IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ERIC STEWART	:	CIVIL ACTION
	:	
v.	:	
	:	
BALLY TOTAL FITNESS	:	NO. 99-3555

MEMORANDUM AND ORDER

HUTTON, J. July 20, 2000

Presently before the Court are Defendant Bally Total Fitness's ("Defendant") Motion for Summary Judgment (Docket No. 12), Plaintiff Eric Stewart's ("Plaintiff") response thereto (Docket No. 14), and Defendant's Reply Brief (Docket No. 15). For the reasons stated hereafter, Defendant's Motion will be denied.

I. BACKGROUND

Plaintiff was hired by Defendant in or about March 1995. He received at least two promotions and one merit bonis subsequent to his hiring. On or about August 30, 1996, while still in Defendant's employ, Plaintiff suffered a breakdown and was thereafter hospitalized for approximately one week. He was treated for Manic Depressive Disorder and has been diagnosed as having Bipolar Illness. At the time of his hospitalization, Plaintiff, through his father, advised Defendant of his hospitalization and stress-related breakdown. When Plaintiff returned to work on or about October 2, 1996, he was demoted. At work, his colleagues

called him "psycho," "wildman," "schitzo," and "freak." On or about October 5, 1996, three days after his demotion, Plaintiff was suspended indefinitely. He was never recalled to work and was terminated on or about March 31, 1997.

On or about May 21, 1997, Plaintiff mailed to the Equal Employment Opportunity Commission ("EEOC") a description of the allegedly discriminatory actions of Defendant. Said description was recorded on a form titled "Allegations of Employment Discrimination" and which appears to be an EEOC publication. Plaintiff promptly complied with all subsequent requests made of him by the EEOC. On or about March 31, 1999, the EEOC issued a Right to Sue Letter. (See Def.'s Mot. for Summ. J., Ex. A at 2 (handwritten note in bottom margin)). In late 1998, prior to the issuance of the Right to Sue Letter, the EEOC (presumably) reviewed the timeliness of Plaintiff's filing. (See Pl.'s Resp. to Def.'s Mot. for Summ. J., Ex. C of Pl.'s Affidavit (handwritten note in bottom margin, dated 9/21/98)). Plaintiff commenced this lawsuit in or about July 1999 and Defendant filed the instant Motion in or about January 2000.

II. LEGAL STANDARD

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 a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Ultimately, the moving party bears the burden of showing that there is an absence of evidence to support the nonmoving party's case. See id. at 325. Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is "material" only if it might affect the outcome of the suit under applicable rule of law. See id.

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or

vague statements. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992). The court's inquiry at the summary judgment stage is the threshold inquiry of determining whether there is need for a trial--that is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. See Anderson, 477 U.S. at 250-52. If there is sufficient evidence to reasonably expect that a jury could return a verdict in favor of plaintiff, that is enough to thwart imposition of summary judgment. See id. at 248-51.

III. DISCUSSION

Defendants request summary judgment on each of Plaintiff's counts--(1) Count I, Title I of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. ("ADA"); (2) Count II, Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. Ann. § 951 et seq. ("PHRA"); and (3) Count III, Breach of Contract under Pennsylvania Law. Without explanation, Defendants fail to present any argument whatsoever concerning the applicability of Federal Rule of Civil Procedure 56 to Counts II and III. Therefore, the Court shall consider the arguments before it concerning Plaintiff's ADA claim and nothing more.

A. Whether the Court Lacks Jurisdiction over Plaintiff's ADA Claim

Defendant puts forth three arguments which attack this Court's

ability to exercise jurisdiction over this matter; each argument concerns whether Plaintiff acted within the relevant statute of limitations. Federal courts do not have jurisdiction to hear discrimination claims unless a timely charge has been filed with the EEOC. See 42 U.S.C. § 2000e- 5(e)(1).[1]

Defendant first argues that Plaintiff's May 21, 1997, submission to the EEOC is not a "charge" and said submission therefore did not toll the statute of limitations. The Court disagrees as the form on which Plaintiff recorded his allegations (and which appears to be a form provided to Plaintiff by the EEOC) states as follows:

> Please immediately complete the entire form and return it to the U.S. Equal Employment Opportunity Commission ("EEOC"). Answer all questions as completely as possible, and attach additional pages if needed to complete your response(s). Incomplete responses will delay further processing of your charge. . . .

