

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

CAROL JOHNSON : CIVIL ACTION  
 :  
 v. :  
 :  
 LEHIGH COUNTY, et al. : NO. 00-CV-1670

**MEMORANDUM**

**Padova, J.**

**October , 2000**

Plaintiff Carol Johnson (“Johnson”) filed this action against Defendants Lehigh County and the Lehigh County Office of Mental Health/Mental Retardation, Drug and Alcohol (collectively “Lehigh”) on March 30, 2000. On July 12, 2000, the Court granted Defendants’ Motion to Dismiss the original Complaint. Plaintiff thereafter filed an Amended Complaint. Before the Court now is Defendants’ Motion to Dismiss the Amended Complaint. For the following reasons, the Court grants in part and denies in part Defendants’ Motion.

**I. LEGAL STANDARD**

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) only if the plaintiff can prove no set of facts in support of the claim that would entitle her to relief. ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. Id.

**II. DISCUSSION**

Johnson alleges that Lehigh discriminated and retaliated against her on the basis of her disability in violation of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12101, et seq., and the Pennsylvania Human Relations Act (“PHRA”), 43 Pa. Cons. Stat. Ann. §951, et seq.

Plaintiff also claims that Defendants unlawfully invaded her privacy by disclosing information about her disability to a third party. Lehigh seeks dismissal of all five counts alleged in the Amended Complaint. The Court will address each count in turn.

A. Count I - Failure to Accommodate

Johnson brings Count I under the ADA alleging that Lehigh discriminated against her by failing to reasonably accommodate her disabilities. To state a cognizable cause of action for discrimination under the ADA, the plaintiff must show that (1) she is a disabled person within the meaning of the ADA; (2) she is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and (3) she has suffered an otherwise adverse employment decision as a result of the discrimination. Shaner v. Synthes, 204 F.3d 494, 500 (3d Cir. 2000). Defendants challenge the adequacy of Plaintiff's pleading as to all three elements of a prima facie case on the ground that Plaintiff fails to allege sufficient facts regarding her claimed disability, her status as a qualified individual, or an adverse employment decision.<sup>1</sup> The Court disagrees.

The first element requires the plaintiff establish that she is a disabled person within the meaning of the ADA. See Shaner, 204 F.3d at 500. A disability is either "(A) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual; (B) a record of such impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(2) (1994). Mental or psychological disorders and emotional illnesses may constitute impairments under the ADA. See Tedeschi v. Sysco Foods of Philadelphia, No. Civ. A. 99-3170,

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<sup>1</sup>Defendants also argue that Plaintiff's claims fall outside of the applicable statute of limitations. Given the lack of allegations regarding the time frame of the relevant events, however, the Court is unable to determine the merits of Defendants' claim under the standard applicable to a motion to dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(6).

2000 WL 1281266, at \*4 (E.D. Pa. Sept. 1, 2000) (citing 29 C.F.R. §1630.2(h) (1999)). Thus, Plaintiff may establish that she has a disability by alleging that she has a mental impairment that substantially limits a major life activity, has a record of such an impairment, or is regarded as having such an impairment. Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 306 (3d Cir. 1999).

Plaintiff alleges that she suffers from post-traumatic stress disorder and chronic depression that limit her ability to think as well as handle everyday experiences.<sup>2</sup> (Am. Compl. ¶ 7.) Post-traumatic stress disorder and chronic depression may qualify as an impairment under the ADA. Tedeschi, 2000 WL 1281266, at \*4 (assuming post-traumatic stress disorder constitutes a disability under the ADA); Shannon v. City of Philadelphia, No. Civ. A. 98-5277, 1999 WL 1065210, at \*2 (E.D. Pa. Nov. 23, 1999). Courts have also determined that thinking is a major life activity. Taylor, 184 F.3d at 307. Although Plaintiff does not directly state that her alleged disabilities ‘substantially limit’ a major life activity, she does allege that she experiences “significant distress” when engaging in thought. Under the notice pleading standards of the Federal Rules of Civil Procedure, this is sufficient at this preliminary stage. See Shumacher v. Souderton Area Sch. Dist., No. Civ. A. 99-1515, 2000 WL 72047, at \*8 (E.D. Pa. Jan. 21, 2000). Plaintiff, therefore, states sufficient allegations to establish that she is disabled within the meaning of the statute. Contrary to Defendants’ assertion, Johnson need not additionally establish that she has a record of an impairment or that her employer regarded her as disabled.

