



disabled him, his termination was therefore in violation of the ADA.

### Standards for Summary Judgment Motions

The standards to be applied by the district courts in ruling on motions for summary judgment are set forth in Fed.R.Civ.P. 56. Under subsection (c) of that rule,

....The judgment sought shall be rendered forthwith 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 a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Pursuant to this rule, a court is compelled to look beyond the bare allegations of the pleadings to determine if they have sufficient factual support to warrant their consideration at trial. Liberty Lobby, Inc. v. Dow Jones & Co., 838 F.2d 1287 (D.C.Cir. 1988), cert. denied, 488 U.S. 825, 109 S.Ct. 75, 102 L.Ed.2d 51 (1988); Aries Realty, Inc. v. AGS Columbia Associates, 751 F.Supp. 444 (S.D.N.Y. 1990).

Generally, the party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits, which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). In considering a summary judgment motion, the court must view the facts in the light most favorable to the non-moving party and all reasonable inferences from the facts must be drawn in favor of that party as well. U.S. v. Kensington

Hospital, 760 F.Supp. 1120 (E.D.Pa. 1991); Schillachi v. Flying Dutchman Motorcycle Club, 751 F.Supp. 1169 (E.D.Pa. 1990).

Where, however, "a motion for summary judgment is made and supported [by affidavits or otherwise], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response...must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against [it]." Fed.R.Civ.P. 56(e). The non-moving party must raise "more than a mere scintilla of evidence in its favor" in order to overcome a summary judgment motion and it cannot rely on unsupported assertions, conclusory allegations, or mere suspicions or beliefs in attempting to survive such a motion. Tziatzios v. U.S., 164 F.R.D. 410, 411, 412 (E.D.Pa. 1996) citing Celotex v. Catrett, *supra*, 477 U.S. at 325, 106 S.Ct. at 2553-54, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S.Ct. 2505, 2510-11; Williams v. Borough of West Chester, 891 F.2d 458, 460 (3rd Cir. 1989).

### **Discussion**

The Americans with Disabilities Act prohibits certain employers from discriminating against individuals on the basis of their disabilities. Sutton v. United Air Lines, Inc., \_\_\_ U.S. \_\_\_ 119 S.Ct. 2139, 2143 (1999). The core anti-discrimination section of the ADA provides that:

No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

Deane v. Pocono Medical Center, 142 F.3d 138, 142 (3<sup>rd</sup> Cir. 1998); 42 U.S.C. §12112(a). Under the Definitions section of the

Act, a "covered entity means an employer, employment agency, labor organization, or joint labor-management committee." 42 U.S.C. §12111(2). A "qualified person with a disability," in turn, is defined as "...an individual 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).

In light of the preceding definitions, the Courts have held that disability discrimination cases, like other types of employment discrimination, are to be analyzed under the burden shifting framework first articulated in McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). To establish a prima facie case of discrimination under the ADA, the plaintiff must therefore show three elements: (1) that he is a disabled person within the meaning of the ADA; (2) that he is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and (3) that he has suffered an otherwise adverse employment decision as a result of discrimination. Taylor v. Phoenixville School District, 184 F.3d 296, 306 (3<sup>rd</sup> Cir. 1999); Gaul v. Lucent Technologies, Inc., 134 F.3d 576, 580 (3<sup>rd</sup> Cir. 1998).

Turning to the first prong of the prima facie case, we must initially determine whether or not Mr. Willmore is a disabled person within the meaning of the ADA. Under 42 U.S.C. §12102(2), "a 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 an impairment; or

(C) being regarded as having such an impairment.

The EEOC's regulations define "substantially limits" as "(i) Unable to perform a major life activity that the average person in the general population can perform; or (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform that same major life activity." Taylor v. Phoenixville, 184 F.3d at 307, citing 29 C.F.R. §1630.2(j)(1). The regulations also include the following factors for evaluating when someone is substantially limited in a major life activity: "(i) the nature and severity of the impairment; (ii) the duration or 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." Id., citing 29 C.F.R. §1630.2(j)(2). Thus the determination whether a person has a disability under the ADA is clearly an individualized inquiry. See: Sutton, 119 S.Ct. at 2147.