

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

CAROL SHANNON : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA : NO. 98-5277

MEMORANDUM AND ORDER

BECHTLE, J.

NOVEMBER , 1999

Presently before the court is defendant the City of Philadelphia's ("the City") motion for summary judgment and plaintiff Carol Shannon's ("Shannon") response thereto. For the reasons set forth below, the court will deny the motion.

I. BACKGROUND

Shannon filed the instant action seeking relief under the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101-12213, the Family Medical Leave Act of 1993 ("FMLA"), 29 U.S.C. §§ 2601-2654 and the Pennsylvania Human Relations Act ("PHRA"), Pa. Stat. Ann. tit. 43, §§ 951-63.¹

Shannon was hired by the City of Philadelphia in 1987. By 1994, she was working as a data support clerk in the Homicide Unit of the District Attorney's Office. On June 10, 1994, Shannon was admitted to the Crises Center at Fitzgerald Mercy Hospital where she was diagnosed with major depression. Shannon

¹ The court has jurisdiction over Shannon's ADA and FMLA claims pursuant to 28 U.S.C. § 1331. The court has jurisdiction over Shannon's PHRA claim pursuant to 28 U.S.C. § 1367.

applied to the City for twelve weeks leave from work under the FMLA. The City granted this leave from June 10 to September 1, 1994. (Def.'s Mot. for Summ. J. at 3.) In August 1994, Shannon requested an additional unpaid leave of absence from September 2 to December 6, 1994. (Compl. ¶ 15.) The City denied this request and instructed Shannon to return to work on September 2, 1994. Shannon again requested leave and supported her request with a letter from her physician which stated that Shannon would be able to return to work in three to six months. (Compl. ¶¶ 18-19.) The City denied this request as well, and informed Shannon that her employment with the District Attorney's Office was terminated. (Compl. ¶¶ 20-21.)

Shannon filed a claim with the Equal Employment Opportunity Commission ("EEOC") and received a Right to Sue letter on July 6, 1998. On October 4, 1998, Shannon filed the instant action alleging claims under the FMLA, the PHRA and the ADA.² The City filed a motion for summary judgment on the ADA claim on April 26,

² By order dated March 5, 1999, the court dismissed Shannon's FMLA claim because she had not alleged a violation until after the applicable statute of limitations period had expired. See 29 U.S.C. § 2617(c)(1)(stating that ordinarily statute of limitations under FMLA is two years). By the same order, Shannon's PHRA claim was dismissed without prejudice because she failed to plead that she had exhausted her administrative remedies under the PHRA before instituting an action in this court. See Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir. 1997)(recognizing that plaintiff may not seek judicial remedies under PHRA unless administrative complaint is filed with Pennsylvania Human Relations Commission within 180 days of alleged act of discrimination)(citation omitted). Subsequently, on March 25, 1999, Shannon filed an amended complaint alleging that she had exhausted her administrative remedies under the PHRA.

1999. Shannon filed a reply on October 12, 1999.³ For the reasons set forth below, the City of Philadelphia's motion for summary judgment on Shannon's ADA claim will be denied.

II. LEGAL STANDARD

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A factual dispute is material only if it might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Whether a genuine issue of material fact is presented will be determined by asking if "a reasonable jury could return a verdict for the non-moving party." Id. In considering a motion for summary judgment, "[i]nferences should be drawn in the light most favorable to the non-moving party, and where the non-moving party's evidence contradicts the movant's, then the non-movant's must be taken as true." Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992) (citation omitted).

³ The City filed a motion to supplement its motion for summary judgment on October 8, 1999, and a surreply in further support of its motion for summary judgment on November 16, 1999. For purposes of this memorandum, the City's supplement and surreply to its motion for summary judgment are incorporated into the City's motion for summary judgment.

III. DISCUSSION

The ADA prohibits employers from discriminating against "qualified individual[s] with a disability." 42 U.S.C. § 12112(a). The City asserts that it is entitled to judgment as a matter of law on Shannon's ADA claim because Shannon has not established the first two elements of a prima facie case. To establish a prima facie case under the ADA, a plaintiff must prove that (1) she is disabled within the meaning of the ADA; (2) she is qualified, with or without reasonable accommodation, to perform the job she held or sought; and (3) she was terminated or discriminated against because of her disability. See Deane v. Pocono Medical Center, 142 F.3d 138, 142 (3d Cir. 1998) (citing Gaul v. Lucent Techs., Inc., 134 F.3d 576, 580 (3d Cir. 1998)). The City contends that Shannon is not "disabled" pursuant to the ADA because her alleged disability was of limited duration. The City also argues that Shannon was not a "qualified individual" because she could not attend work and because granting additional leave time would have constituted an undue hardship for the City. The court will address each argument separately.

