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

LINDA KAUFMANN	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 04-CV-5671
	:	
GMAC MORTGAGE CORP.	:	

SURRICK, J. **MAY 17, 2006**

MEMORANDUM & ORDER

Presently before the Court are Defendant GMAC Mortgage Corporation's Motion For Summary Judgment (Doc. No. 15) and all papers submitted in support thereof and in opposition thereto. For the following reasons, Defendant's Motion will be granted.

I. BACKGROUND

This case emerges out of the circumstances of Plaintiff Linda Kaufmann's employment with Defendant GMAC Mortgage Corp. ("GMAC"), her allergic reaction to perfumes and scents used by coworkers, and the responses by her employers. Plaintiff began her employment with GMAC in December 2000 as a loan processor in the Broker Department. In June 2002, Plaintiff transferred to the Consumer Construction Loan Department ("CCL Department") with the title "loan specialist." (Pl.'s Resp., Doc. No. 19 at 4; Doc. No. 15 at 5.) The CCL Department processed two types of loans: lot loans, which are basic mortgage loans for undeveloped parcels of land, and CPP loans, which are more complex "combination construction and permanent loan[s] that cater[] to lenders who [are] having structures built on an initially undeveloped parcel of land." (Doc. No. 15 at 6.) GMAC viewed lot loans as an initial training step for loan specialists. These specialists were expected to begin working on CPP loans after three to six

months in the department. (*Id.* at 7.) Defendant contends that Plaintiff "never satisfactorily progressed to the level necessary to handle the more complicated CPP loans." (*Id.* at 8.) Plaintiff contests this characterization and contends that any perceived inadequacies were a result of a lack of training. She claims that the written evaluation of her performance that indicated a need to improve on CPP loans was completed only eight days after she was assigned her first CPP loan and therefore did not accurately reflect her abilities.[1] (Doc. No. 19 at 5.)

On her second day of training in the CCL Department, Plaintiff experienced her first allergic reaction. She turned red and had trouble swallowing and breathing. (Doc. No. 15 at Ex. 1, p. 55.) Plaintiff attributed the allergic reaction to a coworker's perfume. She left the training early and informed Lisa Richards, her supervisor, of the problem. Richards responded by sending an e-mail to the CCL Department requesting "that we be very careful of the amount of perfume that is worn by our group." (*Id.* at Ex. 1, K-4.) The e-mail continued by explaining that "[w]e have some allergy sensitive employees that react to certain perfumes and if we could be considerate to others I would appreciate it." (*Id.*) Approximately one week later, on July 9, 2002, Plaintiff e-mailed Richards to again inform her of another allergic reaction. Plaintiff complained of "breathing difficulties, nose bleeds, and burning in [her] nose." (*Id.*) Richards responded that she would attempt to move Plaintiff's desk and would send another e-mail requesting that group members refrain from wearing perfume. On that same day and the next day, Margaret Brossman, administrative assistant to the CCL Department manager, Bernard Smith, sent e-mails to facilities requesting suggestions on how to deal with Plaintiff's problem.

[1] This evaluation was completed by Plaintiff's immediate supervisor, Lisa Richards. In the evaluation, Plaintiff received an overall assessment rating of "solid performer" but "needs improvement." (Doc. No. 19 at Ex. G.)

She asked specifically about an air filter and noted that they might need to move Plaintiff's desk. Brossman also noted that an e-mail to the CCL Department had been sent requesting that they refrain from perfume use and that "evidently they are not paying attention." (July 9, 2002 E-mail, Doc. No. 23 at Ex. A.) Brossman's reference to the other employees in the CCL Department not adhering to the no-perfume policy was based on what Plaintiff herself had told Brossman. (Brossman Dep. at 13.)

On July 10, 2002, Richards e-mailed Plaintiff to let her know that the company was moving her desk and attempting to procure an air purifier specifically for her. Plaintiff responded: "can we just ask the girls not to wear perfume to work?" Richards immediately responded: "That has already been done but that has not helped so we are taking other steps to help. Just let me know when you feel some improvement." (Doc. No. 15 at Ex. 1, K-4.) Roughly fifteen minutes later, Plaintiff e-mailed Richards again, stating that she knew that at least one co-worker had on perfume that day. Richards again responded quickly stating: "We need to give these changes a chance. The company is taking the appropriate steps and I know this is difficult but please lets give these changes a try. Can you tell me who is wearing perfume? I will address directly." (*Id.*)

During Plaintiff's e-mail discourse with Richards on July 10, 2002, Plaintiff also began e-mailing Jennifer Aydelott in Human Resources to express her concerns. Plaintiff noted that despite the changes, "the girls are still going to pour on the perfume." (*Id.*) Aydelott responded by informing Plaintiff that Richards had spoken with the women that Plaintiff thought were wearing perfume and that both women had stopped. She requested that Plaintiff keep her informed of her condition after the move and placement of the air filter. (*Id.*) Plaintiff ultimately

told Aydelott that she believed the source of the problem to be a woman who was new to the CCL Department and who wore Avon products.

After the e-mail discussions of July 10, 2002, Defendant put a number of changes in place in an attempt to alleviate Plaintiff's problems. Plaintiff's desk was moved, she was given a personal air purifier, and the air filters on the third floor were changed. (Doc. No. 15 at 14.) In response to these changes, Plaintiff e-mailed Richards on the morning of July 17, 2002 to thank her for the move and the air filter. Plaintiff noted that July 16, 2002 "was the first day [she] had no reaction to the perfumes" and wanted Richards to know that she appreciated those coworkers who had worn lighter or no perfume. However, less than three hours later Plaintiff again e-mailed Richards to inform her that she believed her coworker Jocelyn was wearing an Avon product that day but that she hoped she would not have a reaction if she stayed away from Jocelyn's area. (Doc. No. 15 at Ex. 1, K-4.) Indeed, Plaintiff did not express any further allergy-related problems that day.[2]

Several days later, on July 23, 2002, Plaintiff again complained about Jocelyn's perfume. (*Id.*) Richards responded within the hour, noting that she had spoken to Jocelyn and did not think she was the problem but that other members of the group may be causing Plaintiff's reaction. (*Id.*) Based on her reaction when near Jocelyn, Plaintiff then posited that if it was not Jocelyn's perfume, it must be an Avon product of some sort because they caused the strongest reactions for her. (*Id.*) Richards's response was to send an e-mail the following morning to the entire CCL Department. This e-mail stated: "I need to do a follow up to my prior e-mail

[2] Both Plaintiff and Defendant attach the July 17, 2002 e-mails that we describe as exhibits to their pleadings. Neither party attaches or makes reference to any other communications on that day.

regarding the perfume in the department. We have an employee that is highly allergic to perfumes specifically Avon products. I need to make a request that you avoid wearing any Avon products to alleviate the problem." (*Id.*) This e-mail seemed to alleviate the problem for some time as Plaintiff did not send any further e-mails about her allergies for two weeks. In addition to sending this e-mail, on July 24, 2002, Richards also gave Plaintiff an Inter-Office Memorandum, dated July 18, 2002. The memo reviewed the events of the previous few weeks and indicated that if Plaintiff had any further outbreaks, she would be required to submit a doctor's note detailing the problem and suggesting additional solutions. (Doc. No. 19 at Ex. S; Doc. No. 15 at Ex. H.)

