1999 WL 1138533
United States District Court, E.D. Louisiana.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
v.
HBH INC., et al.

No. Civ.A. 98–2632. | Dec. 9, 1999.

Opinion

ORDER AND REASONS

VANCE, J.

***1** Before the Court is the motion of defendants, HBH, Inc. and TransCoastal Marine Services, Inc. ["HBH"], for partial summary judgment dismissing Rhua Dale Williams' claim that HBH regarded him as disabled in violation of the ADA. For the following reasons, defendants' motion is GRANTED.

I. BACKGROUND

This suit arises from a Charge of Discrimination filed with the Equal Employment Opportunity Commission by Rhua Dale Williams. Plaintiffs, the EEOC and Mr. Williams, allege that HBH discriminated against Mr. Williams in violation of the Americans with Disabilities Act, 42 U.S.C. § 12112. Specifically, plaintiffs allege that HBH refused to hire Mr. Williams because it regarded him as disabled due to prior back surgeries. Plaintiffs further allege that HBH has engaged in unlawful employment practices in violation of Sections 102(b)(3)(A) and (b)(6) of the ADA by using qualification standards and selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities. Finally, plaintiffs argue that HBH violated Section 102(d)(3)(B) of the ADA by failing to keep medical information of applicants separate from other personnel information.

HBH is a pipeline service company operating both internationally and offshore. In October 1996, Mr. Williams applied for the job of crane operator with HBH. HBH requires all applicants for field positions to submit to a mandatory physical examination. The doctor examining Mr. Williams reported that he would be a "risk" due to two previous back surgeries for a ruptured disc. As a result of this report, HBH did not hire Mr. Williams.

Mr. Williams underwent the surgeries in 1988 and 1989. Over a twenty-year period, both before and after the surgeries, Mr. Williams worked as a crane and heavy equipment operator. In his deposition, he testified that his back injury does not restrict his job performance. Mr. Williams has held two other crane operator jobs, for which he passed physical examinations, since HBH rejected his employment application.

HBH now moves to dismiss plaintiffs' claim that HBH regarded Mr. Williams as disabled in violation of the ADA on the grounds that Mr. Williams cannot show that HBH perceived Mr. Williams to have an impairment that substantially limited the major life activity of working. The motion for summary judgment does not address plaintiffs' claims of unlawful employment practices and commingling of medical records.

II. DISCUSSION

A. Legal Standard

Summary judgment is appropriate when there are no genuine issues as to any material facts, and the moving party is entitled to judgment as a matter of law. *See* FED. R. CIV. P. 56(c); *see also Celotex Corp. v. Catrett,* 477 U.S. 317, 322–23, 106 S.Ct.

2548, 2552 (1986). A court must be satisfied that no reasonable trier of fact could find for the nonmoving party or, in other words, "that the evidence favoring the nonmoving party is insufficient to enable a reasonable jury to return a verdict in her favor." *Lavespere v. Niagara Mach. & Tool Works, Inc.,* 910 F.2d 167, 178 (5th Cir.1990) (*citing Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 249, 106 S.Ct. 2505, 2511 (1986)). The moving party bears the burden of establishing that there are no genuine issues of material fact.

***2** If the dispositive issue is one for which the nonmoving party will bear the burden of proof at trial, the moving party may satisfy its burden by merely pointing out that the evidence in the record contains insufficient proof concerning an essential element of the nonmoving party's claim. *See Celotex,* 477 U.S. at 325, 106 S.Ct. at 2554; *see also Lavespere,* 910 F.2d at 178. The burden then shifts to the nonmoving party, who must, by submitting or referring to evidence, set out specific facts showing that a genuine issue exists. *See Celotex,* 477 U.S. at 324, 106 S.Ct. at 2553. Summary judgment is mandated if the nonmovant fails to make a showing sufficient to establish the existence of an element essential of her case on which she bears the burden of proof at trial. *See id.* at 322, 106 S.Ct. at 2552. The nonmovant may not rest upon the pleadings but must identify specific facts that establish a genuine issue exists for trial. *See id.* at 325, 106 S.Ct. at 2553–54; *Little v. Liquid Air Corp.,* 37 F.3d 1069, 1075 (5th Cir.1996). Finally, the Fifth Circuit has held that "the nonmoving party's burden is not affected by the type of case." *Little,* 37 F.3d at 1075. Rather, summary judgment is appropriate in "any case" where the nonmoving party fails to come forward with evidence sufficient to support a judgment in its favor. *See id.*

