

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

MICHAEL OZLEK : CIVIL ACTION
: :
v. : NO. 05-CV-0257
: :
JOHN E. POTTER, POSTMASTER :
GENERAL, UNITED STATES POSTAL :
SERVICE :

SURRICK, J.

APRIL 13, 2006

MEMORANDUM

On February 8, 2006, at the conclusion of a three and one-half day trial, Defendant made an oral Motion For Judgment As A Matter Of Law Pursuant to Federal Rule of Civil Procedure 50(b). We granted that Motion, explaining our reasons for the decision on the record. Plaintiff has filed an appeal from that decision. We now write to memorialize the decision and to discuss more fully the basis for it.

I. BACKGROUND

Plaintiff Michael Ozlek was a Part-Time Flexible (“PTF”) Letter Carrier for the United States Postal Service. In January 2002, Plaintiff was transferred into the West Park Station (now known as the Freeman Hankins Station), with a group of other PTF carriers, to cover the loss of a number of regular letter carriers from the station.¹ At the West Park Station, Plaintiff was supervised by Joseph Stewart, who was then replaced for a number of months by Louetta Curry. Plaintiff’s more immediate supervisors were Marquita Rucker (now Marquita Howard) and Danielle Candelaria (now Danielle Carney). The entire supervisory team reported to James

¹ PTF Carriers are distinguished from regular carriers in that PTFs do not have a regular route and are not guaranteed the same schedule every day as are regular carriers. PTFs are used to fill in routes that regular carriers are unable to complete.

Vance. Almost immediately, Plaintiff began having problems with the management staff. Shortly after he began working, Plaintiff received the first of a number of letters of warning and other disciplinary measures indicating that he had made mistakes while delivering mail. These letters addressed mistakes such as failure to scan Management Service Point bar codes on his route, failure to properly slot the mail, failure to follow safety instructions by not setting the handbrake on his vehicle, and failure to properly deliver a parcel. Prior to coming to the West Park Station, Plaintiff had begun to experience psychological problems including depression, anxiety disorder, and obsessive compulsive disorder. His performance at the Postal Service before his transfer, however, had been good, and his emotional difficulties had not impacted his work.

In February 2006, Plaintiff requested and received Family Medical Leave Act (“FMLA”) leave for personal illness. Over the next ten months, he requested and was granted FMLA leave nearly every month and, frequently, several times in one month. Each time, Plaintiff provided proper certification from his doctors and was granted the leave because of his personal mental health problems and, occasionally, because of a physical problem. Plaintiff, along with his psychologist, Dr. McGalliard, and his wife, all testified that his mental health problems intensified to the point of incapacitation in response to the negative feedback or criticism that he received at the West Park Station. He was unable to handle the stress of receiving unfavorable reviews or disciplinary actions and required several days and occasionally weeks at a time to stabilize emotionally before he could return to work. Plaintiff exhausted his FMLA leave on August 6, 2002. All of his subsequent time off was approved leave without pay and without penalty.

Plaintiff testified that during his time at the West Park Station, his emotional difficulties were exacerbated by the management team at that station. He claimed that they harassed him and singled him out and that the stress of the work environment caused his anxiety disorder and depression to overwhelm him. As a result, Plaintiff began to request a transfer out of the West Park Station. He asked his direct supervisors for such a transfer but was told that they had no power to effectuate transfers and that he should write to the Postmaster of the Philadelphia District, James Gallagher. Plaintiff wrote at least one letter to Gallagher seeking a transfer but received a response that while his request had been considered, the Post Office could not transfer him at that time because of its personnel needs. Plaintiff sent additional letters to Senators and Congressmen seeking assistance in obtaining a transfer and continued to make the request to his immediate supervisors. Plaintiff's formal requests for a transfer indicated that he sought the transfer in order to be closer to home because of a number of hardships including his own mental illness, his daughter's learning disability, and his wife's heart condition.

