

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOAN NADINE FREDERICKS,
Plaintiff

Case No. 1:06-cv-113

(Hogan, M.J.)

vs

JOHN E. POTTER, et al.,
Defendants

ORDER

This matter is before the Court on defendant United States Postal Service Postmaster General John E. Potter's motion for judgment as a matter of law pursuant to Fed. R. Civ. P. 50. A jury trial of this action commenced before the undersigned on August 11, 2008.¹ At the close of plaintiff's case-in-chief, defendant moved for judgment as a matter of law pursuant to Fed. R. Civ. P. 50. At the close of defendant's case, defendant renewed his motion for judgment as a matter of law. In accordance with the Court's ruling at trial, and for the reasons set forth more fully below, the motion is denied.

Plaintiff Joan Fredericks brings this case under the federal Rehabilitation Act, 29 U.S.C. § 794(a), alleging defendant violated her rights by denying her request for a reasonable accommodation for her disability and by retaliating against her when she complained about disability discrimination.

The following facts are undisputed: Joan Fredericks began working for the U.S. Postal Service ("Post Office") August 29, 1998. She began as a part-time flex clerk. In November 2003 she became a regular full-time clerk.

¹ The parties have consented to the entry of final judgment by the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636.

Ms. Fredericks worked at the Bulk Mail Center – sometimes called the BMC – in Sharonville. As a clerk over the years, the Post Office gave her various assignments at the BMC facility.

Ms. Fredericks injured her right knee at work. In March 2002, Ms. Fredericks was diagnosed with chondromalacia patella, a knee condition that causes the cartilage underneath the kneecap to soften and degenerate. Ms. Fredericks' doctor permitted her to return to work on April 1, 2002, with restrictions that limited her walking, climbing stairs, kneeling, bending and stooping at work. Ms. Fredericks applied for and was granted federal worker's compensation benefits for the time she was off work.

On April 8, 2002, Ms. Fredericks returned to work. She requested a limited duty job which allowed her to work within her restrictions. She returned to work in a job that accommodated her restrictions.

On May 17, 2002, Richard Hohenstatt, a Post Office manager, informed Ms. Fredericks that the Post Office was unable to provide her with work based on her doctor's restrictions. Ms. Fredericks was off work for five months.

In October 2002, the Post Office offered Ms. Fredericks a limited duty job within her restrictions. The Post Office provided her with limited duty in the "loose in the mail" section where she could sit and sort and repair loose mail. This assignment lasted for one year.

On October 8, 2003, the Post Office, reassigned Ms. Fredericks to third shift, beginning work at 7:00 pm and ending at 3:50 a.m. Due to this reassignment, her limited duty assignment in the loose in the mail section ended, as this section does not operate on third shift.

On October 21, 2003, the Post Office offered Ms. Fredericks a third shift limited duty position on a machine known as a small parcel bundle sorter. This job required Ms. Fredericks to use three steps to access this machine. Ms. Fredericks rejected this job offer stating that the three steps were outside her medical restrictions. On October 24, 2003, Ms. Fredericks stopped working at the Post Office.

In March 2003, the federal worker's compensation office sent Ms. Fredericks to a physician, Dr. Sheridan, who confirmed her diagnosis of chondromalacia patella, and stated that her work restrictions were permanent.

While Ms. Fredericks was off work the federal worker's compensation office asked the Post Office to provide Ms. Fredericks a job position consistent with her restrictions. Other than the small parcel bundle sorter job offer, the Postal Office did not make Ms. Fredericks another job offer.

In January 2005, Ms. Fredericks formally requested a reasonable accommodation in writing. One year later the Post Office's reasonable accommodation committee met with her. In January 2006, the committee denied her a reasonable accommodation request because it found she was not disabled. Shortly thereafter, Ms. Fredericks received a proposed notice of separation from the Post Office. She filed this lawsuit in March 2006. Because of this litigation she has not been separated and today remains an employee.

Under Fed. R. Civ. P. 50, "[j]udgment as a matter of law may only be granted if, when viewing the evidence in a light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences, there is no genuine issue of material fact for the jury, and reasonable minds could come to but one conclusion in favor of the moving party." *Barnes v. City*

of *Cincinnati*, 401 F.3d 729, 736 (6th Cir. 2005) (citations omitted). “[W]hile a district court is permitted to enter judgment as a matter of law when it concludes that the evidence is legally insufficient, it is not required to do so. To the contrary, the district courts are, if anything, encouraged to submit the case to the jury, rather than granting such motions.” *Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 405 (2006). The standard for judgment as a matter of law mirrors the standard for summary judgment under Fed. R. Civ. P. 56. *Reeves v. Sanderson Plumbing Products*, 530 U.S. 133, 150 (2000). Thus, on a motion for judgment as a matter of law, the Court must construe the evidence in the light most favorable to the non-moving party and consider the motion without weighing the credibility of witnesses or judging the weight of the evidence. *Zamlen v. City of Cleveland, Ohio*, 906 F.2d 209, 214 (6th Cir. 1990), *cert. denied*, 499 U.S. 936 (1991); *Hill v. McIntyre*, 884 F.2d 271, 274 (6th Cir. 1989). A motion for judgment as a matter of law should not be granted unless there is a “complete absence of pleading or proof on an issue material to the cause or when no disputed issues of fact exist such that reasonable minds would not differ.” *Tarrant Service Agency v. American Standard*, 12 F.3d 609, 613 (6th Cir. 1993). In other words, the motion may be granted only if it is clear from the evidence that reasonable minds could come to but one conclusion. *Coffy v. Multi-County Narcotics Bureau*, 600 F.2d 570, 579 (6th Cir. 1979).