B. "Regarded as Having a Disability" Under the ADA

To establish a *prima facie* case of discrimination under the ADA, a plaintiff must demonstrate that (1) he has a disability; (2) he is a qualified individual for the job in question; and, (3) he suffered an adverse employment decision because of his disability. *See Talk v. Delta Airlines, Inc.,* 165 F.3d 1021, 1024 (5th Cir.1999); *Hamilton v. Southwestern Bell Telephone Co.,* 136 F.3d 1047, 1050 (5th Cir.1998). As a threshold matter, plaintiff must show that he suffers from a disability protected by the ADA. *See Hamilton,* 136 F.3d at 1050; *Bridges v. City of Bossier,* 92 F.3d 329, 332 (5th Cir.1996). An individual is "disabled" within the meaning of the ADA if he (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. *See* 42 U.S.C. § 12102(2); *Sutton v. United Air Lines, Inc.,* 119 S.Ct. 2139, 2144 (1999); *Sherrod v. American Airlines, Inc.,* 132 F.3d 1112, 1119 (5th Cir.1998). Here, plaintiffs do not argue that Williams has an actual disability or a record of such a disability. Rather, plaintiffs' claim falls under the third prong of the statutory definition because Mr. Williams argues that HBH "regarded" him as having an impairment that substantially limited the major life activity of working. *See* 42 U.S.C. § 12102(2)(C); *Sutton,* 119 S.Ct. at 2149; *Hamilton,* 136 F.3d at 1051.

The Supreme Court recently held that an individual may fall under the "regarded as" prong when an employer entertains one of two misperceptions:

> ***3** (1) [an employer] mistakenly believes that an employee has a physical impairment that substantially limits one or more major life activities, or (2) [an employer] mistakenly believes that an actual, nonlimiting impairment substantially limits one or more major life activities. In both cases, it is necessary that [an employer] entertain misperceptions about the individual—it must believe either that one has a substantially limiting impairment that one does not have or that one has a substantially limiting impairment when, in fact, the impairment is not so limiting.

Sutton, 119 S.Ct. at 2149–50. The ADA does not define "substantially limits" or "major life activities." Nevertheless, the regulations implementing the ADA expressly include working as a major life activity. *See* 29 C.F.R. § 1630.2(i); *E.E.O.C. v. R.J. Gallagher Co.,* 181 F.3d 645, 654 (5th Cir.1999). To demonstrate that an impairment substantially limits the major life activity of working, an individual must show that he 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). *See Sutton,* 119 S.Ct. at 2151; *Murphy v. United Parcel Service, Inc.,* 119 S.Ct. 2133, 2138 (1999); *Hamilton,* 136 F.3d at 1051. In contrast, "[e]vidence of disqualification from a single position or narrow range of jobs will not support a finding that an individual is substantially limited from the major life activity of working." *Sherrod,* 132 F.3d at 1120. *See* 29 C.F.R. § 1630.2(j)(3)(i); *Sutton,* 119 S.Ct. at 2151 (holding airline did not regard severely myopic job applicants as substantially limited in major life activity of working because position of global airline pilot is single job and applicants were not precluded from other positions such as regional pilot and pilot instructor); *Bridges* 92 F.3d at 334 (perceived impairment that prevents one from becoming a firefighter and paramedic only affects a "narrow range of jobs"). In determining whether an impairment substantially limits the major life activity of working, a court may consider the following factors:

(A) The geographical area to which the individual has reasonable access;

(B) The 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) The 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).

