


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
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EQUAL OPPORTUNITY §
EMPLOYMENT COMMISSION, §
Plaintiff §
v. §
WESTLODGE HOSPITALITY, INC. §
d/b/a EL PASO TRAVELODGE-CITY §
CENTER, WW LODGING LIMITED, §
L.L.C. d/b/a EL PASO TRAVELODGE- §
CITY CENTER, §
Defendants §

EP-00-CA-297-DB

MEMORANDUM OPINION AND
ORDER DENYING SUMMARY JUDGMENT

On this day, the Court considered the Motion for Summary Judgment, filed in the above-captioned cause on August 15, 2001, by Defendants Westlodge Hospitality, Inc. d/b/a El Paso Travelodge-City Center, WW Lodging Limited, L.L.C. d/b/a El Paso Travelodge-City Center. Plaintiff Equal Employment Opportunity Commission filed a Response to Defendants' Motion on August 31, 2001. On September 7, 2001, Defendants filed a Reply to Plaintiff's Response.

After due consideration, the Court is of the opinion that Defendants' Motion for Summary Judgment should be denied, as set forth below.

BACKGROUND

Plaintiff filed this action based on a Charge of Discrimination filed with Plaintiff on November 20, 1998, by Carlos Sanchez ("Sanchez"), alleging employment discrimination by Defendants because of his disability in violation of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101-12213. Sanchez suffers from spina bifida, resulting in permanent paralysis of his lower extremities and confinement to a wheelchair.

In October 1998, Sanchez applied for employment with Defendants as a hotel night auditor/desk clerk, responsible for maintenance of financial records and for general operation of the hotel from 11:00 P.M. to 7:00 A.M. Mary Perkins (“Perkins”), Manager of the hotel, acting on behalf of Defendants, interviewed Sanchez and hired him for the position. Sanchez began work on the night of October 17, 1998, supervised by Mario Hidalgo (“Hidalgo”), Assistant Manager. The following day, Hidalgo reported to Perkins that Sanchez was not qualified for the position and that it would take too long to train Sanchez to work as the night auditor. That night, when Sanchez reported for work, Hidalgo communicated to him that he was no longer employed by the hotel. The next day, Sanchez and Perkins discussed the termination. Perkins informed Sanchez that she was concerned about his qualifications for the job.

Sanchez alleges that Perkins initially informed him that her decision to terminate him was based on his lack of qualifications for the job and her concern that his disability may hamper him in responding to potential events during his work shift. Specifically, Sanchez claims that Perkins told him that he lacked the necessary computer skills and work experience in the hotel industry. Sanchez also claims that Perkins told him that, because he is in a wheelchair, she was concerned about his ability to handle emergencies such as fires at the hotel or fights among guests. Plaintiff’s investigator, Arturo Carrion (“Carrion”), employed by the El Paso Area Office of the U.S. Equal Employment Opportunity Commission, asserts that Perkins shared these same concerns with him during the course of his investigation. Carrion adds that Perkins also stated that the hotel was in a high crime area and expressed fear for Sanchez because of his disability.

Perkins avers that her basis for terminating Sanchez was that Sanchez did not possess the necessary prerequisite skills and experience to properly perform the job for which he was hired, and that it would take too long to train him to perform his duties. Perkins asserts that

she arrived at this conclusion based on Hidalgo's report to her concerning Sanchez's performance during his first night on the job. Specifically, Hidalgo reported that Sanchez lacked familiarity with the computer keyboard and lacked knowledge of basic hotel operations. Hidalgo also told Perkins that training Sanchez would take up to a month. Perkins denies considering Sanchez's disability in her decision or making any statements to that effect to Sanchez or Carrion.

Sanchez claims that Perkins's concern about Sanchez's job qualifications were merely a pretext for an underlying discriminatory intent for the termination decision. That is, Sanchez claims that the real reason he was fired was because he is confined to a wheelchair. First, Sanchez insists that experience in the hotel industry was not a stated prerequisite for employment as night auditor/desk clerk. He adds that, even if such experience was a prerequisite, he had significant education in the field in lieu of experience and that Perkins was aware of his qualifications when she hired him for the position. Next, Sanchez denies any lack of familiarity with computer keyboards and maintains that he had significant experience operating personal computers since the mid-1980's, and that he had previously taken two computer classes. Finally, Sanchez refutes Defendants' claim that it would take a month to train him. In support, he argues that Hidalgo made no attempt to train him on the first night, thereby rendering Hidalgo's assessment unsupported by any appropriate observation.

