

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BETTY HEIMBACH,)
)
 Plaintiff,)
)
 vs.) CIVIL ACTION No. 99-2979
)
 LEHIGH VALLEY PLASTICS,)
 INC., et al.,)
)
 Defendants.)

MEMORANDUM

Padova, J.

January 5, 2000

Plaintiff Betty Heimbach (“Heimbach”) brings this disability discrimination action against her former employer, Lehigh Valley Plastics, Inc. (“Plastics”); and her former supervisors: Tom Farlow, Layman Snyder, and Fred Berger (“Individual Defendants”). Plaintiff claims that she notified her superiors at Plastics that she suffers from diabetes, cirrhosis of the liver, and chronic kidney dysfunction, and that these illnesses limit her ability to stand for extended periods. She alleges that she requested that Defendants allow her to work in a sitting position or allow her to take occasional breaks to relieve swelling in her extremities caused by standing. She claims that her repeated requests for accommodation were denied, and that her supervisors taunted and berated her about her disability in front of other employees.

Plaintiff requests relief under the Americans with Disabilities Act of 1990 (“ADA”), as amended, 43 U.S.C. § 12101 et seq.; the Pennsylvania Human Relations Act (“PHRA”), 43 Pa. Cons. Stat. Ann. § 951 et seq.; the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2601 et seq.; and Pennsylvania common law. Before the Court is Defendants’ Motion to Dismiss

portions of Plaintiff's Complaint for failure to state a claim upon which relief can be granted. For the reasons that follow, the Court will grant in part and deny in part Defendants' Motion.

I. Background

Plaintiff Betty Heimbach worked as a fabrication technician for Lehigh Valley Plastics from April 1995 until March 1998. She maintained a satisfactory work and attendance record throughout her term of employment. (Compl. ¶ 20.) In April 1997, she was hospitalized for thirteen days for treatment of diabetes, cirrhosis of the liver, and chronic kidney dysfunction. (Id. ¶ 23.) While hospitalized, she was on medical leave from her employment. (Id.) Upon her return to work, Plaintiff requested accommodation for her disability. (Id. ¶ 24.) At this time her supervisors placed her on a ninety day probationary period. (Id. ¶ 27.) Although she passed this and a second probationary period, her supervisors continued to claim she was working too slowly. (Id. ¶¶ 33, 34.) Plaintiff alleges that from April 1997 through March 1998, her supervisors openly criticized her in front of co-workers, and taunted her about her disability. (Id. ¶ 46.) She claims that despite her repeated requests for accommodation, she was not allowed to work in a sitting position or to take occasional breaks to relieve swelling caused by standing. (Id. ¶¶ 42, 44.) Plaintiff was terminated from employment on March 13, 1998, for working too slowly. (Id. ¶ 39.) She alleges that her supervisors assigned two employees to perform her job functions. (Id. ¶ 37.)

II. Standard of Review

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) only if the

plaintiff can prove no set of facts in support of the claim that would entitle her to relief. ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3rd Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. Id.

III. Discussion

The Court will consider Defendants' Motion with respect to each of Plaintiff's Counts, in turn, and then will consider Defendants' Motion to Dismiss Plaintiff's claim for punitive damages.

A. Count I

Count I alleges that Defendant Plastics discriminated against Plaintiff, a qualified individual with a disability, in violation of the ADA. (Compl. ¶ 65.) Defendant moves to dismiss this claim on two grounds: (1) the Complaint fails to identify Plaintiff as a "qualified individual with a disability" under 42 U.S.C. § 12102, and (2) Plaintiff has not set forth specific factual allegations regarding a request for an accommodation.

In order to rise to the level of a disability, an impairment must limit a major life activity. 42 U.S.C. § 12102(2)(A). Major life activities are defined as "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i); Kelly v. Drexel University, 94 F.3d 102, 108 (3d Cir. 1996) (citing Rogers v. International Marine Terminals, Inc., 87 F.3d 755, 759 (5th Cir. 1996), where the court considered the ability to stand a major life activity). The Complaint states that Plaintiff needed an accommodation because of limitations in her ability to stand. (Compl. ¶ 42.) The Complaint further alleges that she requested the accommodation of being allowed to take breaks

or work in a sitting position, and that she was able to perform the essential functions of her occupation with this accommodation. (*Id.* ¶¶ 42,64.)

The Court finds that Plaintiff has sufficiently alleged that she is a qualified individual with a disability who requested accommodation for this disability. Therefore, the Court will deny Defendants' Motion to Dismiss with respect to Count I.

B. Counts II and III with respect to Individual Defendants

Count II brings a retaliation claim against both Plastics and Individual Defendants under the ADA and the PHRA. Count III alleges a claim for discrimination against all Defendants under the PHRA.

Defendants contend that individual employees are not subject to suit under the ADA, and Plaintiff does not contest this assertion. (Plf. Resp. at 5, n 3.) The Court, therefore, will dismiss Individual Defendants from Count II with respect to the ADA.

