

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

VINCENT CARCIA : CIVIL ACTION  
 :  
 v. :  
 :  
 FEDERAL EXPRESS CORP. : No. 99-3672

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.** **APRIL** **, 2001**

Presently before the Court is a Motion to Reconsider filed by the Plaintiff, Vincent Carcia ("Carcia"). Carcia filed suit in this Court alleging that the Defendant, Federal Express Corp. ("FedEx"), discriminated against him because of his disability. The Court entered summary judgment in favor of FedEx and against Carcia on that claim. Carcia now seeks reconsideration of that decision. For the following reasons, Carcia's motion is denied.

**I. BACKGROUND**

FedEx hired Carcia as a courier to pick up and deliver packages for its local customers in Bristol, Pennsylvania. This position involved frequent stair climbing and carrying of heavy packages. Approximately three years later, in February, 1996, Carcia fractured his ankle while on the job. Doctors treated his ankle with physical therapy, cortisone shots and, eventually, surgery. Carcia then sought the assistance of FedEx's Human Capital Manager, Colin Bayne ("Bayne"). With Bayne's help, Carcia earned a position as a tractor trailer driver, which

required less climbing and mobility than the courier's position. Carcia's new position required him to deliver packages between Philadelphia International Airport and FedEx's Bristol offices. Carcia also had to occasionally run a courier route in the Bristol area, delivering or picking up packages after returning from the Airport.

In October, 1996, Carcia aggravated his ankle injury. Between October, 1996 and February, 1997, Carcia worked intermittently at a shipping facility, but could not continue because the prolonged standing and loading caused him discomfort. A functional capacity evaluation later confirmed that stress on Carcia's ankle could aggravate his injury. This meant that Carcia could not perform any tasks that required frequent or constant stair climbing, or traversing steps higher than fourteen inches. Deep squatting and carrying heavy packages would also place added stress on his ankle. Consistent with the evaluation, Carcia's physician gave him a conditional release to return to work, but limited his activities to those that would not aggravate his injury.

Carcia began the search for another position with FedEx. Bayne informed Carcia that FedEx's Medical Leave of Absence Policy afforded Carcia ninety days to find a job that his injury would allow him to fully perform; if Carcia could not find one

within that time, FedEx would terminate his employment.<sup>1</sup> Bayne sent Carcia weekly job postings of positions available at FedEx,<sup>2</sup> and had him take a typing test to determine his suitability for a position as an operations agent. Carcia contacted Bayne about returning to his former position as a tractor trailer driver, but FedEx rejected the idea because it believed Carcia could not perform all of the essential functions of the job. FedEx stated that, although Carcia could drive the tractor trailer, he could not enter or exit it without assistance because cabs on all FedEx tractor trailers had steps greater than fourteen inches. It also cited Carcia's inability to make the local deliveries occasionally required of tractor trailer drivers.<sup>3</sup> Carcia believed that, because of an ongoing conversion process within FedEx, some tractor trailer drivers were not required to perform courier services at all. Bayne investigated this possibility, but found that only the most senior drivers were afforded positions that had no courier duties. Because Carcia had only served as a tractor trailer driver for one year, he would not be eligible for that kind of job.

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<sup>1</sup> FedEx policy also required that Carcia have priority for any new job that became available.

<sup>2</sup> These listings did not contain every available position because local FedEx offices would occasionally omit open positions in order to allow for internal promotions.

<sup>3</sup> Carcia contends that making these deliveries was not an essential function of a tractor trailer driver's job.

FedEx offered Carcia a part-time position as a customer service agent in Vineland, New Jersey, but he rejected it because it was much farther away from his home and would pay him less than his previous job. Carcia argues that FedEx offered him the Vineland job in order to establish a pretextual reason for firing him. FedEx eventually terminated Carcia's employment on July 21, 1997, citing his inability under the Medical Leave of Absence Policy to secure another position within FedEx. Carcia unsuccessfully appealed the decision to FedEx management, and then instituted this action, alleging disability discrimination. Carcia also alleged age discrimination, wrongful termination and due process violations, but voluntarily dropped those claims. Carcia and FedEx filed cross-motions for Summary Judgment on Carcia's disability discrimination claim. The Court entered summary judgment in favor of FedEx and against Carcia on that claim. Carcia then filed the instant Motion for Reconsideration,<sup>4</sup> which the Court will now consider.

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<sup>4</sup> Carcia's Motion for Reconsideration is untimely. Carcia explains that the lateness was caused by a mistaken belief that the rules of civil procedure allowed twenty rather than ten days in which to file this type of motion. Although FedEx asks the Court to disregard this Motion, the Court will not, as courts should reach the merits of a matter whenever doing so will not result in prejudice to the other party. Because no appreciable prejudice will result from the Court's ignoring Carcia's admittedly inexcusable tardiness, the Court will reach the merits of his Motion for Reconsideration.

