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

ROBERT J. CELLA, JR.	:	CIVIL ACTION
	:	
v.	:	
	:	
VILLANOVA UNIVERSITY	:	
and ARAMARK FACILITY	:	
SERVICES, INC.	:	NO. 01-7181

MEMORANDUM

Giles, C.J. February ___, 2003

Robert J. Cella, Jr. ("Mr. Cella") brings this action against Villanova University ("Villanova") and Aramark Facility Services, Inc. ("Aramark"), seeking damages pursuant to the American with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101 et seq., the Pennsylvania Human Relations Act ("PHRA"), and the common law of the Commonwealth of Pennsylvania, to redress acts of employment discrimination allegedly suffered by him while working as a custodian at Villanova. Before the court are Villanova and Aramark's Motions for Summary Judgment pursuant to Fed. R. Civ. P. 56(c). The motions are granted because Mr. Cella has failed to allege and, in any event, cannot prove that his injury was a qualifying disability under the ADA, and because Aramark was not Mr. Cella's employer under the ADA.

Factual Background

The facts in the light most favorable to the non-moving party follow. In 1990, Mr. Cella was hired by Villanova as a custodian. Around that time, he began experiencing mental health problems. (Cella Dep. at 41-43, 50.) As early as 1991, he "did not like to be around large crowds" because he felt that "people were bothering [him] . . . They were talking about [him] and

bothering [him]," (Id. at 50-51.) He was unable to take public transportation because he feared the other passengers. (Id. at 39-40.) Mr. Cella testified that, "[T]he people on the bus are going to attack me . . . I can see it in their eyes and I can hear it . . . They're like faces with big teeth and they're always laughing." (Id. at 39-40.) Despite these problems, Mr. Cella continued to work at Villanova without incident. He did not inform anyone at Villanova of his mental difficulties (Id. at 100), nor did he explain his fears to his family or his general physician, Dr. Boyle. He "was embarassed" and "was worried that people would think of [him] differently." (Id. at 48.)

In April 1996, Aramark entered into a contract with Villanova whereby Aramark agreed to provide the services of a Director of Custodial Services, Nancy Mosley ("Ms. Mosley"), to try to improve the work of the custodial staff. (Aramark Mem. of Law in Supp. of Summ. Jug. at 2; Cella Dep. at 195.) Ms. Mosley's main task was overseeing the Villanova shift supervisors in order to ensure that all work was being performed properly and efficiently. Although she oversaw Villanova's supervisors, she was employed by, and received compensation only from, Aramark. (Mosley Dep. at 16.) At no point was Ms. Mosley the direct supervisor of Mr. Cella. Before and after Ms. Mosley came to Villanova, Mr. Cella's work instructions came solely from his Villanova shift supervisor. (Mosley Dep. at 17, 20-22; Cella Dep. at 196.) However, Ms. Mosley did tell Mr. Cella that she was his "boss" (Cella Dep. at 71), and he alleges that, at times, she gave him specific assignments but through his shift supervisor. (Id. at 76.) Ms. Mosley advised the shift supervisors how to perform certain custodial tasks, but she did not create their assignments (Mosley Dep. at 20-21) and was not responsible for disciplining the custodial employees (Id. at 24).

Mr. Cella's terms and conditions of employment were governed by the collective

bargaining agreement between Villanova and Local 473 of the Firemen and Oilers Union. (Jim Kane Dep. at 46, Cella Dep. at 189, 192.) Mr. Cella believed at all times that Villanova was his employer (Cella Dep. at 189). He received all of his benefits, wages, and tax forms through Villanova (Id. at 189-93). Discipline notices were filed by Villanova management. (Id. at 189, 196.)

Following Ms. Mosley's arrival, Mr. Cella's feelings of anxiety increased. He testified that his reaction to Ms. Mosley was "the same as everyone else's[; i]t was not too good because she, like, cracked the whip." (Cella Dep. at 195.) He participated in psychological therapy at Delaware County Psychological Services between July 1997 and February of 1998, expressing anxiety and depression due to his living situation and difficulties with his supervisors at work. (Villanova's Ex. 7.) He never told anyone at Villanova that he was attending therapy.