(Resp. in Opp. to Def.'s Mot. for Summ. J., Ex A. (emphasis added)). Additionally, Joan D. Gmitter, a Charge Receipt Supervisor employed by the EEOC, wrote in a letter dated July 8, 1997, that the EEOC

> received the completed questionnaire(s) which you returned to this office. . . . [A] representative will analyze the information in your questionnaire(s) and previous correspondence to determine whether your charge should be docketed by the EEOC.

[1] It is undisputed that Pennsylvania is a deferral state within the meaning of 42 U.S.C. § 2000e-5.

(Pl.'s Resp. to Def.'s Mot. for Summ. J., Ex. B). Clearly, Plaintiff's submission is a "charge" as that word is used in relevant law and the EEOC guidelines. Therefore, Defendant's instant argument is inapposite.

Defendant next contends that Plaintiff failed to file and perfect his charge with the EEOC within the applicable one hundred and eighty day statute of limitations (as he filed an "allegation of harassment" with the EEOC two hundred and seven days after he was terminated) and said failure prevents this Court from exercising jurisdiction over the instant ADA claim. (See Def.'s Reply Br. at 2). Defendant relies on the language of 42 U.S.C. § 2000e-5(e) which states as follows:

> A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice . . . , such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred . . . .

42 U.S.C. § 2000e-5(e) (emphases added). In deferral states with worksharing agreement such as Pennsylvania, the three hundred day filing period is available regardless of Plaintiff's failure to effectuate a state filing. See Dubose v. District 1199C, Nat'l Union of Hosp. & Health Care Employees, AFSCME, ALF-CIO, No. CIV.A.

98-2845, 2000 WL 760465, at *7 (E.D. Pa. June 9, 2000) (setting forth series of cases which reach same decision).

Defendant's final argument against jurisdiction is that Plaintiff failed to notarize his submission to the EEOC in derogation of federal law which states that "charges shall be in writing under oath or affirmation . . . ." 42 U.S.C. § 2000e-5(b). (See Def.'s Reply Br. at 3). As Defendant fails to offer any proof that Plaintiff failed to comply with § 2000e-5(b), the Court refuses to rely on this bald allegation. Defendant's related argument is that the EEOC had no jurisdiction to proceed with its investigation due to Plaintiff's failure to notarize his charge. Nevertheless, as the EEOC proceeded with an investigation of Plaintiff's charge and Defendant offers no proof that the charge violated § 2000e-5(b), the Court refuses to deny jurisdiction on this basis. In light of the foregoing, the Court has jurisdiction to consider Plaintiff's ADA claim.

B. Defendant's Argument for Summary Judgment on Plaintiff's ADA Claim

The ADA prohibits employment discrimination against "qualified individuals with disabilities." To establish a prima facie case under the ADA, a plaintiff must prove that (1) he is disabled within the meaning of the ADA, (2) that he is qualified with or without reasonable accommodation, to perform the job he held or sought, and (3) he was terminated or discriminated against because

of his disability. See Deane v. Pocono Med. Ctr., 142 F.3d 138, 142 (3d Cir. 1998). A "qualified individual with a disability" is 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). That is, the individual meets the skill, experience, education, and other job-related requirements of a position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of the employment position.

Defendant puts forth several argument for summary judgment on Plaintiff's ADA claim: (1) Plaintiff is not disabled within the meaning of the ADA as he is not substantially limited in a any major life activity; and (2) Plaintiff did not request a reasonable accommodation from Plaintiff. The Court first addresses whether Plaintiff is disabled under the ADA.

Disability is defined in three ways: (A) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment. 42 U.S.C. § 12102(2)(A)-(C). For the purpose of the instant Motion, Defendant not dispute that bipolar disorder, Plaintiff's claimed disability, constitutes a mental impairment under ADA regulations.[2] (See

[2] The ADA defines disability to include a mental impairment. See 42 U.S.C. § 12102(2)(A).

Def.'s Mot. for Summ. J. at 3). Defendant argues, however, that Plaintiff's impairment did not substantially limit a major life activity.