***4** 29 C.F.R. 1630.2(j)(3)(ii); *Sherrod,* 132 F.3d at 119–20.

Here, defendants argue that, at most, HBH believed that Mr. Williams was incapable of performing the single job of offshore crane operator. Accordingly, HBH asserts that Mr. Williams cannot prove an element essential to his claim, that his impairment substantially limited the major life activity of working, and the claim must be dismissed. The Court agrees. Plaintiffs argue that HBH perceived Mr. Williams to be disabled from a broad class of offshore jobs as a result of his prior back surgeries. Plaintiffs claim that defendants admitted in their partial summary judgment motion that HBH regarded Mr. Williams as unfit to work in any job offshore. (*See* Pls.' Opp'n Mot. Summ. J. Ex. 7, at 10.) Because offshore jobs at HBH include a number of positions in addition to crane operator, plaintiffs assert that HBH believed that Mr. Williams' impairment significantly restricted his ability to perform a broad range of jobs. (See Opp'n Mot. Summ. J. Ex. 11, at 51–52.) Plaintiffs rely on the following statement, which they take out of context: "Where HBH merely regarded Plaintiff as being unfit to work in the offshore environment, considering HBH's own particular operation, it did not consider him to be disabled from a broad class of jobs." (Memo Supp. Mot. Partial Summ. J., at 10.) Any fair-minded reading of defendants' brief reveals that defendants consistently contended that Mr. Williams' prior back surgeries limited him only from the particular job of offshore crane operator. Defendants argued on page 8 of their brief that "Williams is not 'substantially limited in working' if he is only restricted from the particular job of off-shore crane operator with HBH." Defendants also argued on page 5 that Mr. Williams "is limited only in a single job and not from a class ... or a broad range of jobs." The accurate interpretation of defendants' statement is that they regarded Mr. Williams "as being unfit to work [*as a crane operator*] in the offshore environment."

Mr. Williams has put forward no evidence that he is regarded as unable to perform any crane operator job that is not offshore. *See Murphy,* 119 S.Ct. at 2138–39 (when plaintiff was regarded, at most, as unable to perform a mechanic's job which requires driving a motor vehicle, he is not regarded as unable to perform class of jobs). "Indeed, it is undisputed that petitioner is generally employable as a [crane operator]." *Id.* at 2139. Thus, as the Supreme Court held under similar circumstances in *Murphy,* the Court finds that plaintiff was not "regarded as" disabled.

Moreover, even if the Court agreed with plaintiffs that HBH disqualified Mr. Williams from all jobs offshore, the Court finds that the types of jobs available in HBH's offshore division do not represent a "broad range of jobs in various classes" but only a narrow range of jobs available in the market. Most of the offshore jobs at HBH, including mechanics, electricians, foremen, superintendents, and safety directors, can also be performed onshore. Indeed, Mr. William's own employment history since HBH rejected his application reveals that crane and heavy equipment operator jobs are available onshore, since he has held such positions on bridge and road building projects. (*See* Mot. Partial Summ. J. Ex. 3, at 5–6 .) Obviously, cranes are used in heavy construction projects and other activities onshore everyday.

***5** For the foregoing reasons, the Court finds that plaintiffs have failed to present sufficient summary judgment evidence to establish that HBH regarded Mr. Williams as substantially limited in the major life activity of working. Accordingly, plaintiffs' claim under the "regarded as" disabled prong of the ADA must be dismissed.

III. CONCLUSION

For the foregoing reasons, the Court grants defendants' motion for partial summary judgment and dismisses plaintiffs' claim that HBH discriminated against Mr. Williams in violation of the ADA by regarding him as having an impairment that substantially limited the major life activity of working.

Parallel Citations

10 A.D. Cases 138, 17 NDLR P 43