On August 6, 2002, Plaintiff contacted Aydelott and requested an in-person meeting to discuss her work environment. After the meeting, Plaintiff reported that when she informed Richards of the meeting, Richards had "seemed annoyed that I was speaking to [Aydelott]." (Doc. No. 19 at Ex. Q.) Plaintiff further stated:

> I told [Richards] I can't take much more of this. She told me that was fine we should go through my pipeline and clean it out. I told her I didn't plan on going anywhere[—]so now is my job being threatened also. I kinda thought this would happen. I told Lisa I was trying to figure out what my options are.

(*Id.*) Aydelott responded that she would address the situation with Richards directly.

In mid-August, Plaintiff, in response to the Memorandum from Richards, presented Defendant with doctors' notes detailing her allergy and the extent of the problem. In describing the events of August 2002, Plaintiff and Defendant agree that Kaufmann presented GMAC with a doctor's note during this time. However, they describe different notes from different doctors. Defendant acknowledges receipt of a note, written on August 9, 2002, from Dr. George

Belecanech at the Asthma Center. (Doc. No. 15 at Ex. I.) The doctor described Plaintiff's medical problems as follows:

> Ms. Linda Kaufmann is followed at our center for Allergic Rhinitis and Suspected Asthma. Her respiratory symptoms have been exacerbated on exposure to environmental irritants, such as perfumes and strong odors, which she has been exposed to in her workplace. It is recommended that Ms. Kaufmann be isolated from potentially aggravating irritants in the workplace.

(*Id.*) Plaintiff, on the other hand, refers to a note written on August 8, 2002 by Dr. David Zweiback from Zweiback Medical Associates. (Doc. No. 19 at Ex. D.) Dr. Zweiback's note states:

> Linda is a patient of ours who has been in the office numerous times now with acute bronchospastic reaction and/or allergic reaction as a direct result of her exposure to perfumes, smoke fumes and other irritants in the environment where she works. . . . It is medically necessary for her to abstain from these exposures since some of this may actually be not only detrimental to time of exposure but could be fatal if she has an anaphylactic serious reaction which is a medical emergency.

(*Id.*)

By August 13, 2002, GMAC had decided to again change Plaintiff's seat to attempt to further isolate her from perfumes and scents. In response, Plaintiff sent a lengthy e-mail on that day to Richards, Aydelott, and Bernard Smith. In it, she described her severe reactions and stated that she believed that "the best way to fix the problem is to request the team not to wear perfumes." (Doc. No. 19 at Ex. V.) Plaintiff also stated: "I do know that my coworkers were asked to control the perfumes that they ware [sic] and I know that some have most definitely . . . done that." (*Id.*) The following day, Bernard Smith issued an Inter-Office Memorandum to the entire CCL Department. (Doc. No 15 at Ex. K.) The memo laid out GMAC's new zero-tolerance perfume policy as follows:

> [O]ne of your co-worker's [sic] is having very serious allergic reactions to perfumes being worn in the department. As a result, we have made several accommodations to try and remedy the situation, to no avail. Accordingly, due to the allergic reaction[s] that are continuing despite these efforts, **we are implementing a perfume free environment for our department.** It is important to be conscious of those working around us and work as a team to rectify this situation.

(*Id.* (emphasis in original).) In addition to this memo, the CCL Department also had a team meeting during which all of the employees were told that one of their coworkers was having a severe reaction to perfumes and that, as a result, the supervisors were imposing a perfume-free policy on the department. (Richards Dep., *Id.* at Ex. 4, p. 17.) Finally, on August 19, 2002, GMAC moved Kaufmann's desk a second time in the hopes that this would alleviate her problems.[3]

While this appears to have made a difference for some time, Kaufmann again e-mailed her supervisor on September 9, 2002 about the presence of perfume in the office. In that e-mail, Plaintiff complained to Richards that she believed that Jocelyn, the coworker whose Avon products had previously caused her trouble, was wearing perfume or clothing that was scented. (Doc. No. 15 at Ex. 1, K-4.) Richards again responded within the hour and informed Kaufmann that she had spoken with Jocelyn directly and "did not smell anything of note."[4] (*Id.*)

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[3] Remarkably, Plaintiff claims that Richards, who had sent e-mails requesting that all CCL Department employees refrain from using perfume, had procured an air purifier for Plaintiff's desk, had requested that facilities change the air filters for the whole office, had directly confronted employees who Plaintiff believed to be wearing scents, and had changed Plaintiff's desk location twice, was herself continuing to wear perfume throughout this period. (Doc. No. 19 at 6.) Plaintiff cites only to her own deposition testimony as evidence of this allegation. Despite taking two separate depositions of Richards, Plaintiff failed to ask Richards whether or not Plaintiff's allegation was true.

[4] Plaintiff makes reference to this e-mail in suggesting that despite the institution of the zero-perfume policy, "there is evidence employees still continued to wear perfume." (Doc. No.

Finally, on September 12, 2002, Plaintiff informed Aydelott, Richards, and Smith by e-mail that her doctors had recommended that she take a leave of absence in order to allow her symptoms to abate and to regulate her medication. (Doc. No. 19 at Ex. Z.) As a result, Plaintiff took Family Medical Leave Act leave from September 16, 2002 through December 9, 2002. (Doc. No. 15 at Ex. L; Doc. No. 19 at 11.) In the interim, Plaintiff supplied GMAC with additional doctors' notes. One note, from Dr. Turner, stated that Plaintiff "must avoid strong odors—must be in an odor free environment" and that "if exposed to an irritant [Plaintiff] is totally disabled. She develops severe anaphylactic type [reaction]—requiring hospital[ization]." (Doc. No. 19 at Ex. E.) In addition, a note from Dr. Irene Haralabatos from the Asthma Center indicated that Kaufmann had "severe asthma and vocal chord dysfunction" and that "it is absolutely necessary that she avoid strong scents/perfumes/dust and poor air quality." (*Id.* at Ex. F (emphasis in original).)

In expectation of Plaintiff's return to work in December, Richards again sent an e-mail to all of the team members alerting them to Plaintiff's return and reminding them of the zero-perfume policy. The December 5, 2002 e-mail read:

> I need to remind everyone of our department policy of a "Perfume Free" environment. For those of you new to the department, to alleviate allergic reactions to perfumes for one of our fellow employees, we require that you not wear perfumes or anything with a strong scent. We have also asked Facilities to change the air filters to improve air quality for all.

