Mitchell v. Astrue

United States District Court for the District of Maryland
June 29, 2009, Decided
CIVIL NO. CCB-08-1873

Reporter: 2009 U.S. Dist. LEXIS 58207; 2009 WL 2043915

CAROL MITCHELL v. MICHAEL J. ASTRUE

Core Terms

travel, accommodate, retaliate, light duty, disability, overnight, reassign, summary judgment, adverse employment action, protected activity, anxiety, pretext

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For Michael J Astrue, Defendant: ***Melanie L Glickson***, LEAD ATTORNEY, Maryland Office of the United States Attorney, Baltimore, MD.

Judges: Catherine C. Blake, United States District Judge.

Opinion by: Catherine C. Blake

Opinion

MEMORANDUM

Plaintiff Carol Mitchell (″Ms. Mitchell″) has sued Michael J. Astrue, Commissioner of the Social Security Administration (″SSA″), for violations of the Rehabilitation Act of 1973, *29 U.S.C. § 701 et seq.* (″Rehabilitation Act″). The claims stem from Ms. Mitchell's placement on light duty status and eventual transfer from one position to another within SSA. The government has moved for summary judgment. For the reasons articulated below, the government's motion will be granted.

BACKGROUND

Ms. Mitchell, the plaintiff, has been an employee of SSA for over 25 years. For approximately 11 of those years, she worked as a Safety and Occupational Health Specialist (″SOHS″) responsible for performing field inspections of SSA offices to evaluate compliance with safety and occupational health standards. In October 2001, an SSA reorganization occurred, and, as part of that reorganization, the SOHS position description **[*2]** was modified to require travel. SSA wanted employees to be able to respond to health and safety issues and conduct inspections on a nationwide basis. As such, the new SOHS position description provided that SSA could require employees to travel up to 50% of the time.

In March 2004, for the first time, Ms. Mitchell, along with all SOHS employees, was informed that she would have to participate in a ″comprehensive assessment″ at an SSA facility out of state, requiring overnight travel. Ms. Mitchell informed her supervisor, Theodore Horan, that she did not wish to travel overnight, but Mr. Horan informed her that she was required to do so. Ms. Mitchell's trip was scheduled for September 2004.

In July 2004, Ms. Mitchell submitted a letter from her psychiatrist, Dr. Haroldo Drachenberg, to Mr. Horan. The letter requested that Ms. Mitchell be excused from work related travel ″at this time″ due to a ″stress related disorder″ that, while ″manageable most of the time,″ caused her to be ″easily overwhelmed″ by changes to her routine. (Def.'s Summ. J. Mem. Ex. 2 at 43.) Upon reviewing the letter, Mr. Horan and other SSA management determined that they required additional information concerning **[*3]** the nature of Ms. Mitchell's condition and its impact on the requirements of her job. Mr. Horan, in writing, asked Ms. Mitchell to have Dr. Drachenberg review her position description and provide additional information to SSA.

Dr. Drachenberg responded to the request in a letter, dated August 12, 2004, which was sent directly to SSA's medical office. In the letter, he explained that he was treating the plaintiff for ″severe symptoms of anxiety″ and a ″hormonal imbalance due to pre-menopausal conditions which create many unpredictable symptoms″ that are aggravated by anxiety. (*Id.* at 46.) He further explained that he was treating her with Lorazepam to ″manage her anxiety and prevent panic attacks.″ (*Id.*) Dr. Drachenberg concluded that Ms. Mitchell was capable of performing all job requirements with the exception of overnight travel. He explained that her anxiety regarding traveling alone would necessitate an increase in her medication that would make it unsafe for her to drive. As a result, he ″strongly

recommend[ed] that she not be involved in any work related travel that requires flying and/or staying overnight, for an indefinite period of time." (*Id.* at 47.)

Dr. Barbara Wasserman, **[*4]** a medical officer in SSA's Center for Employee Services, reviewed both letters and issued a response on August 20, 2004, which she sent to Mr. Horan. The response questioned how Dr. Drachenberg could conclude that Ms. Mitchell was capable of performing all other job functions given that "she is 'easily overwhelmed with changes in her routine'" and that the job description required that the SOHS be on call on a 24-hour basis to respond to emergencies. (*Id.* at 48.) Dr. Wasserman concluded that "Ms. Mitchell's medical conditions preclude her performing essential SOHS job duties as well as complying with the physical demands and work environment factors outlined in the job description. Therefore, management may wish to determine if Ms. Mitchell is a qualified SOHS." (*Id.* at 49.) It is undisputed that in preparing this response, Dr. Wasserman relied solely on the documentation provided her and did not speak directly to Ms. Mitchell or Dr. Drachenberg.

