

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

FILED by EW D.C.  
SEP 27 2004  
CLARENCE MADDOX  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIAMI

Case No. 02-22913-CIV-GRAHAM/GARBER

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

CEDARS HEALTHCARE GROUP, LTD., d/b/a  
COLUMBIA CEDARS MEDICAL CENTER,

Defendants.

ORDER

**THIS CAUSE** comes before the Court upon the Defendant Cedars Healthcare Group, Ltd., d/b/a Cedars Medical Center Motion for Summary Judgment and Supporting Memorandum of Law (D.E. 63).

**THE COURT** has considered the motion, the pertinent portions of the record, and is otherwise fully advised in the premises.

INTRODUCTION

Plaintiff United States Equal Opportunity Commission ("EEOC") brings this action on behalf of Ms. Heather Rockcastle ("Rockcastle"), against Defendant Cedars Healthcare Group, Ltd., d/b/a Cedars Medical Center ("Cedars" or the "Hospital") alleging violations of Title I of the Americans With Disabilities Act of 1990 ("ADA"), 42 U.S.C.12115 and Title VII, 42 U.S.C. § 2000e of

132  
A

the Civil Rights Act of 1991.

**BACKGROUND**

Defendant Cedars is an acute care hospital located in Miami, Florida. At all relevant times, the Hospital has been owned by Defendant. Ms. Rockcastle is a registered nurse by profession and was employed at Cedars from 1995 through September 1997 as Nurse Manager. Ms. Rockcastle was employed on an at-will basis. Prior to working at Cedars, Ms. Rockcastle had undergone total hip replacement surgeries to both her right and left hips. Ms. Rockcastle asserts that physician restrictions placed upon her because of her hip condition rendered her disabled as defined under the ADA.

When Ms. Rockcastle commenced her employment at Cedars, she had recently undergone hip replacement surgery which limited her ability to walk for large amounts of time as well as her ability to lift, push or pull heavy objects. Plaintiff alleges that these restrictions were not actual physical limitations but were placed upon her by her doctors in order to protect and prolong the life of her hips. Additionally, there was an understanding between Cedars and Ms. Rockcastle that these temporary limitations would not prevent her from performing the duties of a Nurse Manger once she recovered from the hip surgery.

Ms. Rockcastle contends that she performed the duties and functions of her job without incident from the time she started in

1995 through termination of her employment. In November of 1996, she sought and took an extended medical leave of absence in order to have a revision done to her right hip. She returned to work 13 weeks later in February of 1997. Plaintiff contends that a complication arose post-surgery when her trochanter bone failed to unite and grow back together. This resulted in discomfort and pain to Ms. Rockcastle. In order to correct the non-united trochanter, Ms. Rockcastle underwent an additional surgery in June of 1997. She required, requested and received a second extended medical leave of absence for this surgery.

While Ms. Rockcastle was on leave, a decision at the Hospital was made to close one of the two orthopedic units that she was managing and to relocate another, the medicine unit, to the space adjacent to the remaining orthopedic unit. The Nurse Manager for the medicine unit took over as Nurse Manager for the Orthopedic Unit and Ms. Rockcastle's position was eliminated. On August 14, 1997, Ms. Rockcastle was informed of the decision. She was discharged and paid eight weeks severance pay effective September 1, 1997. Ms. Rockcastle then filed a charge of discrimination with the EEOC alleging that Cedars violated the ADA by failing to accommodate her hip problem, by refusing to provide her with a personalized motorized scooter, and, that the decision to consolidate her position with another was predicated upon disability discrimination.

Pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, Defendant Cedars filed a Motion for Summary Judgment along with a Memorandum of Law in Support of Its Motion for Summary Judgment. In its original Motion for Summary Judgment, Defendant argued that 1) Defendant is entitled to summary judgment on the failure to accommodate claim because Defendant was not required to provide Ms. Rockcastle with a personal assistive device; 2) Plaintiff cannot establish a prima facie case because Ms. Rockcastle was not "otherwise qualified" to perform the essential duties and functions of her job as Nurse Manager; 3) Defendant is entitled to summary judgment on Plaintiff's Claim for punitive damages under Kolstad v. American Dental Assoc., 527 U.S. 526, 119 S.Ct 2118 (1999); and 4) Plaintiff cannot rebut Cedars legitimate non-discriminatory reasons for its decisions.