During Plaintiff's time at the West Park Station, Louetta Curry, Plaintiff's supervisor, became concerned because of Plaintiff's reactions to unfavorable feedback and resulting long absences from work. She requested that Plaintiff undergo physical and psychological fitness for duty exams and Plaintiff complied. The result of the psychological exam was that Plaintiff was deemed fit for duty and able continue to work at the West Park Station. However, the examining psychiatrist recommended that Plaintiff be transferred to another station, if only temporarily, to assist with his emotional difficulties.² As a result, Plaintiff continued to request a transfer. He

² There was some disagreement at trial over whether Plaintiff's supervisors reviewed or should have reviewed this portion of the psychiatrist's report. However, this factual issue has no bearing on the decision we have reached in this matter.

maintained throughout the trial that this was the only accommodation he sought and wanted only to be reassigned to a station that was outside of the supervision of any of the managers at the West Park Station, including Mr. Vance, Mr. Stewart, Ms. Curry, Ms. Candelaria, and Ms. Rucker. He consistently maintained, as did his psychologist, Dr. McGalliard, that he was otherwise able to work and handle the stress of his job but for these supervisors.

Plaintiff never received the transfer that he sought. Ultimately, in November 2002, he applied for Disability Retirement. On December 17, 2002, Joseph Stewart, Plaintiff's supervisor, told Plaintiff that he should not return to work until they determined his status. In March 2003, Plaintiff's Disability Retirement application was approved with an effective date of December 17, 2002. Dr. McGalliard indicated that Plaintiff was totally unable to work as of that time and testified at trial that his condition was continuing, making it impossible for him to work at all through the present date.

Plaintiff filed this lawsuit on January 19, 2005, asserting that the Post Office had violated the Rehabilitation Act ("the Act") by discriminating against him based on his disability, by failing to provide him with the reasonable accommodation that he requested, and by retaliating against him. (Compl., Doc. No. 1 ¶ 21.) In addition, Plaintiff claimed that the Post Office violated the Family Medical Leave Act by discriminating against him for his use of FMLA leave. (*Id.* ¶ 45.) Trial commenced in this matter on February 6, 2006.³ At the close of evidence, we

³ Despite a Scheduling Order indicating that all dispositive motions were to be filed by November 14, 2005 (Doc. No. 10), Defendant filed a Motion for Summary Judgment (Doc. No. 17) on January 11, 2006. In our January 18, 2006 Order (Doc. No. 20), we dismissed Defendant's Motion for Summary Judgment as it was filed nearly two months after the deadline and without explanation.

granted Defendant's Motion for Judgment as a Matter of Law. Plaintiff has filed an appeal from that decision.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 50 provides that a court may determine an issue against a party "[i]f during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." Fed. R. Civ. P. 50(a)(1). When considering judgment as a matter of law, "[t]he question is not whether there is literally no evidence supporting the party against whom the motion is directed but whether there is evidence upon which the jury could properly find a verdict for that party." *Foster v. Nat'l Fuel Gas Co.*, 316 F.3d 424, 428 (3d Cir. 2003) (quoting *Walter v. Holiday Inns, Inc.*, 985 F.2d 1232, 1238 (3d Cir. 1993)). Judgment should only be granted if "the record is critically deficient of [a] minimum quantity of evidence from which a jury might reasonably afford relief." *Raiczuk v. Ocean County Veterinary Hosp.*, 377 F.3d 266, 269 (3d Cir. 2004) (quoting *Powell v. J.T. Posey Co.*, 766 F.2d 131, 133-34 (3d Cir. 1985)). The court "may not weigh the evidence, determine the credibility of witnesses, or substitute its version of the facts for the jury's version." *Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1166 (3d Cir. 1993) (citing *Fineman v. Armstrong World Indus., Inc.*, 980 F.2d 171, 190 (3d Cir. 1992)).

III. LEGAL ANALYSIS

A. Plaintiff's Claims Under the Rehabilitation Act

The Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, applies to federal employers and employers who receive federal funding. It forbids such employers from discriminating against people with disabilities in hiring, placement, and advancement. In devising this law, Congress

also recognized that employers have legitimate interests in running an efficient workplace and should not be forced to employ people who cannot perform the job that is required. *See Shiring v. Runyon*, 90 F.3d 827, 830-31 (3d Cir. 1996). In order to make out a prima facie case of discrimination under the Act, a plaintiff must prove the following:

(1) that he or she has a disability, (2) that he or she is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and (3) that he or she was nonetheless terminated or otherwise prevented from performing the job. The plaintiff must make a prima facie showing that reasonable accommodation is possible.

Id. at 831. The Act itself defines an “individual with a disability” as someone who: “(i) has a physical or mental impairment which substantially limits one or more of such person’s major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment.” 29 U.S.C. § 705(20)(B). The Code of Federal Regulations further provides that “Major Life Activities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” 29 C.F.R. § 1630.2(i).

