

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

JANICE MACHAMER : CIVIL ACTION  
 :  
 v. :  
 :  
 HOSPITAL OF THE UNIVERSITY :  
 OF PENNSYLVANIA : NO. 98-6109

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

May 8, 2000

Janice Machamer ("Machamer"), a nursing assistant, alleges her employer, the Hospital of the University of Pennsylvania ("HUP"), violated the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. ("ADA"), when it refused to accommodate her disability by transferring her to the night shift. HUP, moving for summary judgment pursuant to Federal Rule of Civil Procedure 56(c), claims that Machamer did not suffer from a disability, is not a "qualified individual with a disability" under the ADA, and that it had no knowledge of Machamer's alleged disability so it had no duty to provide any accommodation. There are no genuine issues of material fact regarding these claims; HUP's motion for summary judgment will be granted.

**BACKGROUND**

Machamer was hired by HUP as a nursing assistant on December 12, 1995. On March 25, 1996, during her probationary period,<sup>1</sup>

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<sup>1</sup> Her ninety day probationary period had been extended from March 11, 1996 to May 11, 1996 because of absenteeism and failure to meet work performance goals; more time was required to evaluate her performance.

Machamer sustained a back injury while lifting a patient from a bed. Machamer took a leave of absence, during which time she received workers' compensation benefits and underwent treatment for her injury from various practitioners in the University of Pennsylvania Health System. After examining Machamer in November and December, 1996, Dr. William Ball and Dr. David Lenrow found that Machamer could not perform her functions as a nursing assistant without reasonable accommodation. On December 18, 1996, Dr. Marilyn Howarth examined Machamer and found that she was able to return to work with no restrictions.

Machamer resumed her nursing assistant position on December 30, 1996, and was notified that she would be placed on the day shift to receive training and mentoring necessary for her to complete successfully her post-hiring probationary period (extended from May 11, 1996 because of her work related injury). During that shift, Machamer experienced back pain, was referred to Occupational Medicine, examined by Dr. Howarth, and released to return to full duty. Machamer proceeded to work several day shifts until she was terminated on January 8, 1997; HUP believed two incidents on December 30 and December 31, 1996 threatened the well-being of patients under Machamer's care. See 5/27/99 Nancy Rodenhausen Affidavit, p. 2. On September 8, 1997, Machamer filed a petition for reinstatement of workers' compensation benefits; this petition was denied. See 5/27/99 Rosemary Osman-

Koss Affidavit, p. 2.

HUP argues that summary judgment in its favor should be granted because Machamer was not disabled when she returned to work, was not a "qualified individual with a disability" under the ADA, and was terminated for her failure to provide competent care to her patients. Machamer claims that she was disabled, she was terminated because of her disability, and she could have continued to work with a reasonable accommodation for her disability, i.e., transfer to the night shift.

#### **DISCUSSION**

Summary judgment may be awarded "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A party moving for summary judgment bears the initial burden of demonstrating the absence of facts supporting the non-moving party's claim by pointing to the pleadings, depositions or other items mentioned in Rule 56(c); the non-moving party must then introduce specific evidence of a genuine issue for trial. See Celotex v. Catrett, 477 U.S. 317, 322-24 (1986). "When a motion for summary judgment is made and supported as provided in [Rule 56], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the

adverse party's response, by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." Fed. R. Civ. P. 56(e).

A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In making this determination, the court must draw all justifiable inferences in the non-movant's favor. See id. at 255.

The ADA provides that "[n]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a).

A "qualified individual with a disability" is defined by the ADA as a person "with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). A "disability" is defined as: "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a

record of such impairment; or (c) being regarded as having such an impairment." 42 U.S.C. § 12102(2).

To establish a prima facie case of discrimination under the ADA, the plaintiff must show: "(1) [s]he is a disabled person within the meaning of the ADA; (2) [s]he is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and (3) [s]he has suffered an otherwise adverse employment decision as a result of discrimination." See Gaul v. Lucent Technologies, 134 F.3d 576, 580 (3d Cir. 1998).

As the party moving for summary judgment, HUP has pointed to affidavits and depositions that illustrate the absence of facts supporting Machamer's claim. HUP refutes Machamer's claim of disability by demonstrating that Dr. Howarth examined Machamer and released her to work as a nursing assistant without restriction and without requiring any accommodation. See 5/28/99 Dr. Marilyn Howarth deposition, p. 2. HUP contests Machamer's qualification to perform the essential functions of the job, with or without reasonable accommodations, because in Machamer's deposition she stated that she could not have performed her job on the night shift and HUP could have provided no accommodations enabling her to perform that job. See 5/10/99 Janice Machamer deposition, p. 258-59. Finally, HUP contends that Machamer's termination did not result from discrimination, but that Machamer

was terminated because she had, on two occasions, provided sub-standard patient care. On December 30 and December 31, 1996, Machamer: 1) inappropriately left a confused patient's bed in the high position with the side rails down; and 2) improperly manipulated a patient's peritoneal dialysis bag that caused an adverse outcome for the patient. See 5/27/99 Nancy Rodenhausen affidavit, p. 3; see also Def. Pre-trial Mem. p.3. HUP having met its burden, Machamer must establish specific material facts at issue in the record to defeat the motion for summary judgment.

