

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

STEVE EVANS, :
 :
 Plaintiff, : CIVIL ACTION
 :
 v. : No. 06-cv-2804
 :
 MAAK-KSD CORPORATION :
 :
 Defendant. :

MEMORANDUM AND ORDER

Joyner, J.

January 25, 2008

Presently before the Court is Defendant MAAK-KSD's Motion for Summary Judgment ("D. Mot.") (Doc. No. 31) and all responses thereto. For the reasons set forth below, the Court GRANTS Defendant's Motion.

BACKGROUND

Plaintiff Steve Evans began employment with Defendant MAAK-KSD, which manufactures bathroom fixtures, on September 30, 2002. Plaintiff was employed as a stock worker doing work with saws, drill presses, and other machinery, and became a member of Teamsters Union Local No. 115. According to disability reports filed with his union, in July, 2004, Plaintiff became injured

when his knee struck a door frame at home. He continued to work full days, however, until August 17, 2004, at which time his physician, Dr. Lance Wilson, provided Plaintiff with a note for his employer stating that Plaintiff's condition was such that he could not tolerate prolonged standing and should be accommodated with a sitting job for one week. On August 18, 2004, Plaintiff went to work, but company pay records indicate that he left after one hour. Plaintiff testified in his deposition that he was sent home because the company would not accommodate his doctor's request for a sitting job.

Plaintiff did not return to work, and on September 8, 2004, he went on disability leave and began to receive disability benefits under the Teamsters Local Union No. 115 Health and Welfare Plan. According to the Reports of Continuing Disability filed with the union, Plaintiff's orthopedist, Dr. John Nolan, indicated that Plaintiff was unable to work due to his knee problem, which was eventually diagnosed as a medial meniscus tear. On October 4, 2004, Plaintiff underwent arthroscopic surgery on his knee to address the problem. Plaintiff remained on disability leave until February 17, 2005, periodically being reexamined by Dr. Nolan and submitted updated Reports of Continuing Disability affirming his inability to work. In a note dated February 8, 2005, Dr. Nolan reported that Plaintiff could

restart to work on February 17th with no restrictions, and Plaintiff returned to work on that day. When he returned to work, however, Plaintiff's supervisor noticed that he was limping and asked him to go home.

Plaintiff then returned to work on a full-time basis two days later, assigned to the job of packing towel bars into boxes. This job required putting towel bars into boxes, taping up the boxes, and throwing them onto a skid. Plaintiff continued to work in this capacity for several weeks, after which time he was assigned to the task of putting together cardboard boxes, and then to a wrapping job.

On May 27, 2005, Plaintiff took a vacation day from work and saw his primary care physician, Dr. Wilson, because he reported having trouble performing his work tasks. After the appointment, Dr. Wilson provided Plaintiff with a note for his employer which stated:

Steven D. Evans is under my care for right knee arthritis. His condition is such that he needs light duty work to allow his condition to improve. He is unable to repeatedly [sic] do squatting, to continuously stand for more than 4 [hours] at a time, continuous walking and lifting over 35 [pounds]. Work that involves a mixture of sitting, standing and limited walking and lifting would be ideal for his current condition. He needs light duty for 4 weeks at which time he will be reevaluated.

Plaintiff returned to work on May 31, 2005, and presented Dr. Wilson's note to the Plant Manager, Michael Toner. Plaintiff was told that he would be accommodated; however, Plaintiff alleges that he was only accommodated with light duty for one day.

On June 2, 2005, Plaintiff then completed a "Claimant's Notice of Sickness or Accident," seeking disability benefits from the union under its Health and Welfare Plan. In that application, Dr. Patrick Aufiero, an infectious disease specialist, indicated that as of June 1, 2005 Plaintiff had been diagnosed with Lyme Disease and was unable to work as a result. Plaintiff remained on disability leave for five months, again filing regular Reports of Continuing Disability in accordance with the union's Health and Welfare Plan. On August 12, 2005, and September 2, 2005, Plaintiff filed Reports of Continuing Disability indicating that he was unable to work due to problems with his knee, and that he had a second arthroscopic surgery on August 24, 2005. On October 28, 2005, Plaintiff's orthopedist, Dr. Nolan, signed an attending physician's statement reporting that Plaintiff could return to work on October 31st.

