

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

DENISE M. DAVIS,	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 98-5209
v.	:	
	:	
THE GUARDIAN LIFE INSURANCE	:	
COMPANY OF AMERICA,	:	
Defendant.	:	
	:	

**MEMORANDUM**

BUCKWALTER, J.

December 14, 2000

On May 26, 2000, a jury returned a verdict in favor of the plaintiff and against defendant, both as to her claim under the Americans with Disabilities Act (ADA) and the Pennsylvania Human Relations Act (PHRA) for (1) failing to reasonably accommodate her disability, as well as for (2) retaliation. In accordance with the jury's verdict, civil judgment was on the same day, entered in favor of plaintiff and against defendant in the amount of \$1,500,000.

On June 2, 2000, defendant filed its motion for judgment as a matter of law, or, for a new trial or, in the alternative, to alter or amend judgment and motion for stay of proceedings.

While listing eleven (11) reasons in support of its motion, defendant in its brief argues with regard to discrimination that the "crux of this case relates to whether Guardian failed to reasonably accommodate plaintiff."

With regard to the retaliation claim, defendant relies principally on the argument that plaintiff failed to muster evidence of a “causal link” between the EEOC charge and the adverse employment action.

## I. FACTS

The essential evidence developed at trial and considered in light of the standard most recently enunciated by the Supreme Court of the United States<sup>1</sup> supports the following factual background.

From 1988 until 1997, plaintiff was employed by defendant as a disability insurance underwriter. Ed Rezek (Rezek) was her manager. In 1989, plaintiff contracted Crohn’s Disease.<sup>2</sup> Starting that year, plaintiff was absent a great deal because of it,

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1. In Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. 2097, 2110 (2000), Justice O’Connor reviewed what evidence the court should consider under Rule 50. Justice O’Connor wrote:

In the analogous context of summary judgment under Rule 56, we have stated that the court must review the record “taken as a whole.” *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). And the standard for granting summary judgment “mirrors” the standard for judgment as a matter of law, such that “the inquiry under each is the same.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-251, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). It therefore follows that, in entertaining a motion for judgment as a matter of law, the court should review all of the evidence in the record.

In doing so, however, the court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence. *Lyle v. Household Mfg., Inc.*, 494 U.S. 545, 554-555, 110 S.Ct. 1331, 108 L.Ed.2d 504 (1990); *Liberty Lobby, Inc.*, *supra*, at 254, 106 S.Ct. 2505; *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 696, n. 6, 82 S.Ct. 1404, 8 L.Ed.2d 777 (1962). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” *Liberty Lobby, supra*, at 255, 106 S.Ct. 2505. Thus, although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe. See *Wright & Miller* 299. That is, the court should give credence to the evidence favoring the nonmovant as well as that “evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.” *Id.* at 300.

2. Crohn’s Disease is an auto-immune disease. It is chronic inflammation of the bowels which in plaintiff’s case includes excruciating cramps and explosive diarrhea.

as follows:

1989	-	44 days
1990	-	93 days
1991	-	21 days
1992	-	38 days
1993	-	13 days

In addition to her absences as a result of Crohn's Disease, plaintiff was absent on maternity leave as follows:

1988	-	53 days
1991	-	81 days
1992	-	12 days
1993	-	42 days
1994	-	225 days
1995	-	130 days
1996	-	156 days

Notwithstanding her absences, plaintiff continued to receive high ratings and defendant accommodated these absences.

In September of 1993, plaintiff moved from Bethlehem to Feasterville, Pennsylvania, increasing the time it took to get from her home to the defendant's office from five minutes to an hour and 10 to 15 minutes. As a result, it was not unusual for plaintiff to be away from home for 12 hours a day. By November of 1993, plaintiff went on disability leave again

because of an unexpected third pregnancy. Defendant did not terminate plaintiff's employment despite her absenteeism.

When plaintiff did come back to work in October of 1994, defendant did allow her to work from home part time. The schedule was developed by plaintiff and Rezek. Plaintiff worked at home three days a week and in the office on Tuesday and Thursday. This was later changed to Monday and Thursday. Defendant provided a fax machine, a desktop computer, and a telephone line, although this was not requested for her until February of 1995. Plaintiff then took maternity leave from August, 1995 to July of 1996.

