

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

SUSAN AYOUB, Plaintiff	:	CIVIL ACTION
	:	
v.	:	NO. 99-CV-6067
	:	
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, et al., Defendants	:	

EXPLANATION AND ORDER

Anita B. Brody, J.

December , 2002

This decision is issued in tandem with my opinion in Nelson v. Commonwealth of Pennsylvania et al. Nelson is included as an exhibit to this order.

Plaintiff Susan Ayoub, like Martin Nelson, is a blind employee of Pennsylvania's Department of Public Welfare ("DPW"). Plaintiff is suing the DPW and its Secretary, Feather Houston. Plaintiff maintains that during her employment defendants have refused to provide her with a reader, materials in braille, and regular, independent access to computerized hardware and software. She maintains that this failure has denied her reasonable accommodation for her disability and impeded her rate of advancement. Like Nelson, plaintiff brings the following claims against the DPW: (1) disability discrimination under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132 et seq.; (2) retaliation under the ADA; and (3) disability discrimination under the Rehabilitation Act, 29 U.S.C. § 701 et seq. Plaintiff has asserted the following claims against both the DPW and Secretary Houston: (4) disability discrimination

under the Pennsylvania Human Relations Act (“PHRA”), 43 P.S. § 953 et seq.; (5) retaliation under the PHRA; and (6) deprivation of federally protected rights under 42 U.S.C. § 1983. In response to plaintiff’s amended complaint, defendants filed a motion to dismiss based on Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

For the reasons stated at greater length in Nelson, defendants’ 12(b)(1) motion is granted-in-part and denied-in-part. For those claims over which the court has subject matter jurisdiction, defendants’ 12(b)(6) motion is denied.

ORDER

AND NOW, this _____ day of December, 2002, the defendants' 12(b)(1) Motion to Dismiss (Docket # 5) is **GRANTED-IN-PART** and **DENIED-IN-PART**. Defendants' 12(b)(1) is **GRANTED** with regard to:

- (1) Count I for Disability Discrimination under the ADA;
- (2) Count II for Retaliation under the ADA;
- (3) Count IV for Disability Discrimination under the PHRA;
- (4) Count V for Retaliation under the PHRA;
- (5) Count VI for Deprivation of Federally Protected Rights under 42 U.S.C. §

1983 as it pertains to defendant DPW and any retroactive relief sought from Secretary Houston.

Defendants' 12(b)(1) motion is **DENIED** with regard to:

- (1) Count VI insofar as it seeks prospective injunctive relief from the Secretary;
- (2) Count III for disability discrimination under the Rehabilitation Act.

AND Defendants' 12(b)(6) Motion to Dismiss (Docket # 5) is **DENIED**.

Anita B. Brody, J.

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