The Rehabilitation Act prohibits employers from discriminating against their employees on the basis of a disability. 29 U.S.C. § 794(a). To establish her failure to accommodate claim under the Rehabilitation Act, plaintiff must show: (1) she is disabled; (2) she is otherwise qualified for the position; (3) the defendant was aware of her disability; (4) an accommodation was needed, *i.e.*, a causal relationship existed between the disability and the request for

accommodation; and (5) the defendant failed to provide the necessary accommodation. *Gaines v. Runyon*, 107 F.3d 1171, 1175 (6th Cir. 1997) (citing *Kocsis v. Multi-Care Management, Inc.*, 97 F.3d 876, 882-83 (6th Cir. 1996)). Where the accommodation requested is a transfer to another position, plaintiff must identify the vacant position to which she should have been reassigned. *Peltier v. U.S.*, 388 F.3d 984, 989 (6th Cir. 2004).

Defendant contends that plaintiff failed to identify the vacant funded positions for which she was qualified and therefore failed to establish her failure to accommodate claim as a matter of law. Contrary to defendant's argument, there was sufficient evidence presented from which the jury could reasonably conclude that there were available jobs plaintiff could perform at the Post Office, either with or without a reasonable accommodation. George Graves, the Plant Manager at the Bulk Mail Center for the relevant time period, testified that after plaintiff was notified of her transfer from second to third shift in October 2003, it would have been appropriate to accommodate her by moving her back to the loose in the mail position plaintiff had previously performed on second shift. Mr. Graves also testified that it would have been reasonable for the Post Office to construct a ramp to enable plaintiff to traverse the three steps required for the sorter job. Richard Hohenstatt testified that he investigated the installation of a ramp for the sorter job, and determined it was feasible and relatively inexpensive. Stephen Goebel, a labor relations manager with the Post Office, testified that plaintiff could have been returned to the loose in the mail position which would have been a fully funded position. Mr. Goebel also testified that the clerk typist position for which plaintiff had previously applied was also an available funded position. He further testified that it was reasonable to infer from the

thousands of jobs available within the Cincinnati District there would have been an available position for which plaintiff would have been qualified.

Defendant does not contest the other elements of plaintiff's reasonable accommodation claim. In any event, the Court determines there was sufficient evidence presented for the jury to reasonably find that plaintiff met the elements of her failure to accommodate claim under the Rehabilitation Act. Accordingly, the Rule 50 motion must be denied as to this claim.

Defendant's Rule 50 motion must also be denied on plaintiff's retaliation claim. In order to establish a prima facie case of retaliation, plaintiff must prove (1) that she engaged in an protected activity; (2) that this exercise of her protected civil rights was known to defendant; (3) that defendant thereafter took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action. *Smith v. City of Salem, Ohio*, 378 F.3d 566, 570 (6th Cir. 2004) (citing *DiCarlo v. Potter*, 358 F.3d 408, 420 (6th Cir. 2004)).

Defendant contends that plaintiff failed to establish her retaliation claim because plaintiff failed to present evidence that any of the members of the Post Office's reasonable accommodation committee knew of plaintiff's protected activity when they determined that plaintiff was not disabled in January 2006. Defendant also contends that plaintiff failed to present evidence that Mr. Goebel, who admittedly knew of plaintiff's protected activity at the time of plaintiff's proposed separation, actually was responsible for the decision to separate plaintiff from her employment with the Post Office.

Although there is no direct evidence that that the members of the reasonable accommodation committee had actual knowledge of plaintiff's October 2005 grievance, plaintiff

presented circumstantial evidence from which the jury could reasonably infer that the decision-makers on the reasonable accommodation committee knew of plaintiff's October 2005 grievance and/or EEO complaint. Mr. Graves, the Plant Manager, testified that he was notified by the union in October 2005 that plaintiff had filed a grievance about the Post Office's failure to take action on her request for a reasonable accommodation. Graves testified that during that same month, in response to the union, he passed this information on to Joey Bramlage, the chair of the reasonable accommodation committee, for action on plaintiff's request for an accommodation of her disability. The jury could reasonably infer that given the close proximity of time between the union's communication with Graves, which in turn triggered the communication between Graves and Bramlage on the subject of the grievance, *i.e.*, the failure to accommodate, that Bramlage had knowledge of plaintiff's protected activity. In addition, plaintiff presented evidence that Mr. Goebel, a member of the reasonable accommodation committee, was aware of plaintiff's request for an accommodation before he sent plaintiff the proposed letter of separation. Defendant argued that Goebel did not make the decision to separate plaintiff, but merely signed the letter of separation. Plaintiff testified, however, that following the January 2006 reasonable accommodation committee decision she called Mr. Goebel repeatedly with additional information concerning her request and belief that she was in fact disabled and asked him to reconsider the decision. Despite this subsequent contact, the letter of separation was sent to plaintiff in February 2006. This evidence creates an issue of fact as to whether the relevant agents of the defendant knew of plaintiff's protected activity before the Post Office determined she was not disabled and before it proposed to separate plaintiff from employment. There was sufficient evidence to submit this issue to the jury.

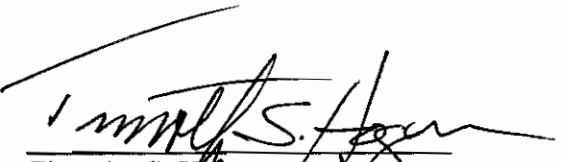
For these reasons, defendant's Rule 50 motion for judgment as a matter of law is

DENIED.

IT IS SO ORDERED.

Date:

8/15/08



Timothy S. Hogan
United States Magistrate Judge