On April 12, 2004, Defendant filed a Supplemental Memorandum in Support of its Motion for Summary Judgment and contends that 1) the Plaintiff is judicially estopped from asserting that the motorized scooter sought was anything other than a personal assistive device; and 2) the Defendant is entitled to summary judgment since the accommodation sought was not casually related to the disability at issue. Plaintiff's Response argues that 1) Defendant never engaged in the ADA's Interactive Process; 2) Defendant cannot change the job-related accommodation issue into a "personal item" by manipulating the doctrine of judicial

estoppel; and 3) the motorized scooter assistive device was requested to accommodate the disability at issue.

**SUMMARY JUDGMENT STANDARD**

Summary judgment may be granted when the evidence in the record establishes that there is no genuine issue of material 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). The moving party has the burden of production. See Adickes v. S.H.Kress & Co., 398 U.S. 144, 157, 90 S.Ct. 1598, 1608 (1970). When a moving party has met this burden by offering sufficient evidence to support the motion, the party opposing must then respond by attempting to establish the existence of a genuine issue of material fact. See

Adickes, 398 U.S. at 160, 90 S. Ct. at 1609-10.

In making its determination, the Court must decide which issues are material. The Supreme Court has stated that “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” Anderson v. Liberty Lobby, Inc., 477 U.S.

242, 106 S. Ct. 2505, 2510 (1986).

The Court must also determine whether the dispute about a material fact is indeed genuine. In other words, is the “evidence ... such that a reasonable jury could return a verdict for the nonmoving party.” Anderson, 477 U.S. at 248, 106 S. Ct.

At 2510; Marine Coatings of Alabama, Inc. V. United States, 932 F.2d 1370, 1375 (11th Cir. 1991) (dispute of fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party).

Finally, a plaintiff cannot defeat a motion for summary judgment by resting on the conclusory allegations in the pleadings. See Fed. R. Civ. P. 56(e); Anderson v. Liberty Lobby, Inc., 477 U.S. at 248, 106 S. Ct. at 2510. Nor will a summary judgment motion be defeated merely on the basis of a "metaphysical doubt" about the material facts, See Matsushita Electric Industrial Co.v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 1356 (1986), "or on the basis of conjecture or surmise." Bryant v. Maffucci, 923 F.2d 979, 982 (2nd Cir. 1991), cert. den., 502 U.S. 849, 112 S.Ct 152 (1991).

#### **ADA STANDARD**

In order to defeat a motion for summary judgment, the Plaintiff must establish a prima facie case under the ADA by showing: (1) she has a disability; (2) she is a qualified individual; and (3) she was discriminated against because of the disability. 42 U.S.C. § 12132; see also, e.g., Harris v. H& W Contracting Co., 102 F.3d 561, 519 (11th Cir. 1996).

#### **Ms. Rockcastle's Disability**

The analysis of the summary judgment motion must begin with the first requirement of the prima facie case under the ADA;

whether or not Ms. Rockcastle has a disability as defined under the ADA. Under the ADA, the term disability means: (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 impairment. 42 U.S.C.A. § 12101(2) (2000); see also, e.g., Harris v. H&W Contracting Co., 102 F.3d 561, 569 (11th Cir. 1996). An individual is deemed to be "disabled" for purposes of the ADA if he satisfies any one of these three enumerated definitions. See 29 C.F.R. Part 1630.2(g)(App.) (2000). A physical impairment, standing alone, however, is not necessarily a disability as contemplated by the ADA. See Pritchard v. Southern Company Services, 92 F.3d 1130, 1132 (11th Cir. 1996). The ADA requires that the impairment substantially limit one or more of the individual's major life activities. See Dutcher v. Ingalls Shipbuilding, 53 F.3d 723, 725-26 (5th Cir. 1995).

The Plaintiff has demonstrated through the testimony of Ms. Rockcastle and various doctors, as well as through supporting documents, that Ms. Rockcastle has an ongoing disability in the form of her many hip replacement surgeries that has severely limited her ability to walk for a lengthy amount of time. Further, the record indicates that Ms. Rockcastle is restricted by her doctors from lifting, pulling, bending or stooping on a regular basis. Accordingly, the Court finds that the EEOC has met the

first element of the prima facie case for a disability  
discrimination action under the ADA.

