

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

ANGEL M. CRUZ,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 01-CV-2167
NORTHWEST AIRLINES, INC.,	:	
Defendant.	:	

MEMORANDUM/ORDER

GREEN, S.J.

MARCH _____, 2002

Presently before the Court are Defendant’s Motion to Dismiss, Plaintiff’s Response, and Defendant’s Reply. For the following reasons, Defendant’s motion will be granted.

I. Factual and Procedural Background¹

In March, 2000, Plaintiff Angel M. Cruz (“Plaintiff”) was conditionally offered employment with Defendant Northwest Airlines (“Defendant”) as a Flight Attendant. Plaintiff’s employment was conditioned on satisfactory completion of a physical examination. During this examination, Plaintiff informed Defendant that he had diabetes. In May, 2000, Plaintiff was informed by Defendant that the offer of employment was being withdrawn, because certain restrictions occasioned by the physical prohibited Defendant from offering Plaintiff a position.

Plaintiff, believing that his employment was refused based on his condition, filed a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”), and was issued a right to sue letter in February, 2001. Plaintiff then filed the instant action, invoking this Court’s federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, alleging that Defendant had violated the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*

¹ Unless otherwise noted, all facts are taken from Plaintiff’s Amended Complaint, and all factual inferences have been drawn in favor of Plaintiff as the non-moving party.

(“ADA”), in refusing to hire Plaintiff because he was a diabetic. Defendant filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that, since Plaintiff has failed to allege that he is substantially limited in a major life activity, the Amended Complaint must be dismissed.

II. Discussion

A court should dismiss a claim for failure to state a cause of action only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Because granting a motion to dismiss results in a determination on the merits at an early stage of a plaintiff’s case, the district court "must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Twp., 838 F.2d 663, 665-66 (3d Cir. 1988) (citations and internal quotations omitted).

The ADA provides that no covered employer “shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment.” 42 U.S.C. § 12112(a). The ADA defines “a qualified individual with a disability” as “an individual 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). A “disability” is defined as: “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of

such impairment; or (C) being regarded as having such an impairment.” 42 U.S.C. § 12102(2). “Accordingly, to fall within this definition one must have an actual disability (subsection (A)), have a record of a disability (subsection (B)), or be regarded as having one (subsection (C)).” Sutton v. United Airlines, Inc., 527 U.S. 471, 478 (1999) (holding, on a motion to dismiss, that plaintiffs had failed to allege a “disability” under the ADA).

1. Major life activity substantially limited by impairment.

The Court will first determine whether Plaintiff has alleged an actual disability; “that is, whether [he has] alleged that [he possesses] a physical impairment that substantially limits [him] in one or more major life activities.” See Sutton, 527 U.S. at 481 (citing 42 U.S.C. § 12102(2)(A)).

Plaintiff’s Amended Complaint fails to make any averment that his diabetes “substantially limits” him in any major life activity. Instead, Plaintiff simply states that he is “an individual with a disability.” See Am. Compl. ¶ 15, 16. While this conclusory averment may have been sufficient before Sutton, it is clearly inadequate now. See, e.g., Taylor v. Phoenixville School Dist., 184 F.3d 296, 306-07 (3d Cir. 1999). Instead, in order to survive a motion to dismiss, a complaint must state not only the condition upon which the discrimination is alleged, but also a major life activity which is substantially limited. Plaintiff also must state what effect, if any, any mitigating measure such as medication has on his condition. See Sutton, 527 U.S. at 488-89; see, also, Taylor, 184 F.3d at 302 (applying Sutton and concluding that inquiry into whether a plaintiff has a disability under 42 U.S.C. § 12102(2)(A) must take into account any mitigating measures plaintiff uses). I conclude that Plaintiff’s Amended Complaint contains no allegations regarding the substantial limitation of a major life activity. Therefore, Defendant’s

motion will be granted on this issue.

2. Regarded as having such an impairment.

In order to determine whether a defendant regarded a plaintiff as being disabled, the Supreme Court has held that § 12102(2)(A) must be read in conjunction with § 12102(2)(C). Read together, having a disability “includes being regarded as having a physical or mental impairment that substantially limits one or more of the major life activities of such individual.” See Sutton, 527 U.S. at 489. A plaintiff may satisfy this definition in two apparent ways: “(1) a covered entity mistakenly believes that a person has a physical impairment that substantially limits one or more major life activities, or (2) a covered entity mistakenly believes that an actual, nonlimiting impairment substantially limits one or more major life activities.” Id.

Considering Plaintiff’s Amended Complaint, I conclude that Plaintiff has failed to allege that Defendant “regards his impairment as substantially limiting” a major life activity. See Sutton, 527 U.S. at 491; **Am. Compl.** ¶¶ 15-18. Since the Amended Complaint is deficient in this respect, Defendant’s motion to dismiss must be granted on this issue.

III. Conclusion

Plaintiff has failed to allege facts sufficient to sustain a cause of action under the ADA. However, it is possible that the facts surrounding Plaintiff’s case could allow Plaintiff to properly state a cause of action under the ADA.² Therefore, Plaintiff’s Amended Complaint will be dismissed without prejudice to the filing of a Second Amended Complaint which states sufficient facts to pursue claims under the ADA. An appropriate order follows.

² Of course, Plaintiffs’ Second Amended Complaint, if filed, like all papers filed with the Court, must be consistent with the strictures of Rule 11 of the Federal Rules of Civil Procedure, subject to sanctions if violated.

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	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of March, 2002, upon consideration of Defendant's Motion to Dismiss, Plaintiff's Response, and Defendant's Reply, **IT IS HEREBY ORDERED** that:

- 1) Defendant's motion is **GRANTED**, without prejudice to Plaintiff filing a Second Amended Complaint in which he alleges fact sufficient to state a cause of action upon which relief may be granted;
- 2) The letter from Defendant's counsel dated January 16, 2002, is to be **FILED AND DOCKETED**.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.