

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

JANET M. TURNER	:	CIVIL ACTION
	:	
v.	:	NO. 03-4412
	:	
HERSHEY CHOCOLATE USA	:	

Diamond, J.

November 30, 2004

MEMORANDUM

Plaintiff Janet Turner alleges that Hershey Foods Corporation violated the "reasonable accommodation" provision of the Americans with Disabilities Act when Hershey would not exempt her from a job rotation system it created to reduce the risk of employee injury. Hershey argues that the rotation system is an "essential function" of Plaintiff's job, and that because she is unable to rotate job duties, she is not a "qualified individual," and cannot establish an ADA claim. I conclude that the ADA does not require an employer to "accommodate" a disabled employee if the accommodation would threaten the health and safety of that employee or other employees. Accordingly, I conclude that the rotation system is an "essential function" of Plaintiff's job, and that Plaintiff is not a "qualified individual" under the ADA. Because Plaintiff's "reasonable accommodation" claim fails as a matter of law, I grant Hershey's Motion for Summary Judgment.

BACKGROUND

Plaintiff worked at Hershey's Reading, Pennsylvania Plant from August 1985 until July 2001. (Compl. at ¶¶ 5-6.) She worked in several production capacities and as a custodian. (Pl. Reply in Opp. to Mot. for Sum. Jud. at 1.) A collective bargaining agreement that included strict seniority and job assignment provisions governed the terms and conditions of Plaintiff's employment. (Def. Motion for Sum. Jud. at Ex. L, Collective Bargaining Agreement.)

During her employment, Plaintiff was diagnosed with medical problems, including fused cervical discs, postlaminectomy pain syndrome, cervical radioculopathy, and thoracic outlet syndrome. (Compl. at ¶ 9.) These conditions compelled Plaintiff to undergo surgery in 1998, 2000, and 2002. (Dep. of Janet Turner at 12-14.)

When Plaintiff returned to work in 1999 (after her 1998 back operation), Hershey accommodated her new work restrictions, assigning her to a "light duty position" as a Shaker Table Inspector on a York Peppermint Patty line. (Id. at 64-66.) The Shaker Table Inspector position involved sitting or standing on the side of the line, while repeatedly reaching, stretching, and twisting to maneuver and remove the chocolate covered and uncovered mint patties. (Dep. of Robert Ladd at 18.)

At the time of Plaintiff's employment, the Reading Plant had six Shaker Table Inspectors, assigned in pairs to one of three lines: Lines 7, 8, or 9. (Dep. of Janet Turner at 3.) Line 7 requires the Inspector to stand and repeatedly bend and twist to sort different size mint patties moving down the conveyor. (Dep. of Janet Turner at 74-78.) The Inspectors on Lines 8 and 9 sit while sorting only one sized mint patty. (Id. at 76-78). Work on Lines 8 and 9 is considered "easier" than work on Line 7. (Id. at 78.)

Before Plaintiff's 1999 return to work, her treating physician, Dr. David W. Allen, reviewed a videotape depicting the Shaker Table Inspectors' duties, and completed a "Work/Study Release" form stating that Plaintiff could return as an Inspector. (Id. at Ex. 3.) Dr. Allen cleared Plaintiff for light duty work that required no bending, stooping, or lifting of more than twenty pounds. (Dep. of Janet Turner at Ex. 3.) Two days after returning, however, Plaintiff complained to her immediate supervisor, Steve Heimbach, that she was in pain and could not work. (Id. at 71-72) Mr. Heimbach transferred Plaintiff from Line 7 to Line 8. (Id. at 84.) Mr. Heimbach also granted Plaintiff's later request for transfer to Line 9 -- which she believed was "easier"-- when another Inspector went on medical leave. (Id.)