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19 at 11.) We note, however, that this e-mail exchange suggests only that Kaufmann complained that she thought Jocelyn was again wearing some scent and that Richards responded by checking with Jocelyn directly and concluded that Kaufmann was mistaken.

(Doc. No. 15 at Ex. N.) On the following day, Aydelott e-mailed Richards to inquire how the December 5, 2002 e-mail was received by the employees in the CCL Department. (Doc. No. 23 at Ex. A.) Richards responded:

> Reaction was what I expected. Many unhappy that she seems to be able to get over on the company and will not be required to do any work due to her "medical condition." I assured them that it is business as usual for all of us. She does seem to be setting up for something else already though. Facilities was over here this morning working on the air filters for us.[5]

(*Id.*) Plaintiff returned to work several days later.

When Plaintiff initially returned to work, she commented in a December 13, 2002 e-mail to Richards, Smith, and Aydelott that "there is a big difference in the perfumes in the area." (Doc. No. 15 at Ex. 1, K-4.) However, in the same e-mail, Plaintiff also expressed concern over an upcoming meeting on Fraud Control during which she would "not be able to retreat back to [her] desk to avoid any irritants." (*Id.*) Smith replied to this e-mail, stating that this and other training sessions were a necessary part of her job. (*Id.*) Plaintiff's request to attend the training via phone from a nearby conference room was denied because the training was interactive in

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[5] Richards clarified that the phrase "setting up for something" referred to comments Plaintiff had made to Richards that led her to believe that Plaintiff was "trying to back [her] into a corner." (Richards Mar. 30, 2006 Dep. at 50.) For example, Richards indicated that Plaintiff asked her: "Are you refusing to accommodate me in this manner?"

Plaintiff points to this particular e-mail as exemplifying Richards's failure to take Plaintiff's disability seriously. (Doc. No. 27 at 2.) Plaintiff argues that this e-mail "shows genuine animus toward Plaintiff and her medical condition" because of its use of "quotation marks for sarcastic emphasis." (*Id.*) We note, however, that Plaintiff's counsel specifically asked Richards in her deposition whether she used quotation marks around the term "medical condition" with a sarcastic intent. (Richards Mar. 30, 2006 Dep. at 49.) Richards responded: "No, absolutely not" and further stated that she believed Plaintiff had a medical condition and was certainly suffering. (*Id.* at 49-50.) Plaintiff's argument fails to mention this portion of the deposition.

nature and participation by phone would be ineffective.[6] (Smith Decl., Doc. No. 15 at Ex. 2.) Plaintiff did not attend the training but was not disciplined for her absence. (Aydelott Dep. at 57.) Smith believed that Plaintiff was going to attend the training and was unaware that Plaintiff did not in fact attend.[7] (Smith Mar. 27, 2006 Dep. at 55.) On December 16, Plaintiff met with Richards and Smith to discuss her allergy-related problems. Smith noted to Aydelott that the meeting did not go well and wrote in an e-mail:

> I think Linda has an unrealistic expectation about what we can do for her here. I did tell her that Lisa and I would not be able to monitor scents and admonish individuals who happened to wear something that might bother Linda. Linda again was making statements about what people are wearing and what people are doing.

(Dec. 16, 2002 e-mail, Doc. No. 23 at Ex. A.) Aydelott agreed with Smith's characterization that Plaintiff had "an unrealistic expectation" about what GMAC could do for her and indicated that the company "had done everything feasible for her at that point." (Aydelott Dep. at 67-68.)

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[6] There is a dispute between the parties over the way in which Smith responded to Kaufmann's request to participate by phone. Kaufmann claims that Smith verbally replied that he was not "the perfume police." (Doc. No. 19 at 12; *id.* at Ex. B-1.) Smith contests this claim and states that he never used that language but did at some point say that "it was not within [his] control to ensure that anyone she came in contact with throughout the day would not have a fragrance that might affect her." (Smith Dep., *id.* at Ex. C, pp. 70-71.)

[7] There is a dispute between the parties regarding the characterization of this incident. Plaintiff refers to Smith's rejection of the request to participate by phone as an example of Defendant ignoring the advice of Aydelott, an attorney in the Human Resources Department. (Doc. No. 27 at 3.) Plaintiff contends that Smith's failure to recommend alternatives such as a one-on-one training (Smith Mar. 27, 2006 Dep. at 59-60) demonstrates that "he put little—if any—thought into the accommodation request at issue." (*Id.* at 4.) Aydelott, on the other hand, contends that she suggested accommodation only if it was reasonable in the context of the training. She noted: "I have to defer to the business because I don't know what's involved." (Aydelott Dep. at 55.) Aydelott indicated that she herself did not offer alternatives to Plaintiff's attendance because "going back to the fact that we are a perfume-free environment, [Aydelott] didn't really understand what the necessity of it was." (*Id.* at 57.)

Aydelott also believed that Plaintiff had made numerous additional accommodation requests, which were not reasonable and which were not feasible:

> Space is very limited. We were not able to put her in a conference room and take up that space. She had requested to work from home. Again, that was an unrealistic request. Very sensitive documentation, people's Social Security numbers, all those pieces which would then be in someone's home, which we could not accommodate. . . . She had indicated that people would maybe come in on a Monday and they might have perfume smells on their coats . . . that we should require that they get their coats cleaned prior to coming to work, which obviously, it's, again, not reasonable. She was requesting . . . that we post some type of sign that indicates no perfume, which, again, if someone doesn't know and they are coming in the building, how can they take the perfume off if they already have it on?

(*Id.* at 68-69.)

After the December 16, 2002 e-mail, Plaintiff expressed no other concerns and did not report any other allergic reactions for the next month. On February 19, 2003, Plaintiff again sent an e-mail to Richards and Aydelott, complaining of "a strong scent by the printer" that may have been a "perfumed hand cream." (Doc. No. 19 at Ex. C1.) June Southall, Plaintiff's coworker e-mailed to apologize and suggested that she would be more careful in the future. Later that month, Richards began to express concern over the amount of time Plaintiff had been taking for doctor and dentist appointments. Richards e-mailed Plaintiff about this issue and wondered whether Kaufmann would be able to maintain her "pipeline" with her many absences. (Feb. 24, 2003 E-mails, Doc. No. 23 at Ex. A.)

In March, April, and May, Plaintiff continued to periodically express concerns about scents in the CCL Department. On March 19, 2003, Plaintiff complained directly to the coworker she suspected of wearing perfume. In response, the coworker, Jennifer Lazor, replied that she was not wearing perfume and had not worn any since Plaintiff made her initial request.