She actually returned to work on August 8, 1996, although there was some confusion as to her starting date. It appears that she was charged with about three weeks of sick days from roughly July 15, 1996 to the day she started in August. In any event, July 15, 1996 was the day she was put back on the active payroll. The confusion is explained somewhat by the testimony of James Saccavino, who remembered that there was a situation where plaintiff had been paid under Long Term Disability and also paid on payroll, but he could not remember why that prevented plaintiff from coming back to work in July.

When plaintiff returned to work in August of 1996, she and Rezek agreed to change her fixed, in-office days from Tuesday and Thursday to Monday and Friday. In addition, it is clear that plaintiff was able to change even these days if she could not come in because of "flare-ups." Rezek allowed her to switch her in-office days on an as-needed basis if she had work available at home. This was a two-way situation. Plaintiff would switch days at Rezek's request also.

In September of 1996, the first attempt at memorializing plaintiff's work schedule in writing was made when Rezek called plaintiff into his office and handed her a written alternative work schedule. Rezek wanted her to sign this form so in the future, if anybody had a disability, he could use this as a guideline for how he would treat it. N.T. Vol. IV at 49.

Plaintiff was afraid that she wasn't going to be able to adhere to the written work schedule<sup>3</sup> and that she would be marked "out sick" if she did not and ultimately terminated. N.T. Vol. IV at 50.

Essentially, plaintiff felt the proposed written schedule removed the flexibility she previously had. It is important to note that up to this point in time, plaintiff was quite pleased with the accommodations defendant had made for her. Plaintiff didn't believe it was unreasonable for defendant to make her call in and report if she couldn't come in on the scheduled day -- it was her belief that now under the written schedule she would be marked out sick whereas previously, that was not her understanding.

Plaintiff refused to sign the work schedule and no action was taken by defendant against her. In fact, she continued to work as she had been doing until April of 1997. N.T. Vol. IV at 96. In that month, plaintiff had a flare-up of Crohn's Disease and called Lydia Labinsky, her immediate supervisor, and said that she would like to work exclusively at home during the duration of this flare-up. N.T. Vol. IV at 97. She said she expected to be back in two weeks. N.T. Vol. IV at 98. Ms. Labinsky called her back and reported that Rezek said that if she could not come into the office on Monday or Thursday, she was to be marked out sick and was not to

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3. The written work schedule provided in part as follows: Allowing Denise to work a modified schedule by working at the Bethlehem office two days per week and three days at her residence . . . . These days cannot be changed without advance notice and approval by Edward Rezek.

work on files those days. Thereafter, Rezek, at plaintiff's request to put in writing what he was going to be requiring of her, faxed her a letter dated April 22, 1997. N.T. Vol. IV at 99. The letter is as follows:

April 22, 1997

Denise Davis  
308 Orchard Lane  
Feasterville, PA 19053

Re: Revised Work Schedule

Dear Denise:

This letter will respond to your request for clarification of your work schedule. When we reviewed your work schedule in my office in December 1996, we agreed that you would work at home on Tuesdays, Wednesdays and Fridays of each week and report to work at the Bethlehem office on Mondays and Thursdays of each week. The past few weeks, there were several times that you did not to [sic] report to work at the Bethlehem office on these agreed upon days. You have advised that the fixed schedule days agreed upon cause you difficulty because of the required travel to this office, therefore, we will further accommodate you by changing the two days that you work in Bethlehem from fixed days (Mondays and Thursdays) to flexible days. Therefore, while you will still be required to work in this office at least two days per week, those days can be chosen by you, as long as they are not consecutive. If you are unable to report to work in the Bethlehem office at least two days per week because of illness, we will record those days as sick days and you will not work from your home on those given days. We ask that you advise this office on days that you cannot report to work, either working from home or when you are required to be in this office. Also, please let us know, in advance, your expected work schedule, on the Friday, prior to each workweek.

We also require that you submit current documentation verifying that you can only work two days per week in the Bethlehem office rather than the customary five day workweek. This documentation can be in the form of a letter from your doctor.

Please sign and date this letter at the bottom acknowledging that you agree to the revised work schedule referenced above. Please let me know if you have any questions.

