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

JULIA LEE BLACKWELL	:	CIVIL ACTION
v.	:	
CITY OF PHILADELPHIA, et al.	:	NO. 99-0015

MEMORANDUM AND ORDER

BECHTLE, J. MAY , 2000

Presently before the court is defendant the City of Philadelphia's and the City of Philadelphia Office of the Clerk of Quarter Sessions' (collectively "Defendants") motion for summary judgment. For the reasons set forth below, the court will grant the motion.

I. BACKGROUND

Julia Lee Blackwell ("Plaintiff") filed the instant action seeking relief under the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101-12213, and the Pennsylvania Human Relations Act ("PHRA"), Pa. Stat. Ann. tit. 43, §§ 951-63.[1]

Plaintiff, who has two years of college education, worked as a deputy clerk with the Clerk of Quarter Sessions. On June 24, 1996, Plaintiff retired from her position after more than 30 years of service. (Compl. ¶¶ 10, 11 & 13.) Plaintiff was 55

[1] The court has jurisdiction over Plaintiff's ADA claim pursuant to 28 U.S.C. § 1331. The court has jurisdiction over Plaintiff's PHRA claim pursuant to 28 U.S.C. § 1367.

The PHRA and ADA are interpreted in a coextensive manner because they deal with similar subject matter and are grounded on similar legislative goals. Imler v. Hollidaysburg Am. Legion Ambulance Serv., 731 A.2d 169, 173 (Pa. Super. Ct. 1999).

years old when she retired. (Defs.' Mem. of Law in Supp. of Mot. for Summ. J. at 3; Compl. ¶¶ 10 & 11.)[2] Plaintiff asserts that she was forced to retire because Defendants refused to provide reasonable accommodations for her disability, in violation of the ADA.[3] Plaintiff's alleged disability is bilateral carpal tunnel syndrome. Plaintiff asserts that she began to develop pain in her forearms and wrists in 1991. (Compl. ¶ 16.) In 1993, Plaintiff was diagnosed as suffering from bilateral carpal tunnel syndrome. (Compl. ¶ 17.)

Plaintiff filed the instant action on January 1, 1999. Defendants filed a motion for summary judgment on December 14, 1999. Plaintiff did not file a reply.

II. LEGAL STANDARD

Summary judgment shall be granted "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 judgment as a matter of law." Fed. R. Civ. P. 56(c). A factual dispute is material only if it might affect the

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[2] Defendants contend that Plaintiff's pension, based on 37 years of service, is at the maximum percentage and is approximately equal to the net salary she received when she worked. (Defs.' Mem. of Law in Supp. of Mot. for Summ. J. at 5.)

[3] Plaintiff filed a charge of discrimination with the Pennsylvania Human Relations Commission in August 1996. Plaintiff's claim was cross-filed with the Equal Employment Opportunity Commission.

outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Whether a genuine issue of material fact is presented will be determined by asking if "a reasonable jury could return a verdict for the non-moving party." Id. In considering a motion for summary judgment, "[i]nferences should be drawn in the light most favorable to the non-moving party, and where the non-moving party's evidence contradicts the movant's, then the non-movant's must be taken as true." Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992) (citation omitted).[4]

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[4] Rule 56 further provides that:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Fed. R. Civ. P. 56 (e). "The non-moving party must raise 'more than a mere scintilla of evidence in its favor' in order to overcome a summary judgment motion and it cannot rely on unsupported assertions, conclusory allegations, or mere suspicions or beliefs in attempting to survive such a motion." Willmore v. American Atelier, Inc., 72 F. Supp. 2d 526, 527 (E.D. Pa. 1999) (citations omitted). As the Court stated in Celotex Corporation v. Catrett, "the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where no such showing is made, "[t]he moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Id. at 323.

III. DISCUSSION

Defendants first contend that Plaintiff is not "disabled" pursuant to the ADA. Defendants also argue that Plaintiff was not a "qualified individual" because she could not perform the essential functions of her job and because the accommodation Plaintiff requested would have constituted an undue hardship.

The ADA prohibits employers from discriminating against "qualified individual[s] with a disability." 42 U.S.C. § 12112(a). To establish a prima facie case under the ADA, a plaintiff must prove that (1) she is disabled within the meaning of the ADA; (2) she is qualified, with or without reasonable accommodation, to perform the job she held or sought; and (3) she was terminated or discriminated against because of her disability. See Deane v. Pocono Medical Center, 142 F.3d 138, 142 (3d Cir. 1998) (citing Gaul v. Lucent Techs., Inc., 134 F.3d 576, 580 (3d Cir. 1998)).

