

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY bn D.C.

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Robert R. Di Tollo
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EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
VS.)
)
GENERAL ELECTRIC COMPANY,)
)
Defendant.)

No. 01-1137

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

Plaintiff Equal Employment Opportunity Commission ("EEOC") has filed suit on behalf of Oscar S. Graham against Graham's former employer, General Electric Industrial Systems,¹ for allegedly discriminating against him in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. Defendant has filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) on the ground that the complaint fails to state a claim upon which relief can be granted. Plaintiff has responded to the motion, Defendant has filed a reply to the response, and Plaintiff has filed a supplement to the response. For the reasons set forth below, the motion to dismiss is DENIED.

A complaint should not be dismissed for failure to state a claim unless it is clear that the plaintiff would not be entitled to relief even if the factual allegations were proven.

¹ Defendant is incorrectly identified in the complaint as "General Electric Company."

Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The factual allegations must be taken as true, Hammond v. Baldwin, 866 F.2d 172, 175 (6th Cir. 1989), and it must be apparent that the plaintiff “can prove no set of facts in support of his claim which would entitle him to relief.” Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Hammond, 866 F.2d at 175. The complaint must be read in the light most favorable to the plaintiff. Allard v. Weitzman (In re Delorian Motor Co.), 991 F.2d 1236, 1240 (6th Cir. 1993).

The complaint alleges that Graham is a qualified individual with a disability within the meaning of the ADA in that he has severe chronic pain and neurological damage. The complaint further alleges that Defendant refused to allow Graham to return to work in his job as a general factory operator/welder after a medical leave of absence. According to the complaint, Defendant subsequently terminated Graham’s employment because of his disability and because of the mitigating measures required to treat Graham’s disability, i.e., narcotic drugs dispensed with a surgically implanted pump.

Defendant contends that compliance with the EEOC’s demand to reinstate Graham while he is under the influence of narcotics would violate state and federal occupational safety laws which require an employer to furnish each employee a safe working environment, Tennessee’s Drug Free Workplace Act, T.C.A. § 50-9-101 et seq., and the public policy behind Tennessee’s criminal law. Defendant further contends that the ADA expressly allows an employer to require that employees not be under the influence of alcohol or engage in the illegal use of drugs in the workplace. See 42 U.S.C. § 12114.

The ADA prohibits an employer from discriminating against a qualified individual with a disability because of that disability. 42 U.S.C. § 12112(a). See McKay v. Toyota Motor Manufacturing, U.S.A., Inc., 110 F.3d 369 (6th Cir.1997). A “qualified individual with a disability” is defined as 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. 42 U.S.C. § 12111(8). To establish a claim under the ADA, a plaintiff must prove that (1) he is a disabled person within the meaning of the ADA, (2) that he is qualified to perform the essential functions of his job with or without reasonable accommodation, and (3) that he suffered an adverse employment decision because of his disability. McKay, 110 F.3d at 371.

An employer may impose as a qualification standard “a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace,” § 12113(b), with “direct threat” being defined as “a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.” Albertson's, Inc. v. Kirkingburg, 527 U.S. 555 (1999) (quoting § 12111(3) and § 12113(b) and citing 29 CFR § 1630.2(r) (1998)). Accordingly, the ADA requires a case-by-case analysis of disabled individuals “to accurately determine what risks, if any, they pose to themselves or the public.” Stillwell v. Kansas City, Mo. Bd. of Police Commissioners, 872 F. Supp. 682, 687 (W.D. Mo. 1995) (holding that an across-the-board exclusion of persons with one hand as armed security guards violates the ADA). See also Bombrys v. City of Toledo, 849 F. Supp. 1210 (N.D. Ohio 1993) (finding that a rule prohibiting persons with insulin-dependent

diabetes from employment as police officers is a blanket exclusion violative of the ADA). “An individualized assessment is absolutely necessary if persons with disabilities are to be protected from unfair and inaccurate stereotypes and prejudices.” Id. at 1219.

In the present case, it is not possible to conclude at this stage of the proceedings whether the drugs that Graham receives through his surgically implanted pump have such an effect on him as to render him unable to perform his job without creating a significant risk to the safety of others which could not be eliminated by reasonable accommodation. There is no evidence in the record as to how surgically implanted pumps operate, how the drugs affect Graham, and whether any reasonable accommodations were available which would have eliminated any significant risk to others. Because the record does not reflect an individualized assessment of the risk that Graham poses to others in the workplace, the court cannot find that Plaintiff cannot prove any set of facts in support of its claim that would entitle it to relief.


As to Defendant’s contention that retaining Graham would force it to violate federal and state law, the Tennessee Drug Free Workplace Act refers to drug or alcohol abuse by employees. See T.C.A. § 50-9-101 et seq. There is nothing in the record establishing that the pump used by Graham qualifies as “drug abuse.” Likewise, the ADA provides that “the term ‘qualified individual with a disability’ shall not include any employee or applicant who

is currently engaging in the illegal use of drugs....”² 42 U.S.C. § 12114(a) (emphasis added).

Graham’s use of the pump does not appear to qualify as the illegal use of drugs.

Accordingly, Defendant’s motion to dismiss is DENIED.

IT IS SO ORDERED.

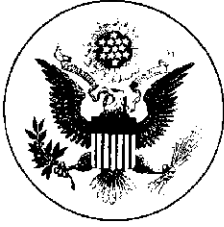


JAMES D. TODD
UNITED STATES DISTRICT JUDGE



DATE

² “The term ‘illegal use of drugs’ means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act[.]” 42 U.S.C. § 12111(6)(A), and “[t]he term ‘drug’ means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.” 42 U.S.C. § 12111(6)(B).



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Honorable James Todd
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