Ms. Rockcastle as Qualified Individual

Having determined that the Plaintiff has met the first element of its prima facie case, the Court now turns to whether or not the Ms. Rockcastle is a "qualified individual." Determining whether an individual is "qualified" for a job is a two-step process. See 29 C.F.R. Part 1630.2(m) (App.) (2000); see also Reed v. The Heil Company, 206 F.3d 1055, 1062 (11th Cir. 2000). The first step is to determine if Plaintiff satisfies the prerequisites for the position. This requires a court to take into account whether or not the Plaintiff has the necessary skills and experience, the required educational background, or the necessary licenses for the job. Id. The second step is to determine whether Ms. Rockcastle can perform the essential functions of Nurse Manager, either with or without reasonable accommodations. Id.

Defendant contends summary judgment should be awarded on the basis that Plaintiff EEOC has not proven Ms. Rockcastle is a "qualified individual" as she was unable to perform the essential duties of her position as Nurse Manager. The term "qualified individual" is defined by 28 U.S.C. § 1211(8) as "an individual who with or without reasonable accommodation can perform the essential functions of the employment position such that individual holds or desires." A "qualified individual with a disability" is "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the

employment position that such individual holds or desires." Davis v. Fla. Power & Light Co., 205 F.3d 1301, 1305 (11th Cir. 2000) (quoting 42 U.S.C. § 12111(8)). Thus, Plaintiff must show "either that [Ms. Rockcastle] can perform the essential functions of [her] job without accommodation, or, failing that, show that [she] can perform the essential functions of her job with a reasonable accommodation." Id.

"[C]onsideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this descriptor shall be considered evidence of the essential functions of the job." 42 U.S.C. § 12111(8). The regulation also sets forth a non-exhaustive list of factors a court may consider when considering whether a particular function is essential: (i) The employer's judgment as to which functions are essential; (ii) Written job descriptions prepared before advertising or interviewing applicants for the job; (iii) The amount of time spent on the job performing the function; (iv) The consequences of not requiring the incumbent to perform the function; ... (vi) The work experience of past incumbents in the job; and/or (vii) The current work experience of incumbents in similar jobs. 29 C.F.R. § 1630.2(n)(3). See Reynolds v. Intl. Business Machines Corp.

This Court relies on a number of exhibits and the parties'

testimony in making a determination regarding the duties of a Nurse Manager at Cedars. Defendant's own document of Plaintiff's position description describes the physical demands of the position: "Describe significant physical exertion as it relates to specific functions of the positions. May include walking, standing, sitting, lifting, pushing, pulling, etc." The only requirement listed under this section is that of "No significant physical exertion." Additionally, under the "Essential Functions" section of the job description form, which is notably under section V entitled "Americans with Disabilities Act," many of these essential functions include critical thinking skills, the ability to input data, and to communicate with others.

However, the record is clear that the duties listed above do not fully encompass the essential duties of a Nurse Manager at Cedars. For example, the record indicates that a Nurse Manager is expected to complete patient rounds, accompany physicians to visit patients, and frequently attend meetings around the hospital. Additionally, the physical duties of a Nurse Manager include moving beds, lifting objects, walking patients to particular locations, assisting them out of their beds, disposing of bed pans, and performing basic life support. In fact, Ms. Rockcastle does not deny that direct patient care is an element of the Nurse Manager position. Moreover, there is ample evidence in the record that indicates that other employees in Ms. Rockcastle's position were

expected to participate in the physical activities listed above. Ms. Rockcastle, therefore, is not a qualified individual under the ADA because Plaintiff cannot show that, at the time Ms. Rockcastle was discharged, she was able to perform the essential functions of the Nurse Manager position, with or without reasonable accommodation. Pouncy v. Vulcan Materials Co., 920 F.Supp. 1566, 1582 (N.D.Ala. 1996); Reynolds, 320 F.Supp.2d 1290, 1306.

Unlawful Discrimination Based Upon Plaintiff's Disability

The final essential element of a prima facie case which the Plaintiff must prove under an ADA claim is that the individual was subjected to unlawful discrimination because of her disability. The Plaintiff must show that the Defendant discriminated against Ms. Rockcastle by eliminating her position and terminating her employment.