Under the ADA, the definition of "disability" is divided into three parts. 42 U.S.C. § 12102(2). An individual must satisfy at least one of these parts in order to be considered an individual with a disability. Id. The term "disability" is defined as:

> (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); 29 C.F.R. § 1630.2(g)(1)-(3).[5]

Plaintiff was diagnosed with bilateral carpal tunnel syndrome. (Compl. ¶¶ 16, 17 & 18.) Plaintiff apparently asserts that bilateral carpal tunnel syndrome is an impairment that renders her disabled under the first prong of the statutory definition.[6]

Determining whether an impairment exists is only the first step in determining whether an individual is disabled. To meet the level of a disability, the impairment must "substantially limit[]" one of the individual's major life activities. 42 U.S.C. § 12102(2)(A); 29 C.F.R. § 1630.2(g)(1). Plaintiff does not explicitly assert which major life activity was substantially limited by her bilateral carpal tunnel syndrome.[7] Plaintiff does not assert that she was substantially limited either in her ability to perform manual tasks or in her ability to care for

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[5] Because the ADA does not define many of the pertinent terms, the court is guided by the Regulations issued by the Equal Employment Opportunity Commission ("EEOC") to implement Title I of the Act. See 42 U.S.C. § 12116 (requiring EEOC to implement said Regulations); 29 C.F.R. § 1630.2. Regulations such as these are entitled to substantial deference. See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844 (1984); Blum v. Bacon, 457 U.S. 132, 141 (1982); Helen L. v. DiDario, 46 F.3d 325, 331-32 (3d Cir. 1995).

[6] Plaintiff does not assert that she is disabled under either the second or the third prong of the definition.

[7] "Major life activities" are defined to include "those basic activities that the average person in the general population can perform with little or no difficulty." 29 C.F.R. § 1630.2(i) app. They include "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i).

herself.[8] However, Plaintiff does, implicitly, contend that she was limited in her ability to work. (Compl. ¶¶ 16-33.)

The ability to work is clearly a major life activity. 29 C.F.R. § 1630.2(i). Nonetheless, for Plaintiff's impairment to rise to the level of a disability, her ability to work must be substantially limited by her condition. The term "substantially limits" is not defined by statute. However, under the regulations implementing the ADA, an impairment is considered substantially limiting when the individual is "unable to perform a major life activity that the average person in the general population can perform" or when the impairment "significantly restricts the duration, manner or condition under which an individual can perform a particular major life activity as compared to the average person in the general population's ability to perform that same major life activity." 29 C.F.R. § 1630.2(j)(2) app.; Aldrich v. Boeing Co., 146 F.3d 1265, 1269 (10th Cir. 1998)(quoting 29 C.F.R. § 1630.2(j)(1)).[9]

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[8] To the contrary, Plaintiff testified that she was "able to do daily care." (Blackwell Dep., 11/9/99, at 99.) Further, she asserted that she was able to perform manual tasks including buttoning buttons and lacing shoes. Id. at 99-100. Additionally, Plaintiff testified that her doctor indicated that she is able to frequently lift and carry up to 10 pounds, use her hands for non-repetitive actions such as grasping, pushing, pulling and performing fine manipulation. Id. at 115-16. See Ouzts v.USAIR, Inc., No. CIV.A.94-625, 1996 WL 578514, at *16 (W.D. Pa. July 26, 1996) (finding plaintiff not disabled by carpal tunnel syndrome which did not "substantially limit" one or more major life activity).

[9] The EEOC guidelines identify several factors to assist in the determination of whether a particular impairment is of

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With regard to "working," the inability to perform a single, particular job does not constitute a substantial limitation. 29 C.F.R. § 1630.2(j)(3)(i). Rather, the term "substantially limits" means that the plaintiff is significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. Id.[10]

Plaintiff does not assert that she was significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes. She asserts only that

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[9](...continued)
such severity that it comes within the protection intended by the ADA. Factors the court may consider in determining whether an individual is substantially limited in a major life activity include (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) (listing factors); Criado v. IBM, 145 F.3d 437, 442 (1st Cir. 1998)(same); Aldrich, 146 F.3d at 1269-70 (same).

[10] The following factors may also be considered in determining whether an individual is substantially limited in the major life activity of "working":

> (A) [t]he geographical area to which the individual has reasonable access; (B) [t]he job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or (C) [t]he job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

29 C.F.R. § 1630.2(j)(3)(ii).

she was unable to perform her duties as a deputy clerk without a reasonable accommodation. (Compl. ¶¶ 31-33.) Thus, the record does not support the conclusion that Plaintiff is substantially limited in the major life activity of working.[11]

Even assuming, arguendo, that Plaintiff was substantially limited in the major life activity of working, Plaintiff must, nonetheless, show that she is a qualified individual, that is, that she is able to perform the essential functions of the job. See 42 U.S.C. § 12111(8) (stating that "qualified individual" is one "who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires").[12]

"Essential functions" are defined to include the "fundamental job duties" of a particular position. 29 C.F.R. §

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[11] In Ouzts, the court found that "[u]nder the ADA, in order to substantially limit one's ability to work, the particular impairment must constitute a significant barrier to employment in general." 1996 WL 578514 at *16 (citations omitted). The court added that "the plaintiff must provide some 'evidence of general employment demographics and/or of recognized occupational classifications that indicate the approximate number of jobs ("few," "many," "most") from which an individual would be excluded because of an impairment'" in order to sustain his summary judgment burden. Id. (citations omitted) (finding that plaintiff's inability to engage in sustained typing for eight-hour workday "does not automatically render them significantly limited under the ADA").