In the first quarter of 2001, Hershey learned that the Shaker Table Inspectors had suffered an increased incidence of repetitive stress injuries to their wrists and arms. (Dep. of Robert Ladd at 31.) Although Plant Management was especially concerned about Line 7 because it was the most demanding line, they noticed repetitive stress injuries to Inspectors working on all three lines. (Dep. of Robert Ladd at 30-32; Dep. of Leslie Goss at 11, 13-16; Def Mot. for Sum. Jud. at Tab J, Aff. of Suzanne Werley at ¶ 7; Def. Mot. for Sum. Jud at Tab 6. Aff. of Suzanne Werley at Ex. C: Employer's Report of Occupational Injury or Disease.) From March 2001 to June 2001, Suzanne Werley (Plant Nurse), Leslie Goss (Manufacturing Department Manager), and Robert Ladd (Mint Department Production Supervisor), met and discussed ways to protect the Inspectors from repetitive stress injuries. (Dep. of Robert Ladd at 30-32.) They accepted the suggestion of Nurse Werley that Hershey require all Inspectors to rotate among all three lines daily. (Id. at 31-32.) This rotation system would allow the Inspectors to change positions hourly, to alternate hourly between sitting and standing, and to use both their left and right arms, thus decreasing the

likelihood of repetitive stress injuries. (Id. at 32.) As Robert Ladd, (Mint Department Production Supervisor) described:

An [I]nspector would go from Line 8 to 9 to 7. Each hour they would change sides, and then move on to the [next table].

(Id. at 32.)

On July 11, 2001, Mr. Ladd, Ms. Werley, and Kathy Gibson (Manager of Employment, Safety, and Security), met with the six Shaker Table Inspectors to discuss the implementation of the rotation system for all three lines. (Dep. of Janet Turner at 91-92; Dep. of Robert Ladd at Ex. 6.) Plaintiff objected and refused to rotate or work on Line 7. (Dep. of Suzanne Werley at ¶ 8.) Plaintiff continued working solely on Line 9 because the rotation had not yet been implemented. (Dep. of Janet Turner at 109.) Immediately after the meeting, Plaintiff contacted her lawyer, who wrote a letter requesting that Plant Management exempt her from the rotation system. (Id. at 102, 103, Ex. 10.)

The next day -- July 12th -- Plaintiff again visited her physician to discuss her lawyer's letter, and to ask him "if he would give [her], [an] excuse explaining her [new restrictions]." (Id. at 102.) Dr. Allen obliged, and issued her a new "Work/School Release" form that was more restrictive than the form he issued in April 1999. (Id. at 105-06, Ex. 9.) Dr. Allen further limited Plaintiff to activities that did not require *any* "stretching, bending, twisting, or turning neck or lower back" or "lifting of greater than 20 lbs." (Id.) Dr. Allen did not ask Hershey to assign Plaintiff to a particular line; he made no distinction among the lines.

On July 17th, Plaintiff presented to Plant Management the new "Work/School Release" form and her lawyer's letter. (Id. at 103-107, Ex. 9, Ex. 10.) On July 18th, Leslie Goss, Jeff

Johnson (Employee Relations Manager), Steve Heimbach (Plaintiff's immediate supervisor), Sandra Kurtz (Plaintiff's Union Representative), and Plaintiff discussed whether, in light of Plaintiff's new work restrictions, it was feasible to exempt her from the rotation system. (Id. at 110-17, Ex. 10.)

Plant Management concluded that Plaintiff's refusal to work on Line 7 prevented her from participating in the rotation system, which was "essential" to preventing injuries to all Inspectors. (Dep. of Jeff Johnson at 7, 22.) Accordingly, management would not allow Plaintiff to continue as a Shaker Table Inspector. Because the Inspector position was already a "light duty" assignment, there was no other work at the Reading Plant that Plaintiff could perform, given her medical restrictions and seniority. (Aff. of Suzanne Werley at ¶ 9.) Plant Management asked Plaintiff and her Union Representative to identify any positions that Plaintiff could perform; they were unable to identify any. (Dep. of Janet Turner at 112.)

Plant Management notified Plaintiff of her right to go on short-term disability, which Plaintiff applied for on August 2, 2001, and later received. (Id. at 117.) In her application, Plaintiff stated that she was unable to return to work from July 12, 2001, and was unable to work in any position in the Reading Plant. (Dep. of Janet Turner at Ex. 10, 11; Aff. of Suzanne Werley at ¶ 10; Ex. D.) Dr. Allen confirmed this in letters he sent to Hershey in August 2001 and September 2001. (Dep. of Janet Turner at Ex. 10, 11; Aff. of Suzanne Werley at ¶ 10; Ex. D.)