Under the PHRA, individual supervisory employees who “aid, abet, incite, compel or coerce the doing of any act declared by this section to be an unlawful discriminatory practice” can be held liable for violations of the Act. 43 Pa. Cons. Stat. Ann. § 955(e); see Frye v. Robinson Alarm Co., No. CIV. A. 97-0603, 1998 WL 57519, at *4 (E.D. Pa. Feb. 11, 1998) (finding that a supervisor’s failure to take action to prevent discrimination, even when it is the supervisory employee’s own practices at issue, can make him or her liable under § 955(e) for aiding and abetting the employer’s insufficient remedial measures). While Defendants agree that supervisory employees may be liable for violations of the PHRA under an aiding or abetting or accomplice liability theory, Defendants claim that Plaintiff has not set forth sufficient facts to sustain such a claim. The Court disagrees. The Complaint specifically alleges that Individual

Defendants taunted Plaintiff about her disability in front of co-workers, gave her work assignments knowing that such assignments were contrary to her physician's orders, and refused her requests for accommodation. (Compl. ¶¶ 46, 47.) Plaintiff has adequately pled a claim against Individual Defendants under the PHRA. The Court therefore will deny Defendants' Motion to Dismiss with respect to the PHRA claims brought in Counts II and III against Individual Defendants.

C. Count IV

Count IV brings a claim against Defendant Plastics under the Family and Medical Leave Act. 29 U.S.C. § 2615(a)(1). Plaintiff concedes that because she did in fact take leave, she has not stated a claim under 29 U.S.C. § 2615(a)(1). Plaintiff requests leave to amend her Complaint to properly bring this claim under Section 2614. Section 2614 provides that upon return from leave under the FMLA, an employee must be restored to her original job or an equivalent job. Plaintiff argues that by placing her on probation when she returned from leave, Plastics violated this section. Blackwell v. Harris Chemical North America, Inc., 11 F. Supp.2d 1302, 1310 (D. Kan. 1998). Courts in this district liberally allow leave to amend pleadings pursuant to Fed. R. Civ. P. 15(a) when "justice so requires," and when the non-moving party is not prejudiced by the allowance of the amendment. Lorenz v. CSX Corp., 1 F.3d 1406, 1413 (3d Cir. 1993). The Court accordingly will grant Plaintiff's request to amend her Complaint to plead Count IV under 29 U.S.C. § 2614.

D. Count V¹

In Count V, Plaintiff brings a common law claim for intentional infliction of emotional

¹Plaintiff incorrectly numbers this Count as a duplicate Count IV.

distress. In order to state a claim for this tort, a plaintiff must allege outrageous conduct on the part of the tortfeasor. Kazatsky v. King David Memorial Park, Inc., 527 A.2d 988, 991 (1987). In the employment context, the level of outrageousness of conduct sufficient to provide a basis for recovery is especially high. Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988). The Complaint alleges that Defendants “openly criticized” Plaintiff in front of co-workers, made “degrading, demeaning and untrue remarks” about her, “taunted,” and “berated” her in front of fellow employees. (Compl. ¶ 46.) This type of intermittent verbal harassment is insufficient to state a claim for intentional infliction of emotional distress in an employment situation. See Cox, 861 F.2d at 395 (noting that courts applying Pennsylvania law have found conduct outrageous in the employment context only where an employer engaged in sexual harassment and other retaliatory behavior against the employee). Therefore, the Court will grant Defendants’ Motion to Dismiss with respect to Plaintiff’s claim for intentional infliction of emotional distress.

E. Punitive Damages

Defendants contend, and Plaintiff agrees, that punitive damages are not available under the PHRA. Defendants argue that because Plaintiff specifically requested punitive damages under the PHRA, this request should be dismissed. The Court, however, construes the Complaint to claim punitive damages under both the PHRA and the ADA. Punitive damages are authorized by the Civil Rights Act of 1991 for cases in which the employee demonstrates that the employer has engaged in intentional discrimination and has done so “with malice or with reckless indifference to [the employee’s] federally protected rights.” 42 U.S.C. § 1981a(b)(1). Plaintiff argues that she has sufficiently alleged malicious conduct to be able to state a claim for punitive damages under the ADA. Viewing the allegations in the light most favorable to

Plaintiff, the Court agrees. The Court, therefore, will grant Defendants' Motion to Dismiss with respect to the request for punitive damages under the PHRA but will deny Defendants' Motion to Dismiss regarding the request for punitive damages under the ADA.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BETTY HEIMBACH,)
)
 Plaintiff,)
)
 vs.) CIVIL ACTION No. 99-2979
)
 LEHIGH VALLEY PLASTICS,)
 INC., et al.,)
)
 Defendants.)

ORDER

AND NOW, this day of January, 2000, upon consideration of Defendants' Motion to Dismiss portions of Plaintiff's Complaint for failure to state a claim upon which relief can be granted (Doc. No. 2), Defendants' Memorandum in support of said Motion (Doc. No. 3), and Plaintiff's Response thereto (Doc. No. 4), **IT IS HEREBY ORDERED** that said Motion (Doc. No. 2) is **GRANTED IN PART AND DENIED IN PART**:

1. Defendants' Motion to Dismiss with respect to Count I is **DENIED**.
2. Defendants' Motion is **GRANTED** with respect to the ADA claim but **DENIED** with respect to the PHRA claim in Count II against Individual Defendants; Individual Defendants are **DISMISSED** from Count II with respect to Plaintiff's claim under the ADA.
3. Defendants' Motion to Dismiss with respect to claims in Count III against Individual Defendants is **DENIED**.
5. Plaintiff is **GRANTED** leave to amend Count IV under the FHLA. Plaintiff shall file an Amended Complaint no later than ten (10) days from the date of this Order.

6. Defendants' Motion to Dismiss with respect to Count V is **GRANTED**.

7. Defendants' Motion to Dismiss Plaintiff's claim with respect to punitive damages under the PHRA is **GRANTED**.

8. The Court construes Plaintiff's Complaint to include a claim for punitive damages under the ADA.

BY THE COURT:

John R. Padova, J.