Towards the end of March, Plaintiff called Human Resources to complain of scents. In response, Richards sent out another e-mail to the entire team, again reminding the CCL Department that it was a "perfume free environment." (Mar. 31, 2003 E-mail, Doc. No. 19 at Ex. I-1.) On April 9, 2003, Plaintiff again complained of a scent in the CCL Department but sent the e-mail to Trish Nicolo, who responded that she did not think she was the proper recipient of the message. It does not appear that Plaintiff forwarded this e-mail to Richards, Smith, or Aydelott. (Doc. No. 19 at Ex. K1.) On April 16, 2003, Plaintiff again alerted Richards and Aydelott that she was having an allergic reaction and that if it did not improve, she would go home. (*Id.* at Ex. L1.) Finally, on May 6, 2003, Plaintiff e-mailed Aydelott to complain about a number of GMAC employees from the Arizona office who were visiting the Pennsylvania office. Plaintiff complained that these visiting employees were wearing scents. (*Id.* at Ex. M1.) One hour later, Plaintiff e-mailed Richards and Smith to let them know that she was reacting to the scents and had to leave. (Doc. No. 23 at Ex. A.)

In April and May, Plaintiff also had a number of interactions with her supervisors about unexplained absences and about her time card. On April 14, 2003, Richards e-mailed Plaintiff, requesting that they review her time card together to insure that it accurately reflected her time in the office. (Doc. No. 15 at Ex. 1, K-4.) That same day, Smith e-mailed Kaufmann to remind her of the company work schedule and to indicate that should she require time off for a personal or doctor's appointment, she must clear that with her supervisor first. (*Id.*) In response, Plaintiff e-mailed Aydelott in Human Resources to discuss this problem. (*Id.*) On May 12, 2003, Plaintiff again e-mailed Human Resources about problems with her paid time off ("PTO"). She had attempted to take PTO for the day of May 6, 2003, when her allergic reaction to scents from

visitors caused her to leave work. Plaintiff suggested in her e-mail that she had been told that she could not use PTO for this time and that she had to be pre-approved in order to use PTO. Based on this information, Plaintiff wrote: "Why am I being treated different than all the other employe[e]s in the department! Enough, please get involved!" (*Id.*) Roughly twenty minutes later, Plaintiff again e-mailed the same three individuals, stating: "I feel like I am being harassed in my department, I had emailed last week and again another situation with My team lead, Lisa Richards—What time today can I meet with someone?" (Doc. No. 19 at Ex. P1.) Katie Alderfer from Human Resources responded and explained that Kaufmann was not being treated differently, that she had exhausted her accrued PTO for the year prior to May 6, 2003, and that this was the reason for the denial of her PTO leave.

In mid-April, Plaintiff's supervisors, Smith, Aydelott, and Richards, began discussing Plaintiff's attendance problems and her job performance. On April 16, 2003, Smith e-mailed Aydelott and Richards, expressing his concern about Plaintiff's attendance and performance. He wrote:

> This is just not working out. Linda's inability to consistently be here makes it nearly impossible for Lisa to manage her workflow. Linda's responsibilities (along with all the others in Lisa's group) are very time sensitive. Linda's erratic attendance and inability to consistently apply herself for 8 hours per day is having a negative impact on the operations of the department and other associates here who have to constantly pick up after her when she has an unexcused absence. As the manager of the group, I can't allow this to continue. I think we need to discuss to see how we can resolve this.

(Doc. No. 15 at Ex. P.) On May 6, 2003, Smith e-mailed Richards and Aydelott about setting up a time with Plaintiff to discuss her employment. He specifically indicated that he "need[ed] to explain to her this is not working out." (Doc. No. 23 at Ex. A.) Aydelott understood this to

mean that Smith wanted to discuss the next steps with Plaintiff, to give her an opportunity to find a different position within the company, or to terminate her. (Aydelott Dep. at 85.) Over the next two days, Smith and Aydelott discussed Smith's intention to terminate Plaintiff. (*Id.* at 87-88.) Aydelott indicated that the reasons for the termination were Plaintiff's attendance problems, her performance problems, the fact that GMAC could "do nothing else for her[,] and it [was] not working out." (*Id.* at 89.) On May 8, 2003, Smith e-mailed Aydelott and Alderfer in Human Resources to inquire whether the lack of documentation regarding Plaintiff's performance issues would present a problem. (Doc. No. 23 at Ex. A.) Smith indicated that they had documentation of Plaintiff's attendance problems but that the performance issues had been dealt with verbally by her supervisor. (*Id.*) Aydelott responded to this e-mail that "[i]t will not be an issue as our approach will be . . . that it is simply not working out for both sides and for that we are giving her additional monies to assist her in looking for a position elsewhere." (*Id.*) Later that day, Aydelott e-mailed Smith and attached the consent agreement that she planned to present to Plaintiff in the termination meeting. (*Id.*) That document was a separation agreement and release of all claims in exchange for the payment of $5,000. (Doc. No. 26 at Ex. 3.) On the morning of May 13, 2003, Aydelott e-mailed Smith to advise him that she believed the termination meeting would be more effective if she met with Plaintiff without Smith present, because it would "keep the emotions at a minimum." (Doc. No. 23 at Ex. A.) Smith agreed. (*Id.*) On May 13, 2003, Aydelott and Alderfer met with Plaintiff. During the meeting, Plaintiff's employment with Defendant was terminated. (Doc. No. 15 at 23; Aydelott Dep. at 101.) The meeting was amicable, but Plaintiff never signed the separation agreement. (Aydelott Dep. at 101-02.)

Plaintiff filed the instant Complaint on December 7, 2004. (Compl., Doc. No. 1.) Plaintiff alleges three causes of action: (1) she claims that GMAC violated the Americans with Disabilities Act ("ADA") "[i]n refusing any accommodation, and harassing and retaliating against Plaintiff on account of her known or perceived disability, and because Plaintiff protested the lack of accommodation" (*Id.* ¶ 59); (2) she alleges that Defendant has engaged in knowing, purposeful and unlawful discrimination pursuant to 42 U.S.C. § 1981a (*Id.* ¶ 61); and (3) she claims that Defendant violated the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. C.S.A. § 955 *et. seq.*

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

The party moving for summary judgment bears the initial burden of demonstrating that there are no facts supporting the nonmoving party's legal position. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986). Once the moving party carries this initial burden, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (explaining that the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts"). "The nonmoving party . . . 'cannot rely merely upon bare assertions,

conclusory allegations or suspicions' to support its claim." *Townes v. City of Phila.*, Civ. A. No. 00-CV-138, 2001 U.S. Dist. LEXIS 6056, at *4 (E.D. Pa. May 11, 2001) (quoting *Fireman's Ins. Co. v. DeFresne*, 676 F.2d 965, 969 (3d Cir. 1982)). Rather, the party opposing summary judgment must go beyond the pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. *Celotex*, 477 U.S. at 324. When deciding a motion for summary judgment, the court must view facts and inferences in the light most favorable to the nonmoving party. *Anderson*, 477 U.S. at 255; *Siegel Transfer, Inc. v. Carrier Express, Inc.*, 54 F.3d 1125, 1127 (3d Cir. 1995). However, we will not resolve factual disputes or make credibility determinations. *Siegel Transfer, Inc.*, 54 F.3d at 1127.

