UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

LYNN MONROE, Plaintiff v. MAINE MEDICAL CENTER, Defendant	Civil No. 97-137-P-C

GENE CARTER, District Judge

MEMORANDUM OF DECISION AND ORDER

Plaintiff Lynn Monroe brings this suit against her employer, Defendant Maine Medical Center ("MMC"), alleging discrimination under the Rehabilitation Act of 1973, 29 U.S.C. § 791 *et seq*., the Americans with Disabilities Act (the "ADA"), 42 U.S.C. § 12101 *et seq*., and the Maine Human Rights Act (the "MHRA"), 5 M.R.S.A. § 4551 *et seq*. (Count I); retaliation under the Rehabilitation Act, the ADA, and the MHRA (Count II); and violations of the Family and Medical Leave Act (the "FMLA"), 29 U.S.C. § 2601 *et seq*., and the Maine Family Medical Leave Requirements (the "FMLR"), 26 M.R.S.A. § 843 *et seq*. (Count III). Now before the Court is Defendant Maine Medical Center's Motion for Summary Judgment and Incorporated Memorandum of Law ("MMC's Motion for Summary Judgment") (Docket No. 6). For the reasons set forth below, the Court will deny MMC's Motion for Summary Judgment as to Counts I and II and grant MMC's Motion for Summary Judgment as to Count III.

I. STANDARD

According to the Court of Appeals for the First Circuit,

> Summary judgment is appropriate where "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 a judgment as a matter of law." Fed. R. Civ. P. 56(c). Inferences are drawn in the light most favorable to the nonmoving party. *Reich v. John Alden Life Ins. Co.*, 126 F.3d 1, 6 (1st Cir. 1997). The nonmovant may not, of course, defeat a motion for summary judgment on conjecture alone. "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202 (1986).

Vartanian v. Monsanto Co., 131 F.3d 264, 266 (1st Cir. 1997).

II. DISCUSSION

A. Count I

The Court concludes that genuine issues of material fact preclude summary judgment on Plaintiff's claims of discrimination under the Rehabilitation Act, the ADA, and the MHRA. Plaintiff rests her claims of discrimination on two grounds. First, she argues that MMC failed to reasonably accommodate her by denying her request to not be required to perform laboratory benchwork. Relevant issues of fact include, *inter alia*, whether laboratory benchwork was an essential function of the chief medical technologist position for the second and third shifts and whether MMC's actions constitute reasonable accommodations of Plaintiff's disability. The Court notes that Plaintiff has offered evidence which indicates that MMC may have continued to expect or pressure Plaintiff to perform laboratory benchwork beyond the physical limitations indicated by Plaintiff and her physician despite the language of her job description. *See*

Deposition of Lynn Monroe at 126-28 and Ex. 8.

Second, Plaintiff asserts that MMC failed to reasonably accommodate her by denying her requests for a four-day work week. MMC argues that Plaintiff has conceded that this accommodation was not required and, therefore, its denial does not constitute discrimination. Paragraph 49 of MMC's Statement of Material Facts reads as follows:

> Sawyer rejected [Plaintiff's request] for the following reasons: a. The very nature of the job, a supervisory position, required a minimum 5 day a week coverage, which would not be reasonably possible if the Chief of the shift worked only four days; and, b. Tiredness was a routine complaint from many people who worked the second/third shift; Sawyer Aff. ¶ 16.

Statement of Material Facts in Support of Maine Medical Center's Motion for Summary Judgment ("MMC's Statement of Material Facts") (Docket No. 7) ¶ 49. Plaintiff responded that she "does not dispute the factual matters set forth in ¶ 49 of MMC's Statement of Material Facts." Plaintiff's Statement of Disputed Material Facts Precluding Summary Judgment in Favor of Defendant ("Plaintiff's Statement of Disputed Material Facts") (Docket No. 13) ¶ 49.

MMC interprets Plaintiff's response to indicate that "[t]he testimony in this case is undisputed that the very nature of the job held by Plaintiff, a supervisory position, required a minimum five-day a week coverage, which would <u>not</u> be reasonably possible if the chief of the shift (the position Plaintiff held) worked only four days." Defendant's Reply Memorandum in Support of its Motion for Summary Judgment ("MMC's Reply") (Docket No. 19) at 4. The Court, however, understands Plaintiff's response to paragraph 49 of MMC's Statement of Material Facts to mean that Plaintiff does not dispute that Sawyer rejected her request for two reasons. The Court is not willing to infer that Plaintiff does not dispute the truth of the reasons

offered. *See also* Plaintiff's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment at 12 (arguing that modified work schedule, as requested by Plaintiff, is a means of providing a reasonable accommodation). Further genuine issues of material fact as to Count I include, *inter alia*, whether MMC knew that Plaintiff's request was related to limitations caused by her disability[1] and whether a shortened work week was a reasonable accommodation for Plaintiff's position.

B. Count II

Plaintiff asserts that MMC retaliated against her for requesting accommodations for her disability by issuing two disciplinary records of warning. MMC argues that the mere chronological correlation between Plaintiff's requests and the records of warning is not enough to generate an inference of retaliation, especially in light of Plaintiff's overall employment record at MMC. This argument ignores the additional evidence put forth by Plaintiff to support her claim of retaliation. In addition to the temporal proximity between her requests for accommodation and the disciplinary actions, Plaintiff offers further evidence which may permit a jury to decide that Plaintiff was disciplined in retaliation for her requested accommodations.