Sincerely,  
/s/  
Edward F. Rezek  
Director  
Disability Selection & Issue

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I agree to the revised work schedule stated above.

\_\_\_\_\_  
Denise Davis

\_\_\_\_\_  
Date

On the very next day, April 23, 1997, plaintiff filed for long term disability benefits which she subsequently received in full with interest for the period of time over which defendant delayed payment of those benefits. The delay in payment was in part caused by plaintiff's telling her doctor not to turn over her records to a defendant's representative who she in fact did not know represented the defendant. As a result, while plaintiff claims the application was filed in April of 1997, defendant did not receive her medical records until January of 1998. She was given benefits, retroactively, from the date of her application and received disability benefits of \$1,762 each month, being 60% of her salary.

Plaintiff never attempted to work under the schedule proposed in the April 22, 1997 letter. She told Rezek she would attempt to but "at that time, I wasn't able to go into the office because I was flaring up." N.T. Vol. IV at 113. The next day, she filed for long term disability benefits.

In summary, the undisputed facts in this case show that defendant reasonably accommodated plaintiff's disability even as far as plaintiff was concerned, at least until the letter of April 22, 1997. Plaintiff does not dispute the reasonableness of those accommodations. First, plaintiff was only required to come into the office two days a week. Second, to accommodate her three days at home, plaintiff was given a fax, a computer, and private messenger service from office to home. Third, by simply calling Rezek, even the two days she was required to work at the office could be switched. It was the April 22, 1997 attempt to memorialize this arrangement

in writing which parenthetically plaintiff refused to even try from the very first time it was suggested in the fall of 1996 that plaintiff claims constitutes an unreasonable accommodation.

As previously stated, it is clear, giving plaintiff the benefit she is entitled to in a post verdict review, that defendant at all times reasonably accommodated her up until the letter of April 22, 1997. Thereafter, defendant's suggestion as to a reasonable accommodation as set forth in that letter fell on deaf ears. Despite the fact that defendant had accommodated her for years, despite the fact that defendant had willingly deviated from its schedule to accommodate plaintiff in the past, despite the fact that plaintiff had an excellent relationship with Rezek, and despite the fact that she continued to get good ratings, she simply closed the door on even attempting merely a week or at least some period of time under the April 22, 1997 schedule.

It is true for purposes of this motion that plaintiff subjectively feared that she was not going to be able to adhere to the April 22, 1997 terms, and also feared that she would be charged sick days that might lead to her termination. But the record does not reveal that she expressed that concern to defendant after she received the letter of April 22, 1997. (She had discussed this in late 1996 when the first written schedule was proposed). What the record does show is that although the alternative work schedule proposed to her in October, 1996 and again in December, 1996 threatened her flexibility, she actually continued to have the flexibility. N.T. Vol. IV at 55.

It is important to this decision to quote directly from Ms. Davis when, in her words, defendant took the flexibility away, and her response to it:

Q. Was there a time when the Guardian actually took away the flexibility?

A. Yes.

Q. When was that?

A. In April of 1997.

Q. What happened then?

A. I had been -- I had contracted a cold, I believe, in the beginning of April. That was a month that was very -- there was a lot of flu going around the office. At the time, I was taking an immunosuppressant drug which made me more susceptible to colds, so I contracted one. I felt a little off the one day, so I called Lydia, and I told her -- I believe it was April 8<sup>th</sup> -- and I told her that I was starting to feel a little punk, and I didn't -- to mark me out sick, but that I still had files with me that I was going to work on, so, if she needed to get ahold of me, just to give me a call. And, she said, fine, and -- because we discussed the fact that I said also -- because she was my manager, I said, I also don't want to give the perception to the other employees that well, now, I never have to take a sick day, because I can switch days whenever I want.

Q. All right. Now, that's -- the day you're talking about is the day that she ultimately did not mark you out sick?

A. Right, she took away the sick day and --

Q. Because she --

A. -- and made it --

Q. -- found you'd done a lot of work.

A. Yes.

Q. All right. What happened after that?

A. After that, I began to experience a flare-up of my Crohn's.

Q. So, what did you do?

A. I called her, and I said, you know, I can feel it's coming -- that used to follow, if I contracted a cold or anything. For some reason it would cause my colon to flare. I started to realize that I was heading towards a flare-up, and I called to say how about if the -- for the next two weeks I just work strictly from home. We let the agencies know, we let everybody in the department know, so that there isn't that uncertainty out there, and I try to drink my Jell-O and continue to work.

