

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

CALITHAE C. CLARK : CIVIL ACTION
: :
v. : :
: :
GERMANTOWN HOSPITAL AND : NO. 00-3862
MEDICAL CENTER :

MEMORANDUM AND ORDER

BECHTLE, J. FEBRUARY , 2001

Presently before the court are Defendant Germantown Hospital and Medical Center's ("Defendant") Motion to Dismiss, Plaintiff Calithae C. Clark's ("Plaintiff") response thereto and Plaintiff's Motion for Appointment of Counsel. For the reasons set forth below, the court will grant in part and deny in part Defendant's motion to dismiss and will deny Plaintiff's motion for appointment of counsel.

I. BACKGROUND

On July 31, 2000, pro se Plaintiff filed her Complaint in the instant case, alleging violations of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12117; Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e, et seq.; and the Family Medical Leave Act of 1993 ("FMLA"), 29 U.S.C. §§ 2601-2654.

Plaintiff states that Defendant hired her as a dietary aide in April 1986. (Pl.'s Resp. to Mot. ¶ 3.) She asserts that on December 4, 1996, she was injured while working. (Compl. ¶ 3.) She alleges that because of this injury, she became "disabled"

and that Defendant assigned her to a "light-duty" position. (Pl.'s Resp. to Mot. ¶ 3.) Plaintiff asserts that on or about February 21, 1997, however, Defendant's worker's compensation physician released her to work without restrictions. Id. Plaintiff states that on March 21, 1997 she presented Defendant with a note from her physician, setting forth "certain restrictions occasioned by [her] disability, thereby requesting . . . a reasonable accommodation." Id. Plaintiff contends that rather than reasonably accommodating her disability, Defendant instead placed her "involuntarily" on unpaid leave of absence under the FMLA. Id. Plaintiff alleges that on June 15, 1997, when her FMLA leave expired, Defendant fired her. Id.

On July 31, 2000, Plaintiff filed a motion for appointment of counsel. On October 16, 2000, Defendant filed a motion to dismiss.¹

II. LEGAL STANDARD

For the purposes of a motion to dismiss, the court must accept as true all well-pleaded allegations of fact in a plaintiff's complaint, construe the complaint in the light most favorable to the plaintiff, and determine whether "under any

¹ The court notes that Defendant's motion to dismiss was brought, in part, under Rules 12(b)(1) and (2) of the Federal Rules of Civil Procedure. However, Defendant offers nothing to support its assertion that this court lacks either personal jurisdiction over it or subject matter jurisdiction over this case. To the contrary, under 28 U.S.C. § 1331, the court has jurisdiction over Plaintiff's ADA, FMLA and Title VII claims.

reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988). The court may also consider "matters of public record, orders, exhibits attached to the Complaint and items appearing in the record of the case." Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n.2 (3d Cir. 1994) (citations omitted). The court, however, need not accept as true legal conclusions or unwarranted factual inferences. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997) (citations omitted). A complaint is properly dismissed only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

III. DISCUSSION

The court will first address Defendant's motion to dismiss and then will address Plaintiff's motion for appointment of counsel.

A. Motion to Dismiss

The court will address, in turn, Defendant's motion to dismiss Plaintiff's Title VII, FMLA and ADA claims.

1. Title VII

Under Title VII, it is an unlawful employment practice to discriminate against any individual because of his or her race, color, religion, sex or national origin. 42 U.S.C. § 2000e-2(a).

The court finds no references to discriminatory treatment in Plaintiff's Complaint that would entitle her to recover under Title VII. Plaintiff's Complaint fails to apprise Defendant as to the basis of her Title VII allegations. Thus, the court will grant Defendant's motion insofar as it seeks to dismiss Plaintiff's Title VII claim.

2. FMLA

Generally, a plaintiff states a prima facie case of discrimination under the FMLA by showing that: "(1) she availed herself of a protected right under the FMLA; (2) she was adversely affected by an employment decision; (3) there is a causal connection between the protected activity and the adverse employment action; and (4) she was qualified for her position at the time of the adverse employment action." Graham v. State Farm Mut. Ins. Co., 193 F.3d 1274, 1282 (11th Cir. 1999); Morgan v. Hilti, Inc., 108 F.3d 1319, 1325 (10th Cir. 1997) (same); see also Watkins v. J & S Oil Co., 164 F.3d 55, 59 (1st Cir. 1998) (stating that, to establish prima facie case for FMLA violation, plaintiff must show that: (1) s/he is protected under Act; (2) s/he suffered adverse employment decision; and (3) either s/he was treated less favorably than employee who had not requested FMLA leave or adverse decision was made because of request for leave).

