

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

JOHN TEDESCHI,	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 99-3170
	:	
THE SYSCO FOODS OF	:	
PHILADELPHIA, INC.,	:	
Defendant.	:	

**MEMORANDUM**

**GREEN, S.J.**

**September 1, 2000**

Presently before the court is the Motion for Summary Judgment of Defendant, Sysco Food Services of Philadelphia, Inc., Plaintiff's response thereto, and the Defendant's Reply Brief and Supplemental Memorandum of Law in Support of the Motion for Summary Judgment. For the reasons set forth below, the Defendant's motion will be granted.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

The following facts are not disputed, although the parties dispute the law applicable to the facts. Defendant, Sysco provides food distribution services for restaurants, hospitals, and other organizations. Plaintiff, John Tedeschi began his career as a delivery associate with the predecessor to Sysco on August 1, 1972. He continued to work in this capacity until July 1999. Mr. Tedeschi's job requirements included driving a tractor-trailer and delivering food to Sysco customers on an assigned route.

In 1996, Mr. Tedeschi's physicians diagnosed him with post traumatic stress

disorder.<sup>1</sup> As a result of this illness, Mr. Tedeschi allegedly suffers from various symptoms, including overreacting to stressful situations, difficulty sleeping, high blood pressure, apprehension, depression and paranoia. (Pl.'s Compl. at ¶ 6). After making the initial diagnosis, Mr. Tedeschi's physicians recommended counseling and prescribed a variety of medications to treat the illness and its accompanying symptoms.

Later in the year, Mr. Tedeschi submitted a Health Care Provider Certification to Sysco management, informing them that he suffered from post traumatic stress disorder which required him to undergo counseling and other necessary treatments. (Def.'s Mot. Summ. J. at Ex. B-A). Although Mr. Tedeschi required medical intervention to treat his post traumatic stress disorder, his treating psychotherapist stated that he should be able to work on a full-time regular schedule. Id.<sup>2</sup> After submitting the Health Care Provider Certification, Mr. Tedeschi requested Fridays off to undergo the treatments described therein. In response to this request, company officials offered Mr. Tedeschi Mondays off to accommodate his need for treatment during work hours. (Def.'s Mem. Supp. Summ. J. at Ex. B -B). Mr. Tedeschi subsequently underwent treatment while he continued to work for Sysco.

During the course of Mr. Tedeschi's employment, he maintained a local delivery route, wherein he delivered to customers that were located within close proximity of

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<sup>1</sup>Mr. Tedeschi is a combat veteran of the United States Army, who served in Vietnam. According to his treating health care professionals, combat related trauma led to Mr. Tedeschi's development of post traumatic stress disorder. (Def.'s Mem. Supp. M. Summ. J. at Ex. B-A).

<sup>2</sup> The Health Care Provider Certification defined proper treatment as weekly treatments for six months to one year that did not require Mr. Tedeschi to take additional time off from work.

Sysco headquarters. To determine how much time a given truck driver should take to complete his assigned route, Sysco used computer software to estimate the amount of time each route should take. When a driver did not complete his route within the projected time, Sysco assigned a supervisor to accompany the driver to either identify unknown problems with the route or aid the driver in employing a more efficient method for completing the route.

On October 1, 1998, Jim Forant, one of Mr. Tedeschi's supervisors, accompanied him on his route. At the end of the day, Mr. Forant directed Mr. Tedeschi to perform an additional delivery. Mr. Tedeschi refused, and Mr. Forant relayed that information to Garren Lisicki, the Director of Transportation for Sysco. After receiving a directive to perform the delivery from Mr. Lisicki, Mr. Tedeschi again refused to perform the delivery. In refusing to comply with Mr. Lisicki's directive, Mr. Tedeschi informed his supervisors that he would only make the delivery if he received a directive from his union representative. Sysco then discharged Mr. Tedeschi for failure to perform a direct work order.