Upon receiving Dr. Wasserman's report, Mr. Horan, together with his supervisor Elizabeth Bake, placed Ms. Mitchell on light duty status while SSA contemplated how to respond to her request and Dr. Wasserman's report. Accordingly, Ms. Mitchell **[*5]** was restricted from performing duties that required her to leave the main office building where she worked. She was not permitted to drive a government car during work hours or perform any off-site inspections. According to SSA, her restrictions stemmed from safety concerns brought about by Dr. Wasserman's report.

In a letter dated November 19, 2004, Donna Siegel, Associate Commissioner for the Office of Facilities Management, advised Ms. Mitchell that, based on the results of the SSA medical evaluation and because there were not enough light duty assignments within the SOHS position to accommodate her, she was being reassigned to a Management Analyst Position. The letter explained that she was being reassigned to accommodate medical concerns regarding her ability to perform essential functions of the SOHS position. (*Id.* at 52.) The letter assured her that the new position would not require overnight travel. The reassignment was effective November 28, 2004. Ms. Mitchell's grade level and salary remained the same. According to Ms. Siegel, the new position was a good match for Ms. Mitchell's "very strong analytical skills." (*Id.* Ex. 5 at 401.)

The plaintiff filed a grievance on February **[*6]** 24, 2005, claiming that SSA retaliated against her for requesting a reasonable accommodation by restricting her duties and reassigning her. SSA denied the grievance in mid-March 2005. The plaintiff's union invoked arbitration on her behalf on March 17, 2005, and an arbitration hearing was held on December 13, 2005 and January 20, 2006. On May 10, 2006, the arbitrator denied the plaintiff's grievance, and the plaintiff then filed an unsuccessful appeal and motion for reconsideration with the Equal Employment Opportunity Commission's Office of Federal Operations. She filed her complaint in this court on July 18, 2008.

ANALYSIS

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(c)*. The Supreme Court has clarified this does not mean that any factual dispute will defeat the motion. "By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat **[*7]** an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)* (emphasis in original).

"A party opposing a properly supported motion for summary judgment 'may not rest upon the mere allegations or denials of [his] pleadings,' but rather must 'set forth specific facts showing that there is a genuine issue for trial.'" *Bouchat v. Baltimore Ravens Football Club, Inc., 346 F.3d 514, 525 (4th Cir. 2003)* (alteration in original) (quoting *Fed. R. Civ. P. 56(e)*). The court must "view the evidence in the light most favorable to . . . the nonmovant, and draw all reasonable inferences in her favor without weighing the evidence or assessing the witness' credibility," *Dennis v. Columbia Colleton Med. Ctr., Inc., 290 F.3d 639, 645 (4th Cir. 2002)*, but the court also must abide by the "affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial." *Bouchat, 346 F.3d at 526* (internal quotation marks omitted) (quoting *Drewitt v. Pratt, 999 F.2d 774, 778-79 (4th Cir. 1993)*, and citing *Celotex Corp. v. Catrett, 477 U.S. 317, 323-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)*).

The **[*8]** Rehabilitation Act prohibits discrimination against an otherwise qualified individual on the basis of a disability. Retaliation claims, like substantive discrimination claims, are analyzed under the *McDonnell Douglas* burden-shifting framework. The plaintiff first must make a *prima facie* case of retaliation under the Rehabilitation Act, which requires her to demonstrate that: (1) she engaged in protected activity; (2) she suffered an adverse employment action; and (3) there is a causal

connection between the protected activity and the adverse action. *Hooven-Lewis v. Caldera, 249 F.3d 259, 272 (4th Cir. 2001)*. If she succeeds in carrying this initial burden, then ″the burden shifts to the employer … 'to articulate a legitimate, nondiscriminatory reason for the adverse employment action.'″ *Lettieri v. Equant Inc., 478 F.3d 640, 646 (4th Cir. 2007)* (quoting *Hill v. Lockheed Martin Logistics Mgmt., Inc., 354 F.3d 277, 285 (4th Cir. 2004)* (*en banc*)). Once such a reason is provided, the burden shifts back to the plaintiff to demonstrate that the given reason was a pretext for unlawful discrimination. *Id*.

