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United States District Court, W.D. Virginia.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,
v.
OVERNITE TRANSPORTATION COMPANY, Defendants.

No. CIV.A. 7:01CV00076. | Nov. 30, 2001.

**Opinion**

**MEMORANDUM OPINION**

WILSON, Chief District J.

***1** This action is brought by the Equal Employment Opportunity Commission ("EEOC") against Defendant, Overnite Transportation Company ("Overnite"). The EEOC claims that Overnite violated a provision of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12112(d)(4), by impermissibly disclosing confidential medical information regarding Etzel P. Newton ("Newton"), a former employee of Overnite. The court has jurisdiction under 28 U.S.C. § 1331. This action is before the court on Overnite's motion for summary judgment. Viewing the facts in the light most favorable to the EEOC, the court finds that Overnite did not disclose confidential medical information under the ADA, and, thus, the court grants Overnite's motion for summary judgment.

**I.**

Newton worked for Overnite for thirteen years as a dock worker and a truck driver. For six years Newton's immediate supervisor was Alan Fralin, the city dispatcher for Overnite's truck drivers. Newton and Fralin had a good working relationship and were friends.

On June 17, 1996, Newton injured his back at work. Pursuant to Overnite policy, Newton called Fralin and informed him of his injury and Fralin filed a Supervisor's Report of Work Injury with Overnite's worker's compensation insurance carrier. As a result of the accident, Newton was out of work for several weeks and received worker's compensation for his injuries. Newton worked light duty in the terminal office when he returned. Overnite kept Newton's medical records, including his worker's compensation documents, in a confidential medical file to which only the terminal manager and administrative assistant had access. Fralin never saw Newton's confidential medical file, and, apart from filing the Supervisor's Report of Work Injury, Fralin was not involved in Newton's worker's compensation claim. However, occasionally, Newton would talk to his co-workers, including Fralin, about his health. From these friendly conversations, Fralin and Newton's co-workers knew of Newton's injuries and that he was receiving worker's compensation. On September 17, 1997, Newton resigned from Overnite pursuant to the settlement of his worker's compensation claim.

In the fall of 1998, Newton applied for a job as a truck driver for U.S.F. RedStar ("RedStar"). Newton stated on his application that he left his job as a truck driver at Overnite because of "job elimination." With his application, Newton signed a release, which purported to release any former employer contacted by RedStar "from liability which might arise out of or result from the communications so made or the information furnished." After submitting his application to RedStar, Newton telephoned Fralin and asked him to be a reference, and Fralin agreed.

Pursuant to a request from RedStar, Overnite's human resources department disclosed Newton's employment dates and stated that the reason Newton left Overnite was that he resigned. Overnite provided no further information to RedStar. RedStar offered Newton a job as a driver, and Newton accepted.

***2** Redstar, however, continued investigating of the accuracy of Newton's application. On November 5, 1998, Butch Vandergift, RedStar's terminal manager in Roanoke, contacted Fralin to verify Newton's reference. In response to questioning, Fralin stated that "Newton had a back injury and worker's compensation claim while at Overnite." (Stipulation 4)

Shortly after this conversation, Vandergift called Newton into his office and asked him about his job injury at Overnite. Newton admitted to Vandergift that he had not been "completely honest" on his employment application when he stated that he left Overnite because of "job elimination." Vandergrift then terminated Newton's employment. Afterwards, Newton called Fralin and asked him what he told Vandergrift. Fralin told Newton what he had said, explaining that he could not lie. Newton said that he understood and thanked him.