Based on the above, Plaintiff commenced this lawsuit on September 28, 2000. The instant motion followed.

SUMMARY JUDGMENT STANDARD

Courts should grant summary judgment only when "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.” FED. R. CIV. P. 56(c). Summary judgment is not proper “if the evidence is such that a reasonable jury could return a verdict for the non-moving party.” *Anderson v. Liberty Lobby*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). The parties that move for summary judgment - the Defendants in this case - bear the initial burden of identifying those portions of the pleadings and discovery on file, together with any affidavit, which they believe demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). The party opposing a summary judgment motion that is supported by evidence must present affirmative evidence in order to defeat a properly supported motion for summary judgment. *Anderson*, 477 U.S. at 248-49. When making a summary judgment determination, courts review the evidence and draw inferences therefrom in a light most favorable to the non-movant. *McInnis v. Alamo Cmty. Coll. Dist.*, 207 F.3d 276, 279 (5th Cir. 2000). Substantive law identifies which facts are material. *Anderson*, 477 U.S. at 248. In this case, the substantive law includes the ADA and related case law.

DISABILITY DISCRIMINATION UNDER THE ADA

The ADA provides that no employer¹ “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.” 42 U.S.C.A. § 12112(a) (West 1995). Where circumstantial evidence is offered to show the alleged discrimination, as in this case, courts apply the *McDonnell Douglas*, Title VII burden-shifting analysis. *McInnis*, 207

¹ The ADA constrains only “covered entit[ies],” which is defined in 42 U.S.C. § 12111(2) as including an “employer.” Defendants do not dispute that they are “covered entit[ies]” within the meaning of the ADA.

F.3d at 279 (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973)). According to the analysis, “a plaintiff must first make a *prima facie* showing of discrimination by establishing that: (1) He is disabled or is regarded as disabled; (2) he is qualified for the job; (3) he was subjected to an adverse employment action on account of his disability; and (4) he was replaced by or treated less favorably than non-disabled employees.” *Id.* at 279-80. Once the plaintiff makes this showing, the burden shifts to the defendant to show a legitimate, non-discriminatory reason for the adverse employment action. *Id.* at 280. Once the defendant does so, the burden shifts back to the plaintiff to show that the reason claimed by the defendant as legitimate was merely a pretext for unlawful discrimination. *Id.* To find the defendant’s reason for the adverse employment action unlawfully discriminatory, the “circumstantial evidence must be such as to allow a rational factfinder to make a reasonable inference that [disability] was a determinative reason for the employment decision.” *Id.* at 282 (quoting *Rhodes v. Gulberson Oil Tools*, 75 F.3d 989, 994 (5th Cir. 1996) (en banc)).

DISCUSSION

Defendants contend that Plaintiff cannot succeed on its disability discrimination claim for two reasons. First, Defendants assert that Plaintiff cannot establish a *prima facie* case of discrimination, arguing that Plaintiff cannot show that Sanchez was qualified for the job or that he was fired because of his disability. In the alternative, Defendants argue that, even if Plaintiff establishes a *prima facie* case of discrimination, Plaintiff cannot meet its burden to show that Defendants’ legitimate reasons for their actions were, in reality, pretexts for a discriminatory intent.

A. Prima Facie Case of Discrimination

Defendants essentially argue that Plaintiff has failed to make a *prima facie* case of employment discrimination because it has failed to meet the second and third elements outlined in

the *McDonnell Douglas* burden-shifting analysis.² Their first argument, relating to the second element of the analysis which concerns Sanchez's job qualifications, is that Sanchez was "patently unqualified for the position of night auditor." In support of this position, Defendants point to Sanchez's lack of work experience in the hotel industry and to Hidalgo's report that Sanchez was "unfamiliar with the computer keyboard."

