

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

DEBORAH HARRIS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 03-cv-3522
	:	
JOHN E. POTTER, POSTMASTER,	:	
UNITED STATES POSTAL SERVICE,	:	
	:	
Defendant.	:	
	:	

MEMORANDUM

Green, S.J

September 7, 2006

Presently pending is Defendant's Motion for Partial Summary Judgment (Dkt. #34) and the response thereto.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, a former employee of the United States Postal Service ("USPS"), filed the instant lawsuit against her former employer alleging that she was unlawfully fired on February 11, 2002 in violation of the Family and Medical Leave Act ("FMLA") and was discriminated against at her former workplace on the basis of sex, disability and religion in violation of Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act ("ADA"). On December 30, 2005, Defendant filed the pending Motion for Partial Summary Judgment pursuant to Fed. R. Civ. P. 56(c) arguing that Plaintiff's FMLA, religious discrimination and ADA claims should be dismissed as a matter of law. About a month later, Defendant filed a Motion for Leave to Schedule an IME of Plaintiff on January 24, 2006. This court granted Defendant's Motion for Leave to Schedule an IME in its Order of February 10, 2006 and in its Order of June 16, 2006 granted Plaintiff an additional twenty (20) days to respond to Defendant's Motion for Partial Summary Judgment. Plaintiff filed her late response to Defendant's Motion for Partial Summary Judgment on July 21, 2006. Defendant has subsequently moved to strike Plaintiff's late

response and Plaintiff has yet to respond to Defendant's Motion to Strike. This court denied Defendant's Motion to Strike in its Order of September 6, 2006 and determined that it would consider Plaintiff's late response as part of the record in this case in deciding Defendant's Motion for Partial Summary Judgment.

II. LEGAL STANDARD

Summary judgment shall be awarded "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 judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue as to any material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

A party seeking summary judgment bears the initial responsibility of identifying the basis for its motion, along with evidence clearly demonstrating the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Rule 56(e) of the Federal Rules of Civil Procedure requires the nonmoving party to supply sufficient evidence, not mere allegations, for a reasonable jury to find in the nonmovant's favor. See Oldson v. General Elec. Aerospace, 101 F.3d 947, 951 (3d Cir. 1996). This evidence must be viewed in the light most favorable to the nonmoving party. See Anderson, 477 U.S. at 256. Disagreements over what inferences may be drawn from the facts, even undisputed ones, preclude summary judgment. Ideal Dairy Farms, Inc. v. John Labatt, Ltd., 90 F.3d 737, 744 (3d Cir. 1996). Credibility determinations, the drawing of legitimate inferences from facts, and the weighing of evidence are matters left to the jury. Anderson, 477 U.S. at 255 (1986).

III. DISCUSSION

In its Motion for Partial Summary Judgment, Defendant argues that this court should

grant summary judgment in its favor for the following reasons: 1) Defendant did not violate FMLA when it terminated Plaintiff's employment; 2) Plaintiff has failed to set forth sufficient evidence to support her religious discrimination claim; and 3) Plaintiff is precluded from bringing her ADA claim against Defendant because Defendant is immune from liability.

Regarding Plaintiff's FMLA claim, Defendant, in its Motion, argues that Plaintiff's mental disability developed after she left the Postal Service on November 1, 2001 and that Defendant did not violate the FMLA when it failed to reinstate Plaintiff after her leave because she was no longer able to perform the essential functions of her job.¹ In response, Plaintiff avers that Defendant's employees knew that she was disabled before her date of leave and that Defendant's employees violated several FMLA regulations and rules in the decision to terminate her.

Upon review of the evidence in the summary judgment record and viewing this evidence in a light most favorable to Plaintiff, this court finds that there are genuine issues of material fact regarding Plaintiff's FMLA claim that preclude a granting of summary judgment on this claim at this time. The parties disagree regarding whether a letter from Defendant dated November 7, 2006 was sent and received by Plaintiff. This letter is material because it required Plaintiff to provide documentation of her absence to substantiate her taking of medical leave and to prevent her termination. Defendant claims that this letter was sent by certified mail to Plaintiff, never claimed by Plaintiff, returned to the postal service unclaimed and Plaintiff failed to submit any documentation to Defendant within the five (5) day deadline set forth in the letter. Def.'s Mot. for Partial Summ. J., Ex. E at 5-7, ¶¶ 26-27. However, Plaintiff avers that she never received Defendant's November 7, 2001 letter and that for a period of time following her date of

¹In support of its argument, Defendant relies upon FMLA regulations which provide that "[i]f the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA." 29 C.F.R. § 825.214(b).

leave she was mentally unable to contact Defendant. Pl.'s Resp. to Def.'s Mot. for Partial Summ. J., Ex. A at 8, 17. Given Plaintiff's apparent unstable mental state during and around the time when the November 7, 2001 letter was allegedly sent and further issues of fact between the parties regarding when Defendant's employees knew that Plaintiff was disabled and whether Defendant's employees followed proper and appropriate FMLA procedures, this court finds that the weighing of this evidence is a matter that should be determined by a factfinder. Therefore, Plaintiff's FMLA claim shall survive summary judgment at this time.

Regarding Plaintiff's religious discrimination claim, in her response to Defendant's Motion, Plaintiff alleges that her co-workers and supervisors at USPS repeatedly and intentionally discriminated against her because she is a Christian in violation of Title VII of the Civil Rights Act of 1964.² However, upon review of Plaintiff's pleadings and her attached exhibits, Plaintiff primarily provides instances of alleged name-calling or taunting by her co-workers. A few instances of being asked to turn off or diminish the volume on Plaintiff's radio station cannot establish the hostile work environment concerning religious discrimination that Plaintiff alleges. Looking to the various theories upon which Plaintiff may assert her religious discrimination claim, it is apparent to this court that Plaintiff has failed to allege facts sufficient to rise to the level of a Title VII violation.³ Therefore, Plaintiff's religious discrimination claim will be dismissed as a matter of law and summary judgment will be granted to Defendant as to the religious discrimination claim.

²Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer "to discriminate against any individual with respect to his [or her] compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1).

³Plaintiff's isolated incidents of teasing by co-workers and supervisors based on her Christianity do not set forth facts demonstrating a prima facie case of discrimination under Title VII based on a disparate treatment theory, a failure to accommodate theory or a hostile work environment theory of liability. See Abramson v. William Patterson College of New Jersey, 260 F.3d 265, 281-2 (3d Cir. 2001); Shelton v. Univ. of Med. & Dentistry of New Jersey, 223 F.3d 220, 224 (3d Cir. 2000); Kunin v. Sears Roebuck & Co., 175 F.3d 289, 293 (3d Cir. 1999), cert. denied, 528 U.S. 964 (1999).

Regarding her ADA claim, Plaintiff alleges that her co-workers and supervisors at USPS knew of her mental illness yet continued to harass her at work causing her to be depressed and mentally disabled. The ADA provides that “[n]o covered entity may discriminate against a qualified individual with a disability because of the disability 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). An "employer" under the ADA does not include the United States or any corporation owned by the federal government. 42 U.S.C.A. §12111(5)(B)(i). Therefore, since Defendant, the USPS, is a branch of the United States government, it is not subject to the ADA. See 39 U.S.C. § 201. Therefore, Plaintiff’s ADA claim will be dismissed as a matter of law.

To the extent that Plaintiff’s disability claim is meant to be brought under The Rehabilitation Act of 1973 (“the Act”) a plaintiff may seek remedy under the Act for a federal employer’s discrimination in matters of hiring, placement or advancement. Shiring v. Runyon, 90 F.3d 827, 831 (3d Cir. 1996). To set forth a prima facie case of discrimination under the Act,

the employee bears the burden of demonstrating (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. If the plaintiff is able to meet these burdens, the defendant then bears the burden of proving, as an affirmative defense, that the accommodations requested by the plaintiff are unreasonable, or would cause an undue hardship on the employer.

Id.

In the instant case, looking to whether Plaintiff sets forth a prima facie case of discrimination under the Act, neither party disputes that Plaintiff is disabled nor that Plaintiff was terminated by Defendant. However, Defendant claims that it had “no notice of Harris’ disability while she worked at the Freeman Hankins station, nor is there any evidence that management was aware that [she] requested accommodation in the form of a transfer.” Def.’s Mot. for

Partial Summ. J. at 19. Defendant argues that, without any notice from Plaintiff, Defendant therefore cannot be held liable for failing to reasonably accommodate her. Furthermore, Defendant claims that since Plaintiff is 100% disabled, she is not otherwise qualified to perform the essential functions of her job. In response, Plaintiff argues that she “was discriminated against on the basis of my disability because I was mentally ill and was not given the reasonable accommodations which I requested.” Pl.’s Resp. to Def.’s Mot. for Partial Summ. J., Ex. A at 15. At her deposition, Plaintiff stated that the accommodation that she requested was to be moved from the Freeman Hankins station to a different location. Dep. of Deborah Harris, P. 40, ¶¶ 10-17 (Nov. 11, 2004). Plaintiff avers that even before November of 2001, “[t]he U.S. Post Office knew that I was disabled; I had episodes of mental illness at work, and was referred to EAP [Employee Assistance Program] and Crisis Intervention.” Pl.’s Resp. to Def.’s Mot. for Partial Summ. J., Ex. A at 15.⁴

The Third Circuit Court of Appeals, in Shiring v. Runyon, 90 F.3d 827 (3rd Cir. 1996), found that “courts should consider whether reassignment is possible in determining whether an individual seeking relief under the Rehabilitation Act is an otherwise qualified individual.” Id. at 832. However, the court stated that “the employee must make at least a facial showing that such accommodation is possible” and provide evidence “to meet his burden of demonstrating the presence of vacant, funded positions at his current level of seniority and pay, which he could perform.” Id.

Here, there is nothing in the record, beyond Plaintiff’s allegations in her deposition and responses submitted to this court, that Defendant failed to provide the reasonable accommodation of a transfer that Plaintiff claims she requested. Furthermore, Plaintiff has

⁴Plaintiff further claims that she signed a statement on October 10, 2001 as a prerequisite to receiving EAP services and that Mr. Ernest Wicks from EAP told her that she needed to calm down and go to the hospital. Pl. Resp. to Def. Mot. for Partial Summ. J. at P. 6.

failed to meet her burden to make a facial showing that vacant, funded positions at her current level of seniority and pay were available at other postal service locations and that her disability did not disqualify her from being able to perform the essential functions of her job. Therefore, Plaintiff's disability claim under the Act will be dismissed as a matter of law and summary judgment will be granted in favor of Defendant as to Plaintiff's disability claim. An appropriate Order follows.

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Plaintiff,	:	
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v.	:	No. 03-cv-3522
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	:	
JOHN E. POTTER, POSTMASTER,	:	
UNITED STATES POSTAL SERVICE,	:	
	:	
	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW, this 7th day of September 2006, upon consideration of Defendant's Motion for Partial Summary Judgment (Dkt. #34) and the response thereto, **IT IS HEREBY ORDERED** that said Motion will be **GRANTED** in part as to Plaintiff's religious discrimination and disability claims and **DENIED** in part as to Plaintiff's Family and Medical Leave Act ("FMLA") claim.

BY THE COURT:
S/ Clifford Scott Green _____
CLIFFORD SCOTT GREEN, S.J.