On October 31, 2005, Plaintiff returned to work and presented a note from Dr. Nolan stating that he could return to work with no restrictions. Plaintiff was assigned to the task of assembling and packing shower doors, which he performed until

around 2pm. At that time, he began experiencing discomfort in his neck and back and reported to Mr. Toner that he needed an alternative job. Mr. Toner informed him that no alternative jobs were available at that time. In response, Plaintiff claimed that an "ADA had been filed," and that the company was required to accommodate him. Company representatives were unable to find any such paperwork, however, and Plaintiff responded that he would need to contact an attorney to investigate the status of the alleged claim. Mr. Toner advised him to go home rather than risk injury by working further.

Plaintiff did not return to work on the morning of November 1, 2005, but called Ellen Haynes, the company's Human Resources Manager, and informed her that no ADA claim had been filed. Plaintiff then stated that he had to go see a doctor about his neck and back pain, but Ms. Haynes informed him to return to work because he did not have any available sick days. Plaintiff then called his union representative, Tom Kane, who also instructed him to return to work. Plaintiff reported to work, and when he arrived, he was informed that he was terminated. Union representatives filed a grievance contesting Plaintiff's termination on November 7, 2005, but it was denied.

This Lawsuit

According to his complaint, Plaintiff filed a Charge of Discrimination against Defendant with the Equal Employment Opportunity Commission on August 22, 2005. On January 2, 2006, Plaintiff filed a second Charge alleging disability discrimination and retaliation by Defendant. The EEOC subsequently issued a Notice of Right to Sue to Plaintiff, who filed his complaint in this court on June 27, 2006. Plaintiff alleges that Defendant, MAAX-KSD Corporation, harassed and discriminated against him by failing to satisfy his requests for reasonable accommodation during the course of his employment and by terminating him on November 1, 2005. Plaintiff also asserts that Defendant retaliated against him after his alleged requests for reasonable accommodation and disability discrimination, in violation of the ADA and PHRA.

STANDARD OF REVIEW

It is recognized that the underlying purpose of summary judgment is to avoid a pointless trial in cases where it is unnecessary and would only cause delay and expense. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). Summary judgment is proper "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©. An issue is genuine only if there is sufficient evidentiary basis on which a reasonable jury could find for the non-moving party, and a factual dispute is material only if it might affect the outcome of the suit under governing law. Kaucher v. County of Bucks, 456 F.3d 418, 423 (3d Cir. 2006), citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). If the non-moving party bears the burden of persuasion at trial, "the moving party may meet its burden on summary judgment by showing that the nonmoving party's evidence is insufficient to carry that burden." Id., quoting Wetzel v. Tucker, 139 F.3d 380, 383 n. 2 (3d Cir. 1998). In conducting our review, we view the record in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. See Bowers v. Nat'l Collegiate Athletic Ass'n, 475 F.3d 524, 535 (3d Cir. 2007). However, there must be more than a "mere scintilla" of evidence in support of the non-moving party's position to survive the summary judgment stage. Anderson, 477 U.S. at 252.

DISCUSSION

Defendant moves for summary judgment on Plaintiff's claims of both substantive discrimination and retaliation. We will address each in turn. As an initial matter, we note that we

apply the same legal standard for claims brought under the PHRA as we do for claims brought under federal anti-discrimination laws addressing the same subject matter. See Kelly v. Drexel Univ., 94 F.3d 102, 105 (3d Cir. 1996). Thus, our analysis of, and decision on, Plaintiff's discrimination claims under Title VII apply equally to his claims under the PHRA, as they are based on the same alleged conduct.

A. Plaintiff's Claim of Unlawful Discrimination

Claims of unlawful discrimination under the Americans with Disabilities Act (ADA) are analyzed under the burden-shifting paradigm established in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). Under that standard, an ADA plaintiff must first establish a prima facie case by demonstrating: (1) he is a disabled person within the meaning of the ADA; (2) he is otherwise qualified to perform the essential functions of the job with or without reasonable accommodations by the employer; and (3) he has suffered an adverse employment action as a result of discrimination. See Gaul v. Lucent Techs., 134 F.3d 576, 580 (3d Cir. 1998). If the plaintiff succeeds in establishing a prima facie case, the burden then shifts to the employer to articulate a legitimate, non-discriminatory reason for each decision. McDonnell Douglas, 411 U.S. at 802; Fuentes v. Perskie, 32 F.3d

759, 765 (3d Cir. 1994). Once the employer has done so, the burden shifts back to the plaintiff to demonstrate that the proffered reasons are pretextual. Id. To avoid summary judgment at this last step, the plaintiff must present rebuttal evidence that would "allow a factfinder reasonably to infer that each of the employer's proffered non-discriminatory reasons . . . was either a post-hoc fabrication or otherwise did not actually motivate the employment action." Id. at 764.