In November 2001, at Hershey's suggestion, Plaintiff and her doctor completed an application for long-term disability coverage. (Id. at Ex. 1.) Plaintiff stated that she had not been released for work and that she could not perform the "essential functions" of her job. (Dep of Janet Turner at Ex. 1; Aff. of Suzanne Werley at ¶ 12; Ex. F.) Plaintiff was awarded long-term

disability benefits on February 26, 2002 (retroactive to January 2002). (Dep. of Janet Turner at 46-51, Ex. 2.) Later that year, the Social Security Administration determined that Plaintiff was disabled from July 2001, and awarded her total disability benefits. (Id. at 46-51.)

Plaintiff's last day of work for Hershey was July 18, 2001. Because she was deemed a disabled employee, her union contract provided her with full time employee benefits for the next twenty-four months. (Dep. of Kathy Gibson at 9-12.) Thus, Plaintiff's employment with Hershey did not actually end until July 25, 2003 -- over two years after her last actual day of work. (Dep. of Janet Turner at 13.) The union contract required Hershey to terminate Plaintiff on that date because of Plaintiff's absence from work for twenty-four months. (Dep. of Kathy Gibson at 9-12.)

Four days later, on July 29th, Plaintiff filed this lawsuit. Apparently contradicting the statements she made in her total disability application, Plaintiff alleged that she was not completely disabled, and could have performed her job if Hershey had exempted her from the rotation system. That system is still in effect at the Reading Plant. (Dep. of Robert Ladd at 47-48.) There are currently three Inspectors; one is assigned to each line. (Dep. of Robert Ladd at 42-43.)

Plaintiff has been inconsistent respecting how she wanted Hershey to "accommodate" her. She has suggested that she was willing to work only on Lines 8 or 9. At other times, however, she has suggested that she would work only on Line 9. (Compare Dep. of Janet Turner at Ex. 10, letter of Brooke M. Boyer, dated July 17, 2001, with Def. Mot. for Sum. Jud. at Ex. K, letter of Dr. David W. Allen, dated May 12, 2003.) Her physician, on the other hand, has suggested that she could work on Lines 7, 8, and 9. (Dep. of Janet Turner at Ex. 3.) He has also suggested, however, that Plaintiff could not work on Line 7, and should work only on Line 9. (Def. Mot. for

Sum. Jud. at Ex. K, letter of Dr. David W. Allen, dated May, 12, 2003.) Finally, Dr. Allen has suggested that Plaintiff could not work on any of the lines. (Def. Mot. for Sum. Jud. at Ex. F., Unum Disability Application.) Ultimately, Plaintiff "crystallized" her position for purposes of disputing Hershey's summary judgment motion: she refuses to participate in the rotation system, and claims that Hershey violated the ADA in requiring her to rotate among the three lines. (Pl. Reply in Opp. to Mot. for Sum. Jud. at 2, 3, 4, 8.)

DISCUSSION

The gravamen of this case is Hershey's requirement that Plaintiff participate in the rotation system -- a system that Plaintiff acknowledges Hershey implemented to protect its workers' health and safety:

At the outset, Plaintiff acknowledges that the imposition of a management policy requiring six inspectors to rotate among the three shaker tables is *a laudable safety measure* intended to reduce repetitive motion injuries to the wrists of the inspectors formerly exclusively assigned to shaker table seven.

(Pl. Reply in Opp. to Mot. for Sum. Jud. at 7 (emphasis added).) Plaintiff nonetheless claims that the ADA required Hershey to exempt her from the rotation system as "reasonable accommodation."

Hershey has moved for summary judgment, arguing that once Plaintiff acknowledged to the Social Security Administration that she could not perform her job's "essential functions," she was precluded from arguing the opposite in this litigation. In the alternative, Hershey argues that because participation in the rotation system -- something Plaintiff acknowledges she cannot do -- is an "essential function" of her job, Hershey could not reasonably accommodate her. Finally, Hershey argues that Plaintiff's various statements respecting her physical limitations prove as a

matter of law that she was not qualified to be an Inspector, regardless of the rotation system.

I agree with Hershey's second contention. I do not address her third contention at this time.