## II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 59(e) and Local Civil Rule 7.1(g) of the United States District Court for the Eastern District of Pennsylvania allow parties to file motions for reconsideration or amendment of a judgment. Fed. R. Civ. P. 59(e); E.D. Pa. R. Civ. P. 7.1(g). Courts should grant these motions sparingly, reserving them for instances when: (1) there has been an intervening change in controlling law; (2) new evidence has become available; or (3) there is a need to prevent manifest injustice or correct a clear error of law or fact. See, e.g., General Instrument Corp. v. Nu-Tek Electronics, 3 F. Supp. 2d 602, 606 (E.D. Pa. 1998), aff'd, 197 F.3d 83 (3d Cir. 1999); Environ Prods., Inc. v. Total Containment, Inc., 951 F. Supp. 57, 62 n.1 (E.D. Pa. 1996). Mere dissatisfaction with the Court's ruling is not a proper basis for reconsideration. Burger King Corp. v. New England Hood and Duct Cleaning Co., No. 98-3610, 2000 WL 133756 at \*2 (E.D. Pa. Feb. 4, 2000).

## III. DISCUSSION

Carcia's Motion for Reconsideration offers no intervening change in controlling law. With regard to new evidence, Carcia offers an affidavit of Mr. James Gallagher, a FedEx employee. This evidence is not new because it was available to Carcia before. Moreover, although Carcia suggests that the Court did

not consider this affidavit, it was already made part of the record as part of the pleadings concerning the parties' cross-motions for summary judgment.<sup>5</sup> Assuming that the Court failed to consider this affidavit, however, it would not alter the disposition of this case; it merely pertains to whether a driver's courier duties were essential functions of the position. The Court already found in Carcia's favor on this issue, stating that genuine issues of material fact existed regarding this element of his prima facie case. Order of January 29, 2001 at 16-17. Nor does the affidavit have any bearing on FedEx's legitimate non-discriminatory reason for firing him, about which the Court concluded there were no triable issues of fact. Id. at 17-19. Even if Carcia had proven each element of his prima facie case beyond doubt, he would not have survived FedEx's Motion for Summary Judgment unless he had produced a genuine issue of material fact regarding its reason for firing him. Because Gallagher's affidavit is irrelevant to that issue, it would not alter the Court's analysis.

Carcia also contends that the Court "failed to consider the vocational evaluations of Dr. Spergel, and Ms. Covington. . . ."

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<sup>5</sup> The Court clearly stated that it made its ruling upon "consideration of the Motion for Summary Judgment filed by the Defendant, Federal Express Corp. ("FedEx") (Doc. No. 18), the Response and Cross-Motion for Summary Judgment of the Plaintiff, Vincent Carcia ("Carcia") (Doc. No. 20), the Response of the Defendant and the Plaintiff's reply thereto. . . ." Order of January 29, 2001.

Plf.'s Mot. for Recons. ¶ 6. That assertion is incorrect; rather than failing to consider the evidence, the Court found that it had no bearing on FedEx's state of mind when it decided to terminate Carcia's employment. See Order of January 29, 2001 at 13. As Carcia conceded he is not actually disabled, but rather was regarded as disabled when FedEx fired him, FedEx's state of mind is at issue. It is irrelevant that the "present day effect of [Carcia's] termination . . . continues to prevent [him] from participating in a broad range of jobs in various classes of jobs. . . ." Plf.'s Mot. for Recons. ¶ 6. Rather, it is only relevant whether FedEx regarded him as so limited when it made the decision to fire him. The Court concluded that there were no triable issues of fact on this point, and Carcia has failed to persuade the Court to the contrary. Moreover, even if Carcia had cited legal authority in support of his position that this aspect of the Court's ruling was incorrect, it would not affect the Court's finding that no genuine issue of material fact existed concerning the legitimacy of FedEx's reason for firing him.

Finally, Carcia implicitly suggests that the Court committed manifest legal error by "accept[ing FedEx's offering Carcia a job ninety miles from his home] as evidence of non-discriminatory intent." Id. ¶ 14. The Court disagrees. Indeed, a careful reading of the Court's Order shows otherwise. The Court reasoned only that FedEx's three months worth of efforts to secure Carcia

another job might show that it did not regard him as unable to hold a broad range of jobs in various classes. Order of January 29, 2001 at 13. The Court also stated:

FedEx's offering Carcia a job in Vineland is not evidence of pretext, even though it was much farther away from his home than his previous job. Even if FedEx had not offered Carcia the Vineland job, it still would have been able to fire him for non-compliance with their medical leave policy. Indeed, had FedEx failed to offer Carcia any other job, Carcia would no doubt seize on that fact as evidence of discriminatory animus instead. The suggestion that FedEx offered Carcia the Vineland job in an attempt to lend credence to a pretextual reason for his firing is unsupported by the record in this case.

Id. at 18. The Court did not use FedEx's offering Carcia another job as evidence of non-discriminatory intent; rather, the Court simply stated that offering the job was not, as Carcia had suggested, evidence of discriminatory intent or pretext. Thus, the Court did not commit the error that Carcia ascribes to it. Had the Court done so, however, Carcia fails to cite any legal authority suggesting that doing so would have been a manifest legal error. Although Carcia is understandably dissatisfied with the entry of summary judgment against him,, his dissatisfaction alone cannot justify the filing of a motion for reconsideration. Burger King Corp., 2000 WL 133756 at \*2. Accordingly, the Motion for Reconsideration will be denied.

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O R D E R

**AND NOW**, this            day of April, 2001, inconsideration of  
the Motion for Reconsideration filed by the Plaintiff, Vincent  
Carcia (Doc. No. 25), and the Response thereto filed by the  
Defendant, Federal Express Corp., it is **ORDERED** that the Motion  
for Reconsideration is **DENIED**.

BY THE COURT:

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JAMES MCGIRR KELLY, J.