[12] The determination of whether an individual with a disability is "qualified" is made in two steps. 29 C.F.R. § 1630.2(m) app. First, a determination is made as to whether the individual satisfies the prerequisites for the position. Id. Second, a determination is made as to whether or not the individual can perform the essential functions of the position, with or without a reasonable accommodation. Id.

1630.2(n)(1). Evidence of whether a certain function is "essential" includes, among other things: the employer's judgment as to what functions of a job are essential; the amount of time spent on the job performing the particular function; the consequences of not requiring the job holder to perform the function; and the number of other employees available among whom the performance of a particular function may be distributed. 42 U.S.C. § 12111(8)(listing factors); 29 C.F.R. § 1630.2(n)(3) (same).[13]

Defendants assert that a court clerk's "most important function" is writing. (Defs.' Mem. of Law in Supp. of Mot. for Summ. J. at 8.) Plaintiff agrees that "the most important" function of her job was writing and that "all court clerks [are] required to be able to write in longhand." (Blackwell Dep., 11/9/99 at 131.) Plaintiff stated that her job as a deputy clerk required her to "write for 6 hours or more per day," file documents, and carry stacks of files weighing 20 pounds or more. (Defs.' Mem. of Law in Supp. of Mot. for Summ. J. at Ex. 5.) Plaintiff also testified that, because of her hands, both she and her doctors had come to the conclusion that she "could not work." Id. at Ex. 7, p. 67-69 & Ex. 11, p. 17.

Plaintiff seems to assert that a reasonable accommodation that would allow her to perform the essential functions of her

[13] Whether or not a particular function is essential is a factual determination made on a "case by case" basis. 29 C.F.R. 1630.2(n) app.

position would be for Defendants to place her on light duty and/or provide "a co-worker [who would] assist [Plaintiff] in performing her duties." (Compl. ¶ 19; Defs.' Mem. of Law in Supp. of Mot. for Summ. J. at 14.)[14] Defendants assert that no "light duty" positions existed at the Clerk's Office. (Defs.' Mem. of Law in Supp. of Mot. for Summ. J. at 4; Compl. ¶ 33.)

The court notes that although Defendants attempted to accommodate Plaintiff by temporarily assigning a second person to work with her, the ADA neither requires Defendants to continue such an accommodation on a permanent basis nor to create a "light duty" or new permanent position. Simmerman v. Hardee's Food Systems, Inc., No.94-6906, 1996 WL 131948, at *9 (E.D. Pa. March 25, 1996) (stating "[t]he ADA does not mandate that the employer create a "light duty" or new permanent position") (citations

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[14] The term "reasonable accommodation" is open-ended: the statues and regulations offer examples, but caution that the term is not limited to those examples. 42 U.S.C. § 12111(9); 29 C.F.R. § 1630.2(o); 29 C.F.R. § 1630.2(o) app. For example, the ADA lists a number of other "reasonable accommodations" that may enable the individual with a disability to perform the essential functions of his or her job, including:

> (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
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> (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C. § 12111(9).

omitted); Soto-Ocasio v. Federal Express Corp., 150 F.3d 14, 20 (1st Cir. 1998) (stating that ADA does not require employer "to reallocate job duties" to other employees); Gilbert v. Frank, 949 F.2d 637, 644 (2d Cir. 1991) (interpreting analogous Rehabilitation Act).[15] Thus, the court concludes that there exists no genuine issue as to any material fact and that no reasonable jury could find that Plaintiff is a qualified individual with a disability under the ADA.

IV. CONCLUSION

For the reasons set forth above, Defendants' motion for summary judgment will be granted.

An appropriate Order follows.

[15] An employer is not required to provide an accommodation that is unreasonable or would impose an "undue hardship." 42 U.S.C. § 12112(b)(5)(A).

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ORDER

AND NOW, TO WIT, this day of May, 2000, upon consideration of defendants the City of Philadelphia's and the City of Philadelphia Office of the Clerk of Quarter Sessions' motion for summary judgment, it is hereby ORDERED that said motion is GRANTED. Judgment is entered in favor of defendants the City of Philadelphia and the City of Philadelphia Office of the Clerk of Quarter Sessions and against plaintiff Julia Lee Blackwell on all counts.

LOUIS C. BECHTLE, J.