Machamer has not met her burden for any of the elements required to establish her prima facie case. In determining whether Machamer was "disabled" within the meaning of the ADA after her return to work in December, 1996, this court is to "determine the existence of disabilities on a case-by-case basis." See Albertsons, Inc. v. Kirkingburg, \_\_U.S. \_\_, 119 S.Ct. 2162, 2169 (1999). To prove that she is "disabled," Machamer must demonstrate that she has, or has a record of, a physical impairment that substantially limits a major life activity and that she had this limitation during the time she claims she was denied reasonable accommodation. See Taylor v. Phoenixville School Dist., 184 F.3d 296, 308 (3d Cir. 1999).

The issue is Machamer's ability to work as a nursing assistant on her return in December, 1996. Working has been identified as a major life activity. See Walton v. Mental Health

Assoc., 168 F.3d 661, 665 (3d Cir. 1999). If Machamer's ability to work was substantially limited by a physical impairment at the time she requested accommodation, she meets the "disability" requirement.

Although the ADA does not define "substantially limits," the Supreme Court has stated that "substantially" suggests that the limitation must be "considerable or specified to a large degree." See Sutton v. United Airlines, Inc., \_\_\_ U.S. \_\_\_, 119 S.Ct. 2139, 2150 (1999), but it need not be the equivalent of an "utter inabilit[y]." See Albertsons, 119 S.Ct. 2162 at 2168.

Machamer claims that there were conflicting medical opinions regarding her condition, but has not provided any evidence on the record of such a conflict. The alleged opinions of Dr. Lenrow and Dr. Ball, if verified, would have created this conflict, but stating the opinion of her physician in the complaint or motion is not enough to meet her burden for opposing a summary judgment motion. See Fed. R. Civ. Proc. 56(c).

Machamer also claims that, even if she were not disabled at the time, she had a "record of such impairment" and, therefore, qualified as disabled. A "record of such impairment" means a "history" of the condition such as a chronic reoccurrence of an ailment. See School Bd. Of Nassau County v. Arline, 480 U.S. 273, 281 (1987). Machamer has not "by affidavits or as otherwise provided in [Rule 56], set forth specific facts showing that

there is a genuine issue" of the existence of such a history. See Fed. R. Civ. P. 56(e). In fact, Machamer stated in her deposition that she had never had a back injury prior to her injury on March 25, 1996. See 5/10/99 Janice Machamer deposition, p. 168. Machamer has not met her burden of demonstrating the existence of a genuine issue of material fact on the record.

Machamer has also not met her burden of demonstrating that there are genuine issues of material fact regarding her qualifications to perform the essential functions of her job, with or without reasonable accommodations by the employer. Machamer argues she was qualified if given an accommodation by placement on the less burdensome night shift and that she did work several day shifts. In her deposition, Machamer stated that there were no positions in the hospital that she could have performed between December 30, 1996 and January 8, 1997. See 4/28/99 Janice Machamer deposition, pp. 167-68, 250-51, 258-61.<sup>2</sup> HUP demonstrated that her performance during that period was sub-standard, and Machamer has produced no evidence to counter this allegation.

Machamer has not demonstrated there are genuine issues of material fact regarding whether the adverse employment decision

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<sup>2</sup> Plaintiff's counsel argues that "[p]laintiff's deposition testimony on the [sic] Hospital relies merely points to Plaintiff's confusion about the legal niceties of ADA law." The "legal niceties" of ADA law are irrelevant to what Machamer thought.

she suffered was a result of disability discrimination. HUP offered a nursing manager's affidavit that Machamer was terminated because of two incidents in which Machamer's actions threatened the well-being of patients under her care. Machamer provided no evidence challenging this or establishing the existence of a genuine issue of material fact regarding her termination.

#### **CONCLUSION**

As the adverse party to the motion for summary judgment, Machamer may not merely rest upon the pleadings, as she did, but must provide admissible evidence demonstrating the existence of a genuine issue for trial. Machamer has failed to meet her burden and, because HUP established it is entitled to a judgment as a matter of law, summary judgment will be granted in favor of HUP.



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ORDER

AND NOW, this \_\_\_th day of May, 2000, upon consideration of defendant's motion for summary judgment and plaintiff's response in opposition, after argument on June 24, 1999 at which counsel for all parties were heard, in accordance with the attached memorandum,

It is **ORDERED** that:

Defendant's motion for summary judgment is **GRANTED**.  
Judgment is entered for the defendant and against the plaintiff.

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Norma L. Shapiro, S.J.