III. LEGAL ANALYSIS

A. Prima Facie Case Under the ADA[8]

The ADA prohibits employers from discriminating "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). Under the Act, a "qualified individual with a disability" is defined as a person 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).

[8] While Plaintiff alleges claims under both the ADA and the PHRA, we discuss only the ADA because our analysis of the ADA claim applies equally to Plaintiff's PHRA claim. *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 306 (3d Cir. 1999) (citing *Kelly v. Drexel Univ.*, 94 F.3d 102, 105 (3d Cir. 1996)).

In addition to adverse employment actions, discrimination under the ADA includes the failure to reasonably accommodate a disabled individual. The term reasonable accommodation includes:

> (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
> (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C. § 12111(9). An employer may be found to discriminate if it does not make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity." 42 U.S.C. § 12112(b)(5)(A).

In order for a plaintiff to establish a prima facie case under the ADA, plaintiff must show the following: "(1) he is a disabled person within the meaning of the ADA; (2) he is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and (3) he has suffered an otherwise adverse employment decision as a result of discrimination." *Taylor*, 184 F.3d at 306 (quoting *Gaul v. Lucent Techs.*, 134 F.3d 576, 580 (3d Cir. 1998)).

B. Plaintiff's "Disability" Under the ADA

The first prong of the prima facie case under the ADA requires that the plaintiff demonstrate a disability as that term is defined by the Act. For purposes of the ADA, 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 an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(2). The Code of Federal Regulations ("C.F.R.") defines "major life activity" to include: "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i). The C.F.R. provides that the term "substantially limits" means that the individual is unable to perform a major life activity or that the person is "significantly restricted as to the manner or duration under which [she] can perform a major life activity as compared to . . . the average person in the population." *Id.* § 1630.2(j). In addition, the Supreme Court has determined that "to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives."[9] *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 198 (2002). The ADA requires plaintiffs to not only submit evidence of a medical diagnosis but to "offer[] evidence that the extent of the limitation caused by their impairment in terms of their own experience is substantial." *Id.* (quoting *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555, 567 (1999)).

[9] Defendant points out that the Supreme Court has acknowledged that despite the EEOC's promulgation of regulations, "no agency has been delegated authority to interpret the term 'disability.'" *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 479 (1999). The Court in *Sutton* and in *Toyota Motor* explicitly declined to consider what deference must be given to these EEOC regulations and assumed that they were reasonable because both parties had accepted them as such. *Toyota Motor*, 534 U.S. at 194; *Sutton*, 527 U.S. at 480. For this reason, we discuss both the language of the C.F.R. and the Supreme Court's language in *Toyota Motor*. We do not believe that the slight variation in language impacts our conclusion that Plaintiff has provided sufficient evidence to create a jury issue on whether she was disabled within the meaning of the ADA.

Plaintiff contends that her allergy to perfumes and the resulting asthmatic condition constitutes a disability under the ADA because she is substantially limited in the major life activity of breathing. Defendant does not contest the fact that Plaintiff suffered from an allergy to perfumes and scents but argues that it did not substantially limit a major life activity. Plaintiff's condition was described somewhat differently by the various doctors she saw. However, all concluded that she had a severe allergy to perfumes and other odors. The descriptions of Plaintiff's condition included: "Allergic Rhinitis and Suspected Asthma" (Doc. No. 15 at Ex. I), "acute bronchospastic reaction and/or allergic reaction" (Doc. No. 19 at Ex. D), "severe anaphylactic type [reaction]—requiring hospital[ization]" (*id.* at Ex. E), and "severe asthma and vocal chord dysfunction" (*id.* at Ex. F). One doctor described the condition as potentially fatal (Doc. No. 19 at Ex. D) and all agreed that it was severe and that the best course of action was to isolate her from potential irritants. Plaintiff also described her allergic reactions in e-mails to her supervisors. On one occasion, she complained of difficulty breathing, nose bleeds, and a burning sensation in her nose. (July 9, 2002 E-mail, Doc. No. 15 at Ex. 1, K-4.) Plaintiff later stated that the allergy prevented her from walking up and down stairs without losing her breath and caused her to faint. In addition, her chest became tight, she often lost her voice, and she experienced a swelling of her bronchial tubes and hives. (Aug. 13, 2002 E-mail, *id.*) On numerous occasions, Plaintiff's condition forced her to visit the hospital and doctors for steroids and air treatments. (*Id.*)

In order to determine whether Plaintiff's allergies substantially limit the major life activity of breathing, we must consider the following factors: "(i) the nature and severity of the impairment; (ii) the duration or expected duration of the impairment; and (iii) the permanent or

long term impact . . . of or resulting from the impairment." 29 C.F.R. § 1630.2(j)(2); *see also Meyers v. Conshohocken Catholic Sch.*, No. Civ. A. 03-4693, 2004 WL 3037945, at *7 (E.D. Pa. Dec. 30, 2004).

With respect to the nature and severity of the impairment, Plaintiff's allergy and resulting asthma has been called severe by all of her doctors and has resulted in numerous trips to the hospital for emergency air treatments and steroids. In fact, Defendant suggests that these numerous absences for treatment (in addition to those for doctor's appointments) were so frequent as to make it impossible for Plaintiff to be effectively trained and to competently perform the essential functions of her job. In addition, all of Plaintiff's doctors indicated that in order to stay healthy, she must avoid exposure to perfume, dust, and smoke, all of which are common elements of daily life. We are compelled to conclude that the nature and severity of Plaintiff's impairment weighs in favor of a finding that it substantially limits the major life activity of breathing. *See Meyers*, 2004 WL 3037945, at *7.

In considering the second factor, the duration or expected duration of the impairment, we note that Plaintiff developed her allergy in June 2002 when she transferred to the CCL Department. She continued to suffer from it after her employment with GMAC was terminated in May 2003.[10] (Kaufmann Dep., Doc. No. 15 at Ex. 1, pp. 44-45.) While the allergy and asthma conditions are brought on only by exposure to irritants, this allergic reaction occurred on a regular basis while Kaufmann worked at GMAC and led her to leave work and seek medical

[10] After her employment with GMAC, Plaintiff suffered from this same allergy to perfume while working at Wawa and Ross Department stores. Interestingly, she indicates that she was able to control her allergy in those jobs by walking away from the areas in which the irritant was present. (Doc. No. 15 at Ex. 1.)

attention numerous times. This factor similarly leads us to conclude that the major life activity of breathing was substantially limited.