Plaintiff contends that Sanchez *was* qualified for the job, first pointing out that, although Sanchez had not worked in the hotel industry, he had extensive training in the field. Plaintiff argues that Perkins knew the extent of Sanchez's work experience and education when she hired him, and that Perkins, therefore, initially determined that he was qualified for the position. Plaintiff also points out that Sanchez spent many hours operating a personal computer over the past five years, along with having taken two computer courses. Plaintiff argues, therefore, that Defendants' assertion that Sanchez was unfamiliar with a computer keyboard is unfounded.

Defendants' next argument relates to the third element of the *McDonnell Douglas* analysis, concerning whether Sanchez was subjected to an adverse employment action because of his disability. Defendants assert that they had legitimate reasons for firing Sanchez that were not related to his disability. Specifically, Defendants point to Hidalgo's and Perkins's joint assessment that Sanchez lacked the necessary skills for the job and that it would take too much time to train him. Plaintiff refutes the validity of this assessment, arguing that Sanchez received no training on

² The Court notes that, in their Motion for Summary Judgment, Defendants list only the first three elements of the *McDonnell Douglas* analysis and argue only that Sanchez failed to meet elements (2) and (3). Accordingly, the Court finds Defendants to have no objections to Plaintiff's case based on elements (1) and (4).

the one night that he was employed and that, because of his education and existing skills, he could have learned the job within a reasonable time.

After reviewing the evidence presented by both Parties concerning Sanchez's job qualifications, the Court finds that there are significant issues of material fact as to whether Plaintiff has made a *prima facie* case of discrimination.

B. Legitimate, Non-discriminatory Reasons or Pretext?

Alternatively, relying on their position that Perkins's concerns about Sanchez's job qualifications constituted legitimate, non-discriminatory reasons for dismissing him, Defendants argue that there is no evidence that those reasons were pretexts for an underlying, discriminatory intent. Sanchez, however, claims that Perkins told him that her decision to fire him was based, not only on his job qualifications, but also on her concern that he would not be able to handle certain emergencies because of his disability. Plaintiff's investigator, Carrion, reported that Perkins made similar statements to him. Perkins, on the other hand, denies this allegation and denies having made such statements to Carrion.


Because intent is usually inferred from the surrounding circumstances, it is nearly always a fact issue. The evidence presents an issue for a jury if it "(1) creates a fact issue as to whether each of the employer's stated reasons was what actually motivated the employer and (2) creates a reasonable inference that [disability] was a determinative factor in the action of which plaintiff complains." *McInnis*, 207 F.3d at 282 (quoting *Rhodes v. Gulberson Oil Tools*, 75 F.3d 989, 994 (5th Cir. 1996)(en banc)) In this case, the Court has already found there to be fact issues concerning Sanchez's job qualifications and the validity of the reasons asserted by Defendants as legitimate bases for terminating Sanchez. Clearly, there is a disagreement as to what reasons Perkins actually stated to Sanchez and to Carrion. Under conditions such as these, a jury should be

given the opportunity to assess the credibility of those whose state of mind is at issue. *Croley v. Matson Navigation Co.*, 434 F.2d 73, 77 (5th Cir. 1970); 10B CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2730 (3d ed. 1998). Based on the factual uncertainty as to Sanchez's job qualifications and the disagreement over Perkins's statements, the Court finds that Defendants' intent and, therefore, whether the legitimate reasons stated for firing Sanchez were pretext for discriminatory reasons, remains a genuine issue of material fact. The Court finds that the evidence is sufficient to allow a jury to infer that Sanchez's disability was a determinative consideration in Perkins's decision to fire him. *McInnis*, 207 F.3d at 282.

Having considered the evidence and argument presented by Defendants and Plaintiff, the Court finds that there are numerous disputed issues of material fact. The Court is, therefore, of the opinion that summary judgment is not proper and should be denied.

Accordingly, **IT IS HEREBY ORDERED** that the Motion for Summary Judgment filed by Defendants Westlodge Hospitality, Inc. d/b/a El Paso Travelodge-City Center, WW Lodging Limited, L.L.C. d/b/a El Paso Travelodge-City Center is **DENIED**.

SIGNED this 2nd day of **October, 2001**.



THE HONORABLE DAVID BRIONES
UNITED STATES DISTRICT JUDGE