Second, the plaintiff must establish that she is a qualified individual with a disability. The

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<sup>2</sup>The Amended Complaint states as follows:

Plaintiff suffers from post-traumatic stress disorder and chronic depression which limit major life activities, including the ability to think, to deal with normal day-to-day experiences without debilitating anxiety, or to experience life without significant distress or impairment of social, occupational or other areas of functioning.  
(Am. Compl. ¶ 7.)

statute defines “a qualified person with a disability” as a person with a disability who “with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.” 42 U.S.C. § 12111(8) (1994). Defendants argue that the Amended Complaint fails because it does not allege specific facts indicating that she has the requisite skills and experience to perform her job. Rather, Plaintiff merely alleges that “Plaintiff is a qualified individual with a disability; that is, she is able, with or without accommodations, to perform the essential duties of the position she holds.” (Am. Compl. ¶8.) Although vague and conclusory, this allegation is sufficient to satisfy the second element of her prima facie case.

Third, Plaintiff must allege that she has suffered an adverse employment action. ADA discrimination encompasses not only adverse actions motivated by prejudice and fear, but can also include failing to make reasonable accommodations for a plaintiff’s known disabilities. Taylor, 184 F.3d at 311; 42 U.S.C. § 12112(b)(5)(A) (1994). The Amended Complaint alleges that she requested certain accommodations for her disability, and that her employer ignored or denied her requests despite knowledge of her disability.<sup>3</sup> (Am. Compl. ¶¶ 9 - 11.) These allegations are adequate under the ADA.

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<sup>3</sup>The Amended Complaint states:

9. Plaintiff’s employer has been aware of her disability since about six months after she began employment with Defendant.
10. Plaintiff requested that reasonable accommodations be provided to her, including, although not limited to, a limitation of her caseload, correlation of the time spent by her providing her Spanish-speaking skills to other staff with reduction of time required to perform other job duties, exclusion of sexual offenders from her caseload, provision of a dictation device to enable her to avoid duplication of effort, and provision of counseling to her, as needed.
11. Plaintiff’s requests for reasonable accommodations were ignored or denied.

(Am. Compl. ¶¶ 9-11.)

Having determined that Plaintiff's allegations satisfy all of the elements for a claim of discrimination under the ADA, the Court denies Defendants' Motion with respect to Count I.

B. Count II - Disability Harassment

Count II asserts that Defendants unlawfully harassed Johnson on the basis of her disabilities. Neither the United States Supreme Court nor the United States Court of Appeals for the Third Circuit have determined whether the ADA creates a cause of action for harassment. See Simonetti v. Runyon, No. Civ. A. 98-2128, 2000 WL 1133066, at \*7 (D. N.J. Aug. 7, 2000). Rather, the Third Circuit assumed without deciding that harassment is a viable cause of action under the ADA. Walton v. Mental Health Ass'n, 168 F.3d 661, 666-67 (3d Cir. 1999); see also Simonetti, 2000 WL 1133066, at \*7 (listing decisions from other circuits in which the court assumed the viability of harassment claims in ADA cases); Pirolli v. World Flavors, Inc., No. Civ. A. 98-3596, 1999 WL 1065214, at \*6 (E.D. Pa. Nov. 23, 1999)(assuming the existence of a cause of action for disability harassment); Motto v. City of Union City, No. Civ. A. 95-5678, 1997 WL 816509, at \*11 (D. N.J. Aug. 27, 1997). Defendants do not argue that the ADA does not support a cause of action for harassment. Rather, Defendants challenge the sufficiency of her allegations. Assuming without deciding that harassment is a viable cause of action under the ADA, the Court will assess the merits of Defendants' argument.

To state a cause of action for a hostile work environment claim under the ADA, the plaintiff must show that (1) she is a qualified person with a disability; (2) she was subject to unwelcome harassment; (3) the harassment was based on her disability or request for an accommodation; (4) the harassment was sufficiently severe or pervasive to alter the conditions of her employment and to create an abusive working environment; and (5) that the employer knew or should have known of the harassment and failed to take prompt effective remedial action. Walton, 168 F.3d at 667. The

Court has already determined that Plaintiff adequately alleges that she is a qualified person with a disability in the discussion of Count I and will not revisit that conclusion. The Court, therefore, will assess Plaintiff's allegations with respect to the remaining elements.