First, the February 22, 1995, record of warning specifically references the requested

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[1] MMC argues that Plaintiff has not generated an issue of fact as to whether MMC knew that Plaintiff's request for a four-day work week was related to her disability. *See* MMC's Reply at 5-6. The Court determines that paragraph 9 of Plaintiff's affidavit, indicating that she told her supervisor that her request for a shortened work week was related to her disability, does not directly contradict her deposition testimony in which she states, "I can't remember the precise words" in response to the question: "And can you remember the precise words you used [when you requested a four-day work week]?" Deposition of Lynn Monroe at 96. Further, Plaintiff has offered evidence that she told a human resources representative that she was requesting a temporary four-day work week because of exhaustion caused by her arthritis. Affidavit of Lynn Monroe ¶ 10. The Court is satisfied that a genuine dispute exists as to this material fact.

accommodations, regarding both the performance of laboratory benchwork and the shortened work week. Second, the May 8, 1995, warning was not for any specific instance of conduct but, rather, sets forth a list of complaints about Plaintiff's performance during the first five months of 1995. Third, Plaintiff asserts that MMC did not follow its own disciplinary procedures in issuing the May 8, 1995, record of warning. *See* Deposition of Susan Williams at 67-68; Deposition of Sandra Larlee at 76-77, 89-92. Plaintiff also indicates that MMC relied on second-hand and inaccurate information in composing the warning. *See* Deposition of Thomas Sawyer at 163-71; Deposition of Lynn Monroe at 129-44. Viewing this record in the light most favorable to Plaintiff, the Court is satisfied that Plaintiff has proffered specific evidence from which a reasonable factfinder could conclude that MMC's justification for one or both of the warnings was no more than a pretext to disguise retaliation against Plaintiff for requesting accommodations. *See Soileau v. Guilford of Maine, Inc.*, 928 F. Supp. 37, 53 (D. Me. 1996), *aff'd*, 105 F.3d 12 (1st Cir. 1997).

C. Count III

MMC urges the Court to dismiss Plaintiff's claim under the FMLA and asserts that Plaintiff has no right of action under the FMLA. Section 2617 governs the enforcement of the FMLA and states that "[a]ny employer who violates section 2615 of [the FMLA] shall be liable to any eligible employee affected . . . ." 29 U.S.C. § 2617(a)(1). Employers may be liable for damages equal to "any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation" or "any actual monetary losses sustained by the employee as a direct result of the violation . . . up to a sum equal to 12 weeks of wages or salary

for the employee"[2] and "for such equitable relief as may be appropriate, including employment, reinstatement, and promotion." 29 U.S.C. § 2617(a)(1)(A)-(B). This section then provides a right of action for employer violations of section 2615:

> An action to recover the damages or equitable relief prescribed in paragraph (1) may be maintained against any employer . . . by any one or more employees for and in behalf of--
> (A) the employees; or
> (B) the employees and other employees similarly situated.

29 U.S.C. § 2617(a)(2).

In its motion, MMC argues that Plaintiff has no evidence of any denial of wages, benefits, or actual monetary losses and no claim for equitable relief. The undisputed facts indicate that Plaintiff received her full pay for the entire period she was on active status and that she is currently on voluntary disability leave and remains an employee of MMC. Plaintiff's Statement of Disputed Material Facts ¶¶ 66-71; MMC's Statement of Material Facts ¶¶ 66-71. Therefore, MMC concludes, Plaintiff has no cause of action under section 2617, which explicitly provides a right of action "to recover the damages or equitable relief prescribed [in section 2617(a)(1)]." 29 U.S.C. § 2617(a)(2). In her response to MMC's Motion for Summary Judgment, Plaintiff does not address this argument.

"As to issues on which the summary judgment target bears the ultimate burden of proof, she cannot rely on an absence of competent evidence, but must affirmatively point to specific facts that demonstrate the existence of an authentic dispute." *McCarthy v. Northwest Airlines, Inc*., 56 F.3d 313, 315 (1st Cir. 1995). Although the Court must indulge all reasonable inferences

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[2] This amount, if proven, can be doubled as liquidated damages. 29 U.S.C. § 2617(a)(1)(A)(iii).

in favor of the nonmoving party, the Court is not obligated to rely upon "conclusory allegations, improbable references, [or] unsupported speculation." *Medina-Munoz v. R.J. Reynolds Tobacco Co.*, 896 F.2d 5, 8 (1st Cir. 1990). Because Plaintiff has failed to come forth with any evidence generating a genuine issue of material fact as to the damages or equitable relief she is entitled to or properly seeks under section 2617 of the FMLA, the Court will grant MMC's Motion for Summary Judgment as to Count III.[3]

III. CONCLUSION

Accordingly, it is **ORDERED** that MMC's Motion for Summary Judgment be, and it is hereby, **DENIED** as to Counts I and II and **GRANTED** as to Count III.

GENE CARTER
District Judge

Dated at Portland, Maine this 28th day of April, 1998.

[3] Count III also includes a claim under Maine's FMLR. As MMC points out, the FMLR does not provide for intermittent leave and, therefore, Plaintiff does not state a claim under the FMLR. *See* 26 M.R.S.A. § 844(1).