Major life activities are defined as "those basic activities that the average person in the general population can perform with little or no difficulty," including "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i). An impairment "substantially limits" a major life activity when the person is either "[u]nable to perform a major life activity that the average person in the general population can perform, or [s]ignificantly restricted as to the condition, manner, or duration under which an individual can perform a particular life activity as compared to the condition, manner, or duration under which the average person in the general population can perform the same major activity. 29 C.F.R. § 1630.2(j)(1)-(2). EEOC guidelines identify several factors to assist in the determination of whether a particular impairment is so severe that it is protected by the ADA: (i) the nature and severity of the impairment; (ii) the expected duration of the impairment; and (iii) the permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment. 29 C.F.R. § 1630.2(j)(2).

In the record is the psychiatric report of Pogos H. Voskanian, M.D. ("Dr. Voskanian"), dated December 7, 1999. Dr. Voskanian reports that Plaintiff

> meets the criteria for a diagnosis of Bipolar Illness. This is a chronic mental disorder . . . . One of the most important accommodations for [Plaintiff] would be to establish a stable work schedule which would not lead to [Plaintiff] experiencing deprivation of sleep by having to work late in the evening. Sleep deprivation can lead to relapse into the manic state of Bipolar Illness.

(Def.'s Reply Brief, Ex. B at 12). Defendant has not presented evidence to contradict that there are material issues surrounding whether Plaintiff, having been diagnosed as having "chronic" Bipolar Illness "which can present with acute exacerbations," is substantially limited in the major life activities of, inter alia, sleep and work. Upon examination of the evidence under the relevant standard, the Court concludes that a reasonable jury could find in Plaintiff's favor on his ADA claim. Accordingly, summary judgment is inappropriate.

The issue whether Defendant regarded Plaintiff as having a disability also precludes the entry of summary judgment. Defendant argues that "[e]ven thought [P]laintiff alleged at his deposition that he told his supervisors at [Defendant] Bally's that he suffered from manic depression and had a mental condition, this evidence does not indicate that any of [Plaintiff's] supervisors 'perceived him as having a substantially limiting impairment within the meaning of the ADA'" (Def.'s Mot. for Summ. J. at 8). When a

Plaintiff states a claim under the "regarded as" segment of the ADA definition of disability, 42 U.S.C. § 12102(2)(C), he need not prove that he is substantially limited in a major life activity. See Fowler v. Borough of Westville, CIV.A. No. 99-2929 (JEI), 2000 WL 656232, at *6 (D.N.J. May 16, 2000). Indeed, Section C of the ADA's disability definition protects those individuals who are not substantially limited in a major life activity from discriminatory actions but are perceived to have such a limitation. That Plaintiff was demoted, suspended, and ultimately dismissed, and that the temporal proximity of this sequence of events commenced with the onset and manifestation of symptoms related to his Bipolar Illness, suggests to the Court that Defendant may have regarded Plaintiff as disabled. Additionally, that Plaintiff and/or his father disclosed Plaintiff's mental illness and reason for hospitalization to Defendant and that Plaintiff returned to work only to be taunted by his colleagues as "psycho", "wildman," "freak," and "schitzo" also suggests that Defendant may have thought him to be disabled. Upon examination of this evidence under the relevant standard, the Court concludes that a reasonable jury could find in Plaintiff's favor on his ADA claim. Therefore,

the entry of summary judgment is inappropriate pursuant to the immediately foregoing analysis.[3]

An appropriate Order follows.

[3] As genuine issues of material fact exist such that summary judgment is inappropriate, the Court need not reach Defendant's additional arguments against Plaintiff's ADA claim.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ERIC STEWART	:	CIVIL ACTION
	:	
v.	:	
	:	
BALLY TOTAL FITNESS	:	NO. 99-3555

O R D E R

AND NOW, this day of July, 2000, upon consideration of Defendant Bally Total Fitness's ("Defendant") Motion for Summary Judgment (Docket No. 12), Plaintiff Eric Stewart's ("Plaintiff") response thereto (Docket No. 14), and Defendant's Reply Brief (Docket No. 15), IT IS HEREBY ORDERED that Defendant's Motion is **DENIED**.

BY THE COURT:

_____
HERBERT J. HUTTON, J.