

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

RALPH L. HERBST : CIVIL ACTION
 :
 v. :
 :
 GENERAL ACCIDENT INSURANCE :
 COMPANY : NO. 97-8085

MEMORANDUM ORDER

This is an employment discrimination action. Plaintiff has asserted, inter alia, claims under the Age Discrimination in Employment Act, Title VII and the Americans with Disabilities Act.

Plaintiff initiated this action on December 27, 1997. The court issued a scheduling order under which discovery was to be completed by November 25, 1998 and the case placed in the trial pool of January 4, 1999. On December 3, 1998, the court granted defendant's motion to extend the discovery deadline to January 22, 1999 and moved the case to the trial pool of March 8, 1999.

On February 24, 1999, defendant filed a motion for summary judgment. On March 1, 1999, plaintiff's counsel submitted a letter to the court stating that since the spring of 1998 he had been "overwhelmed" by certain health problems and had been too "distracted" to complete discovery. Counsel requested a

90-day extension of the discovery deadline. By letter of March 4, 1999, defense counsel opposed the request for an extension. The court extended the discovery deadline to April 30, 1999 and granted plaintiff until May 10, 1999 to respond to the motion for summary judgment. By letter of March 19, 1999, counsel for defendant requested that any trial be deferred until September 6, 1999 because of scheduled maternity leave.

The extended discovery deadline has expired and discovery is still apparently not completed.

On April 28, 1999, defendant filed a motion to compel plaintiff's deposition and a motion to compel independent physical and psychiatric examinations of plaintiff. Defendant argues with some force that it was unable to complete its deposition of plaintiff at the first two sessions on October 13, 1998 and December 23, 1998 because plaintiff had been dilatory in authorizing the release of his medical records. Plaintiff has alleged that defendant's actions caused him to suffer "medical and emotional problems and disabilities" which required him to expend funds on treatment. Plaintiff has thus placed his physical and mental condition at issue. Defendant reasonably asserts that "fundamental fairness dictates that [defendant] be allowed to meet and rebut the conclusions of Plaintiff's physicians."

Plaintiff has filed a motion to extend his time to respond to the summary judgment motion yet again, citing defendant's failure to make available an employee who supervised plaintiff and whose deposition had been noticed. Plaintiff also asserts that defendant has still failed to produce a privilege log.

The time has come for discovery to end. The court will require that plaintiff submit to independent medical and psychiatric examinations. The court will permit defendant to continue the deposition of plaintiff, limited to matters encompassed by the medical and psychiatric records and other evidence not produced before December 23, 1998.

The court will not compel the appearance of an "employee" of defendant whose deposition was "noticed" in the absence of any showing that the "employee" is an officer, director or managing agent of defendant for whom notice is sufficient to compel attendance. See, e.g., Armsey v. Medshares Management Svces., 1998 WL 995512, *2 (W.D. Va. Nov. 16, 1998); O'Connor v. Trans Union Corp., 1998 WL 372667, *2 (E.D. Pa. May 11, 1998); In re Honda American Motor Co., Inc. Dealership Relations Litig., 168 F.R.D. 535, 540 (D. Md. 1996); United States v. Afram Lines (USA), Ltd., 159 F.R.D. 408, 413 (S.D.N.Y. 1994). If defendant will not extend the courtesy of producing the employee, plaintiff may subpoena him.

The court will not require defendant to try its case while its lead counsel is on maternity leave. The court notes, however, that defendant has co-counsel of record and has engaged a relatively large law firm. There is thus no reason why all matters related to discovery and the resolution of the summary judgment cannot be completed now. The court will grant a final extension to plaintiff for additional discovery and to respond to the summary judgment motion.

ACCORDINGLY, this day of May, 1999, upon consideration of plaintiff's letter request dated April 22, 1999 (Doc. #35) seeking a two-month extension of the discovery deadline and defendant's letter request dated March 19, 1999 seeking a trial date not earlier than September 6, 1999, **IT IS HEREBY ORDERED** that the requests are **GRANTED** in that the discovery deadline is extended for a final time to June 14, 1999; this case will be placed in the trial pool of September 7, 1999; and, the parties shall forthwith comply with all outstanding discovery obligations and cooperate fully and proceed diligently to ensure all additional discovery is timely concluded or appropriate sanctions will be imposed.

IT IS FURTHER ORDERED that defendant's Motions to Compel Plaintiff's Deposition and to Compel Independent Psychiatric Examinations (Docs. # 36 & 37) are **GRANTED**.

IT IS FURTHER ORDERED that plaintiff's Motion to Extend Time for Answer to Motion for Summary Judgment (Doc. #38) is **GRANTED** in that plaintiff shall have until June 28, 1999 to file any response to the motion, which time will not again be extended.

BY THE COURT:

JAY C. WALDMAN, J.