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United States District Court,
S.D. Iowa, Davenport Division.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,
Quianna M. KNOWLES, Plaintiff–Intervenor,
v.
REMEDY INTELLIGENT STAFFING, INC., Defendant.

No. Civ.3:02–CV–10067. | Dec. 22, 2003.

Attorneys and Law Firms

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Opinion

ORDER

LONGSTAFF, Chief J.

*1 The Court has before it plaintiff Equal Employment Opportunity Commission’s motion for partial summary judgment and motion in limine, filed October 1, 2003. Plaintiff-intervenor Quianna M. Knowles joined the motions on October 20, 2003. Defendant filed its resistance on November 3, 2003 and plaintiff filed a reply on December 12, 2003. The motions are now fully submitted.

In its motion for partial summary judgment, plaintiff seeks a judgment on the issue of liability. Plaintiff’s motion in limine seeks a determination that the record supports the submission of punitive damages to the jury.

I. BACKGROUND

The following facts are either not in dispute or are viewed in the light most favorable to defendant, the non-moving party. Defendant Remedy Intelligent Staffing, Inc. (“Remedy”) is a contract employment or temporary employment agency that provides staffing for the production area of the Scotts Company in Fort Madison, Iowa. Randall Sorrell was the branch manager of Remedy’s Fort Madison location on all relevant dates. Sorrell’s job was to recruit and retain staff. On September 27, 2000, Quianna Knowles, who is deaf, applied for production work at Scotts through Remedy. She was interviewed by Sorrell and turned down for the position because Sorrell did not think it would be safe for her to work at Scotts. Sorrell told Knowles that she would not be able to hear the audible startup signal from the production lines, and that she would be in close proximity to forklifts. Although Knowles’ work experience included working in factories around machinery and forklifts, Sorrell did not ask Knowles about her experience as it related to his concerns. Sorrell admits that he did not ask Knowles if she needed reasonable accommodation. Sorrell also did not ask Scotts whether they could reasonably accommodate Knowles.

The parties both had experts inspect the Scotts plant. The expert hired by defendant determined that a person who is hearing-impaired cannot perform the essential functions of the production job at Scotts with or without reasonable accommodation. He also found that if reasonable accommodation was required it would create an undue financial hardship on defendant. The EEOC expert determined that reasonable accommodation for Knowles could be easily achieved by making

slight alterations to the workplace at low to moderate costs to Scotts.

Plaintiffs Equal Employment Opportunity Commission (“EEOC”) and Knowles now allege that Remedy violated Sections 102(a) and (b) of the American with Disabilities Act (“ADA”), 42 U.S.C. § 12112(a) and (b), by refusing to hire Knowles and by failing to provide her with reasonable accommodation.

II. MOTION FOR SUMMARY JUDGMENT

A. Summary Judgment Standard

Summary judgment is properly granted when the record, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Walsh v. United States*, 31 F.3d 696, 698 (8th Cir.1994). The moving party must establish its right to judgment with such clarity there is no room for controversy. *Jewson v. Mayo Clinic*, 691 F.2d 405, 408 (8th Cir.1982). “[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). An issue is “genuine,” if the evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. *Id.* at 248. “As to materiality, the substantive law will identify which facts are material.... Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.*

*2 “Summary judgment should seldom be used in employment discrimination cases.” *Crawford v. Runyon*, 37 F.3d 1338, 1341 (8th Cir.1994). Summary judgment should be granted only on the rare occasion where no dispute of fact exists and there is only one conclusion. *Id.* (citations omitted) (quotations omitted). The Court should not grant plaintiffs’ summary judgment motion “unless the evidence could not support any reasonable inference for the nonmovant.” *Id.* (citations omitted).

B. Qualified Individual with a Disability

In order to recover under the ADA, a plaintiff must show: (1) she was disabled within the meaning of the ADA; (2) she was qualified to perform the essential functions of the job at issue, with or without reasonable accommodation; and (3) she suffered an adverse employment action because of her disability. *See Cravens v. Blue Cross and Blue Shield of Kansas City*, 214 F.3d 1011, 1016 (8th Cir.2000). In the present case, defendant does not appear to dispute that Knowles is disabled as defined by the ADA or that Knowles suffered adverse employment action because of her disability. *See* Defendant’s Memorandum. The principal issue, then, is whether Knowles was a “qualified individual” for purposes of the ADA.

An individual with a disability is “qualified” under the ADA if she possesses the requisite skill, education, experience or training required for the position, and she can perform the essential functions of the position with or without reasonable accommodation. *See Moritz v. Frontier Airlines, Inc.*, 147 F.3d 784, 787 (8th Cir., 1998). The Court first notes that Knowles worked in several factories prior to applying for work with defendant. Defendant does not appear to suggest that Knowles lacks the requisite skill, education, experience or training for the position with Remedy. Instead, defendant argues that, in light of her disability, Knowles cannot perform the essential functions of the job, with or without reasonable accommodation.

