

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

JAMES GEORGE DOURIS : CIVIL ACTION
 :
 v. :
 :
 COUNTY OF BUCKS, :
 MARIE COSTELLO, et al. : NO. 99-3357

MEMORANDUM AND ORDER

HUTTON, J.

September 19, 2000

Presently before this Court is Defendants Bucks County and Marie Costello's ("Costello") (collectively, the "Defendants") Renewed Motion to Compel a Medical Examination of Plaintiff James Douris and a Vocational Examination of Plaintiff James Douris ("Plaintiff") Pursuant to Rule 35 of the Federal Rules of Civil Procedure (Docket No. 22), Plaintiff's Response to Defendants' Renewed Motion (Docket No. 24), Defendants' Reply Brief in Support of Their Renewed Motion to Compel a Medical Examination and a Vocational Examination (Docket No. 29) and Plaintiff's Response to Defendants' Reply Brief (Docket No. 30). For the reasons stated below, the motion is **GRANTED**.

I. DISCUSSION

The Court first considers Defendants' motion to compel Plaintiff to submit to a complete medical examination pursuant to Federal Rule of Civil Procedure 35. Plaintiff opposes the motion.

Rule 35(a) provides, in relevant part:

When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner The order may be made only on motion for good cause shown and upon notice to the person to be examined
. . . .

FED.R.CIV.P. 35(a) (West 2000).

In *Schlaugenhaut v. Holder*, 379 U.S. 104 (1964), the United States Supreme Court considered the meaning of "in controversy" and "good cause." The Court found that these terms were not mere formalities but that they expressed limitation[s] on Rule 35. See *id.* at 118. In the Court's view, these limitations:

are not met by mere conclusory allegations of the pleadings -- nor by mere relevance to the case -- but require an affirmative showing by the movant that each condition as to which the examination is sought is really and genuinely in controversy and that good cause exists for ordering each particular examination. Obviously, what may be good cause for one type of examination may not be so for another. The ability of the movant to obtain the desired information by other means is also relevant.

Id. The Court noted that the "in controversy" and "good cause" requirements were "necessarily related." *Id.* at 118-19. The Court noted that the movant does not have to prove his case on the merits in order to meet the requirements for a mental or physical examination. *Id.* at 119. The movant, however, does have to "produce sufficient information, by whatever means so that the

district judge can fulfill his function mandated by the Rule." *Id.*

The Court then noted that in cases where the plaintiff asserts a mental or physical injury, the plaintiff himself has placed his mental or physical condition in controversy. *Id.* The same is true if a defendant uses his mental or physical condition as a defense. *Id.* In such cases, the Court explained that the pleadings alone placed the mental or physical condition of the party in controversy. *Id.* When other parties, however, place a party's mental or physical condition in issue, the movant must go beyond the pleadings and make an affirmative showing that the other party's mental or physical condition is in controversy and that there is good cause to order the requested examination. *Id.* at 119-20.

Here, the requirement that the mental or physical condition of a party is in controversy is satisfied. Where a party asserts a physical or mental injury, a party thus places his condition in controversy. See *id.* at 119; *Tangires v. The Johns Hopkins Hospital*, No. H-98-4181, 1999 U.S. Dist. LEXIS 15461, at *4-5 (D. Md. July 6, 1999); *G.B Goldman Paper Co. v. United Paper Workers Int'l Union*, No. CIV.A.98-2538, 1996 WL 432484, at * 1 (E.D. Pa. July 18, 1996). Plaintiff alleges that he belongs to a protected category under the Americans with Disabilities Act because he is a qualified individual with an impairment that effects one or more of life's major activities. Pl.[']s] First Am. Compl. ¶ 67. Further,

Plaintiff alleges that he was rejected as an applicant because of his disability. Plaintiff has placed his condition in controversy.

Rule 35(a) also requires an order for a medical examination to be for good cause. See FED. R. CIV. P. 35(a). Plaintiff asserts that Defendant's have not stated good cause for a medical examination. Furthermore, Plaintiff asserts that he has made his medical records available to Defendants and having done so, eliminated the need for a further examination by Defendants' examiners. See Pl.['s] Response to Defs.['] Renewed Motion to Compelling Rule 35 Examination and Vocational Examination at 3. Plaintiff asserts that the medical records he has provided Defendants are sufficient to allow Defendants' examiners to form an opinion about Plaintiff's disability. See *id.* at 3-4.