The defendant does not dispute that Mitchell engaged in protected activity. As to the **[*9]** second requirement, while the agency acknowledges that Mitchell's reassignment constitutes an adverse employment action, it contends that placing Mitchell on light duty status does not. For the purposes of this motion, however, the court will assume that Mitchell's placement on light duty status was an adverse employment action. ″To satisfy the third element, the employer must have taken the adverse employment action *because* the plaintiff engaged in a protected activity.″ *Dowe v. Total Action Against Poverty in Roanoke Valley, 145 F.3d 653, 657 (4th Cir. 1998)*. The burden at this stage, however, is not onerous, *Williams v. Cerberonics, Inc., 871 F.2d 452, 457 (4th Cir. 1989)*, and is met when a plaintiff can show that the ″defendant was aware of . . . the protected activity″ and that there was ″some degree of temporal proximity to suggest a causal connection.″ *Constantine v. Rectors & Visitors of George Mason Univ., 411 F.3d 474, 501 (4th Cir. 2005)*. Here, it is undisputed that the defendant's actions were taken in response to Mitchell's request for an accommodation for her purported disability, and, thus, it appears she has made out a *prima facie* case of retaliation.

Nonetheless, Mitchell's **[*10]** claim does not survive summary judgment. The defendant has articulated legitimate, non-retaliatory reasons for Mitchell's placement on light duty status and her reassignment, namely the agency's concern regarding the plaintiff's ability to perform the requisite functions of the SOHS position. According to Ms. Mitchell's supervisors, upon learning of her condition and based on Dr. Wasserman's findings, they placed Ms. Mitchell on light duty status for approximately three months to further explore how they were going to respond to her request. After determining that there was not enough light duty work to maintain Ms. Mitchell as an SOHS, Ms. Siegel reassigned her to a position with the same pay grade that did not require overnight travel.

As evidence of pretext, Ms. Mitchell claims that SSA did not interact with her regarding her accommodation request, as required by *29 C.F.R. Pt. 1630*, App. *§ 1630.9*. [1] An employer's failure to engage in an interactive process with a disabled employee, however, is relevant to a claim that the employer failed to reasonably accommodate the employee's disability, which places different burdens on the parties than does a retaliation analysis. [2] The plaintiff, **[*11]** for example, need not establish that she has a disability or that the employer failed to reasonably accommodate her alleged disability to pursue a retaliation claim. Accordingly, the court examines whether the alleged adverse employment actions were taken in retaliation for or to deter the protected activity rather than whether they were reasonable accommodations of the employee's alleged disability. On its own, then, the plaintiff's allegation that SSA did not initiate an interactive process to accommodate her purported disability is not sufficient evidence of pretext in the retaliation context.

The plaintiff also suggests that SSA's rationale for restricting her work activities and eventually reassigning her -- that she was a safety risk -- is pretext for retaliation. Specifically, Mitchell contends that SSA's rationale is not credible because no one at SSA previously considered her to be a safety risk, even though Mr. Horan and others knew she was taking prescription anxiety medication. Such an argument overlooks the fact that Mitchell herself, through her psychiatrist's letter, informed SSA that her susceptibility to stress placed her at risk if she was required to travel overnight -- a new requirement of the job.

Moreover, Ms. Mitchell's job description called for exposure to potentially high-stress situations responding to emergencies and working under time constraints. While Ms. Mitchell performed her job well and her doctor suggested that her anxiety affected only her ability to travel, Dr. Wasserman's report suggested otherwise. **[*13]** Dr. Wasserman based her report on Dr.

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[1] This provision states that ″[o]nce a qualified individual with a disability has requested provision of a reasonable accommodation, the employer must make a reasonable effort to determine the appropriate accommodation. The appropriate reasonable accommodation is best determined through a flexible, interactive process that involves both the employer and the qualified individual with a disability.″

[2] *A prima facie* case in a failure-to-accommodate claim requires the plaintiff to show that: (1) she was an individual who had a disability within the meaning of the statute; (2) her employer had notice **[*12]** of the disability; (3) with reasonable accommodation she could perform the essential functions of the position; and (4) her employer refused to make such accommodations. *See Rhoads v. Fed. Deposit Ins. Corp.*, 257 F.3d 373, 387 n. 11 (4th Cir. 2001).

Drachenberg's letters in conjunction with the SOHS job description and concluded that, given Ms. Mitchell's condition, management might wish to reevaluate whether the plaintiff was qualified for the position. [3] Thus, Ms. Mitchell's contention that neither Mr. Horan nor Ms. Siegel personally considered her to be a safety risk in the SOHS position is not evidence of pretext. To the contrary, the evidence suggests that they placed their personal feelings about Ms. Mitchell and her accommodation request aside and relied on the findings of Dr. Wasserman, a medical professional, in making their personnel decisions. [4]

