

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

_____	:	CIVIL ACTION
PATRICK J. W. MANION	:	
	:	
Plaintiff,	:	
	:	
v.	:	NO. 97-6078
	:	
WAWA, INC., and	:	
ST. JOSEPH'S UNIVERSITY,	:	
	:	
Defendants.	:	
_____	:	

MEMORANDUM

ROBERT F. KELLY, J.

MARCH 20, 1998

This action involves several claims against the Defendants, including violations of the Rehabilitation Act, 29 U.S.C. § 701 et seq., and the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 et seq. The Defendants in this action have filed Motions to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons that follow, the Defendants' Motions will be treated as Motions for Summary Judgment and will be granted.

Background

The Plaintiff was accepted into the Masters of Business Administration ("MBA") program at St. Joseph's University ("St. Joseph's") in July of 1996. At the time, the Plaintiff was employed by Wawa and was attending St. Joseph's as part of a scholarship program co-sponsored by St. Joseph's and Wawa, and funded by Wawa.

During the summer of 1997, the Plaintiff communicated with St. Joseph's and the United States Information Agency

("USIA") concerning his belief that the program did not conform to immigration laws. As a result, St. Joseph's and Wawa conferred with the USIA and made adjustments to the MBA program. After these adjustments and an investigation by the USIA, the Plaintiff continued, and indeed continues to this day, to insist that the program violates the law.

In August of 1997, the Plaintiff requested from Wawa, and was granted, FMLA leave. The Plaintiff notified Wawa by electronic mail on August 17 that he was resigning "effective 25 December 1997." (Wawa's Supplemental Submission in Support of Mot. for Summ. J. Ex. G.) On August 18, 1997, the Plaintiff sent to Adele Foley, Associate Dean of St. Joseph's MBA program, a handwritten note stating: "I decline the WAWA scholarship for Spring 1998. I will not accept money from a company who knowingly violates immigration law." (St. Joseph's Mot. to Dismiss Third Am. Compl. Ex. B.) Subsequently, by handwritten note dated October 17, 1997, the Plaintiff notified Wawa that "Effective immediately I am no longer employed by Wawa, Inc." (Wawa's Supplemental Submission Ex. J.)

The Defendants agreed that, based upon his communications, the Plaintiff did not intend to complete the program, and terminated his scholarship benefits. St. Joseph's advised the Plaintiff that he could continue to pursue his MBA at St. Joseph's, but at his own expense.

Plaintiff originally filed a pro se action in Philadelphia Municipal Court. The Defendants removed the action

to this Court. The Plaintiff then instituted a separate action in this Court and voluntarily discontinued the Municipal Court complaint. The Plaintiff filed several amended complaints, and while the third Complaint is presently before this Court, all of the complaints state essentially the same claims.

Standard

The Defendants have filed Motions to Dismiss pursuant to Rule 12(b)(6). If, on a motion to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the court must treat the motion as one for summary judgment and dispose of it as provided in Rule 56. Fed. R. Civ. P. 12(b); Tomalewski v. State Farm Life Ins. Co., 494 F.2d 882, 884 (3d Cir. 1974). In this case, all parties presented matters outside the pleading in their filings. This Court notified the parties that the Motions to Dismiss would be treated as Motions for Summary Judgment, and allowed time for additional filings. Accordingly, the pending Motion will be treated as a Motion for Summary Judgment pursuant to Rule 56.

Summary judgment is appropriate if "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The non-

moving party cannot rest on the pleading, but must go beyond the pleadings and "set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); Celotex, 477 U.S. at 324. Summary judgment will not be granted "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). In this case, the Plaintiff, as the non-moving party, is entitled to have all reasonable inferences drawn in his favor. J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990), cert. denied, 499 U.S. 921 (1991).

Discussion

The Plaintiff alleges that the Defendants violated section 504 of the Rehabilitation Act. The elements of a cause of action under this section are: (1) the plaintiff is a "handicapped person" under the Rehabilitation Act; (2) the plaintiff is "otherwise qualified" for participation in the program; (3) the program receives federal financial assistance; and (4) the plaintiff was denied the benefits of or subject to discrimination under the program. Nathanson v. Medical College of Pennsylvania, 926 F.2d 1368, 1380 (3d Cir. 1991); 29 U.S.C. § 794.