A. Did Shannon Suffer from a Disability?

The City contends that Shannon was not disabled. (Def.'s Supp. to Mot. for Summ. J. at 3-4.) Under the ADA, the definition of "disability" is divided into three parts. 42 U.S.C. § 12102(2). An individual must satisfy at least one of these parts in order to be considered an individual with a disability. Id. The term "disability" is defined as:

- (A) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.

42 U.S.C. §12102(2)(A)-(C); 29 C.F.R. § 1630.2(g)(1)-(3).⁴

Shannon asserts that she is disabled under the first part of the statutory definition.⁵ (Pl.'s Reply to Def.'s Mot. for Summ. J. at unnumbered p. 4.) Shannon was diagnosed with major depression on June 10, 1994. She alleges that this depression substantially limited her ability to work, and thus constitutes a disability under the ADA.

The ADA defines disability to include "mental impairment[s]." 42 U.S.C. § 12102(2)(A)(defining disability as "physical or mental impairment"). Under the Regulations implementing Title I of the ADA, impairments encompass "any mental or psychological disorder, such as . . . emotional or mental illness." 29 C.F.R. § 1630.2(h)(2). Therefore,

⁴ Because the ADA does not define many of the pertinent terms, the court is guided by the Regulations issued by the Equal Employment Opportunity Commission ("EEOC") to implement Title I of the Act. See 42 U.S.C. § 12116 (requiring EEOC to implement said Regulations); 29 C.F.R. § 1630.2. Regulations such as these are entitled to substantial deference. See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844 (1984); Blum v. Bacon, 457 U.S. 132, 141 (1982); Helen L. v. DiDario, 46 F.3d 325, 331-32 (3d Cir. 1995).

⁵ Shannon also alleges that her disability satisfies both the second and third parts of the statutory definition. (Pl.'s Reply to Def.'s Mot. for Summ. J. at unnumbered p. 4.)

depression and other mental illnesses may qualify as impairments for purposes of the ADA. See, e.g., Pritchard v. Southern Co. Servs., 92 F.3d 1130, 1132 (11th Cir. 1996), amended on reh'g, 102 F.3d 1118 (11th Cir. 1996)(stating that depression has been held to constitute mental impairment); Duda v. Board of Educ., 133 F.3d 1054, 1059 (7th Cir. 1998)(recognizing manic depression as disability under ADA); Den Hartog v. Wasatch Academy, 129 F.3d 1076, 1081 (10th Cir. 1997)(recognizing bipolar disorder as mental disability covered under ADA); Doe v. Region 13 Mental Health--Mental Retardation Comm'n, 704 F.2d 1402, 1408 (5th Cir. 1983)(recognizing depression as handicap under section 504 of Rehabilitation Act of 1973)⁶; Olson v. General Elec. Astrospace, 966 F. Supp. 312, 316 (D.N.J. 1997)(recognizing depression as disability under ADA); Stradley v. Lafourche Communications, Inc., 869 F.Supp. 442, 443 (E.D. La. 1994)(same).

Determining whether an impairment exists is only the first step in determining whether an individual is disabled. To meet the level of a disability, the impairment must "substantially limit[]" one of the individual's major life activities. 42 U.S.C. § 12102(2)(A); 29 C.F.R. § 1630.2(g)(1). "Major life activities" are defined to include "those basic activities that the average person in the general population can perform with little or no difficulty." 29 C.F.R. § 1630.2(i) app. They

⁶ Doe involved the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., but Congress intended for courts to rely on Rehabilitation Act cases when interpreting similar language in the ADA. 29 C.F.R. § 1630.2(g) & (m) app.

include "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i). Shannon asserts that her depression substantially limited her ability to work. (Pl.'s Reply to Def.'s Mot. for Summ. J. at unnumbered p. 3.)