Governing Legal Standards

Upon motion of any party, the Court should grant summary judgment “if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). The moving party must initially show the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). In its review of the record, “the court must give the nonmoving party the benefit of all reasonable inferences.” Sempier v. Johnson & Higgins, 45 F.3d 724, 727 (3d Cir. 1995), cert. denied, 132 L. Ed. 2d 854, 115 S. Ct. 2611 (1995). An issue is material only if it could affect the result of the suit under governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Summary Judgment is appropriate if, after viewing all reasonable inferences in favor of the non-moving party, the Court determines that there is no genuine issue of material fact. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

"The purpose of the ADA is to eliminate "the stereotypical thought processes . . . and . . . hostile reactions that . . . bar those with disabilities from participating fully . . . in the workplace." US Airways, Inc. v. Barnett, 535 U.S. 391, 401 (2002); see also Buskirk v. Apollo Metals, 307 F.3d 160, 166 (3d Cir. 2002); Gaul v. Lucent Techs. Inc., 134 F.3d 576, 580 (3d Cir. 1998). To establish a general ADA claim," a plaintiff must establish that she: (1) has a disability, (2) is a qualified individual, and (3) has suffered an adverse employment action because of that disability." See Buskirk, 307 F.3d at 166 (internal citations omitted).

A plaintiff can make out an ADA discrimination claim based on the failure to accommodate her disability by alleging facts showing: (1) that the employer is subject to the ADA, (2) that the plaintiff is a qualified individual with a disability who, with or without "reasonable accommodation," could perform the "essential functions" of the position, and (3) that the employer had notice of the plaintiff's disability and failed to provide such accommodation. See Kralik v. Durbin, 130 F.3d 76, 78 (3d Cir. 1997); see also Lyons v. Legal Aid Soc'y, 68 F.3d 1512, 1515 (2d Cir. 1995). The plaintiff bears the burden of proving that she is a "qualified individual with a disability," that is, "a person who, with or without reasonable accommodation, can perform the essential functions of her job." See 42 U.S.C. § 12111(8) (2004).

The parties do not dispute that Hershey is subject to the ADA or that Plaintiff provided Hershey with notice of her disability. The only disputed question is whether Plaintiff is a qualified individual who could perform the "essential functions" of her job.

Plaintiff's "Contradictory" Allegations

Hershey first argues that because Plaintiff told the SSA that she could not perform her job's "essential functions," she is estopped from asserting the opposite here: that she is a "qualified individual with a disability." I disagree.

The Supreme Court has held that a sworn statement of total disability in a benefits application *may* create a presumption that the employee is not a "qualified individual," and so bar the employee's ADA claim. See Cleveland v. Policy Mgmt. Sys. Corp., 526 U.S. 795, 806, 807-808 (1999). The Supreme Court stated that a plaintiff may overcome this presumption, however, by explaining adequately any apparent contradiction between the disability application and the ADA claim:

To defeat summary judgment, the explanation must be sufficient to warrant a reasonable juror's concluding that, assuming the truth of, or the plaintiff's good faith belief in, the earlier statement, the plaintiff could nevertheless "perform the essential functions" of her job, with or without "reasonable accommodation."

See id.; see also Detz v. Greiner Indus., Inc., 346 F.3d 109, 119 (3d Cir. 2003). An employee can reconcile assertions in an disability benefits application with a "reasonable accommodation" claim, if the disability proceedings "do[] not take the possibility of 'reasonable accommodation' into account." See Cleveland, 526 U.S. at 804.

In making allegations in her benefits application, Plaintiff was compelled to accept Hershey's position that rotating among the three lines was an "essential function" of the Inspector's job. Thus, Plaintiff necessarily alleged that she could not perform the "essential functions" of the job because she could not participate in the rotation system.

In her ADA claim, Plaintiff argues that if Hershey accommodates her disability by exempting her from the rotation system, she could perform the Inspector's functions. Thus, the "ADA suit claiming that . . . [P]laintiff can perform her job with reasonable accommodation . . . prove[s] consistent with a [disability] claim that . . . [P]laintiff could not perform her own job (or other jobs) without it." See id.

In these circumstances, Plaintiff is not estopped from claiming here that she is a "qualified individual" under the ADA.

Plaintiff's ADA Claim

Hershey also contends that because Plaintiff cannot participate in the rotation system, she cannot perform her job's "essential functions," and so cannot establish that she is a "qualified individual." Accordingly, Hershey argues Plaintiff cannot make out all the elements of a

"reasonable accommodation" claim. See Kralik, 130 F.3d at 78 (to establish a "reasonable accommodation" claim under the ADA, an employee must establish that she is a qualified individual with a disability who, with or without reasonable accommodation, could perform the job's "essential functions").

