

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

JAMES J. PROCOPIO : CIVIL ACTION  
 :  
v. :  
 :  
CASTROL INDUSTRIAL NORTH :  
AMERICA, INC. : NO. 96-5234

MEMORANDUM AND ORDER

Fullam, Sr. J.

May , 1997

The facts set forth in plaintiff's amended complaint, and reviewed at length at the argument of the pending Motion to Dismiss, clearly establish that plaintiff has no valid claim under the Americans With Disabilities Act, because at no time during his employment by the defendant was he suffering from a "disability" within the meaning of that statute, nor was he perceived by the defendant as disabled. In fact, it is clear that neither plaintiff nor the defendant was aware of the medical condition which plaintiff now asserts as a "disability" (moderate to severe depression). Count II of plaintiff's amended complaint will therefore be dismissed with prejudice.

The situation is less clear with respect to plaintiff's claims under the Family and Medical Leave Act, 29 U.S.C. § 2601. Plaintiff may be able to show that he was actually suffering from a "serious medical condition" and should have been granted sick leave. The facts should be more fully developed, for disposition either at trial or by summary judgment.

An order follows.

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

JAMES J. PROCOPIO	:	CIVIL ACTION
	:	
v.	:	
	:	
CASTROL INDUSTRIAL NORTH	:	
AMERICA, INC.	:	NO. 96-5234

ORDER

AND NOW, this            day of May 1977, upon consideration of defendant's Motion to Dismiss Plaintiff's Amended Complaint, and plaintiff's response, IT IS ORDERED:

1. Count II of plaintiff's amended complaint is DISMISSED with prejudice.
2. In all other respects the Motion to Dismiss is DENIED.

---

John P. Fullam, Sr. J.