1. Essential functions

ADA regulations advise that a job function may be considered essential for any of several reasons, including, but not limited to the following: (1) the purpose of the position is the performance of that function, (2) only a limited number of employees are available among whom performance of that function can be delegated, or (3) an employee is hired because of her experience or ability to perform a specialized function. *See* 29 C.F.R. § 1630.2(n)(2). In making their determination, courts may consider: (1) the employer’s judgment as to which functions are essential, (2) written job descriptions prepared before advertising or interviewing applicants for the job, (3) the amount of time spent on the job performing the function, (4) the consequences of not requiring the job to be performed, and (5) the work experience of both past and present employees in the job. *See* 29 C.F.R. § 1630.2(n)(3).

In the present case, a manager at Scotts described the essential function of the job on their production line as “[t]o service our package lines with supplying components to the packaging lines. Doing job tasks that support the operation of the packaging lines.” Defendant’s Appendix, exhibit 4, p. 39, dep p. 103. As plaintiffs points out, Knowles has successfully worked in

factories in the past without any problems. *See* EEOC's Memorandum at 4. Moreover, a report issued by the EEOC's industrial safety expert, completed after an inspection of the plant, argues that Knowles is able to perform all production packaging jobs at Scotts with or without reasonable accommodation. *Id.*

*3 Conversely, defendant contends the ability to hear is an essential function to the job with respect to both working safely on the production line and to being able to identify jams in the machinery. *See* Defendant's Memorandum at 5–6. Defendant first argues that Knowles cannot safely perform the essential functions of the job because “working around forklifts and startup of the machines are real safety concerns to a deaf person working in this environment.” Defendant's Memorandum at 5. Defendant expresses concern that Knowles will either be injured by a passing forklift, which announces its presence using horns, or will not be able to identify jams in the machinery by sound. Defendant also notes that Knowles will not be able to hear the machines starting up. While defendant admits that lights could signal the start up, defendant contends “[i]t is not realistic to guarantee that the worker will be facing the direction of the light at all times.” *Id.* at 6. Most importantly, however, an expert hired by defendant conducted an inspection of the Scotts plant and determined that a person who is hearing-impaired cannot perform the essential functions of the job with or without reasonable accommodation.

Plaintiff argues that defendant's expert is directly contradicted by testimony of defendant's Vice President, Susan Cooksey. EEOC's Reply Brief at 2. Nevertheless, the Court finds that the statement by defendant's expert does raise material issues of fact as to whether the ability to hear is integral to performing the essential functions of the production line jobs at Scotts. The remaining analysis, then, is whether or not reasonable accommodation could have been made to assist Knowles in performing the job at Scotts.

2. Reasonable accommodation

Under the ADA, the term “reasonable accommodation” includes the “acquisition or modification of equipment or devices” that would enable a qualified individual with a disability to perform the essential functions of the position. 42 U.S.C. § 12111(9)(B). At all times, a plaintiff has the burden of persuading the trier of fact that the plaintiff has been the victim of illegal discrimination due to her disability. *Benson v. Northwest Airlines, Inc.*, 62 F.3d 1108, 1112 (8th Cir.1995). If a plaintiff makes a facial showing of the availability of a reasonable accommodation that would allow her to perform the essential functions of the job, the burden shifts to the defendant to show that such an accommodation constitutes an undue hardship. *Id.* In the present case, Knowles contends she can work safely in a factory environment without accommodation. Even assuming accommodation is necessary, however, she argues the report by the EEOC's expert provides the necessary facial showing that accommodation is possible. The EEOC's expert found reasonable accommodation for Knowles could be easily achieved by making slight alterations to the workplace at low to moderate costs to Scotts. Defendant's expert disagrees. He contends that “the cost to retrofit the place of employment with warning lights or assigning another worker to be with the hearing impaired person as they move throughout the facility would create an undue hardship on the hiring employer.” Defendant's Appendix, Exhibit 3, p. 23.

*4 In light of this conflicting evidence, this Court finds that triable issues of fact exist regarding whether Knowles could be reasonably accommodated in fulfilling the essential function of the production job at Scotts or whether such accommodation would place an undue hardship on defendant.

C. Conclusion

For the aforementioned reasons, the Court concludes that material issues of fact remain as to the essential functions of the production job at Scotts, whether Knowles can perform the essential functions of the job despite being deaf, and, if not, whether a reasonable accommodation by Scotts would enable her to do so. Accordingly, plaintiffs' motion for summary judgment is denied.

III. MOTION IN LIMINE

It is premature at this time for the Court to address the issue of whether punitive damages should be submitted to the jury. Accordingly, plaintiff's motion in limine is denied.

IV. CONCLUSION

For the reasons outline above, plaintiffs' motion for summary judgment and motion in limine are DENIED.

IT IS ORDERED.