Plaintiff asserts that he was disabled in the major life activity of working because of his mental disabilities. He further asserts that he was a qualified individual under the Rehabilitation Act because, with accommodation in the form of a transfer to a position under different supervisors, he would have been otherwise qualified to perform the essential functions of the job. Plaintiff claims that Defendant violated the Act by discriminating against him because of his disability, by creating a hostile work environment, and by failing to provide him with reasonable accommodation.

1. Individual with a Disability

Plaintiff contends that he is disabled because he suffers from depression, anxiety disorder, and obsessive compulsive disorder which were exacerbated by the stress of receiving negative feedback from his supervisors. Throughout the trial, Plaintiff consistently claimed that he was capable of performing the job of a PTF carrier but that the work environment under the supervisors at the West Park Station exacerbated his anxiety disorder and other mental disabilities to the point where he could no longer work. Testimony from Plaintiff and from Dr. McGalliard indicated that while Plaintiff had preexisting mental conditions, his anxiety disorder was heightened to the point of incapacitation by the warnings of disciplinary actions and negative feedback that he received from his supervisors at the West Park Station.

Case law as well as the language of the C.F.R. clearly demonstrate that such mental impairments do not make Ozlek disabled within the meaning of the Rehabilitation Act.⁴ The Court of Appeals for the Seventh Circuit dealt with a remarkably similar case in which the plaintiff, like Ozlek, suffered from anxiety and depression which, she alleged, her employer caused by yelling at her during a review of her job performance. The court stated: “[a]n inability to perform a particular job for a particular employer’ is not sufficient to establish a substantial limitation on the ability to work; rather, ‘the impairment must substantially limit

⁴ Throughout this opinion, we refer to case law that addresses the standards under both the Rehabilitation Act and the Americans with Disabilities Act interchangeably, because the Rehabilitation Act itself provides: “The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12111 *et seq.*) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12201 to 12204 and 12210), as such sections relate to employment.” 29 U.S.C. § 794(d).

employment generally.’” *Weiler v. Household Fin. Corp.*, 101 F.3d 519, 524 (7th Cir. 1996) (quoting *Byrne v. Bd. of Educ., Sch. of W. Allis-W. Milwaukee*, 979 F.2d 560, 565 (7th Cir. 1992)). In addition, the Code of Federal Regulations specifically provides that to be disabled because of a substantial limitation on the major life activity of working, a plaintiff must be

significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

29 C.F.R. § 1630.2(j)(3)(i).

Plaintiff testified that throughout his employment at the Post Office, his disability prevented him from working for the supervisors at the West Park Station but would not have prevented him from working as a letter carrier elsewhere. However, as the court in *Weiler* made clear, “[t]he major life activity of working is not ‘substantially limited’ if a plaintiff merely cannot work under a certain supervisor because of anxiety and stress related to his review of [plaintiff’s] job performance.” *Weiler*, 101 F.3d at 524. The courts in other circuits have similarly rejected disability claims premised on the notion that the plaintiff was unable to work with certain employees or supervisors. *See Amiot v. Kemper Ins. Co.*, 122 F. App’x 577, 580 (3d Cir. 2004) (disability that limits plaintiff from working under specific supervisor and within a specific geographic area does not substantially limit the major life activity of working); *see also Aldrup v. Caldera*, 274 F.3d 282, 287 (5th Cir. 2001) (regarding plaintiff whose disability was caused by anxiety of working with certain employees, the court held claim “would merely tend to show that he was unable to perform any job at one specific location, and is not evidence of [plaintiff’s] general inability to perform a broad class of jobs”); *Simeon v. AT&T Corp.*, 117 F.3d

1173, 1176 (10th Cir. 1997) (mental impairment that prevents plaintiff from working under a few supervisors within the organizational structure of one major corporation does not constitute a disability under the ADA); *Potter v. Xerox Corp.*, 88 F. Supp. 2d 109, 112-113 (W.D.N.Y. 2000) (inability to work under a certain supervisor does not rise to the level of a disability under the statutory definition). Because Ozlek claims that while he was employed by the Post Office he would have been able to perform the job for another supervisor, he was not “disabled” as the term is used in the Rehabilitation Act. *See Weiler*, 101 F.3d at 525 (“If [plaintiff] can do the same job for another supervisor, she can do the job, and does not qualify under the ADA.”).