Pursuant to the FMLA, "an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period . . . [b]ecause of a serious health condition that makes

the employee unable to perform the functions of the position of such employee." 29 U.S.C. § 2612(a)(1)(D). Any employee who takes such a leave "shall be entitled, on return from such leave--(A) to be restored by the employer to the [previous] position . . . or (B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment." Id. § 2614(a)(1)(A) & (B).

The court observes that the statute provides only for twelve weeks of leave. Under the FMLA, "twelve weeks of leave is both the minimum the employer must provide and the maximum that the statute requires. The provisions of the FMLA are noticeably bereft of any purpose to . . . require more generous leave plans than the minimum twelve weeks of unpaid leave mandated by the FMLA." Ragsdale v. Wolverine Worldwide Inc., 218 F.3d 933, 937-38 (8th Cir. 2000) (pet. for cert. filed Sept. 5, 2000) (citations omitted).

Plaintiff, however, asserts that Defendant violated the FMLA by not providing her with more than twelve weeks unpaid leave. (Pl.'s Resp. to Mot. ¶ 3.) It is uncontested that Plaintiff took twelve weeks leave under the FMLA. She did not request an extension. She did not return to work when the twelve weeks expired. When Plaintiff failed to return to work, Defendant terminated her employment. Because Plaintiff was absent for more than the protected period of time, she did not have a right to be restored to her prior or similar position. See McGregor v. Autozone, Inc., 180 F.3d 1305, 1308 (11th Cir. 1999) (finding

same). Plaintiff has not stated a claim for which relief may be granted under the FMLA. Ragsdale, 218 F.3d at 937-38 (stating that terms of statute contemplate only that employer will be required to provide "total" of twelve weeks of unpaid leave, and "[e]ntirely absent from the text of the FMLA is any indication that the FMLA was designed to entitle an employee to additional leave under the FMLA"). Thus, the court will grant Defendant's motion to the extent that it seeks to dismiss Plaintiff's FMLA claim.

3. ADA

The ADA prohibits employers from discriminating against "qualified individual[s] with a disability." 42 U.S.C. § 12112(a). To establish a prima facie case under the ADA, a plaintiff must prove that (1) she is disabled within the meaning of the ADA; (2) she is qualified, with or without reasonable accommodation, to perform the job she held or sought; and (3) she was terminated or discriminated against because of her disability. See Deane v. Pocono Med. Ctr., 142 F.3d 138, 142 (3d Cir. 1998) (citations omitted).

In its motion, Defendant neither asserts that Plaintiff is not disabled under the statute nor that she is not qualified to perform the essential functions of her job.² Rather, Defendant

² Under the ADA, the definition of "disability" is divided into three parts:

- (A) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual;

(continued...)

contends that its statutory duty to reasonably accommodate Plaintiff's disability was satisfied when, upon receiving a note from Plaintiff's physician requesting an accommodation, Defendant instead placed Plaintiff on unpaid leave under the FMLA.³

The court does not agree. To the contrary, it appears that Defendant failed to meet its burden under the ADA to engage in an "interactive process" with Plaintiff. Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 315 (3d Cir. 1999).⁴ When Plaintiff

²(...continued)

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

42 U.S.C. §12102(2)(A)-(C). An individual must satisfy at least one of these parts in order to be considered an individual with a disability. Id. § 12102(2). Although Defendant asserts that Plaintiff "has failed to plead sufficient facts" showing that she has a physical or mental impairment, Defendant assumes, for the purpose of its motion to dismiss, that Plaintiff is disabled. (Def.'s Resp. to Pl.'s Opp'n to Mot. to Dismiss at 2.)

The court notes that, aside from the first prong, Plaintiff may be disabled under other prongs of the statute. For example, Plaintiff alleges that Defendant fired her "because [her] injury was so severe that [Defendant] felt that it would have been too 'dangerous' or 'risky' to have [her] around." (Pl.'s Resp. to Mot. at ¶ 3.) Thus, Plaintiff raises an inference that Defendant regarded her as disabled under the third prong.

³ Defendant cites an unpublished opinion, Conklin v. City of Englewood, in support of its assertion that it need not have granted Plaintiff's requested accommodation. Conklin, No.Civ.A.95-3786, 1996 WL 560370, 98 F.3d 1341 (6th Cir. Oct. 1, 1996). That case, which affirms the lower court's determination that a police officer with an injured ankle could no longer perform the essential functions of his job, is inapposite.