Plaintiff disputes that rotating among the three lines is an "essential function" of the job. Plaintiff cites no case law whatsoever to support her contention. Rather, she makes two arguments, neither of which is persuasive. Plaintiff first notes that rotating among the three lines was not mentioned in Hershey's October 18, 2001 job description for the position. Next, Plaintiff argues -- again, without citing any case law -- that even if a management policy is safety related, it remains subject to the ADA's "reasonable accommodation" requirements, unless the accommodation would impose an "undue hardship" on Hershey. (Pl. Reply in Opp. to Mot. for Sum. Jud. at 7.)

Plaintiff's arguments are incorrect, and, if accepted here would jeopardize Plaintiff herself, as well as the other Inspectors. Federal Regulation defines "essential functions" as those requirements that are "fundamental job duties of the employment position." See 29 C.F.R. § 1630.2(n). According to the Regulation, evidence of whether a requirement is "essential" includes the employer's judgment as to which functions are "essential," written job descriptions prepared before advertising or interviewing for the job, the amount of time spent on the job performing the function, the consequences of not requiring the incumbent to perform the function, the terms of a collective bargaining agreement, the work experience of past incumbents in the job, and the current experience of incumbents in similar jobs. 29 C.F.R. §1630.2(n)(3).

Courts have repeatedly held that an employer's determination of what constitutes an "essential function" is due significant deference because it is "not the function of the courts to

micro-manage corporate practices." Conneen v. MBNA Am. Bank, N.A., 182 F. Supp. 2d 370, 378 (D. Del. 2002); see also Deane v. Pocono Medical Center, 142 F.3d 138, 149 (3d Cir. 1998); Davis v. Guardian Life Ins. Co. of Am., CIV. No. 98-5209, 2000 U.S. Dist. LEXIS 719, *9-*10 (E.D. Pa. February 1, 2000); 29 C.F.R. § 1630.2(n)(3)(I). Nor does the ADA allow the courts to "establish the conditions of [a worker's] employment." See Gaul v. Lucent Techs., 134 F.3d 576, 581 (3d Cir.1998).

The omission of the rotation system in Hershey's job description (Plaintiff's first argument), although significant, is not dispositive. An employer's job description is just one factor that must be considered in determining a position's "essential functions." See 29 C.F.R. §1630.2(n)(3). Looking at the other factors, and giving proper deference to Hershey's judgment, the rotation system is certainly "essential" for Shaker Table Inspectors who wish to avoid injury. It is undisputed that "the work experience of past incumbents in the job" confirms that "the consequences of not requiring" the Inspectors to rotate will be increased repetitive stress injuries. See 29 C.F.R. § 1630.2(n). Moreover, the undisputed evidence shows that Inspectors are required to rotate duties hourly, every day. (Dep. of Robert Ladd at 30-32.)

In these circumstances, the case law Plaintiff has ignored compels me to conclude that the rotation system is, indeed, an "essential function" of the Inspector position. See Chevron U.S.A. v. Echazabal, 536 U.S. 73, 85 (2002) (a safety measure may constitute an "essential function" of the job if it is required to provide the employee with a safe workplace); see also Williams v. Phila. Hous. Auth. Police Dep't, 380 F.3d 751, 770 (3d Cir. 2004) (same); Anderson v. Elgin Riverboat Resort-Riverboat Casino, CIV No. 96-7045, 1999 U.S. Dist. LEXIS 497 (D. Ill. 1999) (procedures instituted to protect workers' safety are "essential functions").

Plaintiff's second contention (that Hershey must show that exempting her from the

rotation system would cause "undue hardship"), stands the ADA on its head: it would require Hershey to "accommodate" Plaintiff in a manner that could well cause disability. There is nothing "reasonable" in Plaintiff's argument.

In seeking to determine what is a "reasonable accommodation," courts look both to statute and regulation. The ADA itself provides that "reasonable accommodation" may include:

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to vacant positions, acquisitions or modifications of equipment or devices, appropriate adjustments or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C. § 12111(9). Significantly, in applying these provisions and related regulations, the

Third Circuit has cautioned:

The duty to provide reasonable accommodation is subject to certain limitations. For example, an employer is not required to provide a reasonable accommodation if it would . . . pose a "direct threat" to the safety of the employee or others

Buskirk, 307 F.3d at 168 (citing Echazabal, 536 U.S. at 78-79 (applying 29 C.F.R. § 1630.2(o)(1))); see also 29 C.F.R. § 1630.15(b)(2) (an employer may use "direct threat" as a qualification standard); 29 C.F.R. § 1630.2(r) (defining "direct threat").