Mr. Tedeschi subsequently filed a grievance protesting his discharge. The grievance was submitted to arbitration and a hearing was held on June 3, 1999. The Arbitrator found that Mr. Tedeschi wrongly refused the direct work order, but, in light of his twenty-six years of service with Sysco, the discharge should not be sustained. The Arbitrator ordered that Sysco reinstate Mr. Tedeschi to his position without back pay and retained jurisdiction for one year from the date of the hearing to insure that Mr. Tedeschi complied with future reasonable orders of his employer. Mr. Tedeschi subsequently returned to work at Sysco in June 1999.

As is its policy when drivers return to work after a period of absence, Sysco officials required Mr. Tedeschi to undergo a physical examination prior to resuming his duties as a delivery associate. During the physical, Mr. Tedeschi reported taking certain prescription medications to treat symptoms related to his post traumatic stress disorder. Although Mr. Tedeschi passed the physical examination and accompanying strength assessment, Sysco officials directed him to obtain documentation of his ability to safely operate a tractor trailer while taking the prescribed medications.

During the first two weeks following his return to work, Sysco assigned various supervisory employees to accompany Mr. Tedeschi on his route. According to Mr. Tedeschi, the presence of the supervisors created a stressful work environment for him. (Pl.'s Dep. at 56). As a result of various incidents that occurred during his employment, including the two week period wherein supervisory personnel accompanied him on his route, Mr. Tedeschi perceived that Sysco was engaging in a pattern of harassing behavior designed to "bait" him into acting aggressively toward Sysco supervisors. (Pl.'s Dep. at 74). According to Mr. Tedeschi, this aggressive behavior would then lead to Sysco's imposition of disciplinary measures against him. Id. Notwithstanding the alleged hostile environment in which he worked, Mr. Tedeschi continued his employment with Sysco through mid-August 1999.

In response to Sysco's request for documentation certifying that Mr. Tedeschi could safely operate a tractor trailer while taking the prescribed medications identified during his physical examination, Mr. Tedeschi's treating psychiatrist, Dr. Stephan C. Mann, sent a letter to Sysco on August 16, 1999. In the letter, Dr. Mann stated that Mr. Tedeschi experienced lightheadedness that might be medication induced. (Letter from

Stephan Mann, M.D., Def.'s Mem. Opp. Summ. J. at Ex. A-E). He concluded, therefore, that Mr. Tedeschi was not capable of returning to work at that time. Id.

Mr. Tedeschi's union representative then met with Sysco management to inform them that he was out of work indefinitely because his treating physician would not certify him to drive while taking certain medications. Since that time, Mr. Tedeschi has not returned to work at Sysco.

Mr. Tedeschi commenced this action against Defendant Sysco, alleging that Sysco supervised his performance as a delivery associate too closely and improperly disciplined him for failing to follow a direct work order in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101-12213, and the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. § 951-63. Defendant Sysco now moves for summary judgment arguing that: (1) Mr. Tedeschi is not disabled within the meaning of the ADA; (2) Mr. Tedeschi cannot establish that he is a "qualified individual with a disability for ADA purposes; and (3) Mr. Tedeschi's claims are precluded because Sysco granted him every accommodation he ever requested. For the following reasons, the motion will be granted.

## **II. SUMMARY JUDGMENT STANDARD**

Summary judgment is properly granted to the moving party if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). A genuine issue as to any material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248,

106 S. Ct. 2505, 2510 (1986).

A party seeking summary judgment always bears the initial responsibility of identifying the basis for its motion, along with evidence clearly demonstrating the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986). Once the moving party has satisfied this requirement, Rule 56(e) of the Federal Rules of Civil Procedure requires the nonmoving party to supply sufficient evidence, not mere allegations, for a reasonable jury to find in the nonmovant's favor. Olson v. General Elec. Astrospace, 101 F.3d 947, 951 (3d. Cir. 1996). This evidence must be viewed in the light most favorable to the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. at 256, 106 S.Ct. at 2514. In support of its motion for summary judgment, Defendant Sysco argues that Mr. Tedeschi is not within the class of people protected under the ADA and PHRA. Sysco further argues that even if Tedeschi were covered by the relevant statutes, a grant of summary judgment in their favor is still appropriate because Mr. Tedeschi failed to request "reasonable accommodation" for his condition, as required by the relevant statutes, prior to filing this suit.