The Amended Complaint alleges two specific instances of harassment. First, Johnson claims that Defendants harassed her by sending agents to her home under false pretenses on July 16, 1998. (Am. Compl. ¶ 16.) During the visit, these agents allegedly disclosed confidential information about her disability to a third party, interrogated her and the third party, and demanded that Johnson undergo a psychiatric evaluation before returning to work. (Id.) Second, Plaintiff alleges that when she suffered a work-related injury in July 1998, Defendants refused to take remedial steps because of its perception of her disabilities. (Id. ¶ 19.) These allegations, if true, and the reasonable inferences therefrom could establish that the claimed harassment was based on her disability, the harassment was severe or pervasive, and the employer knew or should have known of the harassment and failed to remedy the situation. Accordingly, the Court determines that Plaintiff's allegations are sufficient to maintain a cause of action for disability harassment.

C. Count III - Retaliation

Count III alleges that Lehigh retaliated against Johnson for engaging in legally protected conduct related to her disabilities. To state a prima facie claim of retaliation under the ADA, a plaintiff must show (1) protected employee activity; (2) adverse action by the employer either after or contemporaneous with the employee's protected activity; and (3) a causal connection between the employee's protected activity and the employer's adverse action. Shaner, 204 F.3d at 500. Defendants argue that this count fails because it lacks allegations of facts specifying the nature of the protected conduct in which she allegedly engaged or of any retaliation. The Court agrees.

The Amended Complaint alleges:

24. Defendant knew that Plaintiff engaged in legally protected conduct.
25. As a result of Plaintiff's engagement in protected conduct, Defendant retaliated against her.

(Am. Compl. ¶¶ 24-25.) Although one may reasonably infer from paragraph 24 that Plaintiff engaged in protected conduct, Plaintiff provides no facts indicating the nature of the conduct. Similarly, Plaintiff fails to state the nature of the alleged retaliation. Even under the loose notice pleading standard, these allegations are too vague to state a claim.<sup>4</sup> Accordingly, the Court grants Defendants' Motion with respect to Count III.

D. Count IV - PHRA claim

Count IV alleges a claim for discrimination and retaliation under the PHRA, 43 Pa. Cons. Stat. Ann. §§ 955(a), (d). Lehigh argues that Plaintiff has failed to exhaust her administrative remedies under the PHRA since she fails to allege that she filed a claim with the Pennsylvania Human Rights Commission ("PHRC"). To bring suit under the PHRA, a plaintiff must first have filed an administrative complaint with the PHRC within 180 days of the alleged act of discrimination. 43 Pa. Cons. Stat. Ann. §§ 959(a), 962 (West 2000). If no complaint is filed, then the plaintiff is precluded from seeking judicial remedies under the PHRA. Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir. 1997). This requirement is strictly interpreted and enforced. Id.

The Amended Complaint merely alleges that Johnson "exhausted her administrative remedies with the Equal Employment Opportunity Commission." (Am. Compl. ¶ 3.) Filing a charge with the

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<sup>4</sup>In fact, the Court dismissed Johnson's original Complaint for failure to specify the nature of her disability and requested accommodation, stating that simply restating the language of the statute without describing the disability failed to state a claim under the ADA. See also McCann v. Catholic Health Initiative, No. Civ. A. 98-1919, 1998 WL 575259, at \*2 (E.D. Pa. Sept. 8, 1998).

EEOC is insufficient to satisfy the exhaustion requirements under the PHRA<sup>5</sup>. See Woodson, 109 F.3d at 927. Plaintiff's claim, therefore, is fatally flawed. See Price v. Philadelphia Elect. Co., 709 F.Supp. 97, 99 (E.D. Pa. 1992). Accordingly, the Court dismisses Count IV.

E. Count V - Invasion of Privacy

Lastly, Count V asserts a claim for invasion of privacy under Pennsylvania state law.<sup>6</sup> Plaintiff alleges that Linda Berghold and Sarah Janowski, Defendant's agents, visited Johnson at home on July 16, 1998, on the false pretext of concern for Johnson's well-being. During the visit, Berghold and Janowski allegedly revealed Johnson's disabilities to a third party, interrogated Johnson and the third party about the disabilities, and demanded that she undergo a psychiatric evaluation prior to returning to work. Johnson claims that their conduct embarrassed her and caused continuing mental anguish because she wished to keep the nature and extent of her illnesses private.

