

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

JOSEPH MCCANN, : CIVIL ACTION  
Plaintiff, :  
 : NO. 98-CV-1919  
v. :  
 :  
 :  
CATHOLIC HEALTH INITIATIVE :  
d/b/a FRANCISCAN HEALTH :  
SYSTEM/ ST. JOSEPH HOSPITAL :  
Defendant. :

**M E M O R A N D U M**

BUCKWALTER, J.

September 8, 1998

Plaintiff claims that Defendant, his former employer, violated the Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq. ("ADA") by refusing to allow him to return to work on a part-time basis after an extended medical leave. Presently before the court is Defendant's 12(b)(6) motion for dismissal for failure to state a claim. Plaintiff's complaint will be dismissed pursuant to Rule 12(b)(6), however, for reasons independent of those put forth by Defendant.

**I. Background**

Plaintiff, Joseph McCann ("McCann") was employed by Defendant, St. Joseph Hospital ("SJH") as a Primary Therapist. During the summer of 1995, McCann took leave of absence under the Family Medical Leave Act ("FMLA") to "deal with a serious medical

emergency." (Complaint at ¶ 12). On July 24, 1995 when his FMLA leave expired, McCann continued his leave "for medical reasons relating to [his] disability" under SJH's Accident/Illness Leave of Absence Policy which allowed him to remain out of work until August 15, 1995. (Id. at ¶ 12). While still on leave, he wrote to SJH asking for a "reasonable accommodation" -- that he be given a short extension and permitted to return on a part-time basis. McCann claims that SJH violated his rights under the ADA when it "rejected out-of-hand" his accommodation request; terminated him on or about September 20, 1995 and replaced him with a less qualified non-disabled individual. (Complaint at ¶'s 11, 14, 15, 17, and 20).

## **II. Legal Standard**

In deciding to dismiss a claim pursuant to Rule 12(b)(6) a court must consider the legal sufficiency of the complaint and dismissal is appropriate only if it is clear that "beyond a doubt . . . the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The court assumes the truth of plaintiff's allegations, and draws all favorable inferences therefrom, however, conclusory allegations that fail to give a defendant notice of the material elements of a claim are insufficient. See Sterling v. SEPTA, 897 F.Supp. 893, 895 (E.D.Pa. 1995).

SJH, requests dismissal of McCann's complaint arguing that attendance is an essential function of McCann's job therefore his prolonged absence disqualified him, as a matter of law, from being considered a "qualified individual" entitled to protection under the ADA. I need not reach the merits of this argument as obvious and significant pleading deficiencies in McCann's complaint, not noted by SJH, independently dictate dismissal.

**III. Discussion**

Title I of the ADA prohibits discrimination by certain private employers against qualified individuals with disabilities, because of such disabilities, in the terms, conditions and privileges of employment. 42 U.S.C. § 12112. Under the Act "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 impairment.

Id. at § 12102. A qualified individual with a disability is defined as an individual who, "with or without reasonable accommodation, can perform essential functions of the employment position that such individual holds or desires." Id. at § 12111(8).

Thus, in order to state an ADA claim McCann must at least allege that he is a qualified individual suffering from a

disability and was terminated because of his disability. Yet his complaint is devoid of these essentials. The court and presumably the defendant, although they don't complain of it, is at a loss as to the actual nature and extent of McCann's claimed disability. His allegations in this regard, which are few, are only conclusory and nebulous generalizations. The court is left to wonder what "serious medical emergency" triggered his initial need to leave under the FMLA and what "medical reasons relating to his disability" required extension of such leave. Nothing in the record provides further insight. Although he attaches the EEOC's right to sue letter, as he must to establish federal jurisdiction, McCann has not attached a copy of his EEOC complaint which might provide the court with some inkling as to his predicament. Furthermore, absent are any allegations relating to McCann's qualifications. Paragraph 18 of his complaint merely states "[a]t the time of his termination, Plaintiff was a fully-qualified employee who was able to perform the essential functions of his position had he been provided with the requested reasonable accommodation from Defendant."

The court is well aware of Federal Rule 8(a)(2)'s directive that a complaint need only consist of a "short plain statement of the claim showing that the pleader is entitled to relief", yet notice pleading does not alleviate the need for some allegations of material fact. See e.g., Abbasi v. Hertzfeld &

Rubin, P.C., 863 F.Supp. 144 (S.D.N.Y. 1994)(dismissing complaint for failure to plead nature and extent of disability); see also Super v. Price Waterhouse, Civ. A. No. 94-7466, 1995 WL 498773 (S.D.N.Y. Aug. 22, 1995)(striking ADA allegations from complaint because plaintiff failed to identify her disability). Simply restating the language of the statute is not enough. With no description of his disability or his qualifications, McCann's complaint fails to state a claim under the ADA and therefore must be dismissed. An appropriate order follows.

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O R D E R

AND NOW on this 8th day of September 1998, upon consideration of Defendant's motion to dismiss (Dkt. No. 3); Plaintiff's response (Dkt. No. 7) and Defendant's undocketed letter reply, it is hereby ordered that the motion is **GRANTED**; Plaintiff's complaint is **DISMISSED, without prejudice**, and Plaintiff may within 10 days from the date of this Order file an amended complaint in accordance with the accompanying Memorandum.

BY THE COURT:

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RONALD L. BUCKWALTER, J.