

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:97CV150-MU

FILED
CHARLOTTE, N.C.
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U.S. DISTRICT COURT
W. DIST. OF N.C.

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION)
)
Plaintiff,)
)
v.)
)
STOWE-PHARR MILLS, INC.)
d/b/a PHARR YARNS)
)
Defendant.)
_____)

ORDER

THIS MATTER is before the Court upon Defendant's Motion for Summary Judgment and accompanying Brief, filed February 28, 2001, Plaintiff's Response, filed March 20, 2001, and Defendant's Reply, filed April 12, 2001.

This is an employment discrimination action brought by the Equal Employment Opportunity Commission ("EEOC") under the Americans with Disabilities Act ("ADA") on behalf of former Stowe-Pharr Mills, Inc. ("Pharr Yarns") employee Catherine Treece ("Treece"). Pharr Yarns filed a Motion for Summary Judgment in this matter on July 16, 1998. In support of its Motion, Defendant argued that (1) the Plaintiff was precluded by the doctrine of judicial estoppel from establishing a prima facie case of discrimination under the ADA, (2) Treece was not "disabled" according to the ADA statutory definition and (3) Pharr Yarns fulfilled its reasonable accommodation obligation. This Court granted Defendant's Motion based on the judicial estoppel argument.

Since that time, the Supreme Court decided Cleveland v. Policy Mgmt. Sys. Corp., 526

U.S. 795, 119 S.Ct. 1597, 143 L.Ed.2d 966 (1999). The Cleveland court held that the doctrine of judicial estoppel did not preclude a person who sought and received Social Security disability benefits from subsequently claiming to be a "qualified individual" under the ADA. In light of the Cleveland decision, the United States Court of Appeals for the Fourth Circuit reversed this Court's Order granting Defendant's Motion for summary judgment and remanded the case for further proceedings. EEOC v. Stowe-Pharr Mills, Inc., 216 F.3d 373 (4th Cir. 2000).

Defendant now renews its Motion for Summary Judgment and advances two arguments in support of its Motion. First, Defendant argues that Plaintiff cannot show that Treece was "disabled" under the ADA; therefore, Plaintiff cannot prove its prima facie case. Second, Defendant argues that Plaintiff cannot show that Defendant's reasons for discharging Treece were a pretext for unlawful discrimination.

Rule 56 of the Federal Rules of Civil Procedure states that summary judgment is appropriate if "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 judgment as a matter of law." Fed. R. Civ. P. 56(c). A party may not rest on his pleadings, but must demonstrate that specific material facts give rise to a genuine issue. See Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). A genuine issue of material fact exists only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

In order to establish that Defendant discriminated against Treece, Plaintiff must show (1) that Treece has a disability, (2) that Treece is otherwise qualified for the employment in question, and (3) that the Defendant took an adverse employment action against Treece because of her

disability. See Stowe-Pharr Mills, 216 F.3d at 377. The Fourth Circuit has previously determined that "the EEOC has made a sufficient showing to defeat [Defendant's] motion for summary judgment on the "qualified individual" element of the ADA claim." Id. at 380. It is not seriously disputed that Defendant's denial of a transfer could be viewed as an adverse employment action.¹ Therefore, the Court must determine whether or not Plaintiff can establish the "disability" element outlined above.

The ADA prohibits an employer from discriminating "against a qualified individual with a disability because of the disability of such individual" 42 U.S.C. § 12112(a). With respect to an individual, a "disability" is defined to include "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." 42 U.S.C. § 12102(2)(A). There is evidence in the record that Treece has a physical impairment, osteoarthritis, that limits her ability to walk, bend and climb. A reasonable jury could conclude that this impairment was so severe that one or more of Plaintiff's major life activities was substantially limited. Consequently, the Court believes that there is a genuine issue of materials fact as to whether or not Treece is disabled.

Defendant argues that this Court should take certain "mitigating measures" into account in determining whether or not Treece is disabled. In two recent cases, Sutton v. United Airlines, Inc., 527 U.S. 471, 119 S.Ct. 2139, 144 L.Ed.2d 450 (1999), and Albertson's Inc. v. Kirkingburg,

¹ Treece had surgery for an unrelated matter early in 1994. Upon her return to work following the surgery, she presented Defendant with a medical form requesting an accommodation which included a transfer to a Pharr Yarns plant with wooden floors. Defendant responded by placing Treece on involuntary leave. Treece was never transferred, but was dismissed in September 1994 because she had exhausted her available leave.

527 U.S. 555, 119 S.Ct. 2162, 144 L.Ed.2d 518 (1999), the Supreme Court held that mitigating measures must be taken into account in judging whether an individual has a disability. While there is evidence that Treece's pain and swelling are reduced with medication and special shoes, a reasonable jury could still conclude that she suffers from a disability, even with the help of these aids. This is not a case like Sutton where an individual's "disabling" condition can be improved with the help of corrective lenses. All the evidence, taken in a light most favorable to the Plaintiff, shows that there is an issue of fact on the disability issue.

Defendant argues that, even if there is an issue of fact as to Treece's disability, summary judgment is proper because Plaintiff has failed to demonstrate that the Defendant's explanation for the discharge is pretextual. The Court disagrees and will deny Defendant's Motion.


Assuming Plaintiff has established a prima facie case, the Defendant must offer a nondiscriminatory reason for denying Treece's transfer. The Court believes Defendant has done so. Defendant's plant managers at the two plants with wooden floors both stated that they did not want Treece because of her history of absenteeism and her involvement in a "mooning" incident. Consequently, in order to survive summary judgment, Plaintiff must show that Defendant's proffered non-discriminatory reasons for Treece's termination are pretextual. See Rowe v. Marley Co., 233 F.3d 825, 829 (4th Cir. 2000), citing Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133 (2000). The Court believes that Plaintiff has succeeded in creating an issue of fact.

Both parties rely on the Rowe decision, while Plaintiff also relies heavily on EEOC v.

Sears, Roebuck and Co., 243 F.3d 846 (4th Cir. 2001).² Those cases state that a Plaintiff who establishes a prima facie case and pretext is entitled to have his claim submitted to a jury. The Court believes there is at least an issue of fact as to whether or not Defendant's actions were pretextual. Defendant believes that the Court should look only to the two plant managers in determining Defendant's reasons for denying Treece's transfer. However, as in Sears, "different justifications" have been offered at "different times" for Defendant's decision to deny the transfer. Sears, 243 F.3d at 853-54. Plaintiff's Memorandum adequately summarizes these different justifications. See Plaintiff's Memorandum at 14-18. The Court believes it is possible for a reasonable fact-finder to disregard the non-discriminatory explanation and infer discrimination on the part of the Defendant. See Sears 243 F.3d at 854.

The Court believes that Plaintiff has made a sufficient showing to avoid summary judgment on both the disability issue and the pretext issue. IT IS THEREFORE ORDERED that Defendant's Motion for Summary Judgment is DENIED.

This the 24th day of April, 2000.


CHIEF UNITED STATES DISTRICT JUDGE
GRAHAM C. MULLEN

² Of course, Defendant could not use the Sears case because it was decided two weeks after Defendant filed its Memorandum. Defendant attempts to distinguish Sears in its Reply Brief.

United States District Court
for the
Western District of North Carolina
April 25, 2001

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:97-cv-00150

True and correct copies of the attached were mailed by the clerk to the following:

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4/25/01
Haw/CL

[Handwritten Signature]
Deputy Clerk