

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

ANGEL M. CRUZ,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 01-CV-2167
NORTHWEST AIRLINES, INC.,	:	
Defendant.	:	

MEMORANDUM/ORDER

GREEN, S.J.

OCTOBER _____, 2002

Presently before the Court are Defendant’s Motion to Dismiss Plaintiff’s Second Amended Complaint, Plaintiff’s Response, and Defendant’s Reply. For the following reasons, Defendant’s motion will be denied.

I. Factual and Procedural Background¹

In March, 2000, Plaintiff Angel M. Cruz (“Plaintiff”) was conditionally offered employment with Defendant Northwest Airlines (“Defendant”) as a Flight Attendant. Plaintiff’s employment was conditioned on satisfactory completion of a physical examination. During this examination, Plaintiff informed Defendant that he had diabetes. In May, 2000, Plaintiff was informed by Defendant that the offer of employment was being withdrawn, because certain restrictions occasioned by the physical prohibited Defendant from offering Plaintiff a position.

Plaintiff, believing that his employment was refused based on his condition, filed a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”), and was issued a right to sue letter in February, 2001. Plaintiff then filed the instant action, invoking this Court’s federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, alleging that

¹ Unless otherwise noted, all facts are taken from Plaintiff’s Second Amended Complaint, and all factual inferences have been drawn in favor of Plaintiff as the non-moving party.

Defendant had violated the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* (“ADA”), in refusing to hire Plaintiff because he was a diabetic.

Defendant filed a motion to dismiss Plaintiff’s First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that since Plaintiff had neither alleged that he was substantially limited in a major life activity or that Defendant regarded him as being substantially limited as such, the Amended Complaint must be dismissed. Pursuant to an Order by this Court dated March 6, 2002, Plaintiff’s Amended Complaint was dismissed without prejudice to file a Second Amended Complaint. *Cruz v. Northwest Airlines, Inc.*, 2002 WL 376899 (E.D. Pa. Mar. 5, 2002). Following Plaintiff’s filing of a Second Amended Complaint, Defendant filed another motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Defendant again argues that since Plaintiff has failed to allege either that he is substantially limited in a major life activity or that Defendant regards him as being limited as such, the Second Amended Complaint must be dismissed.

II. Discussion

A. Legal Standard

A court should dismiss a claim for failure to state a cause of action only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). Federal Rule of Civil Procedure 8(a)(2) provides that a complaint need only offer “a short and plain statement of the claim showing that the pleader is entitled to relief.” This is a minimum notice pleading standard “which relies on liberal discovery rules and summary judgment motions to...dispose of unmeritorious claims.” *Swierkiewicz v. Sorema*, 122 S.Ct. 992, 998 (2002). Claims lacking merit are more appropriately

dealt with through summary judgment pursuant to Rule 56. *See Swierkiewicz*, 122 S.Ct. 998. If a defendant feels that a pleading fails to provide sufficient notice, he or she may move for a more definite statement pursuant to Rule 12(e) before fashioning a response. *Id.*

Furthermore, because granting a motion to dismiss results in a determination on the merits at an early stage of a plaintiff's case, the district court "must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." *Colburn v. Upper Darby Twp.*, 838 F.2d 663, 665-66 (3d Cir. 1988) (citations and internal quotations omitted).

B. The ADA

The ADA provides that no covered employer "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). The ADA defines "a qualified individual with a disability" as "an individual 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).

"Accordingly, to fall within this definition one must have an actual disability (subsection (A)), have a record of a disability (subsection (B)), or be regarded as having one (subsection (C))."

Sutton v. United Airlines, Inc., 527 U.S. 471, 478 (1999) (holding, on a motion to dismiss, that plaintiffs had failed to allege a “disability” under the ADA).

1. Major life activity substantially limited by impairment.

The Court will first determine whether Plaintiff has adequately alleged an actual disability; “that is, whether [he has] alleged that [he possesses] a physical impairment that substantially limits [him] in one or more major life activities.” *See Sutton*, 527 U.S. at 481 (citing 42 U.S.C. § 12102(2)(A)).

If a § 12102(2)(A) ADA claim is to survive a motion to dismiss, the complaint must state not only the condition upon which the discrimination is alleged, but also a major life activity which is substantially limited. A plaintiff should also state what effect, if any, any mitigating measures such as medication has on his condition. *See Sutton*, 527 U.S. at 488-89; *see, also, Taylor*, 184 F.3d at 302 (applying *Sutton* and concluding that inquiry into whether a plaintiff has a disability under 42 U.S.C. § 12102(2)(A) must take into account any mitigating measures plaintiff uses).

In his Second Amended Complaint Plaintiff states that he “was a qualified individual with a disability.” *See Sec. Am. Compl.* ¶ 20. It was this same conclusory averment which this Court, in light of *Sutton*, found to be insufficient when it dismissed Plaintiff’s First Amended Complaint. However, when viewed in light of *Swierkiewicz*, the statement now appears to be adequate. Plaintiff’s allegation that he was a qualified individual with a disability must be evaluated under the very simplified pleading standard of Rule 8(a)(2) as interpreted in *Swierkiewicz*. Because the ADA defines disability as being substantially limited in a major life activity, a reasonable interpretation of Plaintiff’s bare bone averment that he has a disability is

that Plaintiff is also alleging that he is substantially limited in a major life activity.