The ability to work is clearly a major life activity. Nonetheless, for Shannon's impairment to rise to the level of a disability, her ability to work must be substantially limited by her condition.⁷ See Sarko v. Penn-Del Directory Co., 968 F. Supp. 1026 (E.D. Pa. 1997)(stating that depression did not

⁷ With regard to "working," the inability to perform a single, particular job does not constitute a substantial limitation. 29 C.F.R. § 1630.2(j)(3)(i); Gordon v. E.L. Hamm & Assoc., Inc., 100 F.3d 907, 912 (11th Cir. 1996); Imler v. Hollidaysburg Am. Legion Ambulance Serv., 731 A.2d 169 (Pa. Super. Ct. 1999). Rather, the term "substantially limits" means that the plaintiff is 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 having comparable training, skills and abilities. 29 C.F.R. § 1630.2(j)(3)(i). In this case, the City initially asserted that "the evidence . . . indicates that [Shannon] was . . . unable to perform any work at all." (Def.'s Mot. for Summ. J. at 7 & Ex. 4.) In its supplement to its motion for summary judgment, however, the City argues that despite the fact that Shannon was unable to work as a data services support clerk, she failed to establish that she could not perform "a broader class of potential jobs for a person with her skills and training." (Def.'s Supp. to Mot. for Summ. J. at 10.) The City also contends that because Shannon began looking for work in October 1994, approximately one month after her request for extended medical leave was denied, she cannot establish that she was substantially limited in her ability to work. Id. at 11. It is not disputed that Shannon's ability to work was limited "from June 1994 until October 1994." Id. at 8. Further, Shannon's physician certified that she was "not able to perform work of any kind." (Def.'s Mot. for Summ. J. at 3.) Viewing the evidence in the light most favorable to Shannon, the court finds that a reasonable jury could conclude that Shannon was substantially limited in her ability to work.

constitute substantial impairment where depression and medication individual took to treat it interfered only with her ability to get to work on time).

The term "substantially limits" is not defined by statute. However, under the regulations implementing the ADA, an impairment is considered substantially limiting when the individual is "unable to perform a major life activity that the average person in the general population can perform" or when the impairment "significantly restricts the duration, manner or condition under which an individual can perform a particular major life activity as compared to the average person in the general population's ability to perform that same major life activity." 29 C.F.R. § 1630.2(j)(2) app.; Aldrich v. Boeing Co., 146 F.3d 1265, 1269 (10th Cir. 1998)(quoting 29 C.F.R. § 1630.2(j)(1)). The EEOC guidelines identify several factors to assist in the determination of whether a particular impairment is of such severity that it comes within the protection intended by the ADA. Factors the court may consider in determining whether an individual is substantially limited in a major life activity include (i) the nature and severity of the impairment; (ii) the expected duration of the impairment; and (iii) the permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment. 29 C.F.R. § 1630.2(j)(2) (listing factors); Criado v. IBM, 145 F.3d 437, 442 (1st Cir.

1998)(same); Aldrich, 146 F.3d at 1269-70 (same).⁸

The City views Shannon's depression as a temporary mental condition that cannot qualify as a disability under the ADA because it was not long-standing or permanent. (Def.'s Supp. to Mot. for Summ. J. at 3-4.) If Shannon's impairment were a temporary injury with minimal residual effects, it would not be the basis for a sustainable claim under the ADA. See McDonald v. Commonwealth of Pennsylvania, Dep't of Pub. Welfare, Polk Ctr., 62 F.3d 92, 95 (3d Cir. 1995)(finding no disability for purposes of ADA where plaintiff was not able to work for less than two months following surgery); Sanders v. Arneson Prods., Inc., 91 F.3d 1351, 1354 (9th Cir. 1996) (finding that temporary psychological impairment of less than four months was not disability under ADA); Blanton v. Winston Printing Co., 868 F. Supp. 804, 807 (M.D.N.C. 1994)(stating that knee injury which

⁸ In addition to the factors listed in 29 C.F.R. § 1630.2(j)(2), the following factors may also be considered in determining whether an individual is substantially limited in the major life activity of "working":

(A) [t]he geographical area to which the individual has reasonable access; (B) [t]he job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or (C) [t]he job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

29 C.F.R. § 1630.2(j)(3)(ii).

prevented plaintiff from working for matter of days was not disability under ADA); Imler, 731 A.2d at 174 (stating that plaintiffs do not suffer disability under ADA when injury is of temporary nature). Thus, it is clear that "temporary, non-chronic impairments of short duration, with little or no long term or permanent impact are usually not disabilities" under the ADA. Aldrich, 146 F.3d at 1270 (citing 29 C.F.R. §1630.2(j) app.) (alteration in original). By way of illustration, the EEOC's interpretive guidance in the appendix to the regulation points out that a broken leg that takes eight weeks to heal is an impairment of fairly brief duration. 29 C.F.R. § 1630.2(j) app. Similarly, broken limbs, sprained joints, concussions, appendicitis and influenza are not usually disabilities. Id.