Q. And, what did she say?

A. She said it sounded fine to her, but she would talk to Ed.

Q. What was the next thing you heard from The Guardian?

A. The next thing she said was that, if I couldn't come in on Monday and Thursday, I was going to be marked out sick, and that I shouldn't do work, even if I had it at home or was capable of doing it.

Q. Do you remember about what day that was?

A. It was about April 22<sup>nd</sup> -- 21<sup>st</sup>, 22<sup>nd</sup>.

Q. All right. Shortly after that, you got a fax with a letter dated April 22<sup>nd</sup>, correct?

A. Yes, because af -- after I spoke with Lydia, I called Ed.

Q. And, what did you say to Ed?

A. I was almost hysterical. I was -- because I was saying to him, this is -- the whole point of the accommodation is that I be allowed to work from my home when my colon is acting up. The flexibility is what I need, and, you know, we discussed back and forth the problem. I said -- I asked him, I said, don't you understand, you know, where this is headed, that I'm going to accumulate sick time and, ultimately, be fired. And, I asked him to please take the letter to the law department and make sure that -- because his signature was on the letter, that this decision would be okay, like, this decision was right and that it was sanctioned by the company.

Q. Okay. Just so I have the time frame right, you called him after you received the letter?

A. I'm sorry, I called him first, before I received the letter, and then I called him again after I received the letter.

Q. Okay.

A. I'm sorry.

Q. And, you suggested he take the letter to the law department?

A. Yeah, because what he said to me in the phone conversation -- I said to him, I'm sorry, I'm not understanding what you're asking me. Just write -- just do me a favor and write it down and send it over to me, so that I'm not misunderstanding what you're saying to me, what you're expecting of me.

Q. Uh-huh.

A. So, he did that, and he faxed me the letter.

Q. And, then you spoke to him after he faxed you.

A. Yes.

Q. And, that's when you asked him to -- maybe you should take it to the law department?

A. Yes.

Q. What was his response?

A. The law department helped him write it.

Q. And, what did you say to that?

A. I said, I don't think we should talk anymore, Ed, because it's not --

Q. It's all right. Take your time.

A. -- it's not between us anymore. I'm sorry. That it was no longer between Ed and I.

Q. What kind of relationship had you had with Ed Rezek?

A. We -- we were very close.

Q. He said you were friends. Is that how you felt?

A. Yes. I'm sorry.

As previously stated, the day after the April 22, 1997 letter, plaintiff filed for disability and on May 18, 1997, filed her complaint with the EEOC.

It is clear from the record that the April 22, 1997 letter offered plaintiff more flexibility than she was offered by the October, 1996 arrangement, later memorialized in December, which plaintiff would not sign. It is also clear that it was not as flexible as the manner in which the December plan was actually operating in practice. In any event, plaintiff as stated earlier did not even try to see how it would work in practice.

## **II. LAW**

It should first be noted that plaintiff's subjective and unsubstantiated belief that the April 22, 1997 proposal would not work is insufficient to establish the accommodation was unreasonable. Shelton v. University of Medicine, 223 F.3d 220 (3<sup>rd</sup> Cir. 2000) at 227, where "generic speculation" as to long term consequences of a transfer was insufficient to preclude summary judgment. The speculation by plaintiff in this case was not that she would continue to have unpredictable flare-ups. Both plaintiff and defendant, for purposes of this motion, know that as a fact. The speculation was that in the future, any failure to report to the office would be counted as sick days and lead to plaintiff's termination. This belief is unsubstantiated because of defendant's long record in the past of accommodating her even when a supposedly rigid schedule was in place. In any event, the plaintiff's failure to even try the April 22, 1997 plan resulted in

the total breakdown of any kind of interactive process which should take place between an employer and the qualified employee with a disability.

