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

BOB GOODMAN	**:**	**CIVIL ACTION**
	:	
v.	**:**	**NO. 04-CV-3471**
	:	
L.A. WEIGHT LOSS CENTERS, INC.	**:**	

MEMORANDUM AND ORDER

Kauffman, J. **February 1, 2005**

Plaintiff Bob Goodman brings this action against Defendant L.A. Weight Loss Centers, Inc. alleging violations of the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq. (Count I), and the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. § 951 et seq. (Count II). Now before the Court is Defendant's Motion to Dismiss Pursuant to Rule 12(b)(6). For the reasons stated below, the Motion will be granted.

I. BACKGROUND

Viewed in the light most favorable to Plaintiff, the relevant facts are as follows. Plaintiff is an adult individual who suffers morbid obesity, weighing approximately 350 pounds at times relevant to this Complaint. Complaint ¶¶ 7, 10. On or about November 18, 2002, Plaintiff met with Mary Carbaugh, an employee of Defendant, to interview for the position of Sales Counselor. Complaint ¶ 11. Defendant L.A. Weight Loss Centers, Inc. is a company that provides weight reduction plans to clients, with an emphasis on one-on-one coaching and maintenance of a healthy lifestyle. Defendant's Motion to Dismiss at 1. After their meeting, around November 21, Carbaugh informed Plaintiff that her regional manager had concerns about Plaintiff's weight, but that she believed he was the "most qualified" applicant for the position and

that she would encourage his hiring. Complaint ¶ 12. On November 26, Carbaugh told Plaintiff that her manager had a "problem" with his weight and, on December 2, she informed him that his application for employment would be rejected because Defendant was an "image conscious" company and his weight would send the "wrong message" to Defendant's overweight clientele. Complaint ¶¶ 13, 14. Carbaugh told Plaintiff that she would hold his resume and that he should reapply for employment after he lost approximately seventy more pounds. Complaint ¶ 15. Plaintiff alleges that the sole basis for the denial of employment was Defendant's perception that his morbid obesity constituted a disability. Complaint ¶ 16. Defendant moves to dismiss under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

II. LEGAL STANDARD

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). However, a court must draw on the allegations in the complaint in a realistic, rather than "slavish" manner. See Doug Grant, Inc. v. Greate Bay Casino, Corp., 232 F.3d 173, 184 (3d Cir. 2000) (quoting City of Pittsburgh v. West Penn Power Co., 147 F.3d 256, 263 n.13 (3d Cir. 1998)). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts provable by plaintiff. See Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

III. ANALYSIS

A. Plaintiff's ADA Claim (Count I)

Plaintiff alleges that he was denied employment based solely on Defendant's perception that he was disabled. In order to state a claim under the ADA, a plaintiff must establish that he or she has a "disability" within the meaning of the statute, is an otherwise qualified individual, and has suffered an adverse employment action by a covered employer because of that disability. See Gaul v. Lucent Technologies, Inc., 134 F.3d 576, 580 (3d Cir. 1998). The ADA defines "disability" as (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual; (2) a record of such an impairment; or, (3) being regarded as having such an impairment. Buskirk v. Apollo Metals, 307 F.3d 160, 166 (quoting 42 U.S.C. § 12102(2)). Plaintiff's Complaint does not assert that he suffers an actual impairment, instead basing the claim on the third, or "regarded as," prong.[1] Complaint ¶ 18.

In order to be "regarded as" having a disability under the ADA, Plaintiff must show that he (1) has a physical or mental impairment that does not substantially limit major life activities, but is treated by a covered entity as constituting such a limitation; (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment; or, (3) has no such impairment, but is treated by the covered entity as having a substantially limiting impairment. See Sutton v. United Air Lines, Inc., 527 U.S. 471,

[1] Plaintiff argues throughout his Response that "morbid obesity" is a disability that "inherently and substantially limits" several major life activities. Plaintiff's Response to Motion to Dismiss at 9, 15. However, because Plaintiff's only asserted claim is that his weight was "regarded as" a disability within the meaning of the ADA and PHRA, this Court need not reach the question of whether obesity would meet the requirements of an actual disability under those statutes.