Nonetheless, "[a]n impairment does not necessarily have to be permanent to rise to the level of a disability. Some conditions may be long-term, or potentially long-term, in that their duration is indefinite and unknowable or is expected to be at least several months. Such conditions, if severe, may constitute disabilities." Aldrich, 146 F.3d at 1270 (citing EEOC, Interpretive Manual (1995), reprinted in 2 EEOC Compliance Manual § 902.4(d), at 902-30 (BNA 1997)). In Aldrich, the Tenth Circuit determined that a jury could find that the plaintiff suffered a substantially limiting impairment where the duration of his condition was "indefinite, unknowable, or was expected to be at least several months." Aldrich, 146 F.3d at 1270.

The court finds that Shannon has presented evidence that a

genuine issue of material fact exists as to whether her impairment rose to the level of a disability under the ADA. The record shows that although Shannon was not diagnosed with depression until June 1994, she began suffering from it in January 1994. (Def.'s Supp. to Mot. for Summ. J. Ex. 3.) The major depressive episode Shannon experienced in June 1994 left her hospitalized for twelve days. (Pl.'s Reply to Def.'s Request for Production of Docs. at unnumbered p. 17.) This episode required an extended leave of absence during which Shannon was unable to work. (Def.'s Mot. for Summ. J. at 7 & Ex. 3.) Examining the evidence under the standard required, the court finds that a reasonable jury could return a verdict for Shannon. The record contains sufficient evidence to present a genuine issue of fact as to whether Shannon was "disabled" under the ADA. Accordingly, the court will deny the City's motion for summary judgment on this ground.

B. Was Shannon a "Qualified Individual"?

The City's second argument is that Shannon was not a "qualified individual" as defined by the ADA. The City asserts that Shannon was not qualified because she was not able to attend work for an extended period of time. Further, the City contends that granting Shannon extended leave would have constituted an undue hardship rather than a reasonable accommodation.

Under the ADA, "a qualified individual with a disability" is a person "who, with or without reasonable accommodation, can perform the essential functions of the employment position that

such individual holds or desires." 42 U.S.C. § 12111(8). Thus, to be a "qualified individual" under the ADA, Shannon must have been able to perform the essential functions of her job with the City, with or without a reasonable accommodation. The determination of whether an individual with a disability is "qualified" is made in two steps. 29 C.F.R. § 1630.2(m) app. First, a determination is made as to whether the individual satisfies the prerequisites for the position. Id. Second, a determination is made as to whether or not the individual can perform the essential functions of the position, with or without a reasonable accommodation. Id.

In this case, Shannon began working for the City in 1987 as a clerk typist. By the time Shannon suffered her impairment, she had been promoted to and was performing as a data support services clerk. (Def.'s Supp. to Mot. for Summ. J. at 8 n.5 & Ex. 9; Pl.'s Ans. to Def.'s Interrogatories at ¶ 4.) The City does not claim that Shannon was not qualified for her promotion or that she did not satisfy the prerequisites for that position. Rather, the City asserts that because Shannon's physician indicated that she would not be able to return to work for three to six months beyond the leave period granted under the FMLA, Shannon was not qualified to perform the essential function of attending work. (Def.'s Mot. for Summ. J. at 7-8.)

1. Essential Functions

Under the ADA, "essential functions" are defined to include the "fundamental job duties" of a particular position. 29 C.F.R.

§ 1630.2(n)(1). Evidence of whether a certain function is "essential" includes, among other things: the employer's judgment as to what functions of a job are essential; the amount of time spent on the job performing the particular function; the consequences of not requiring the job holder to perform the function; and the number of other employees available among whom the performance of a particular function may be distributed. 42 U.S.C. § 12111(8)(listing factors); 29 C.F.R. § 1630.2(n)(3) (same); Imler, 731 A.2d at 173 (same); see also Strathie v. Department of Transp., 716 F.2d 227, 231 (3d Cir. 1983) (interpreting analogous Rehabilitation Act). Whether or not a particular function is essential is a factual determination made on a "case by case" basis. 29 C.F.R. 1630.2(n) app.