The Plaintiff cannot maintain a claim against Wawa under the Rehabilitation Act because there are no allegations or evidence that Wawa receives federal financial assistance. Proceeding on the assumption that St. Joseph's is subject to the

Rehabilitation Act, the Plaintiff's claim against it must fail as well. There is uncontroverted evidence that the Plaintiff in fact resigned from the program and his employment at Wawa. Because of his resignation, the Plaintiff was unable (or unwilling) to meet all of the scholarship program's requirements, and was therefore not otherwise qualified to participate in the program. Moreover, there was no discrimination by St. Joseph's, as it was Wawa that was providing the Plaintiff with his scholarship and other benefits. The Plaintiff does not contest the fact that he is still permitted to pursue his MBA degree at St. Joseph's. Therefore, the Plaintiff does not meet the requirements of an action under the Rehabilitation Act.

The Plaintiff's claim under the FMLA is somewhat more difficult to discern. The FMLA provides that any employee who takes leave under 29 U.S.C. § 2612 shall not lose any employment benefit accrued prior to the date on which the leave commenced. 29 U.S.C. § 2614(a)(2). Because the FMLA applies to employers, the Plaintiff cannot maintain this claim against St. Joseph's. The Plaintiff views his scholarship along with the benefits that came with it (such as transportation, housing, and a stipend), as employment benefits. But the Plaintiff declined the scholarship and resigned from his employment and the program. Thus, even assuming the scholarship and accompanying benefits were employment benefits within the meaning of the FMLA, the Plaintiff was not deprived of any benefits. Rather, he voluntarily relinquished them. Therefore, the Plaintiff cannot meet the

requirements of a claim under the FMLA.

The Plaintiff has also, in previous complaints, claimed violations of the "Whistleblower Act." The Plaintiff alleges that he was discharged because he reported the Defendants to the USIA and that this is a violation of "the Whistleblower Act." The federal Whistleblower Act is irrelevant in this case because it applies only to employees of the federal government. Ortez v. Washington County, 88 F.3d 804, 811 (9th Cir. 1996). Similarly, Pennsylvania's Whistleblower Law offers protection from retaliation only to public employees. See 43 Pa. C.S. § 1421 et seq; Clark v. Modern Group Ltd., 9 F.3d 321, 332 (3d Cir. 1993). Because it is undisputed that Wawa is a private employer (and St. Joseph's, were it considered the Plaintiff's employer, is also a private entity) the Plaintiff has no claim under either the federal or Pennsylvania whistleblower laws.

The Plaintiff further makes reference in some of his pleadings to claims under the Americans with Disabilities Act and the Pennsylvania Human Relations Act. He indicated in his Amended Complaint filed December 8, 1997, that these claims are being investigated by the "appropriate administrative agencies" and are not presently before this Court. Thus, they are not a part of this action.

Conclusion

In summary, the Plaintiff is unable to maintain an action under the Rehabilitation Act. He does not contend that his scholarship was terminated solely because of any disability.

Further, by resigning from his employment, he could not meet the scholarship program's requirements. The Plaintiff cannot maintain an FMLA claim because, even assuming the scholarship and accompanying benefits were employment benefits, the Plaintiff resigned from Wawa, thereby voluntarily relinquishing them. Finally, as an employee of a private entity, the Plaintiff was not protected by the federal or Pennsylvania whistleblower laws. Summary judgment will be entered in favor of the Defendants on all claims.

An appropriate Order follows.

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WAWA, INC., and	:	
ST. JOSEPH'S UNIVERSITY,	:	
	:	
Defendants.	:	
_____	:	

ORDER

AND NOW, this 20TH day of March, 1998, upon consideration of Defendants' Motions for Summary Judgment, and all responses thereto, it is hereby ORDERED that:

1. Defendants' Motions are GRANTED;
2. the Clerk of Court is directed to list this case as CLOSED.

BY THE COURT:

Robert F. Kelly, J.