The phrase “interactive process” is used in EEOC Regulations. At 29 C.F.R. § 1630.2(0)(3), the following appears:

To determine the appropriate reasonable accommodation it may be necessary for the [employer] to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

Our Court of Appeals has said that participation in this process is an obligation of both parties and that neither can be faulted if the other does not supply information or answer requests of the other. Taylor v. Phoenixville School Dist., 184 F.3d 296 (3<sup>rd</sup> Cir. 1999). See p. 33 for discussion of interactive process.<sup>4</sup> See also, Shelton, supra, for proposition that once employer initiates proposal, employee has a duty to cooperate in determining whether proposal was reasonable.

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4. In Taylor, the court said:

We agree with the Seventh Circuit, which held that:

An employee’s request for reasonable accommodation requires a great deal of communication between the employee and employer ... [B]oth parties bear responsibility for determining what accommodation is necessary ... “[N]either party should be able to cause a breakdown in the process for the purpose of either avoiding or inflicting liability. Rather, courts should look for signs of failure to participate in good faith or failure by one of the parties to help the other party determine what specific accommodations are necessary. A party that obstructs or delays the interactive process is not acting in good faith. A party that fails to communicate, by way of initiation or response, may also be acting in bad faith. In essence, courts should attempt to isolate the cause of the breakdown and then assign responsibility.”

*Bultemeyer*, 100 F.3d at 1285 (quoting *Beck*, 75 F.3d at 1135.)

It seems rather obvious that an interactive process must involve the working together by all parties to achieve a solution to a problem. In this instance, after Rezek had verbally told plaintiff what the new accommodation was going to be and then at plaintiff's request, faxed her the letter explaining it, plaintiff's response was, "I don't think we should talk anymore, Ed, because it's not between us anymore." See Notes of Testimony, supra. Plaintiff's argument for not making any attempt to determine whether the April 22, 1997 proposal was reasonable seems to be this: Defendant knows that "flare-ups" are unpredictable and therefore any attempt to make a schedule in advance was simply not possible. Nevertheless, despite the fact that defendant knew that a flare-up could happen any time, defendant also knew that plaintiff continued to come to the office two days a week, suggesting that even with the unpredictability of flare-ups, she was still willing and able to make the long trek to and from defendant's office. To reject out of hand a proposal to name her two office days on the Friday prior to each work week is not engaging in the type of interaction contemplated by the ADA to arrive at an accommodation that is fair and reasonable. This constituted a failure to comply with plaintiff's duty to cooperate in the interactive process so that defendant cannot be faulted for a failure on its part with regard to finding a reasonable accommodation after its April 22, 1997 letter was rejected.

In conclusion, plaintiff admits that defendant reasonably accommodated her throughout all the many years of employment and many absences until April 22, 1997. These accommodations included granting her permission to work at home three days a week; installing a computer, fax and dedicated phone line in plaintiff's home; paying for a courier to travel between Bethlehem and Feasterville to deliver file documents necessary for her work; and

permitting her to change her days of working at the office when she requested. Whether the defendant's proposal of April 22, 1997 was reasonable was never subject to the interactive process because plaintiff herself announced that we (employee and employer) should not talk anymore. Under the circumstances, defendant's motion for judgment as a matter of law must be granted.

As to plaintiff's claim for retaliation, I have reviewed the entire record and find no evidence that the person who was responsible for the investigation and suspension of benefits ever knew that plaintiff had filed an EEOC charge against defendant. There was no direct evidence of retaliatory motive so that, as is usually the case, plaintiff had to prove this circumstantially. Frequently, the proximity of the filing of the EEOC charge to the adverse employment action is submitted as circumstantial evidence. In this case, plaintiff filed her application for long term disability on April 24, 1997 (signed April 23, 1997) and her EEOC charge in May of 1997. Kettly E. Philippe testified that it was her job to determine whether plaintiff's claim for long term disability was valid. N.T. Vol. II at 177, 178. Initially, she "started the benefits" (p. 182). The claim form of plaintiff stated both that she was suffering from Crohn's Disease and depression, anxiety (p. 187). Ms. Philippe's manager ordered an investigation of plaintiff's claim and subsequently Ms. Philippe sent plaintiff a letter dated July 16, 1997, advising plaintiff that, "Based on the lack of medical certification of disability as well as lack of proof of loss, there are no benefits payable after July 15, 1997." The letter went on to say that defendant will continue handling the claim upon receipt of the information requested from plaintiff (which she had not submitted when requested) and an IMA.