For most jobs, regular attendance at work is an essential function. See, e.g., Carr v. Reno, 23 F.3d 525, 529-30 (D.C. Cir. 1994)(construing Rehabilitation Act); Jackson v. Veterans Admin., 22 F.3d 277, 278-79 (11th Cir. 1994)(same). However, where a leave from work is at issue, whether attendance is an essential function of a particular job is "not the relevant inquiry." Rascon v. U.S. West Communications, Inc., 143 F.3d 1324, 1333 (10th Cir. 1998). In Rascon, the Tenth Circuit stated that when leave was at issue, "the question of whether attendance is an essential function is equivalent to the question of what kind of leave policy the company has." Id. The record in this case shows that the applicable Civil Service Regulations stipulate that extended medical leave is not to exceed one year,

but that extra time may be granted for "meritorious" reasons. (Shannon Dep. at 9; Pl.'s Reply to Def.'s Mot. to Dismiss Ex. B at 2.) Further, Shannon asserts that the City granted extended leave following FMLA leave to two other employees during the same period in which her request was denied. (Pl.'s Reply to Def.'s Mot. for Summ. J. at unnumbered p.6.)

Additionally, a number of courts have recognized that leave of absence for medical treatment may constitute a reasonable accommodation under the ADA. See Criado v. IBM Corp., 145 F.3d 437 (stating that leave may constitute reasonable accommodation); Cehrs v. Northeast Ohio Alzheimer's Research Ctr., 155 F.3d 775, 782 (6th Cir. 1998)(citing Criado); Rascon v. U.S. West Communications, Inc., 143 F.3d 1324, 1334 (10th Cir. 1998) (stating that "time for medical care or treatment may constitute a reasonable accommodation"); Dockery v. North Shore Med. Ctr., 909 F.Supp. 1550, 1560 (S.D. Fla. 1995)(recognizing that unpaid leave may constitute reasonable accommodation); Schmidt v. Safeway, Inc., 864 F. Supp. 991, 996 (D. Or. 1994)(reasonable accommodation may include leave of absence for treatment). The EEOC interpretive guidance to the ADA states that a reasonable accommodation could include "additional unpaid leave for necessary medical treatment." 29 C.F.R. § 1630.2(o) app. Likewise, Department of Labor regulations announce that a reasonable accommodation may require an employer "to grant liberal time off or leave without pay when paid sick leave is exhausted and when the disability is of a nature that it is

likely to respond to treatment of hospitalization." 29 C.F.R. pt. 32, app. A(b).⁹ A leave for an "indefinite" period of time, however, is not a reasonable accommodation, particularly where the employee presents no evidence of the expected duration of the impairment and no indication of a favorable prognosis. See, e.g., Myers v. Hose, 50 F.3d 278, 283 (4th Cir. 1995)(stating that reasonable accommodation does not require employer to wait indefinite period); Rogers v. International Marine Terminals, Inc., 87 F.3d 755, 759-60 (5th Cir. 1996)(same); Hudson v. MCI Telecommunications Corp., 87 F.3d 1167, 1169 (10th Cir. 1996)(stating that indefinite leave with no indication of favorable prognosis was not reasonable accommodation); Monette v. Electronic Data Sys. Corp., 90 F.3d 1173, 1188 (6th Cir. 1996)(observing that employer had no way of knowing when, or even

⁹ The term "reasonable accommodation" is open-ended: the statutes and regulations offer examples, but caution that the term is not limited to those examples. 42 U.S.C. § 12111(9); 29 C.F.R. § 1630.2(o); 29 C.F.R. § 1630.2(o) app. For example, the ADA lists a number of other "reasonable accommodations" that may enable the individual with a disability to perform the essential functions of his or her job, including:

(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 a vacant position, acquisition or modification of equipment or devices, appropriate adjustment 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).

if, employee would return to work).