Plaintiff has not offered any direct evidence of discrimination based on Ms. Rockcastle's disability. In the absence of direct evidence of discrimination, a plaintiff may establish a prima facie case of discrimination by using the McDonnell-Douglas burden shifting analysis. See Wascura v. City of South Miami, 257 F.3d 1238, 1242 (11th Cir. 2001); see also Richio v. Miami-Dade County, 163 F.Supp.2d 1352 (S.D.Fla. 2001). Therefore, when determining whether Ms. Rockcastle was discriminated against based upon that her disability, the burden shifting analysis used in Title VII employment discrimination cases

applies. Earl v. Mervyns, Inc., 207 F.3d 1361, 1365 (11th Cir. 2000).

The plaintiff bears the burden of establishing a prima facie case of discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). After the plaintiff establishes a prima facie case of discrimination, the burden shifts to the defendant. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 254, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). Once the burden shifts to the defendant, the defendant is required to show a "legitimate nondiscriminatory reason" for the alleged discriminatory action. Id. The defendant is only required to produce a nondiscriminatory reason for the alleged discriminatory actions. Id. Defendant is not required to bear the burden of proof. Id. Thus, the burden of production that shifts to the defendant, once a plaintiff has established its prima facie case of discrimination, is "exceedingly light" and easily established. Perryman v. Johnson Products Co., Inc., 698 F.2d 1138, 1142 (11th Cir. 1983).

Once the defendant satisfies the burden of production, the plaintiff is required to prove by a preponderance of evidence that the defendant employer possessed a discriminatory intent, or that the defendant's alleged nondiscriminatory reason is a mere pretext for the adverse employment action. Texas Dept. Of Community Affairs v. Burdine, 450 U.S. 248, 256, 101 S.Ct. 1089, 1094 (1981).

Summary judgment in favor of the defendant is appropriate if the plaintiff is unable to make a sufficient showing to rebut the defendant's proffered reasons for the employment decision. Bogle v. Orange County Board of County Commissioners, 162 F.3d 653, 658 (11th Cir. 1998); Beno v. United Telephone Co. of Florida, 969 F.Supp. 723, 726 (M.D.Fla. 1997).

Defendant, Cedars, claims that summary judgment should be granted in its favor because the Plaintiff cannot rebut the claim that Cedars had a legitimate, non-discriminatory reason for its decision to terminate Ms. Rockcastle. Defendant contends that as a normal part of its review process, and based upon a decline in patient census in its Orthopedic Units, along with a desire to open a Transitional Care Unit in the hospital, a decision was made by senior administration to close one of Cedars' two Orthopedic Units. In doing so, it was decided that the Medicine Unit, which was located on the seventh floor, would be relocated to the eleventh floor and take the place of the Orthopedic Unit that was closed. Defendant contends that the space made available by such a move would provide space for the new Transitional Care Unit. Additionally, senior administration decided that the Nurse Manager for the Medicine Unit, Terry Lyons, who was also acting as Nurse Manager of the Orthopedic Unit during Ms. Rockcastle's absences, would take over all of the functions of the Nurse Manager position for the remaining Orthopedic Unit and her Medicine Unit as

combined.

Cedars claims that its decision to terminate Ms. Rockcastle was "like all other hospitals [which] constantly reviews the performance of its various units within the Hospital to ascertain whether it is economically feasible to maintain and/or add services." Cedars claims that its decision "... made by senior administration to close one of the two 35 bed orthopedic units" was based on an administrative and economic decision for more efficient use of space and resources.

The Plaintiff has responded that the Defendant's proffered reasons for terminating Ms. Rockcastle are merely a pretext. The Plaintiff has produced evidence that when Ms. Rockcastle applied for unemployment benefits after the job elimination, Cedars told the Florida Department of Labor that " the Claimant was considered by the employer to have voluntarily quit for medical reasons when she did not return from a leave of absence." However, after Ms. Rockcastle discovered this denial, she called Cedars who in turn changed its reason to "job elimination."

Plaintiff argues further that additional evidence shows that Cedars may have had ulterior motives for eliminating Ms. Rockcastle's position. Specifically, Plaintiff points to an email sent by Karen Moyer to then Vice-President Elly Howard, on May 7, 2003, where Ms. Moyer writes that " I do not want to grant leave unless absolutely have to... I prefer that she [Rockcastle] resign

so that I can fill the job with another manager." Neither of these occurrences, however, provide a sufficient basis for a finding of discriminatory intent.