On August 19, 1997, Ms. Phillippe sent a letter to plaintiff's lawyer explaining the need for medical information to determine eligibility benefits and that not receiving it she closed the file. Up until the time she closed the file, she never heard anything about the plaintiff filing an EEOC charge. (N.T. at 216).

In October of 1997, plaintiff's disability file was transferred to Zenia Korduba. N.T. Vol III at 71. She then wrote to plaintiff's attorney in November and the forms that defendant wanted were ultimately received in February of 1998 (p. 75). Following an in-house investigation made by an agent of defendant, the benefits were reinstated as of March 15, 1998, retroactive to July 15, 1997 (p. 92).

The only possible evidence of causal connection between the EEOC charge and denial of benefits is the proximity in time; i.e., EEOC charge ( May, 1997); denial of benefits (July, 1997). To allow such evidence to be legally sufficient to establish causation would only be where some other factors make it "unusually suggestive"<sup>5</sup> of retaliatory motive. Here, it is quite

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5. Robinson v. City of Pittsburgh, 120 F.3d 1286 (3<sup>rd</sup> Cir. 1997). The court in Robinson said:

Our cases are seemingly split on the question whether the timing of the allegedly retaliatory conduct can, by itself, support a finding of causation. *Compare Jalil v. Avdel Corp.*, 873 F.2d 701, 708 (3d Cir. 1989) (plaintiff "demonstrated the causal link . . . by the circumstance that the discharge followed rapidly, only two days later, upon Avdel's receipt of notice of [his] EEOC claim") with *Delli Santi v. CNA Ins. Co.*, 88 F.3d 192, 199 n. 10 (3d Cir. 1996) ("timing alone will not suffice to prove retaliatory motive"). In *Woodson v. Scott Paper Co.*, 109 F.3d 913, 920 (3d Cir. 1997), relying on *Jalil*, we stated in dicta that "temporal proximity between the protected activity and the termination is sufficient to establish a causal link." On the other hand, in *Quiroga v. Hasbro, Inc.*, 934 F.2d 497 (3d Cir. 1991), we characterized our statement in *Jalil* that the "timing of the discharge in relation to Jalil's EEOC complaint may suggest discriminatory motives" as the holding of that case, and stated that in *Jalil*, "we stopped short of creating an inference based upon timing alone." *Id.* at 501 (emphasis added).

We believe that, if *Jalil* is to be interpreted, as holding that timing alone can be sufficient, that holding must be confined to the unusually suggestive facts of *Jalil*. Thus, even if timing alone can prove causation where the discharge follows only two days after the complaint, the mere fact that adverse employment action occurs after a complaint will ordinarily be insufficient to satisfy the plaintiff's burden of demonstrating a causal link between the two events. See *Quiroga*, 934 F.2d at 501 (holding that "[a]s a matter of fact," the timing of Quiroga's alleged constructive discharge was not independently sufficient to prove it was caused by his complaint).

the opposite. Plaintiff admits she did not initially send defendant the requested information; when she ultimately did, the benefits were reinstated retroactively. Defendant's motion for judgment as a matter of law must be granted on this claim as well.

An order follows.

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

DENISE M. DAVIS,	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 98-5209
v.	:	
	:	
THE GUARDIAN LIFE INSURANCE	:	
COMPANY OF AMERICA,	:	
Defendant.	:	
	:	

**ORDER**

AND NOW, this 14<sup>th</sup> day of December, 2000, Defendant, having renewed its motion made during trial for judgment as a matter of law in accordance with Rule 50(b) of the Federal Rules of Civil Procedure, or; in the alternative, for a new trial (Docket No. 61), and the court having considered each of these motions, it is hereby ORDERED that the motion of Defendant for judgment as a matter of law is GRANTED.

IT IS FURTHER ORDERED that the verdict and judgment heretofore entered in favor of Plaintiff is set aside, and that judgment is entered in favor of Defendant.

IT IS FURTHER ORDERED that Plaintiff's motion to mold the verdict (Docket No. 62) and for attorney's fees (Docket No. 69) are DENIED.

BY THE COURT:

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RONALD L. BUCKWALTER, J.