Pennsylvania courts recognize the umbrella tort of invasion of privacy as encompassing four distinct causes of action: (1) intrusion upon seclusion; (2) appropriation of name or likeness; (3) publicity given to private life; and (4) publicity placing a person in a false light. Marks v. Bell Tel. Co. of Pa., 331 A.2d 424, 430 (Pa. 1975). Despite the vagueness of the Amended Complaint, Plaintiff in her response to Defendants' Motion indicates that she is proceeding under the torts of intrusion upon seclusion and publicity given to private life. Accordingly, the Court will address only those two causes of action.

1. Intrusion Upon Seclusion

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<sup>5</sup>Plaintiffs may satisfy the filing requirement by indicating on the EEOC charge form that the charge should be simultaneously filed with the appropriate state agency. See Woodson, 109 F.3d at 925. Plaintiff, however, fails to attach a copy of the actual charge filed with the EEOC or allege that she so indicated.

<sup>6</sup>The Amended Complaint misnumbers the claim for invasion of privacy as Count VI instead of Count V.

Pennsylvania courts have adopted section 652B of the Restatement (Second) of Torts which states:

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

Restatement (Second) of Torts § 652B (1976); Harris v. Easton Publ'g Co., 483 A.2d 1377, 1383 (Pa. Super. Ct. 1984). The invasion may take various forms including (a) physical intrusion into a place where the plaintiff has secluded herself; (2) use of the defendant's senses to oversee or overhear the plaintiff's private affairs, or (3) some other form of investigation into plaintiff's private concerns. Restatement (Second) of Torts § 652B cmt. b (1976); Harris, 483 A.2d at 1383. The defendant is subject to liability under this section only when he has intruded into a private place, or has otherwise invaded a private seclusion that the plaintiff has thrown about her person or affairs. Restatement (Second) of Torts § 652B cmt. c (1976). There is no liability unless the interference with the plaintiff's seclusion is both substantial and highly offensive to the ordinary reasonable person. Id. cmt. d.

Reading the allegations in the light most favorable to the Plaintiff, the Court concludes that Plaintiff has adequately stated a cause of action for intrusion into seclusion. Plaintiff alleges that Defendants conducted an investigation into the nature and extent of her mental illnesses that she wished to keep private. This is sufficient to constitute an invasion. Depending on the circumstances of their questioning, the invasion could be substantial and highly offensive to a reasonable person. That, however, is an issue that is best resolved upon a motion for summary judgment filed pursuant to Federal Rule of Civil Procedure 56. At this early stage, the Amended Complaint adequately states a cause of action under this theory of recovery.

2. Publicity Given to Private Life

Pennsylvania courts have also adopted section 652D of the Restatement (Second) of Torts that states:

One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter published is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.

Harris, 483 A.2d at 1384. To state a cause of action, the plaintiff must prove that the defendant (1) publicized (2) private facts (3) that would be highly offensive to a reasonable person, and (4) are not of legitimate concern to the public. Id. The publicity element requires that the matter be communicated “to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge.” Kryeski v. Schott Glass Tech. Inc., 626 A.2d 595, 601 (Pa. Super. Ct. 1993)(quoting Restatement (Second) of Torts § 625E (1976)); Harris, 483 A.2d at 1384. Disclosure of information to only a small number of people is insufficient to constitute publicity. See Kryeski, 626 A.2d at 602 (disclosure to two people is insufficient); Harris, 483 A.2d at 1384 (disclosure to one person is insufficient). Plaintiff’s allegations that Defendants’ agents revealed her disabilities to one third party, even if true, fail to establish communication to the public or to so many people that her disabilities would become public knowledge. The Court, therefore, concludes that Count V fails insofar as it asserts a claim for publicity of private facts.

### **III. CONCLUSION**

For the foregoing reasons, the Court grants in part and denies in part Defendants’ Motion to Dismiss. Counts III and IV are dismissed in their entirety. Count V is dismissed only insofar as it alleges a claim for publicity of private facts. Plaintiff may proceed on a claim for intrusion upon seclusion under Count V. An appropriate Order follows.