Defendant's have questions concerning Plaintiff's disability and should be afforded an opportunity to examine Plaintiff. See *Bethel v. Dixie Homecrafters, Inc.*, 192 F.R.D. 320, 322 (Feb 7, 2000); *Tangires*, 1999 U.S. Dist. LEXIS 15461, at *7-8; *Eckman v. Univ. of Rhode Island*, 160 F.R.D. 431, 434 (D. R.I. Jan. 5, 1995).

To establish a claim under the ADA, it must be shown that a party is disabled within the meaning of the ADA, that a party is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer and that a party has suffered an otherwise adverse employment decision as a result of discrimination. See *Shaner v. Synthes (USA)*, 204 F.3d

494, 500 (3d Cir. 2000). Because liability under the ADA rests on whether Plaintiff is disabled, Defendants' have good cause to seek an examination to determine whether Plaintiff is disabled.

Defendants also have pending before the Court a Motion to Compel a Vocational Examination of Plaintiff. Rule 35(a) has been interpreted to encompass vocational examinations. See *Smolinsky v. State Farm Insurance Co.* No. CIV.A.99-2065, WL 1285824, at *1 (E.D. Pa. Dec. 22, 1999)(holding order to submit to vocational exam not contrary to law); *Jefferys v. LRP Publications, Inc.*, 184 F.R.D. 262, 262-63 (E.D. Pa. Feb 16, 1999) (granting motion to compel plaintiff to submit to examination by vocational expert); *Carotenuto v. Emerson Electric Co.*, No. CIV.A.89-6298, 1991 WL 111258, at *1 (E.D. Pa. June 19, 1991)(ordering vocational examination pursuant to Rule 35).

Accordingly, before an order for a vocational examination can be entered, there must be a showing that Plaintiff's qualifications for employment are in controversy and that there good cause for an examination. See *Jefferys*, 184 F.R.D. at 262-63. Plaintiff placed his vocational status in controversy when he alleged that he was qualified for and able to perform the essential functions of the position he sought with Bucks County. See Pl.['s] First Am. Compl. ¶ 68. Further, good cause for the vocational examination exists. As discussed above, it is not sufficient that Plaintiff provided Defendants' with his medical records. See *Carotenuto*, 1991 WL

111258, at *1. Defendants' stand to be prejudiced if they are refused the right to conduct their own vocational exam of Plaintiff. See *id.* Accordingly, Defendants will be permitted to conduct appropriate medical and vocational examinations of Plaintiff.

An appropriate Order follows.

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O R D E R

AND NOW, this 19th day of September, 2000, upon consideration of Renewed Motion of Defendants County of Bucks and Marie Costello to Compel a Medical Examination of Plaintiff James Douris and a Vocational Examination of Plaintiff James Douris Pursuant to Rule 35 of the Federal Rules of Civil Procedure (Docket No. 22), Plaintiff's Response to Defendants' Renewed Motion (Docket No. 24), Defendants' Reply Brief in Support of Their Renewed Motion to Compel a Medical Examination and a Vocational Examination (Docket No. 29) and Plaintiff's Response to Defendants' Reply Brief (Docket No. 30), IT IS HEREBY ORDERED that the Renewed Motion of Defendants County of Bucks and Marie Costello to Compel a Medical Examination of Plaintiff and a Vocational Examination of Plaintiff James Douris pursuant to Rule 35 is **GRANTED**.

IT IS FURTHER ORDERED that within twenty (20) days of the date of this Order, Plaintiff James Douris shall submit to a medical examination to be conducted by Stanley Askin, M.D.

IT IS FURTHER ORDERED that within twenty (20) days after the date of the medical examination conducted by Stanley Askin, M.D.,

Plaintiff James Douris shall submit to a vocational examination to be conducted by Jasen M. Walker, Ed.D., C.R.C., C.C.M.

BY THE COURT:

HERBERT J. HUTTON, J.