Defendant contends that Plaintiff cannot establish a prima facie case of discrimination under the ADA. We agree. Under the first prong of the prima facie test, a plaintiff is "disabled" if he has (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 impairment, or (3) been regarded as having such an impairment. Olson v. G.E. Astrospace, 101 F.3d 947, 951 (3d Cir. 1996). An individual is "substantially limited" in a major life activity if she is "unable to perform an activity that the average person in the general population can perform," or is "significantly restricted as to the condition, manner, or duration under which she can perform a major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform the same activity.'" Kelly, 94 F.3d at 105 (quoting 29 C.F.R. §

1630.2(j)); see also Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184, 196 (2002).

In Toyota Motor Mfg., the Supreme Court held that to be considered "substantially limited" by an impairment under the ADA, an individual must have an impairment that "severely restricts the individual from doing activities that are of central importance to most people's daily lives" and that is "permanent or long term." Toyota Motor Mfg., Ky, Inc., 534 U.S. at 198. Plaintiff has not carried his burden under this standard, and thus cannot established a prima facie case under the ADA. First of all, the evidence in the scant record before us shows that Plaintiff's limitations were not "permanent or long term." Plaintiff first became impaired in August, 2004. He went on disability leave for six months, during which time all of his Reports of Continuing Disability were signed by the orthopedist treating him for his knee condition. Plaintiff returned to work on February 17, 2005, and the only evidence in the record about Plaintiff's condition at this time is a note from Plaintiff's orthopedist stating that Plaintiff could work without any restrictions. There is no evidence supporting Plaintiff's bald allegations that he was more restricted than an average person in any life activities during, or at the end of, this time period.

Over the next four months of Plaintiff's employment, there is no evidence whatsoever in the record indicating that Plaintiff was impaired in any way, and he even testified himself that he could work without any restrictions. The next piece of evidence regarding Plaintiff's impairment comes from May, 2005, when his physician, Dr. Wilson, wrote that Plaintiff was "unable to repeatedly [sic] do squatting, to continuously stand for more than 4 hours at a time, continuous walking and lifting over 35 pounds," and that Plaintiff needed "light duty for four weeks." Plaintiff subsequently went on a second disability leave. There is no further evidence in the record indicating that any of these limitations made him significantly more restricted than an average person performing the same activities. While Plaintiff's alleged inability to repetitively squat, stand for more than four hours, or lift more than 35 pounds may indeed call for "light duty," but it does not, without further evidence to support it, mean that he was significantly restricted in a major life activity. See Taylor v. Pathmark Stores, Inc., 177 F.3d 180, 183 (3d Cir. 1999) (finding that Plaintiff's inability to stand for more than four hours did not constitute a substantial life activity); see also Kresge v. Circuitek, 958 F. Supp. 223, 225 (E.D. Pa. 1997) ("The inability to stand or walk for prolonged

periods even though most people may be able to do so . . . cannot be said to be a substantial limitation.”)

When Plaintiff returned from his second, five-month disability leave, his orthopedist again opined that he was able to work “without restrictions.” Plaintiff attests, however, that it was at this point that he injured his neck and back, a new impairment admittedly separate from his knee injury. Thus, in the time period in question, Plaintiff suffered from several temporary periods of physical impairment related to his knee injury that were interrupted by a time period during which Plaintiff admitted in his deposition that he had no restrictions. This falls well short of the Supreme Court’s requirement that an impairment be “permanent or long term” to be a significant limitation on a life activity. Furthermore, there is not one shred of evidence outside of Plaintiff’s own deposition testimony that even touches on the question of how Plaintiff’s functioning in major life activities compared to that of an average person. After the two extensions granted to Plaintiff, the parties had six months to conduct discovery and yet Plaintiff has not deposed a single witness or produced anything from his treating physicians - or any other witness for that matter - other than the small handful of doctors’ notes discussed above. Accordingly, Plaintiff’s unsupported arguments that he had

trouble sleeping and sitting or standing for long periods of time fall well short of what is required to make a prima facie showing that he was disabled under the ADA.¹ See NLRB v. FES, 301 F.3d 83, 95 (3d Cir. 2002)(unsupported statements insufficient to survive summary judgment).