### **III. DISCUSSION**

The ADA prohibits discrimination by covered entities against qualified individuals with a disability. 42 U.S.C. § 12112(a). Only extremely limiting disabilities in either the short or long term qualify for protected status under the ADA. To establish a prima facie case of discrimination under the ADA,<sup>3</sup> a plaintiff must demonstrate that: (1) he is

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<sup>3</sup> The legal analysis for an ADA claim is identical to that of a claim submitted under the PHRA. Therefore, the ADA analysis in this case applies equally to the Plaintiff's PHRA claims.

disabled within the meaning of the ADA; (2) he was qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and (3) he has suffered some adverse employment action as a result of his disability. See Deane v. Pocono Med. Ctr. 142 F.3d 138, 142 (3d Cir. 1998). Under the ADA, disability is defined as: (1) a physical or mental impairment that “substantially limits” one or more major life activities; (2) a record of such an impairment; or (3) being regarded as having such an impairment. Kelly v. Drexel University, 98 F.3d 102, 104 (3d Cir. 1996), 42 U.S.C. § 12102(2). Since Mr. Tedeschi’s complaint does not address the second and third prong of the ADA’s definition of disability, the disposition of the present motion depends upon whether he introduced sufficient evidence for any reasonable jury to conclude that he suffers from a physical or mental impairment that substantially limits one or more of his major life activities.

For ADA purposes, an impairment is defined as “[a]ny physiological disorder, or condition, affecting one or more body systems; or any mental or psychological disorder . . .” 29 C.F.R. § 1630.2(h)(1)(1999).<sup>4</sup> In his complaint, Mr. Tedeschi alleges that he suffers from post traumatic stress disorder, which, in accordance with the EEOC’s interpretive guidelines with respect to the ADA, constitutes an impairment. Sysco does not dispute that Mr. Tedeschi suffers from an impairment under the ADA; rather, Sysco argues that Mr. Tedeschi’s impairment does not substantially limit one or more of his

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Kelly v. Drexel University, 98 F.3d 102, 105 (3d Cir. 1996).

<sup>4</sup> Because the ADA does not define many of its pertinent terms, I am guided by the Regulations issued by the Equal Employment Opportunity Commission (“EEOC”), as our Court of Appeals has afforded these regulations substantial deference in deciding ADA cases. See e.g. Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 307 ( 3d.Cir. 1999).

major life activities. Since Sysco does not argue to the contrary, I will address their arguments from the perspective that Mr. Tedeschi's post traumatic stress disorder constitutes an impairment under the relevant statute.

A determination of whether a plaintiff's impairment substantially limits a major life activity must be done on a case by case basis. Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 306 (3d.Cir. 1999). To begin the analysis, a court must first identify the specific life activity affected by the plaintiff's disorder and then determine whether the disorder substantially impairs the life activity. Id. According to the EEOC's interpretive guidelines, major life activity is defined as "a basic life activity that the average person in the general population can perform with little or no difficulty." 29 C.F.R. § 1630.2(i)(2000). Major life activities include functions such as "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working." Id.

In accordance with the procedure set forth in Taylor v. Phoenixville Sch. Dist., *supra*, I must determine whether any of the activities Mr. Tedeschi identifies in his complaint constitute a major life activity within the meaning of the ADA. In his complaint, Mr. Tedeschi states that his post-traumatic stress disorder causes him to suffer from various symptoms, including "overreaction to stressful situations, difficulty sleeping, high blood pressure, apprehension, depression and paranoia, all of which limit one or more of his major life activities." (Pl.'s Compl. at 6). The complaint also states that Mr. Tedeschi "tires more readily after driving for extended periods of time." (Pl.'s Compl. at 11). And, in his opposition memorandum, Mr. Tedeschi asserts that the medications he takes to treat his disorder render him "unable to work at times." (Pl.'s

Mem. Opp. Summ. J. at 3). After thorough review of Mr. Tedeschi's complaint and Memorandum in Opposition to the Motion for Summary Judgment, however, I find that he has not specifically identified the major life activity affected by his post traumatic stress disorder.