Finally, although Plaintiff's allergy has not been as severe since she left GMAC, the condition still exists. The only suggested long-term treatment has been that Plaintiff should avoid irritants. Should Plaintiff be unable to avoid these irritants, she will continue to suffer severe breathing problems and allergic reactions in the long term. Thus, the third factor, the permanent or long-term impact of the impairment, also leads us to conclude that Plaintiff's condition does constitute a disability that substantially limits a major life activity. In sum, we conclude that Plaintiff has presented sufficient evidence to create a jury issue on whether her allergies to perfumes and other scents makes her disabled within the meaning of the ADA.[11] *See Davis v. Utah State Tax Comm'n*, 96 F. Supp. 2d 1271, 1286-87 (D. Utah 2000) (evidence of plaintiff's reaction to strong fragrances is enough to create a jury issue on whether she has a disability under the ADA); *see also Keck v. N.Y. State Office of Alcoholism & Substance Abuse*

[11] Defendant argues that Plaintiff's failure to identify an expert witness is fatal to her disability claim because medical testimony is necessary to substantiate her claim that the allergy substantially limited her breathing. (Doc. No. 15 at 31 n.8.) Plaintiff correctly counters that medical testimony is not always necessary to establish disability. *Katz v. City Metal Co.*, 87 F.3d 26, 32 (1st Cir. 1996) ("There is certainly no general rule that medical testimony is always necessary to establish disability. . . . [I]t is certainly within the realm of possibility that a plaintiff himself in a disabilities case might offer a description of treatments and symptoms over a substantial period that would put the jury in a position where it could determine that he did suffer from a disability within the meaning of the ADA."). In addition, we have based our conclusion that Plaintiff has established this prong of the prima facie case on Plaintiff's own statements, the undisputed facts concerning her absences from work, and her doctors' notes. *See* Fed. R. Evid. 803(4) (excluding statements of medical diagnosis or treatment from hearsay rule).

Servs., 10 F. Supp. 2d 194, 200 (N.D.N.Y. 1998) (plaintiff has raised a question of fact with regard to whether her severe allergy to perfumes constitutes a disability under the ADA).[12]

C. "Qualified Individual" Under the ADA

Having determined that there are genuine factual disputes about whether Plaintiff has a disability under the ADA, we must now determine whether she is a "qualified individual" under the Act. 42 U.S.C. § 12112(a). In order to be a "qualified individual," Plaintiff must demonstrate that "with or without reasonable accommodation, [she] can perform the essential functions of the employment position." 42 U.S.C. § 12111(8). Plaintiff's allergy to perfumes and scents caused severe breathing problems and other physical reactions. When this occurred, Plaintiff could not work and was forced to leave the office to seek medical treatment at a hospital or doctor's office. This occurred on numerous occasions, leading her supervisors to conclude that her attendance problems prevented her from being effectively trained and from working efficiently. It is clear that without accommodation, Plaintiff was incapable of effectively doing her job.

We must therefore determine whether Plaintiff was qualified to perform her job *with* reasonable accommodation. This discussion necessitates consideration of the accommodation

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[12] In contrast to these cases, Defendant points to *Rinehimer v. Cemcolift, Inc.*, 292 F.3d 375 (3d Cir. 2002), which holds that "the condition of being sensitive to dust and fumes which is not temporary . . . does not 'substantially limit' a 'major life activity.'" *Id.* at 381 (quoting 42 U.S.C. § 12102(2)(A)). However, the Third Circuit did not detail how it reached this conclusion in *Rinehimer* and made mention of only one doctor's letter submitted to the employer, which indicated that the plaintiff should avoid dust and fumes. In contrast, Kaufmann has submitted evidence in the form of multiple doctors' notes about the severity of her condition, her own testimony about the disabling effect of her allergy, and the testimony of coworkers and supervisors about her resulting lack of attendance. This set of facts makes the instant matter easily distinguished from *Rinehimer*.

sought by Plaintiff, the accommodation provided by Defendant, and the reasonableness of each. We note that the burden remains with the plaintiff to demonstrate that "a reasonable accommodation, allowing [her] to perform the essential functions of [her] job, is possible." *Buckles v. First Data Res., Inc.*, 176 F.3d 1098, 1101 (8th Cir. 1999); *see also Gaul*, 134 F.3d at 581 ("[Plaintiff] does not meet his burden . . . because his proposed accommodation was unreasonable as a matter of law. Therefore, [Plaintiff] is not a 'qualified individual' under the ADA . . . ."). "There is no precise test for what constitutes a reasonable accommodation, but an accommodation is unreasonable if it 'either imposes undue financial or administrative burdens, or requires a fundamental alteration in the nature of the program.'" *Buckles*, 176 F.3d at 1101 (quoting *DeBord v. Bd. of Educ.*, 126 F.3d 1102, 1106 (8th Cir. 1997)).

In this case, it is beyond dispute that Defendant took steps to accommodate Plaintiff and to alleviate her medical problems. As is evidenced by the numerous e-mail messages, Plaintiff's supervisors sent e-mails to the entire CCL Department requesting that employees no longer wear perfume, instituted a zero-tolerance perfume policy and had meetings with the Department to explain the policy, addressed the matter with specific individuals when Plaintiff complained, asked employees to "wash off" if they had worn a scent that caused Plaintiff to react, changed Plaintiff's desk location twice in an effort to move her into a more secluded area, changed the air filters on the floor on which she worked, and provided Plaintiff with a personal air purification device for her desk. In fact, when Plaintiff returned from her FMLA leave in December 2002, she herself commented in an e-mail to her supervisors that there was "a big difference in the perfumes in the area." While Plaintiff continued to experience allergy-related problems after she sent this e-mail, Defendant also continued in its attempts to accommodate her.

Plaintiff contends that, despite these steps, Defendant's responses were inadequate. Plaintiff characterizes Defendant's approach as "half-hearted." (Doc. No. 19 at 6.) As an example, Plaintiff points to Richards's July 24, 2002 e-mail to the CCL Department, sent in response to a complaint by Plaintiff the prior day. Richards's e-mail stated: "I need to do a follow up to my prior e-mail regarding the perfume in the department. We have an employee that is highly allergic to perfumes specifically Avon products. I need to make a request that you avoid wearing any Avon products to alleviate the problem." Because the e-mail was phrased as a request and not a "blanket prohibition," Plaintiff asserts that this was both half-hearted and inadequate. In addition, Plaintiff asserts that despite the "zero perfume policy" established by Smith several weeks later, employees continued to wear perfume. As evidence of this, Plaintiff offers the fact that she continued to have allergic reactions.

Plaintiff also contends that GMAC should have taken a number of additional steps that would have made the accommodation reasonable in her estimation. Plaintiff requested to work from home. This request was denied because of the sensitive nature of her job and the documents with which she worked. Plaintiff requested that all employees be required to clean their coats before returning to work on Mondays. This request was denied as unreasonable. Plaintiff argues that GMAC should have posted signs in the lobby alerting people to the no-perfume policy and should have taken steps to ensure that all third-party guests, visitors, contractors, and customers adhere to the policy. Finally, Plaintiff contends that the lack of discipline accompanying the perfume-free policy demonstrates that it was not enforced.