Absent an actual impairment that qualifies as a disability under the Act, a plaintiff can also establish that he is disabled if he shows that his employer regarded him as having an impairment that substantially limits a major life activity. However, Ozlek fails in this regard as well. He has provided no testimony or evidence to suggest that his employers believed that his mental condition substantially limited his ability to work. In fact, Curry, Plaintiff’s supervisor, requested that he undergo physical and psychological exams, the results of which were that Plaintiff was deemed fit for duty and capable of continuing work as a letter carrier. Plaintiff’s employers continued to give him assignments until he himself applied for disability retirement and claimed to be totally incapable of working. These circumstances compel the conclusion that Ozlek’s employers did not regard his mental condition as substantially limiting his ability to work. Plaintiff, having failed to demonstrate that he is either disabled or regarded as disabled, has failed to establish the first requirement for a prima facie case. He is, therefore, not entitled to the protection of the Rehabilitation Act.

2. Qualified Individual Under the Act

The second prong of the prima facie case requires the plaintiff to demonstrate that he is “otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer.” *Shiring*, 90 F.3d at 831. The plaintiff must not only show that he could effectively perform his job with accommodation, but also that the accommodation he seeks is reasonable. Ozlek has failed in this regard both for the period in which he worked at the West Park Station and for the period after he accepted disability retirement.

Plaintiff claims that once he permanently stopped working for the Post Office and accepted disability retirement, his condition intensified such that he is no longer able to work at all. He specifically testified, as did his psychologist, that as of December 17, 2002, he was no longer able to work at any job that requires interpersonal contact of any kind. Plaintiff quickly becomes overwhelmed and anxious to the point where he can no longer think or concentrate. Thus, by his own testimony, as of December 17, 2002, Plaintiff is no longer able to perform the essential functions of the job with or without reasonable accommodation.

In addition, Plaintiff fails to demonstrate that he was a qualified individual under the Act during the time in which he was employed by the Post Office. Plaintiff’s only requested accommodation was a transfer to a Post Office installation that was outside of the supervision of the management team at the West Park Station. However, the law is clear that such a request is not a reasonable accommodation. The Third Circuit has stated that the Rehabilitation Act does not require employers to accommodate employees by transfer to another supervisor. “[N]othing in the law leads us to conclude that in enacting the disability acts, Congress intended to interfere with personnel decisions within an organizational hierarchy.” *Gaul v. Lucent Techs., Inc.*, 134

F.3d 576, 581 (3d Cir. 1998) (quoting *Wernick v. Fed. Reserve Bank of N.Y.*, 91 F.3d 379, 384 (2d Cir. 1996)). The *Gaul* court noted that a plaintiff does not meet the burden of demonstrating that he is a qualified individual if his proposed accommodation is unreasonable as a matter of law. *Id.* The Court reasoned that “[b]y asking to be transferred away from individuals who cause him prolonged and inordinate stress, [plaintiff] is essentially asking this court to establish the conditions of his employment, most notably, with whom he will work. However, ‘[n]othing in the [Act] allows this shift in responsibility.’” *Id.* (quoting *Weiler*, 101 F.3d at 526); *see also Weiler*, 101 F.3d at 526 (ADA does not require defendant to transfer plaintiff to work for another supervisor or to transfer the supervisor).

Ozlek’s only proposed accommodation was a transfer outside of the supervision of the West Park management team. This is clearly not a reasonable accommodation under the law. Because Plaintiff has failed to demonstrate that the proposed accommodation was reasonable, he has failed to satisfy the second requirement of a prima facie case, namely that he is a qualified individual under the Act. While Plaintiff claims that Defendant violated the Act by failing to engage in the “interactive process,” this claim is of no consequence because Plaintiff has not demonstrated that he is entitled to the protections of the Act at all. *See Gaul*, 134 F.3d at 581 (“Therefore, Gaul is not a ‘qualified individual’ under the ADA, and AT & T’s alleged failure to investigate into reasonable accommodation is unimportant.”).⁵