The Defendant argues, and this Court agrees, that the intent of the hospital administration to permanently remove Rockcastle from her position appears to be legitimate. In fact, Ms. Rockcastle herself testified during her deposition that "we were going through reorganization at Cedars, we were also learning how to become more efficient by using less." The record indicates that nothing was improper or unreasonable about this restructuring and Plaintiff has failed to present sufficient evidence that such restructuring was motivated by a discriminatory intent.

#### Failure to Accommodate Claim

The ADA "imposes upon employers the duty to provide reasonable accommodations for known disabilities unless doing so would result in undue hardship to the employer." Davis v. Fla. Power & Light Co., 205 F.3d 1301, 1305 (11th Cir. 2000) (internal quotation marks omitted). An accommodation may be reasonable, however, only if it "is job-related, e.g. specifically assists the individual in performing the duties of a particular job." 29 C.F.R. § 1630, App. § 1630.9. Thus, generally speaking, an employer is not required to provide an employee with personal items such as "a prosthetic limb, wheelchair, or eyeglasses," or "any amenity or convenience that is not job-related." Id.; see also Azrelvant v. The B. Manischewitz

Co., 2000 WL 264345, at (E.D.N.Y. January 13, 2000) (finding plaintiffs' requests for a TTY telephone, sign language interpreter, and visual fire alarm in the workplace to be unreasonable accommodations because they were not job-related). Additionally, an employer is not obligated to make accommodations that are primarily for the personal benefit of the individual," such as "an adjustment or modification [that will] assist the individual throughout his or her daily activities, on and off the job." 29 C.F.R. § 1630, App. § 1630.9; see also Quintana v. Sound Distrib. Corp., No. 95 CIV.0309 LAP, 1997 WL 40866, (S.D.N.Y. Feb. 3, 1997) (An employer is not required "to make accommodations that are primarily for the [individual's] personal benefit" (internal quotation marks omitted). For example, in Burnett v. Western Resources, Inc., 929 F. Supp. 1349, 1352 (D. Kan. 1996),

Defendant argues that Cedars is not obligated to provide Ms. Rockcastle a motorized scooter or wheelchair under the ADA because it is not a job-related accommodation. Defendant argues that the motorized scooter would provide a personal benefit for Ms. Rockcastle because it will assist her throughout her daily activities, on and off duty. See 29 C.F.R. § 1630, App. § 1630.9. Ms. Rockcastle admits she was seeking the scooter and has in fact used scooters for personal use and activities of daily living outside of the workplace such as when she would have gone to malls or to grocery stores. Ms. Rockcastle's physicians agree that the

use of a scooter would not only have assisted her at work but in all of her other personal activities of daily living. Defendant argues that since the use of the scooter would have benefited Ms. Rockcastle throughout her daily activities, on and off the job, it was, as defined by the EEOC, a "personal assistive device," and as such, Cedars was under no obligation to provide Ms. Rockcastle with the same.

The Court's decision, however, should be based upon the reasonableness of the accommodation. Based upon this Court's previous finding that even with the accommodation requested, namely the motorized scooter, Ms. Rockcastle would remain unable to adequately complete her duties as a Nurse Manager, the Court must find that in this instance, Cedars' providing a motorized scooter to Ms. Rockcastle would be an unreasonable accommodation. Therefore, this claim must fail.

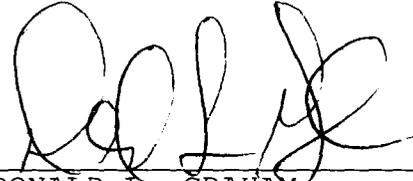
#### **CONCLUSION**

Based on the foregoing, it is

**ORDERED AND ADJUDGED** that the Defendant's Motion for Summary Judgment is **GRANTED**. It is further

**ORDERED AND ADJUDGED** that this case is **CLOSED** for administrative purposes and any pending motions are **DENIED** as moot.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 24<sup>th</sup> day  
of September, 2004.

A handwritten signature in black ink, appearing to read 'DLG', written over a horizontal line.

DONALD L. GRAHAM  
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record