Notwithstanding Mr. Tedeschi's failure to identify the major life activity affected by his alleged disability, the averments set forth in the pleadings suggest that he may be asserting that he is substantially limited in the major life activities of sleeping, driving and/or working. (Pl.'s Compl. at ¶¶ 6 and 9). Taking these activities into consideration, I will determine whether Mr. Tedeschi has come forward with evidence from which a reasonable jury could conclude that he is substantially limited in a major life activity as contemplated by the ADA.

**A. Whether Mr. Tedeschi Is Substantially Limited in the Major Life Activity of Sleeping.**

Mr. Tedeschi's complaint lists difficulty sleeping as one of the symptoms caused by his post traumatic stress disorder. (Compl. at ¶6). Courts have generally held that sleeping is considered a major life activity. Gaul v. Lucent Technologies, Inc., 134 F.3d 576, 580, n.3 (3d. Cir.1998). However, in the instant matter, Mr. Tedeschi cannot survive summary judgment by asserting that he is substantially limited in the major life activity of sleeping.

In his sworn deposition testimony, Mr. Tedeschi stated that his post traumatic stress disorder affects his ability to sleep. (Pl.'s Dep. at 28). When asked whether the medications he takes enable him to sleep, however, he answered in the affirmative. Id. If a person is taking measures to correct for, or mitigate, a physical or mental

impairment, the effects of those measures must be taken into consideration when determining whether that person is substantially limited in a major life activity. Sutton v. United Airlines, Inc., 567 U.S. 471, 119 S.Ct. 2139, 2146 (1999). Applying the rationale set forth in Sutton, therefore, Mr. Tedeschi cannot raise a genuine issue with regard to whether he is substantially limited in the major life activity of sleeping because his medications enable him to sleep. Therefore, if Mr. Tedeschi bases his claims upon the fact that he is substantially limited in the major life activity of sleeping, summary judgment is properly granted in favor of Sysco.

**B. Whether Mr. Tedeschi Is Substantially Limited in the Activity of Driving.**

Although Mr. Tedeschi asserts that he tires more readily after driving for extended periods of time in his complaint, courts have concluded that driving is not the type of endeavor that may be characterized as a major life activity. Colwell v. Suffolk County Police Dept., 158 F.3d 635,643 (2nd Cir.1998), *cert. denied*, 526 U.S. 1018, 119 S.Ct. 1253 (1999). Therefore, Mr. Tedeschi's alleged inability to drive cannot independently support his ADA claim.

**C. Whether Mr. Tedeschi Is Substantially Limited in the Major Life Activity of Working.**

A person is properly characterized as substantially limited in the major life activity of working under the ADA, if the individual is unable to "perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities." 29 C.F.R. §§ 1630.2(j)(3)(i)(2000). The mere inability to perform a single, particular job, however, will not suffice to establish a substantial limitation with respect to working. Id. Moreover, an individual that is unable

to perform a particular job for one employer, or . . . is unable to perform a specialized job is not substantially limited in his ability to work. 29 C.F.R. §1630.2(j).

In determining how these regulations should be applied in the instant case, I find the recent opinion of our Court of Appeals in Marinelli v. City of Erie (Pa.) 216 F.3d 354 (3d. Cir. 2000) particularly instructive. In Marinelli, the plaintiff alleged that his substantial arm and neck pain resulted in a disability that prevented him from performing essential employment functions of his position as a shift crew member with the City Highway Department. Specifically, the plaintiff asserted that he could perform most of the tasks associated with the position, but during cold or wet weather, he could not operate certain tools or drive the snow plow that the City utilizes and requires certain shift crew members to employ. Based on these alleged limitations, the plaintiff argued that he was substantially limited in the major life activity of working.

Finding that the plaintiff's alleged impairment merely precluded his ability to function in one particular aspect of his job as a shift crew member, the court held that he was not disabled within the purview of the ADA. Id. at 365. In so holding, the court stated that the mere inability to perform a single, particular job will not suffice to establish limitation with respect to working. Id. Because the plaintiff's evidence showed that his impairments precluded him from driving the type of snow plow utilized by the City and did not support a finding that he was otherwise unable to obtain a position driving a truck utilized by another employer, the court found that he failed to introduce evidence sufficient for a reasonable jury to conclude that he was substantially limited in the major life activity of working. Id.