Moreover, SSA management has consistently maintained that Ms. Mitchell's transfer was a result of her request to be relieved of overnight travel, and the evidence suggests that her supervisors believed she was requesting a permanent reprieve from the travel requirement. Even if that was an incorrect assessment of Ms. Mitchell's accommodation request -- she claims she was seeking only temporary relief from travel -- it would not necessarily follow that her claim of retaliation is meritorious; she has an affirmative obligation to establish pretext. *See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 523-24, 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993)*. The evidence suggests that SSA decision **[*15]** makers attempted to accommodate Ms. Mitchell's request by finding a position, at the same level and pay grade, that did not have travel as a job requirement. [5] Whether the decision to transfer Ms. Mitchell was done out of concern for her safety or concern that she could not perform all of her job requirements or both, the court does not substitute its own judgment for that of the employer in making these types of personnel decisions. *See, e.g., DeJarnette v. Corning Inc., 133 F.3d 293, 298-99 (4th Cir. 1998)* (noting that courts "do [] not sit as a kind of super-personnel department weighing the prudence of employment decisions made by firms charged with employment discrimination") (quotations and citations omitted).

Although Ms. Mitchell was not included in the decision making and was obviously displeased with the accommodation accorded her, she has failed to present evidence that anyone at SSA acted in retaliation for her request not to travel. [6] Accordingly, the defendant's motion for summary judgment will be granted. A separate order follows.

June 29, 2009

Date

/s/

Catherine C. Blake

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[3] The plaintiff takes issue with Dr. Wasserman's report, contending that she failed to fully investigate her findings and did not personally speak with Ms. Mitchell or Dr. Drachenberg. That decision by Dr. Wasserman, however, does not translate to a finding of retaliation merely because Mr. Horan and Ms. Siegel relied on the medical office report in making their personnel decisions.

[4] In his sworn testimony before the arbitrator, Mr. Horan, in discussing his rationale for placing Ms. Mitchell on light duty status, stated, "[the light duty assignment] **[*14]** was just . . . a precautionary measure, based on that we had technical information from a medical person and we wanted to make sure that we were doing the right thing." (Def's Summ. J. Mem. Ex. 4 at 321.) In her sworn testimony, Ms. Siegel stated that Dr. Wasserman's memo "strongly indicate[d] that [Ms. Mitchell] cannot perform the position at all, not just the travel piece of it. There is discussion of several medical conditions, medication that can cause excessive sedation, as well as mental and motor impairment." (*Id.* Ex. 5 at 395-96.)

[5] The court notes that the Rehabilitation Act does not require an employer to eliminate essential job functions in order to accommodate a disabled employee. *See*29 C.F.R. Pt. 1630, App. at § 1630.2(o) ("An employer or other covered entity is not required to reallocate essential functions."); *see also Martinson v. Kinney Shoe Corp.*, 104 F.3d 683, 687 (4th Cir. 1997) (concluding that an employer is not required to hire an additional employee to perform the essential functions **[*16]** of the disabled employee's job).

[6] In her opposition, the plaintiff, relying on *Rule 56(f)*, suggests that "it is likely that there were written (including email) communications among the various managers and the medical office, which were not produced during the grievance and arbitration procedure" and that "[w]ithout discovery [she] will not be able to produce evidence of why [Dr. Wasserman] interpreted Dr. Drachenberg's letter the way she did." (Pl.'s Opp. to Summ. J. Ex. 2 at 1-2.) In light of the wealth of information that is already available from the administrative record, however, Ms. Mitchell must articulate some legitimate rationale for how the requested discovery would enable her to establish a genuine issue for trial. *See Nguyen v. CNA Corp.*, 44 F.3d 234, 242 (4th Cir. 1995) (noting that a *Rule 56(f)* affidavit must "particularly specif[y] legitimate **[*17]** needs for further discovery"). As discussed above, while Mr. Horan and Ms. Siegel relied on Dr. Wasserman's report, she had no direct role in either of the complained of personnel decisions. Her role was limited to assessing the plaintiff's medical condition based on Dr. Drachenberg's letters and the SOHS job description. All of these materials are included in the record. Thus, it is unclear what legitimate discovery needs would be served by deposing Dr. Wasserman or requesting communications among SSA managers and the medical office. *See, e.g., Morrow v. Farrell, 187 F.Supp.2d 548, 551 (D. Md. 2002)* (noting that a plaintiff is not entitled to a "fishing expedition" in the context of a *Rule 56(f)* request for additional discovery).

United States District Judge

ORDER

For the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that:

1. the defendant's motion for summary judgment (docket no. 9) is **GRANTED**;

2. judgment is entered in favor of the defendant; and

3. the Clerk shall **CLOSE** this case.

June 29, 2009

Date

/s/

Catherine C. Blake

United States District Judge