⁴ To show that an employer failed to participate in the interactive process, a disabled employee must demonstrate: (1) the employer knew about the employee's disability; (2) the employee requested accommodations or assistance for his or her disability; (3) the employer did not make a good faith effort to assist the employee in seeking accommodations; and (4) the

(continued...)

presented a doctor's note to Defendant, requesting an accommodation for her disability, Defendant peremptorily refused and instead placed Plaintiff, apparently unwillingly, on unpaid leave. (Pl.'s Resp. to Mot. ¶ 3.) When Plaintiff's leave expired, Defendant fired her. Id. Viewing the evidence in the light most favorable to Plaintiff, it appears that Defendant failed to participate in an interactive process with her, as required by the ADA. Taylor, 184 F.3d at 315 (stating that "interactive process, as its name implies, requires the employer to take some initiative"). Although the interactive process does not mandate that any particular concession must be made by an employer, it does require the employer to "make a good faith effort to seek accommodations." Id. at 317 (stating that employers can show good faith by "meet[ing] with the employee who requests an accommodation, request[ing] information about the condition and what limitations the employee has, ask[ing] the employee what he or she specifically wants, show[ing] some sign of having considered employee's request, and offer[ing] and discuss[ing] available alternatives when the request is too burdensome"). Thus, the court will deny Defendant's motion insofar as it seeks to dismiss Plaintiff's ADA claim.

⁴(...continued)
employee could have been reasonably accommodated but for the employer's lack of good faith. Taylor, 184 F.3d at 319-20 (citations omitted). A party that obstructs the interactive process, delays it, or fails to communicate, may be acting in bad faith. Id. at 312 (citations omitted).

B. Appointment of Counsel

There is no constitutional or statutory right to the appointment of counsel in a civil action. Parham v. Johnson, 126 F.3d 454, 456-57 (3d Cir. 1997). However, "in such circumstances as the court may deem just, the court may appoint an attorney." 42 U.S.C. § 2000e-5(f)(1).

The court must consider certain factors in determining whether to appoint counsel. Snelling v. Covington, No.Civ.A.96-5456, 1996 WL 515904, at *1 (E.D. Pa. Sept. 6, 1996) (listing factors to consider in determining whether to appoint counsel in ADA case). Specifically, the court must consider: (1) the merits of the plaintiff's claim in fact and in law; (2) the plaintiff's ability to present his or her case; (3) the difficulty of the particular legal issues; (4) the degree to which factual investigation will be required and the ability of the indigent plaintiff to pursue such an investigation; and (5) whether the case is likely to turn on credibility determinations. Id. (citing Tabron v. Grace, 6 F.3d 147, 155-56 (3d Cir. 1993)).

Although Plaintiff's allegations, if true, may present a meritorious claim under the ADA, the court finds that Plaintiff is able to present her own case. Plaintiff's case does not appear to be so complex that she cannot adequately present it without assistance of counsel. To the extent that credibility will be an issue, there is no reason why Plaintiff would be prejudiced by acting pro se. Unlike cases in which the plaintiff

is a prisoner, Plaintiff's liberty is not restricted. She may pursue any factual investigation that becomes necessary. Although Plaintiff contacted three attorneys without success, there is no evidence that she contacted any Bar Association or any legal organization for assistance. Plaintiff was able to afford the filing fee to institute this civil action, and, based on the papers she has submitted to the court, Plaintiff appears capable of expressing herself in a clear manner.⁵ Thus, the court will deny Plaintiff's motion for appointment of counsel.

IV. CONCLUSION

For the reasons set forth above, the court will grant in part and deny in part Defendant's motion to dismiss and deny Plaintiff's motion for appointment of counsel.

An appropriate Order follows.

⁵ In addition to the factors set forth above, the court must be cautious in appointing counsel because "volunteer lawyer time is a precious commodity." Tabron, 6 F.3d at 157 (quotations omitted).

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MEMORANDUM AND ORDER

AND NOW, TO WIT, this day of February, 2001, upon consideration of Defendant Germantown Hospital and Medical Center's ("Defendant") Motion to Dismiss, Plaintiff Calithae C. Clark's ("Plaintiff") response thereto and Plaintiff's Motion for Appointment of Counsel, IT IS ORDERED that:

(1) Defendant's motion to dismiss is GRANTED IN PART and DENIED IN PART. Plaintiff's claims under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e, et seq., and the Family Medical Leave Act of 1993 ("FMLA"), 29 U.S.C. §§ 2601-2654 are DISMISSED; and

(2) Plaintiff's motion for appointment of counsel is DENIED.

LOUIS C. BECHTLE, J.