

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

ROBERT J. CONTI,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 02-1658
CSX INTERNATIONAL,	:	
	:	
Defendant.	:	

MEMORANDUM

Baylson, J.

August 22, 2003

Defendant moves for reconsideration of the Court's January 17, 2003 Order denying Defendant's Motion for Summary Judgment. At the conclusion of oral argument on that date, the Court identified a number of factual issues for trial which the Court held prevented the Court from granting Defendant's Motion for Summary Judgment.

Defendant now moves for reconsideration and asks the Court to grant summary judgment alleging four grounds: (1) Plaintiff's inability to work for his supervisor demonstrates that he could not perform the essential functions of his job upon the expiration of his FMLA leave; (2) the fact that an employer provides more than required by the FMLA is inconsequential to an FMLA claim according to the United States Supreme Court; (3) Defendant's policy of attempting to accommodate workers is irrelevant because the FMLA does not require an employer to provide reasonable accommodations to employees; and (4) Plaintiff is unable to make even a facial showing that the accommodation he needed to return to work for Defendant was a

possibility during and/or upon the expiration of his FMLA leave.

I. Reconsideration Under Federal Rule of Civil Procedure 59(e)

The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985), cert. denied, 476 U.S. 1171, 106 S. Ct. 2895, 90 L. Ed. 2d 982 (1986). A court should grant a motion for reconsideration only “if the moving party establishes one of three grounds: (1) there is newly available evidence; (2) an intervening change in the controlling law; or (3) there is a need to correct a clear error of law or prevent manifest injustice.” Drake v. Steamfitters Local Union No. 420, C.A. No. 97-585, 1998 U.S. Dist. LEXIS 13791, at *7-8 (E.D. Pa. Sept. 3, 1998) (citing Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994)). “Because federal courts have a strong interest in finality of judgments, motions for reconsideration should be granted sparingly.” Continental Casualty Co. v. Diversified Industries, Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995).

The Court believes that the record does not allow the grant of summary judgment, and in response to each of the four grounds above, the Court holds as follows:

1. The essential function of Plaintiff’s job is not undisputed from the record. The regulations adopted pursuant to the statute entitled “What Are the Employees Rights on Returning to Work from FMLA Leave?”, provide as follows:

(a) On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee’s absence. See also § 825.106(3) for

the obligations of joint employers.

(b) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. However, the employer's obligations may be governed by the Americans with Disabilities Act (ADA). See § 825.702.

29 C.F.R. § 825.214.

The record is also not clear as to what exactly would be an "equivalent position." Plaintiff contends that he did want to return to his job, but did not want to be subject to stress from his supervisor. Whether Plaintiff's position is proper under the statute and regulations is one of the several factual issues present in the case. Defendant cites cases, some of which support its position, from other courts and other circuits, but not all of Defendant's case citations are FMLA cases. However, Defendant does not cite to any Third Circuit decisions to support its contentions in its Motion.

2. The Court cited deposition testimony of Defendant's employee that Defendant's policy was to work with returning employees to try to adjust job functions as may be necessary. Defendant's position that Ragsdale v. Wolverine Worldwide, Inc., 535 U.S. 81, 122 S. Ct. 1155, 152 L. Ed. 2d 167 (2002) requires this Court to disregard this testimony is not a correct reading of that case. In Ragsdale, the Supreme Court voided a Labor Department regulation requiring employers to give employees notice that leave is FMLA qualifying before the leave may be counted against the employer's twelve week obligation. The Ragsdale decision discusses many reasons for its conclusion, but the case holds nothing more than the voiding of this specific regulation, which is not at issue in this case. Defendant is inferring from the Ragsdale holding

additional legal principles that may become part of the FMLA legal landscape down the line.

3. There is no binding legal precedent under the FMLA that if an employer has a policy to provide reasonable accommodations to employees, a court must ignore that policy. If Defendant had such a policy, and refused to apply it to Plaintiff, this evidence may be relevant in developing a trial record. This is an issue to be developed at trial, not on summary judgment.

4. As to the last ground, the testimony is in dispute as to the communications between Plaintiff and Defendant as his FMLA leave was expiring. Defendant's exact position on Plaintiff's return, as well as Plaintiff's state of mind, are not subject to a ruling on summary judgment.

Defendant has advanced a number of legal points in its Motion for Summary Judgment and in the Motion for Reconsideration. The Court finds, however, that Defendant has not demonstrated the existence of any of the factors for reconsideration - Defendant presents no new evidence, shows no intervening change in controlling law, and points to no clear error of law or manifest injustice. See Drake, 1998 U.S. Dist. LEXIS 13791, at *7-8. As noted at oral argument, the Third Circuit itself has not handed down any holdings that adopted, as the law of this Circuit, the Defendant's contentions. It may be that Defendant is right on all of these issues and that the Supreme Court or the Third Circuit will eventually adopt Defendant's contentions. The Court is unwilling to adopt Defendant's contentions on a summary judgment record where there are disputed genuine issues of fact.

Therefore, the Court declines to change its decision to deny Defendant's Motion for Summary Judgment. Defendant may submit its contentions in arguing for exclusion of evidence and/or as points for charge. Once the jury renders a verdict, the Court can make the appropriate

legal rulings based on the jury's verdict. On post-trial motions, the Court will rule, as necessary, on Defendant's legal contentions.

II. Conclusion

For the reasons set forth above, the Court will deny Defendant's Motion for Reconsideration.

An appropriate Order follows.

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CSX INTERNATIONAL,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 14th day of February, 2003, upon consideration of Defendant's Motion for Reconsideration (Docket No. 15), and Plaintiff's response thereto (Docket No. 17), it is hereby ORDERED that Defendant's Motion is DENIED.

BY THE COURT:

Michael M. Baylson, U.S.D.J.