On January 31, 2001, the EEOC filed this action against Overnite, alleging that it violated the ADA by

impermissibly disclosing Newton's confidential medical information. The EEOC stipulates that Newton was not a "qualified individual with a disability" within the ADA at any time relevant to the present case and that Newton was not a current employee of Overnite at the time of the alleged unlawful disclosure. (Stipulations 1 and 2)

## II.

The ADA limits the scope of information that employers may seek and disclose about their employees' medical condition. *See* 42 U.S.C. § 12112(d). Specifically, under § 12112(d)(4)(C), incorporating by reference subparagraphs (3)(B), (3)(C) and (4)(B), information obtained from medical examinations regarding the medical condition or history of an employee must be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record. In certain situations, disclosure of this confidential medical information would be a violation of the ADA.[1]

1 The relevant portions of the ADA provide:
(a) General rule
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....
(d) Medical examinations and inquiries
(1) In general
The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquires....
(3) Employment entrance examination ...
(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, expect that -
(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
(iii) government officials investigating compliance with this chapter shall be provided relevant information on requests; and
(C) the results of such examination are used only in accordance with this subchapter.
(4) Examination and inquiry ...
(B) Acceptable examinations and inquires
A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.
(C) Requirement
Information obtained under subparagraph (B) regarding the medical condition or history of an employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).
42 U.S.C. § 12112.

Overnite claims that it is entitled to summary judgment under several different theories. First, Overnite claims that § 12112(d) does not provide a general right of medical record privacy and only applies to qualified individuals with a disability. Since Newton was not a qualified individual with a disability, Overnite claims that he cannot bring this suit under the ADA. Second, Overnite claims that a former employee cannot bring a suit under § 12112(d) for actions which occurred after his employment ended. Third, Overnite claims that for there to be a violation of § 12112(d), the employer must have a discriminatory intent. In other words, the employer must disclose the employee's confidential information because of the employee's disability. Thus, since Overnite did not act against Newton because of a disability, Newton cannot bring an ADA claim. Fourth, Overnite claims the information disclosed by Fralin was not confidential medical information within the meaning of § 12112(d) because the information was not obtained from medical examinations.

***3** Overnite's first three arguments involve unsettled questions of law, and the court finds it unnecessary to decide them. The court will assume, *without deciding,* that § 12112(d) of the ADA protects individuals who are not qualified individuals with a disability, that it protects former employees as well as current employees, and that it is not necessary to show discrimination because of a disability. Assuming all of this and viewing the facts in the light most favorable to the EEOC, the court finds that Overnite did not violate the ADA.

Although Fralin told Vandergift that Netwon had a back injury and a worker's compensation claim while at Overnite, this communication was not an unlawful disclosure of confidential medical information under the ADA because Fralin did not obtain the information from confidential medical records or medical examinations. Instead, Fralin learned about Newton's injuries and worker's compensation claim from Newton himself. The EEOC stipulates that Newton's medical records, including his workers compensation documents, were kept in a confidential medical file, and that Fralin did not have access to this information and never saw it. (Stipulation 5) The EEOC further stipulates that Newton openly talked about his injury and worker's compensation claim to others, including Fralin, at Overnite, and that this information was common knowledge among employees at Overnite. (Stipulation 5) Fralin did not know about

Newton's injuries and worker's compensation claim from confidential medical records or medical examinations; instead, he knew about them because Newton was telling everyone about them. Since the information Fralin disclosed to Vandergift was not obtained from confidential medical records or medical examinations, Overnite did not violate § 12112(d) of the ADA.[2] Accordingly, the court will grant Overnite's motion for summary judgment.

2 Furthermore, the information Fralin disclosed was not confidential because Newton consented to its disclosure. Newton implicitly consented to the disclosure when he asked Fralin to be a reference for him. Also, Newton signed a document which expressly released former employers, like Overnite, from liability arising out of disclosures made in reference checks.

## III.

Viewing the facts in the light most favorable to the EEOC, the court finds that Overnite did not disclose confidential medical information in violation of § 12112(d) of the ADA. Accordingly, the court will grant Overnite's motion for summary judgment. An appropriate order will be entered this day.

## FINAL ORDER

In accordance with the court's Memorandum Opinion entered this day, it is ORDERED and ADJUDGED that Overnite Transportation Company's motion for summary judgment is GRANTED. It is further ORDERED that this matter be stricken from the docket of the court.