Whether a leave request is reasonable turns on the facts of the case. Criado, 145 F.3d at 443 (recognizing that "[a] leave of absence and leave extensions are reasonable accommodations in some circumstances"). Courts have held that a leave of five months for medical treatment was a reasonable accommodation. Rascon, 143 F.3d at 1334-35 (stating that five month leave of absence to attend treatment program was reasonable accommodation). Further, reasonable accommodation is a "continuing" duty and is not exhausted by one effort. See Ralph v. Lucent Tech., Inc., 135 F.3d 166, 172 (1st Cir. 1998)(finding that employer may be required to grant additional accommodations beyond 52-week leave with pay for employee who suffered mental breakdown). In this case, Shannon requested an additional three months of unpaid leave for medical treatment following twelve weeks of FMLA leave. Shannon's physician was "hopeful" that Shannon's symptoms would "resolve nearly entirely" within a year and he opined that she would be "fully fit" to return to work in three to six months. (Compl. ¶ 19; Def.'s Mot. for Summ. J. Ex. 6.) Viewing the evidence in the light most favorable to Shannon, the court finds that a reasonable jury could conclude that Shannon's request for an additional three months of unpaid leave for medical treatment was a reasonable accommodation. Thus, the court will deny the City's motion for summary judgment on this ground.

2. Undue Hardship

The City asserts that granting Shannon an additional three months of unpaid leave beyond the twelve weeks leave it granted Shannon pursuant to the FMLA would have constituted an undue hardship rather than a reasonable accommodation for Shannon's disability.¹⁰ An employer is not required to provide an accommodation that is unreasonable or would impose an "undue hardship." 42 U.S.C. § 12112(b)(5)(A). "Undue hardship" means an action that requires "significant difficulty or expense" when considered in light of the following factors:

- (i) the nature and cost of the accommodation needed . . .;
- (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

¹⁰ As to the issue of whether a particular accommodation is reasonable or an undue hardship, the plaintiff bears only the burden of identifying an accommodation, the costs of which, facially, do not clearly exceed its benefits. Walton v. Mental Health Ass'n, 168 F.3d 661, 670 (3d Cir. 1999). Following such a showing by the plaintiff, the burden shifts to the defendant to prove that the accommodation is unreasonable or that it creates an undue hardship. Id.

42 U.S.C. § 12111(10).

Shannon asserts that granting additional unpaid leave time would have been a reasonable accommodation. In support of this assertion, Shannon points out that her duties as a data support clerk were assumed by another City employee who was transferred from another unit. (Pl.'s Reply to Def.'s Mot. for Summ. J. at unnumbered p.4.) Shannon further contends that the City granted extended leave to two other individuals during the same year that she was denied extended leave. (Pl.'s Reply to Def.'s Mot. for Summ. J. at unnumbered p.4.) The City responds that an employer is not obligated to provide identical accommodations for all employees. See Myers v. Hose, 50 F.3d 278 (4th Cir. 1995) (stating that "the fact that certain accommodations may have been offered . . . to some employees . . . does not mean that they must be extended to [other employees] as a matter of law"). The City acknowledges that Shannon's position was assumed by another City employee during her initial leave of absence, however, the City alleges that granting Shannon an additional three months leave would have imposed an undue hardship because of the difficulties in hiring a temporary worker. (Def.'s Mot. for Summ. J. at 16.) The court finds that a genuine issue of fact exists as to whether an extended leave of absence would have been reasonable for the City under the circumstances. Thus, the court will deny the City's motion for summary judgment on this ground.

In short, there remain several material issues of fact for

trial, including whether Shannon was disabled under the ADA, whether Shannon was qualified to perform her job with an accommodation, and if so, whether the leave time she requested was a reasonable accommodation or an undue hardship for the City. Accordingly, the court will deny the City's motion for summary judgment on Shannon's ADA claim.

IV. CONCLUSION

For the reasons set forth above, the City's motion for summary judgment will be denied.

An appropriate Order follows.

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

CAROL SHANNON : CIVIL ACTION
v. :
CITY OF PHILADELPHIA : NO. 98-5277

ORDER

AND NOW, TO WIT, this day of November, 1999, upon consideration of defendant the City of Philadelphia's motion for leave to supplement and motion to surreply to the City of Philadelphia's motion for summary judgment, it is hereby ORDERED that said motions are GRANTED. The City's supplement and surreply to its motion for summary judgment are hereby incorporated into the City of Philadelphia's motion for summary judgment.

IT IS FURTHER ORDERED that upon consideration of defendant the City of Philadelphia's motion for summary judgment and plaintiff Carol Shannon's response thereto, IT IS ORDERED that said motion is DENIED.

LOUIS C. BECHTLE, J.