I, therefore, conclude that Plaintiff's Second Amended Complaint has satisfied the requirements of Rule 8(a)(2) with regard to his § 12102(2)(A) ADA claim. Plaintiff has alleged that he was denied employment based on his disability in violation of the ADA. *See Sec. Am. Compl.* ¶ 18. Plaintiff has also described the events surrounding the alleged violation and provided the relevant dates. *See Sec. Am. Compl.* ¶¶ 7-14. Defendant has thus been given fair notice of Plaintiff's claim as well as its basis. *See Swierkiewicz*, 122 S.Ct. at 999. Defendant's motion, therefore, will be denied on this issue. If Defendant feels the need for greater specificity or clarity then they may conduct discovery until they are satisfied that all the relevant facts have been brought to light. *See Id* at 998.

2. Regarded as having such an impairment.

In order to determine whether a defendant regarded a plaintiff as being disabled, the Supreme Court has held that § 12102(2)(A) must be read in conjunction with § 12102(2)(C). Read together, having a disability "includes being regarded as having a physical or mental impairment that substantially limits one or more of the major life activities of such individual." *See Sutton*, 527 U.S. at 489. A plaintiff may satisfy this definition in two apparent ways: "(1) a covered entity mistakenly believes that a person has a physical impairment that substantially limits one or more major life activities, or (2) a covered entity mistakenly believes that an actual, nonlimiting impairment substantially limits one or more major life activities." *Id.*

Under the ADA, employers are permitted to rely on hiring criteria which prefer some physical characteristics, mental conditions, and limiting impairments over others, but they are prohibited from making hiring decisions "based on a physical or mental impairment, real or

imagined, that is regarded as substantially limiting a major life activity.” *See Sutton*, 527 U.S. at 491.

In his Complaint Plaintiff clearly “avers that Defendant perceived Plaintiff as being substantially limited in one or more major life activities, such as, by way of example and not limitation, eating and traveling.” *See Sec. Am. Compl.* ¶ 16. Plaintiff goes on to allege that “[d]efendant made erroneous stereotypical assumptions about Plaintiff on the basis of his diabetes, namely that Plaintiff was substantially limited in one or more major life activities, such as...eating and traveling...” *See Sec. Am. Compl.* ¶ 17. Plaintiff has alleged that he is a qualified individual with a disability within the meaning of the ADA. *See Sec. Am. Compl.* ¶ 20. Plaintiff has also alleged that he is disabled by virtue of the fact that Defendant regarded him as being substantially limited in the major life activities of eating and traveling. *See Sec. Am. Compl.* ¶¶ 16-19. Finally, Plaintiff has alleged that Defendant’s discrimination was based on their perception of Plaintiff as an individual whose impairment substantially limited him in a major life activity. *See Sec. Am. Compl.* ¶¶ 18-19.

Taking Plaintiff’s allegations as true, and construing the Second Amended Complaint in the light most favorable to Plaintiff, I conclude that Plaintiff has adequately alleged that Defendant “regards his impairment as substantially limiting” a major life activity. *See Sutton*, 527 U.S. at 491; *See Sec. Am. Compl.* ¶¶ 16-19. I also conclude that Plaintiff has alleged all the elements of a § 12102(2)(C) ADA claim. *See Sutton*, 527 U.S. at 478. Consequently, Defendant’s motion to dismiss must be denied on this issue.

III. Consideration of Dr. Kipp's May 24, 2000 Note

In his response to Defendant's Motion to Dismiss, Plaintiff objects to Defendant's attempt to introduce a note prepared by its medical expert, Dr. John Kipp, on May 24, 2000. Dr. Kipp authored the note after having conducted Plaintiff's pre-employment medical evaluation. The note lists seven activity restrictions under which Dr. Kipp felt Plaintiff was obligated to work if he were to be hired by Defendant.

At the Motion to Dismiss stage the Court should only concern itself with evaluating the sufficiency of the pleadings set forth in Plaintiff's Second Amended Complaint, however, references in the complaint make it appropriate to consider Dr. Kipp's note. *See Sec. Am. Compl.* ¶¶ 12, 14, 15, 22. Notwithstanding the Court's consideration of this document, I conclude that Plaintiff's Second Amended Complaint is sufficient to withstand Defendant's Motion to Dismiss.

IV. Conclusion

Plaintiff has adequately alleged facts sufficient to sustain causes of action under §§ 12102(2)(A) and 12102(2)(C) of the ADA. Therefore, Defendant's Motion to Dismiss will be denied.

An appropriate order follows.

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Plaintiff,	:	
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v.	:	
	:	NO. 01-CV-2167
NORTHWEST AIRLINES, INC.,	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of October, 2002, upon consideration of Defendant's Motion to Dismiss, Plaintiff's Response, and Defendant's Reply, **IT IS HEREBY ORDERED** that Defendant's motion is **DENIED**.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.