In August 1997, at work Mr. Cella injured his elbow while lifting bags of trash. (Pl's Ex. A.) He reported his injury to Villanova (Id.), and was treated by Villanova's panel doctor, Dr. Snedden. (Villanova's Ex. 6.) He diagnosed Mr. Cella with right arm lateral epicondylitis, or tennis elbow, which is an inflamation of the tendon tissue in the elbow region. (Id., Oct. 22, 1997 Notes.) Despite the tenderness in the elbow region, Dr. Snedden found that Mr. Cella's right shoulder had full and painless range of motion, and his neurovascular status was intact. (Id.) He sent Mr. Cella to physical therapy, fitted him for a tennis elbow strap, and placed him on light duty status at work. (Id.) Mr. Cella was restricted from lifting more than ten pounds or using tools or machines with his right arm. (Pl.'s Ex. B.)

Over the next few weeks, Mr. Cella attended several follow-up appointments with Dr. Snedden and regularly saw a physical therapist. (Villanova's Ex. 6) He recovered full range of

motion returned and his elbow became less tender. Mr. Cella reported that his elbow pain had lessened, although it recurred with certain activities. (Villanova's Ex. 6, Oct. 29, 1997 & Nov. 19, 1997 Notes; Villanova's Ex. 9.) On December 8, 1997, Dr. Snedden recommended termination of Mr. Cella's light duty status in as much as he determined that Mr. Cella was able to resume full activity. (Villanova's Ex. 6, Nov. 19, 1997 Notes.)

After Mr. Cella sustained the injury to his elbow, Ms. Mosley began calling him the "one-armed bandit." (Cella Dep. at 113.) Mr. Cella claimed that she used this phrase on an "[a]ll the time basis," like it was his name. (Id. at 113.) This name or phrase bothered Mr. Cella. On a few occasions he confronted Ms. Mosley. "I told her I didn't like the way she was calling me that, and . . . I told her I didn't think it was showing me respect by calling me that." (Id. at 114.) Ms. Mosley responded by saying, "I can talk to you any way I want," and continued to call him "one-armed bandit." (Cella Dep. at 114.) Ms. Mosley denies that she ever referred to Mr. Cella in this manner. (Mosley Dep. at 62.) However, Villanova employee, Gerald Carmody, testified that he heard her call Mr. Cella "one-armed bandit" on two occasions. (Carmody Dep. at 46-47.)

Following his return to full-time work, Mr. Cella alleges that Ms. Mosley gave him tasks that he claims that he was unable to complete due to arm pain. (Cella Dep. at 114.) He complained to his direct supervisor, Tom Reilly ("Mr. Reilly"), who told him that he had to comply with the assignments. (Id. at 114-15.) His tasks included sweeping down stairwells and cleaning the back pipes of toilets and urinals. (Id. at 114, 119.) These tasks were all within the scope of normal custodial operations and duties. Mr. Cella claims that "[Ms. Mosley] would beep me a lot," (Id. at 72), "she was looking at me like I wasn't doing a good job," (Id. at 74), and "she [was] going to take me out of the area where I was because she didn't treat me fair" (Id.

at 78).

In September 1997, he received a disciplinary notice from Tom Reilly for excessive absenteeism. He had missed 25.5 days of work. (Villanova's Ex. 5.) The vast majority of the absences were from the time before his injury occurred. Mr. Cella accepted the disciplinary notice as fair. (Cella Dep. at 132.)

Following his injury, Mr. Cella had began to have suicidial and homocidal thoughts. (Cella Dep. at 120-21; Villanova Ex. 8, Northwestern Hum. Svcs. Psych. Eval.) He heard male voices telling him to "to go and hurt [Ms. Mosley, Mr. Bull, and Mr. Malloy] . . . to go and kill them," and he had thoughts of "cutting their throats" and getting "giant shears . . . [for] stabbing them in the neck." (Cella Dep. at 122-23; Villanova's Ex. 8.)