489 (1999); Buskirk, 307 F.3d at 166. This section of the statute focuses on the reactions and perceptions of those working with a plaintiff, and not on his actual disability. See Kelly v. Drexel Univ., 94 F.3d 102, 108-09 (3d Cir. 1996). Included within each of these prongs is an allegation that a plaintiff's prospective employer regarded or perceived the plaintiff as being substantially limited in one or more major life activities. See Buskirk, 307 F.3d at 166. Although Plaintiff does not specifically so allege in his Complaint, this Court will infer that the major life activity at issue is "working." See Plaintiff's Response to Motion to Dismiss at 8.

Taking every well-pleaded allegation in the Complaint as true, Defendant regarded Plaintiff as the "most qualified" applicant for the job and there is no allegation that its agents perceived him as unable to perform some aspect of the required work. See Walton v. Mental Health Ass'n of Southeastern Pa., 168 F.3d 661, 665 (3d Cir. 1999). Moreover, while "working" can be considered a major life activity under the ADA, in order to state a claim based on a perceived impairment in this activity, Plaintiff would have to allege that Defendant regarded him as incapable of performing a wide range of tasks or jobs. See 29 C.F.R. § 1630.2(j)(3)(i) (defining limitation in working to mean "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person"); see also Sutton, 527 U.S. at 491. Here, Defendant rejected Plaintiff's job application for one specific position, which is not sufficient under the ADA. See 29 C.F.R. § 1630.2(j)(3)(i) ("inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working"); Sutton, 527 U.S. at 493 (rejecting "regarded as" disability claim under the ADA where plaintiff was precluded from single job of "global airline pilot").

Furthermore, it is well established that an employer is permitted to make hiring decisions

based on certain physical characteristics. See, e.g., Sutton, 527 U.S. at 490 (stating that employers may prefer particular physical characteristics to others and that they are permitted to make hiring decisions based on factors such as height or build). The mere fact that Defendant was aware of Plaintiff's weight and rejected his application for fear that his appearance did not accord with the company image is not improper. To hold otherwise would render an employer's ability to hire based on certain physical characteristics entirely void. See Kelly, 94 F.3d at 109; see also Gregg v. Nat'l League of Prof'l Baseball Clubs, 2002 WL 32348274, at *4 (E.D. Pa. Mar. 13, 2002) ("It is not the function of a court to second-guess an employer's evaluation of the relative merits of applicants for employment."). There is simply no basis in this Complaint to infer that Defendant perceived Plaintiff as substantially limited in the performance of a wide range of work-related tasks or varying positions, as a result of some physical or mental impairment associated with his weight. Cf. Kelly, 94 F.3d at 108-09. Read in the light most favorable to Plaintiff, the Complaint reflects that although Defendant considered Plaintiff otherwise qualified for the position, it chose not to hire him because of his physical appearance, which Defendant believed was manifestly inconsistent with the product it was trying to sell. This cannot rise to the level of an ADA violation and, accordingly, Plaintiff's federal claim will be dismissed.

B. Plaintiff's Claim Under the PHRA (Count II)

As with the ADA, to establish a claim under the PHRA, a plaintiff must allege that he suffers a non-job related handicap or disability, or that he is perceived by a prospective employer as suffering from such a handicap or disability. See Gregg, 2002 WL 32348274 at *4. The definition of "handicap or disability" mirrors that set forth in the ADA, and Pennsylvania courts

have generally interpreted the provisions of the PHRA in accord with their federal counterparts. See, e.g., Buskirk, 307 F.3d at 166 n.1; Kelly, 94 F.3d at 105. Consequently, "regarded as" claims under the PHRA are generally subject to the same test and analysis as that set forth under the ADA. See Civil Serv. Comm'n of City of Pittsburgh v. Commonwealth of Pa., Pa. Human Relations Comm'n, 591 A.2d 281, 283 (Pa. 1991) (rejecting "regarded as" claim under the PHRA based on employer's alleged perception of obesity as disability). Accordingly, for the reasons set forth above, Plaintiff's claim under the PHRA will also be dismissed for failure to state a claim upon which relief may be granted.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss will be granted as to both Counts I and II. An appropriate Order follows.

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ORDER

AND NOW, this 1st day of February, 2005, upon consideration of Defendant's Motion to Dismiss (docket no. 5), and Plaintiff's Response thereto, it is **ORDERED** that the Motion is **GRANTED**. Accordingly, the Complaint is **DISMISSED**.

BY THE COURT:

S/Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.