Because he has failed to produce any evidence that he was "substantially limited" in a major life activity, Plaintiff has not created any issues of material fact as to whether he was disabled within the ADA's meaning of that term. He has therefore failed to make a prima facie case under the ADA and the McDonnell Douglas burden shifting standard.² Accordingly, because no

¹ Plaintiff also argues in his Response that he was disabled as a result of Lyme Disease, but he has similarly submitted virtually no evidence to support this vague claim. There is only one exceedingly brief note from a treating physician indicating that Plaintiff ever even had Lyme Disease, and Plaintiff has submitted no evidence whatsoever indicating how that impairment restricted major life activities, outside of his own unsupported deposition testimony. Furthermore, all of the Reports of Continuing Disability filed with the union appear to have been based on his knee injury and resulting recovery from two knee surgeries; in fact, they are all signed by his orthopedist, and only one even mentions the word "lyme." Thus, Plaintiff's unsupported claims of disability based on his contracting Lyme Disease during the course of his employment must also be denied.

² We also note that when he was terminated, Plaintiff was informed that he was being terminated for "refusing to do work by supervisor" and "theft and dishonesty." (D. Mot. Ex. Z). This would constitute a legitimate, nondiscriminatory justification for the adverse action. Thus, even if Plaintiff could establish a prima facie case - and we reiterate that he has not even come close to doing so - Defendant has proffered a legitimate justification for its actions to which Plaintiff has not

reasonable juror could find in Plaintiff's favor, Defendant's Motion for Summary Judgment as to Plaintiff's claim of discrimination under the ADA is GRANTED.

B. Plaintiff's Claim of Unlawful Retaliation

Plaintiff also claims that in firing him, Defendant took retaliatory action against him for filing an EEOC complaint, in violation of the ADA, 42 U.S.C. § 12203(a), and the PHRA, 43 Pa. Cons. Stat. § 955(d).³ The ADA and PHRA make it unlawful for an employer to discriminate against an employee who has opposed practices made illegal by those statutes, or because he participated in an investigation or proceeding under those statutes.⁴ Id. To succeed on his claim of unlawful retaliation,

responded with any evidence showing that it is pretextual. Plaintiff's claim would therefore fail at this stage of the *McDonnell-Douglas* burden shifting analysis as well.

³ Plaintiff urges that his retaliation claim should proceed to trial simply because Defendant failed to address it in its initial Motion for Summary Judgment. Defendant did address the retaliation claim in its Reply brief, however, and in any case, we may grant summary judgment on this issue *sua sponte*. See Celotex v. Catrett, 477 U.S. 317, 326 (1986); Couden v. Duffy, 446 F.3d 483, 500 (3d Cir. 2006). Plaintiff argued his case on the retaliation issue in both his Response and his Surreply, and has thus had a fair opportunity to present evidence and legal argument in support of this claim.

⁴ We reiterate that our analysis for Plaintiff's retaliation claim under the PHRA will be the same as it would be for the ADA retaliation claim. Thus, though we specifically address the ADA here, our conclusions apply equally to the PHRA claim.

Plaintiff must demonstrate: (1) he engaged in an activity protected by Title VII; (2) after or contemporaneous with engaging in that conduct, his employer took an adverse action against him; (3) the adverse action was "materially adverse"; and (4) a causal link exists between his participation in the protected activity and the employer's adverse action. See Hare v. Potter, 220 Fed. Appx. 120, 127 (3d Cir. 2007)(citing Burlington N. & Santa Fe Ry. Co. v. White, 126 S. Ct. 2405, 2415 (2006)). To satisfy the third, "material adversity," prong, Plaintiff must prove that the action "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." Id. at 128. If Plaintiff establishes a prima facie case of retaliation, the burden shifts to Defendant to advance a legitimate, nonretaliatory reason for its actions. Id. at 127. If Defendant has done so, the burden shifts back to Plaintiff to prove that the proffered explanation is mere pretext for retaliation. Id.

Plaintiff claims that he filed a Charge of Discrimination with the EEOC in August, 2005, and that his November 1, 2005 termination was an act of retaliation for that filing. As an initial matter, we note that there is not a shred of evidence to even support Plaintiff's claim that he did in fact file a Charge of Discrimination. Plaintiff has not even produced a copy of any

EEOC filing, let alone one from August, 2005, and MAAK-KSD's Human Resources Manager has attested that the company was never served with a Notice of Charge of Discrimination or a Charge of Discrimination pertaining to the Plaintiff. Thus, we cannot conclude that Plaintiff has engaged in protected activity.

