

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

BARBARA J. EFFINGER,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 97-5354
	:	
v.	:	
	:	
THE LOOMIS COMPANY,	:	
	:	
Defendant.	:	

**MEMORANDUM**

BUCKWALTER, J.

December 4, 1998

Presently before this Court is Defendant's Motion for Summary Judgment. The Court will assume that both parties are intimately familiar with the case and thus, will dispense with a recitation of the relevant facts. After a careful and considered review of the submissions, Defendant's motion is DENIED.

Initially, the Court declines to apply judicial estoppel to the facts in this case. The form Plaintiff completed in applying for long-term disability benefits can be fairly read only to imply that Plaintiff was totally, but temporarily disabled. However, Defendant's employee disability memorandum characterizes the application of long-term disability benefits under the heading, "permanent disability." Without the utmost clarity in the record that Plaintiff has indeed spoken out of both sides of her mouth or is playing "fast and loose" with the judicial system, the Court will not exercise its discretion to estop Plaintiff from asserting a claim under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq.

The record before the Court also contains several disputed issues of fact sufficient to warrant denial of Defendant's request for summary judgment. Some, but not all, of the issues of concern to the Court include whether Defendant tolerated Plaintiff's failure to inform it of her intended return two weeks beforehand; whether a violation of this company policy is, in any event, uniformly applied; whether Plaintiff requested an accommodation in the form of additional leave time through her May 19, 1998 letter; whether that accommodation was reasonable in light of Defendant's personnel needs at the time of the termination; and whether Plaintiff has demonstrated that Defendant's articulated reasons for the termination were, in fact, pretextual.

These and other issues evident in the record are central to Plaintiff's establishment of a prima facie case, as well as her ultimate burden of persuasion, on the disabilities discrimination claims under the ADA and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. Ann. § 951 et seq. Accordingly, because there exists at least one genuine issue of material fact in dispute, Defendant's request for summary judgment is DENIED.

An appropriate order follows.

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

BARBARA J. EFFINGER,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 97-5354
	:	
v.	:	
	:	
THE LOOMIS COMPANY,	:	
	:	
Defendant.	:	

**ORDER**

AND NOW, this 4th day of December 1998, upon consideration of Defendant's Motion for Summary Judgment (Docket No. 17) and Plaintiff's response thereto (Docket No. 20), it is hereby ORDERED that Defendant's motion is DENIED, in accordance with the accompanying memorandum.

BY THE COURT:

---

RONALD L. BUCKWALTER, J.