
TOPSHAM, ME 04086
(207) 725-5581

v.

CYRO INDUSTRIES
dba
CYRO INDUSTRIES
aka
CYTEC PLASTICS INC.
defendant

MELISSA A. HEWEY, ESQ.
DRUMMOND, WOODSUM & MACMAHON
P.O. BOX 9781
PORTLAND, ME 04101
(207) 772-1941

and

FLOYD PHILLIPS
defendant

MELISSA A. HEWEY, ESQ.
(See above)

DREW SCOTT
defendant

MELISSA A. HEWEY, ESQ.
(See above)