Even assuming that the Charge was actually filed as Plaintiff claims, however, Plaintiff still fails to satisfy the prima facie test because there is no evidence of a causal connection between the alleged complaint and Plaintiff's termination. In determining whether Plaintiff has met the causation element of the prima facie case, we consider all evidence that is "potentially probative of causation." Farrell v. Planters Lifesavers Co., 206 F.3d 271, 279 (3d Cir. 2000). Temporal proximity between the protected activity and the employer action may indicate causation, but "the mere fact that adverse employer action occurs after a complaint will ordinarily be insufficient to satisfy the plaintiff's burden of demonstrating a causal link between the two events." Krouse v. American Sterilizer Co., 126 F.3d 494, 503 (3d Cir. 1997)(quoting Robinson v. City of Pittsburgh, 120 F.3d 1286 (3d Cir. 1997)). Rather, in cases where temporal proximity was not "unusually suggestive" of retaliatory motive, the Third Circuit has demanded further evidence to substantiate a causal connection. See Thomas

v. Town of Hammonton, 351 F.3d 108, 114 (3d Cir. 2003)(noting that where "the temporal proximity is not so close as to be unduly suggestive . . . timing plus other evidence may be an appropriate test"); Farrell, 206 F.3d at 280; Krouse, 126 F.3d at 503; cf. Jalil v. Avdel Corp., 873 F.2d 701 (3d Cir. 1989) (finding that plaintiff established causation on retaliation claim merely by showing that discharge occurred just two days after filing of complaint). Such other evidence may include, but is not limited to, a "pattern of antagonism" by the employer that could link the adverse action with Plaintiff's complaint. See Farrell, 206 F.3d at 280; Krouse, 126 F.3d at 503-04; Woodson v. Scott Paper Co., 109 F.3d 913, 921 (3d Cir. 1997).

Here, three months elapsed between the alleged filing of Plaintiff's August, 2005 EEOC complaint and his termination. There is no other evidence whatsoever to support Plaintiff's argument that this time frame is suggestive of retaliation, and thus nothing to establish a causal link between the two events. Indeed, the evidence from MAAX-KSD's Human Resources Manager shows that the company was not even aware of any filings from Plaintiff, and Plaintiff admitted in his deposition that on November 1, 2005, he informed company representatives that he had not in fact filed a claim of ADA discrimination. (D. Mot. Ex. B, p. 93).

Accordingly, because he has failed to produce sufficient evidence that he engaged in protected activity, or that there was a causal link between any alleged complaint and his termination, Plaintiff fails to make out a prima facie case for unlawful retaliation.⁵ We must therefore enter judgment in favor of Defendant on this claim. Defendant's Motion for Summary Judgment as to Plaintiff's claim of retaliation under the ADA is GRANTED.

C. Conclusion

Despite having many months to conduct discovery, Plaintiff has not produced one shred of evidence in this case beyond his own unsupported deposition testimony. This falls well short of what the Supreme Court has told us is required to survive the summary judgment stage. Plaintiff has produced no evidence that would allow a reasonable juror to find that he has established a prima facie case of either unlawful discrimination or unlawful retaliation. Accordingly, he has not created sufficient issues

⁵ As we did with Plaintiff's discrimination claim, we note that when he was terminated, Plaintiff was informed that he was being terminated for "refusing to do work by supervisor" and "theft and dishonesty." (D. Mot. Ex. Z). This would constitute a legitimate, nonretaliatory justification for the adverse action. Thus, even if Plaintiff could establish a prima facie case - and we reiterate that he has not even come close to doing so - Defendant has proffered a legitimate justification for its actions to which Plaintiff has not responded with any evidence showing that it is pretextual. Plaintiff's claim of unlawful retaliation would therefore fail at this stage of the *McDonnell-Douglas* burden shifting analysis as well.

of fact to survive summary judgment under the McDonnell Douglas burden shifting analysis and the standards for claims of unlawful discrimination and retaliation under the ADA and PHRA.

Defendant's Motion for Summary Judgment on those claims must therefore be GRANTED.

An order follows.

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

STEVE EVANS :
 :
 Plaintiff, : CIVIL ACTION
 :
 v. : No. 06-cv-2804
 :
 MAAX-KSD CORPORATION, :
 :
 Defendant. :

ORDER

AND NOW, this 25th day of January, 2008, upon consideration of Defendant's Motion for Summary Judgment (Doc. No. 31), and responses thereto, it is hereby ORDERED that the Motion is GRANTED. Judgment as a matter of law is ENTERED in favor of Defendant MAAX-KSD and all of Plaintiff's claims against Defendant MAAX-KSD are hereby DISMISSED.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.