We are satisfied that Defendant's many attempts to alleviate Plaintiff's problem constitute reasonable accommodation. We are also satisfied that Plaintiff's accommodation demands were not reasonable. Our courts have recognized that

> [t]he use of the word "reasonable" as an adjective for the word "accommodate" connotes that an employer is not required to accommodate an employee in any manner in which that employee desires. The term "reasonable," as it is employed in the ADA, would have no meaning if employers were required to provide employees the maximum accommodation or every conceivable accommodation possible.

Whillock v. Delta Air Lines, Inc., 926 F. Supp. 1555, 1565 (N.D. Ga. 1995). Clearly, what Plaintiff was demanding here was a completely scent-free environment to be policed by her supervisors and enforced with disciplinary punishments. To require GMAC to enforce this type of accommodation would be to impose undue financial and administrative burdens. It would not only be impractical, it would be virtually impossible. *See Montenez-Denman v. Slater*, No. 98-4426, 2000 WL 263279, at *3 (6th Cir. Mar. 1, 2000) (finding the plaintiff's request for a fragrance-free environment to be impractical and unreasonable). As the District Court in *Montenez-Denman* stated:

> [A]ffording her a "fragrance-free" work environment still purports to require her employer to engage in the undue burden of establishing and enforcing a prohibition against "scents." This imposes an obligation on her employer to prohibit plaintiff's co-workers and those who occasionally come into the office of their right to wear "scents," to engage in the burdensome and unseemly task of enforcing such a prohibition and to identify and rid plaintiff's workplace of many other common, scent producing agents such as cleaning supplies. . . . [N]othing in the . . . Act suggests that Congress intended for the Act to extend an employer's obligation as far as plaintiff urges.

Id. at *2.

Defendant took reasonable steps to accommodate Plaintiff in this case and to help her avoid the irritants that caused her allergic reactions. Plaintiff's supervisors sent e-mails requesting that employees refrain from using scents and then instituted a complete no-fragrance policy. They twice moved Plaintiff's desk to more secluded areas, changed the air filters, and provided her with a personal air purifier in an effort to make her work space better ventilated. "In this situation, there is only so much avoidance that can be done before an employer would essentially be providing a bubble for an employee to work in." *Buckles*, 176 F.3d at 1101. Moreover, the additional accommodation sought by Plaintiff, an enforcement of the no-fragrance policy with respect to all visitors to the CCL Department and by disciplinary measures against GMAC employees, would impose "an undue financial [and] administrative burden" on GMAC. *Id.* "An employer is not required by the ADA to create a wholly isolated work space for an employee that is free from numerous possible irritants, and to provide an unlimited absentee policy." *Id.* The steps taken by GMAC were reasonable. The demands of Plaintiff were not. Because Plaintiff has not offered reasonable accommodations that would allow her to perform the essential functions of the job, she has not established that she is a "qualified individual" under the ADA. *See id.* at 1102.[13] Accordingly, we are compelled to grant summary judgment in favor of Defendant on Plaintiff's discrimination claims under the ADA and the PHRA and Plaintiff's claim under 42 U.S.C. § 1981(a).

D. Retaliation Claim

[13] Defendant also argues that Plaintiff was not a qualified individual because, regardless of her disability, she lacked the skills necessary to do the job and exhibited poor performance. However, such an argument relies on facts in dispute and, therefore, is not the basis of our conclusion that Plaintiff has failed to meet her initial burden under the ADA.

Plaintiff also raises a claim of retaliation, alleging that GMAC terminated her for making discrimination complaints. Specifically, Plaintiff contends that she was terminated one day after sending an e-mail to Aydelott in which she complained that she felt that she was being harassed. Preliminarily, we note that Plaintiff's failure to make out a prima facie case under the ADA does not preclude her from recovering on her retaliation claim. *Shellenberger v. Summit Bancorp, Inc.*, 318 F.3d 183, 188 (3d Cir. 2003); *see also Krouse v. Am. Sterilizer Co.*, 126 F.3d 494, 498 (3d Cir. 1997) ("We hold that a person's status as a 'qualified individual with a disability' is not relevant in assessing the person's claim for retaliation under the ADA.")

The ADA retaliation provision provides: "No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter." 42 U.S.C. § 12203(a). To establish a prima facie case of retaliation, Plaintiff must show: "(1) protected employee activity; (2) adverse action by the employer either after or contemporaneous with the employee's protected activity; and (3) a causal connection between the employee's protected activity and the employer's adverse action."[14] *Krouse*, 126 F.3d at 500.

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[14] The Court in *Woodson v. Scott Paper Co.*, 109 F.3d 913 (3d Cir. 1997) explained that if Plaintiff succeeds in making out a prima facie case,

> the burden of production shifts to the defendant to articulate some legitimate, nondiscriminatory reason for its actions. The defendant's burden at this stage is relatively light: it is satisfied if the defendant articulates any legitimate reason for the discharge; the defendant need not prove that the articulated reason actually motivated the discharge. At this point, the presumption of discrimination drops from the case. To prevail at trial, the plaintiff must convince the factfinder both that the reason was false, and that discrimination was the real reason. . . . In the end, the burden of proof remains with the plaintiff.

It is clear that Plaintiff did engage in protected employee activity during her tenure at GMAC. She complained about her work environment and its effect on her, and she made numerous requests to her supervisors and human resources for varying forms of accommodation. In addition, Plaintiff engaged in protected activity on May 12, 2003 when she sent e-mails to Aydelott containing the following statements: "Why am I being treated different than all the other employe[e]s in the department!" and "I feel like I am being harassed in my department, I had emailed last week and again another situation with My team lead, Lisa Richards—What time today can I meet with someone?" In addition, Defendant does not dispute the fact that Plaintiff was terminated and that termination is an adverse action. Defendant does, however, challenge the notion that there is a demonstrated causal connection between the protected activity and Plaintiff's termination.

Plaintiff contends that the temporal proximity, roughly twenty-four hours, between her May 12th e-mails and her termination is sufficient in and of itself to make out a prima facie case of retaliation. The Third Circuit has stated that "temporal proximity between the protected activity and the termination is itself sufficient to establish a causal link." *Shellenberger*, 318 F.3d at 189 (quoting *Woodson v. Scott Paper Co.*, 109 F.3d 913, 920 (3d Cir. 1997)). However, the Court in *Krouse* also made it clear that "[e]ven if timing alone could ever be sufficient to establish a causal link . . . the timing of the alleged retaliatory action must be 'unusually suggestive' of retaliatory motive before a causal link will be inferred." *Krouse*, 126 F.3d at 503. Finally, the Third Circuit has cautioned that "each case must be considered with a careful eye to

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Id. at 920 n.2 (internal quotations and citations omitted).

the specific facts and circumstances encountered." *Farrell v. Planters Lifesavers Co.*, 206 F.3d 271, 279 n.5 (3d Cir. 2000).