Other courts have ruled similarly, holding either that: (1) an "accommodation" that would jeopardize workers' health and safety cannot be a "reasonable accommodation"; or (2) requiring an "accommodation" that could jeopardize workers' health and safety would necessarily impose an "undue hardship" on the employer. See Echazabal, 536 U.S. at 78-79, 84-85 (an employer is not required to accommodate an employee if the accommodation threatens the health and safety

of that employee or other employees); see also Williams, 380 F.3d 751 at 770 ("an employer is not required to provide a reasonable accommodation if it . . . would pose a direct threat to the safety of the employee or others") (quoting Echazabal, 536 U.S. at 78-79); Buskirk, 307 F.3d at 168 (same). Indeed, I am unable to find any reported decision in which a court ordered an employer to accommodate an employee's disability under the ADA if that accommodation created a risk to the health or safety of that employee or other employees. See Buskirk, 307 F.3d at 168 (3d Cir. 2002) (an employer is not required to accommodate an employee in a manner that could threaten the health or safety of that employee or others); Hutton v. Elf Atochem N. Am., 273 F.3d 884, 892-93 (9th Cir. 2001) (same); Lusby v. Metropolitan Wash. Airports Auth., CIV. No. 98-2162, 1999 U.S. App. LEXIS 18428, *5-*6, *7-*9 (4th Cir. August 9, 1999) (same); Turco v. Hoechst Celanese Chem. Group, 101 F.3d 1090, 1094 (5th Cir. 1996) (same).

Hershey discovered that when Inspectors worked on just one line, they suffered repetitive stress injuries. Although the majority of the injuries occurred on Line 7, the undisputed evidence shows that the injuries also occurred on Lines 8 and 9, albeit less frequently. (Dep. of Robert Ladd at 30-32; Dep. of Leslie Goss at 11, 13-16; Def. Mot. for Sum. Jud. at Tab J, Aff. of Suzanne Werley at ¶ 7; Def. Mot. for Sum. Jud. at Tab 6, Aff. of Suzanne Werley at Ex. C: Employer's Report of Occupational Injury or Disease.) Plaintiff concedes that Hershey implemented the rotation system as "a laudable safety measure." (Pl. Reply in Opp. to Mot. for Sum. Jud. at 7.) Were Plaintiff exempt from rotating, she would work only on Lines 8 and 9, or on Line 9 alone. (Plaintiff is unclear as to which "accommodation" she seeks.) Such a limited work assignment would increase the likelihood of Plaintiff suffering repetitive stress injuries to her arms or wrists. As significant, it would also necessarily limit the rotation system for the other Inspectors, thus increasing the likelihood that they would suffer repetitive stress injuries. In these

circumstances, the "accommodation" Plaintiff seeks is certainly *unreasonable*.

In sum, the ADA was intended to achieve fairness in the workforce for the disabled. It was not intended to compel employers to take actions that could cause employee disability. See Sutton v. United Air Lines, 527 U.S. 471, 497 (1999). Accordingly, I conclude that Plaintiff is not a "qualified individual," because she cannot perform the "essential functions" of a Shaker Table Inspector. Therefore, she cannot maintain a "reasonable accommodation" claim under the ADA.

I grant Defendant's Motion for Summary Judgment and dismiss Plaintiff's Complaint. An appropriate Order follows.

Date

Paul S. Diamond, J.

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

JANET M. TURNER	:	CIVIL ACTION
	:	
v.	:	NO. 03-4412
	:	
HERSHEY CHOCOLATE USA	:	

ORDER

AND NOW, this 30th day of November, 2004, upon consideration of the Motion of Defendant for Summary Judgment, the Response of Plaintiff, and any related submissions, it is **ORDERED** that the Motion is **GRANTED** and Plaintiff's Complaint is **DISMISSED with prejudice**.

The Clerk of Court shall close this matter for statistical purposes.

Paul S. Diamond, J.