⁵ We note that while we find that Plaintiff has not demonstrated that his proposed accommodation was reasonable, the testimony also indicates that the Post Office did in fact offer Ozlek several reasonable accommodations. The Post Office allowed Plaintiff to take long leaves of absence from work without penalizing him for this time even after he had exhausted his leave under the FMLA. In addition, after Plaintiff filed his Disability Retirement application, his supervisor suggested that there were vacant positions at two other stations. Plaintiff refused these positions because they, like his posting at West Park Station, were under the overall

B. Plaintiff's Claims Under the Family Medical Leave Act

“The Family and Medical Leave Act of 1993 entitles eligible employees to take up to 12 work weeks of unpaid leave annually” and still maintain their positions. *Nev. Dept. of Human Res. v. Hibbs*, 538 U.S. 721, 724 (2003). Eligible employees are entitled to a total of twelve workweeks of leave during any twelve-month period for one or more of the following reasons:

- (A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.
- (B) Because of the placement of a son or daughter with the employee for adoption or foster care.
- (C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.
- (D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

29 U.S.C.A. § 2612 (a)(1). FMLA Regulations also prohibit employers from retaliating or discriminating against employees for their use of this leave. 29 C.F.R. § 825.220. To succeed on a claim of discrimination or retaliation based on FMLA use, Plaintiff must show that “(1) he took an FMLA leave, (2) he suffered an adverse employment decision, and (3) the adverse decision was causally related to his leave.” *Conoshenti v. Pub. Serv. Elec. & Gas Co.*, 364 F.3d 135, 146 (3d Cir. 2004).

supervision of James Vance, although none of the West Park supervisors worked there.

Furthermore, we note that even if Plaintiff were able to show that he was entitled to protection under the Rehabilitation Act, he has not offered testimony sufficient to demonstrate that he was indeed the object of harassment or discrimination based on his psychological disability. Plaintiff's only evidence of harassment is his description of a number of incidents in which he received letters of warning regarding mistakes he had made while delivering mail, discussions with supervisors about such mistakes, and one instance where his supervisor observed him on his postal route. Such disciplinary measures were used regularly by the Post Office. Plaintiff has failed to demonstrate that the Post Office in any way singled him out or harassed him because of his disability.

Plaintiff has provided no evidence of an adverse employment action nor has he demonstrated any retaliation or discrimination based on his use of FMLA leave. Plaintiff's only evidence of an adverse employment decision was his supervisor Joseph Stewart's direction on December 17, 2002 that he not come to work until his status had been verified. This event occurred after Plaintiff had submitted a Disability Retirement application in which he asserted that he was no longer capable of performing his job at the Post Office. Stewart testified that his instruction to Plaintiff not to come in was based on this application and the need to determine whether Plaintiff was fit to work at all. Dr. McGalliard, confirmed that as of December 17, 2002, Plaintiff was not capable of working in any position at the Post Office because of his mental disability. Plaintiff was approved for Disability Retirement and never did return to work at the Post Office. There is no evidence of an adverse employment action.

Similarly, Plaintiff offers no evidence that he was harassed or discriminated against because of his use of FMLA leave. Plaintiff's counsel points to only one statement made by Plaintiff's supervisor Louetta Curry at her deposition, where Curry stated that her evaluation was based in part on the amount of sick leave taken by employees in her office. Plaintiff contends that this is evidence of a causal relationship between discriminatory treatment and Plaintiff's FMLA leave. Curry testified at trial that she was mistaken at her deposition and that in fact her evaluations were not based on the use of sick leave. However, even accepting Curry's deposition statement, this statement is not sufficient to make out a claim of discrimination based on the use of FMLA leave. Accordingly, we conclude that Plaintiff has failed to demonstrate that he suffered an adverse employment decision or that any harassment or negative treatment was causally related to his use of FMLA leave.

IV. CONCLUSION

After reviewing all of the evidence and testimony at trial, we were compelled to conclude that Plaintiff had failed to establish his claims under the Rehabilitation Act and the Family Medical Leave Act. Plaintiff failed to demonstrate that he was “disabled” as that term is defined by the Rehabilitation Act, and he failed to show that he was a “qualified individual” under the Act. In addition, Plaintiff failed to demonstrate that he suffered an adverse employment action that was causally related to his use of FMLA leave. Accordingly, we granted Defendant’s Motion for Judgment as a Matter of Law and entered judgment in Defendant’s favor.

BY THE COURT:

/s R. Barclay Surrick

R. Barclay Surrick, Judge