After the close of discovery, we permitted Plaintiff to do additional discovery because of the emergence of e-mails that Defendant had not previously produced. Plaintiff conducted the additional depositions of Smith and Richards and the first and only deposition of Aydelott, as well as other GMAC employees. The additional e-mails and depositions provide a more complete picture of the last several weeks of Plaintiff's employment at GMAC. These e-mails demonstrate that Smith and Aydelott began talking about terminating Plaintiff as early as May 6, 2003. Moreover, they had finalized the decision to terminate by May 8, 2003 when they discussed the basis for the termination and the separation agreement that would be presented to Plaintiff. The e-mails between Smith and Aydelott suggest that while Smith was temporarily concerned about a lack of documentation regarding Plaintiff's performance problems, both had already concluded that the relationship between Plaintiff and GMAC was no longer working. Smith wondered whether they should base the termination on attendance problems or performance problems. Aydelott responded that she would simply suggest to Plaintiff that the relationship was not working for either party. In her deposition, Aydelott confirmed that she had decided to explain to Plaintiff that she could not do the job effectively and that GMAC could do nothing more to help her. (Aydelott Dep. at 89.)

On May 6, 2003, Plaintiff left work early because of an allergic reaction, which she attributed to scents worn by visitors to GMAC. When she attempted to take paid time off for this day, she was informed that she could not. That fact led to her e-mails on May 12, 2003 in which she claimed she was being treated differently and harassed. Aydelott responded on May 12th,

explaining that Plaintiff was not being treated differently than any other employee and that she was denied paid time off because she had exhausted that leave before May 6th. However, the e-mails reveal that Aydelott and Smith had already made the decision to terminate Plaintiff's employment at least four days before she sent the e-mail complaining of harassment. The record in this case clearly establishes that there is no causal link between Plaintiff's May 12th e-mail and Plaintiff's May 13th termination.

In her Supplemental Response to Defendant's Summary Judgment Motion, Plaintiff further argues that Smith's May 6th and May 8th e-mails to Aydelott regarding Plaintiff's termination are so closely related in time to a complaint made by Plaintiff on May 6th as to sufficiently suggest a causal connection. On May 6, 2003, Plaintiff e-mailed Aydelott to ask for her assistance. She was experiencing an allergic reaction to scents worn by visitors from the GMAC Arizona office and asked: "Shouldn't my managers politely have advised of the perfume free environment for my safety? I don't understand why my team leader doesn't take this seriously." (Doc. No. 19 at Ex. M1.) One hour later, Plaintiff e-mailed Richards and Smith to let them know she was leaving because of the scents. (Doc. No. 23 at Ex. A.) In response to the second e-mail from Plaintiff, Smith wrote to Aydelott and Richards and indicated that he wanted to meet with Linda to "explain to her this is not working out." (*Id.*) This e-mail began the discussion between Smith and Aydelott that included e-mails sent on May 8th, discussing the approach that would be taken in terminating Plaintiff. Those discussions ultimately culminated in Plaintiff's termination on May 13, 2003. Plaintiff argues that the temporal proximity between Smith's May 6th and May 8th e-mails discussing Plaintiff's termination and Plaintiff's complaint

to Aydelott about the guests and her supervisor is "unusually suggestive" of retaliation given that Smith sent his May 6th e-mail less than two hours after Plaintiff complained to Aydelott.

In response, Defendant points to Smith's April 16th e-mail to Aydelott and Richards in which he had already stated that it was "not working out" with Kaufmann. In fact, in the April 16th e-mail, Smith described Plaintiff's attendance problems and the resulting effect on her work and the overall work of the department. Defendant contends that this e-mail demonstrates that Smith was already contemplating Plaintiff's termination at least three weeks prior to her May 6th e-mail complaint. Defendant argues that Smith's May 6th and May 8th e-mails were sent in the context of a conversation that had begun between Plaintiff's supervisors as early as April 16th and that termination was not in response to any complaint or request by Plaintiff, but was instead a result of Plaintiff's inability to effectively do her job. In fact, Aydelott understood Smith's May 6th e-mail indicating that it was "not working out" to mean that Plaintiff "was not performing her job and there was nothing else that we can do to accommodate her." (Aydelott Dep. at 83.) At his deposition, Smith was explicitly asked whether Plaintiff's termination, discussed in the May 8th e-mail, was a result of Plaintiff's e-mail on May 6th. He responded that it was not. (Smith 2d Dep. at 87.)

Considering all of the evidence in the light most favorable to Plaintiff, it is clear that Plaintiff has not met the burden of establishing a causal connection between her protected activity and her termination. The conversation between Plaintiff's supervisors regarding her attendance and performance problems and ultimately her termination was ongoing and began in earnest as early as April 16, 2003. Because these discussions began three weeks before Plaintiff's May 6th e-mail complaint about guests and May 8th e-mail about harassment, the

temporal proximity between Plaintiff's protected activity and Smith's e-mails about termination creates no inference of retaliatory motivation. *See Straining v. AT&T Wireless Servs, Inc.*, 144 Fed. Appx. 229, 233 (3d Cir. 2005) (former employee fails to establish prima facie case of retaliation when termination decision preceded protected activity). Moreover, nothing in the ADA suggests that Congress contemplated putting an employer at risk for a claim of retaliation when terminating an employee who simply cannot be reasonably accommodated and, as a result, cannot adequately do the job.

In this case, Plaintiff's supervisors responded quickly to each complaint and accommodation request, acting on those requests which were reasonable. Plaintiff's termination was clearly related to her allergy, GMAC's inability to accommodate her needs, and Plaintiff's inability to work effectively under these circumstances. There is no evidence that the termination was in retaliation for her complaints and requests for accommodation.[15] Accordingly, we are compelled to conclude that Plaintiff has not established a causal link between her termination and any protected activity. Therefore, she has failed to make out a prima facie case of retaliation. Summary judgment will be granted in favor of Defendant on Plaintiff's retaliation claim as well.

An appropriate Order follows.

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[15] Plaintiff's pleadings do not specify whether she argues the retaliation claim under a pre-text or mixed-motives theory. However, we note that Plaintiff specifically states that "Defendant terminated Plaintiff because of her repeated protected activity," and makes no mention of a mixed-motives possibility.

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

LINDA KAUFMANN	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 04-CV-5671
	:	
GMAC MORTGAGE CORP.	:	

ORDER

AND NOW, this 17th day of May, 2006, upon consideration of Defendant GMAC Mortgage Corporation's Motion For Summary Judgment (Doc. No. 15) and all papers submitted in support thereof and in opposition thereto, it is ORDERED that Defendant's Motion is GRANTED and judgment is entered in favor of Defendant GMAC Mortgage Corp. and against Plaintiff Linda Kaufmann.

IT IS SO ORDERED.

BY THE COURT:

/s R. Barclay Surrick

R. Barclay Surrick, Judge