The facts of the case at bar are quite similar to those of Marinelli. Here, the

plaintiff admits that he is physically capable of performing the essential duties of his truck driving position, but he is uncertain about whether he can mentally perform the duties of the job because the job requires him to sometimes be accompanied by supervisory personnel. According to his sworn deposition testimony, Mr. Tedeschi's uncertainty about his mental capability to perform his job at Sysco stems from the fact that Sysco's policy of having supervisory personnel accompany drivers on their routes creates an unusually stressful work environment for him. (Pl.'s Dep. at 22). Because Mr. Tedeschi considers this policy to be a form of harassment, he testified that he had no doubt as to whether he could perform the essential functions of his truck driving position if supervisory personnel did not accompany him on his route. (Pl.'s Dep. at 23-24).

As the Third Circuit recently made clear, "an individual that 'is unable to perform a particular job for one employer, or ... is unable to perform a specialized job' is not substantially limited in his ability to work. Marinelli v. City of Erie (Pa.) at 365. The mere inability to perform a single, particular job will not suffice to establish a substantial limitation with respect to working. Id. Mr. Tedeschi bases his ADA claim upon the fact that he cannot perform the essential duties of his truck driving position because supervisors accompanying him on his route creates too much stress. Thus, Mr. Tedeschi essentially argues that his alleged disability prohibits him from performing a narrow range of jobs — those jobs in which the truck drivers are closely supervised by their employers. As the holding in Marinelli clearly points out, this type of argument is insufficient to avoid the entry of summary judgment in the defendant's favor, since a plaintiff's inability to work under a particular type of supervision does not constitute a disability within the meaning of the ADA.

To avoid the entry of judgment as a matter of law in this case, Mr. Tedeschi must come forward with evidence sufficient to show that he is substantially limited in a broad range of jobs. Where he so narrows the range of jobs he is unable to perform, he effectively steps outside the range of protections afforded under the ADA.<sup>5</sup>

#### **IV CONCLUSION**

As our Third Circuit Court of Appeals recently stated, “Congress did not intend for the ADA to protect all individuals who suffer from medical difficulties; rather, Congress desired to shield from adverse employment actions those individuals whose medical troubles prevent them from engaging in significant daily activities.” Marinelli v. City of Erie(Pa.) at 366. Although Mr. Tedeschi suffers from post traumatic stress disorder as a result of his service to our country in Vietnam, he has not proffered sufficient evidence to support a finding that he suffers from an extremely limiting disability under the ADA. Therefore, having concluded that Mr. Tedeschi failed to come forward with evidence sufficient to raise a genuine factual dispute regarding his alleged disability, as defined by the ADA, I will grant Defendant Sysco’s Motion for Summary Judgment. An appropriate order follows.

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<sup>5</sup> To the extent that Mr. Tedeschi attempts to argue that he is precluded from performing any truck driving position, his ADA claim still fails. Essential to his employment with Sysco is the ability to drive a motor vehicle. If Mr. Tedeschi is unable to do so, he is not a qualified individual under the ADA. And, as a matter of law, the changing of supervisors or the company policy as to performance supervision is not a reasonable accommodation under the ADA. Therefore, summary judgment in favor of Sysco must follow.

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

JOHN TEDESCHI,	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 99-3170
	:	
THE SYSCO FOODS OF	:	
PHILADELPHIA, INC.,	:	
Defendant.	:	

**ORDER**

AND NOW, this \_\_\_\_\_ day of September 2000, upon consideration of the Defendant's Motion for Summary Judgment, the Plaintiff's response thereto, and the Defendant's Reply Brief and Supplemental Memorandum of Law in Support of the

Motion for Summary Judgment, **IT IS HEREBY ORDERED** that the Motion is **GRANTED. IT IS FURTHER ORDERED** that Judgment is entered for the Defendant and against the Plaintiff as to both counts of the Plaintiff's complaint.

BY THE COURT,

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CLIFFORD SCOTT GREEN, S.J.