On or about December 1997, in order to avoid contact with Ms. Mosley, Mr. Cella requested to be reassigned to the night custodial shift on or about December 1997. (Cella Dep. at 148-49, 198.) Mr. Cella made this request even though he knew that the work involved in the night shift was more difficult, and that the night shift "did more of the heavy-duty work." (Id. at 149.) Ms. Mosley approved his transfer request. (Id. at 149.) While on the night shift Mr. Cella's only limitation was the amount of weight he could lift using his right arm. (Id. at 205.) He accomplished all of the other tasks "to the best that [he] could do," although Mr. Cella felt his work was unsatisfactory. (Id. at 205.) Despite this personal assessment, none of Mr. Cella's night shift supervisors criticized him or told him that he was performing inadequately. (Id. at 205.)

When Mr. Cella switched to the night duty he rarely saw Ms. Mosley. However, on several occasions, when she came into work early, he would see her as he was punching out.

(Cella Dep. at 199.) Ms. Mosley would ask Mr. Cella, "How are you today, my one-armed bandit? How do you feel?. . . [G]ive me a hug. Let me see how your arm feels. Depending on the way you hug me is depending on how good your arm is feeling." (Id. at 199.) This occurred on five or six occasions. (Id. at 200.) Mr. Cella said he would step away, and that there was a physical touching "maybe once of those times." (Id. at 200.) Several times he replied, "Nancy, I don't like the way that you are treating me and the way you are calling me the one-armed bandit, and I would like you to stop doing it." (Id. at 201.) Ms. Mosley responded that should could do whatever she wanted to. (Id. at 201.) Mr. Cella described these encounters and complained about what he thought was mistreatment by Ms. Mosley to the Villanova Director of Human Resources, Tom Bull ("Mr. Bull"), who responded that, "[Ms. Mosley] doesn't mean it. You are being very thin-skinned, and you should listen to her because she is very good." (Id. at 202-03.)

In November 1998, almost a year after he went onto the night shift, Mr. Cella re-injured his right arm while mopping and scrubbing floors. (Pl.'s Ex. H.) Villanova sent Mr. Cella to be examined by Dr. Chalfin, who diagnosed him again with lateral epicondylitis, though he stated that Mr. Cella could return to light duty work. (Pl's Ex. D.) The light duty restriction limited lifting to less than then pounds with his right arm, and prohibitted repetitive motions operation of machines used by the night shift. (Pl's Ex. D; Cella Dep. at 209-12.) Because of the pain, Mr. Cella was prescribed Vicodin (Villanova Ex. 7, Delaware Hum. Scvs. Psych. Eval.), and given corticosteriod injections (Villanova's Ex. 9). The corticosteroid injections gave lessened Mr. Cella's pain, although he did not achieve complete relief. (Villanova's Ex. 11, Apr. 16, 1999 Chalfin Notes.)

Mr. Cella began physical therapy at the Center for Rehabilitation & Sports Medicine

following his second injury. After a short period of treatment, his therapists noted improvement in the condition of his arm. On March 18, 1999, Mr. Cella informed his therapist that his arm "fel[t] a little better." (Cella Dep. at 173.) At his March 24, 1999 appointment, Mr. Cella remarked that "I feel my arm is getting better consistently." (Id. at 173-74.) In the medical record it is noted that Mr. Cella discussed a work-hardening program with the therapist. (Id. at 174.) On March 29, 1999, Mr. Cella told the therapist, "[T]he arm feels okay. I get periods of soreness if I lift something heavy but overall the pain is less intense." (Id. at 175-76.) In March, following Mr. Cella's improvement, Dr. Chalfin lessened the lifting restriction to allow lifting up to ten pounds with his right arm. (Pl's Ex. D.)

On January 19, 1999, Mr. Cella went to see his family doctor, Dr. Boyle, who had been Mr. Cella's general physician since 1993. (Boyle Dep. at 14, 18-19.) Dr. Boyle is "board eligible" in the area of "physical medication and rehabilitation," meaning that he sat for the board examinations twice but failed to pass on each occasion. (Id. at 9.) Dr. Boyle's practice concerned general medicine and physical medicine, he was not an upper extremity specialist, and generally referred individuals with special needs to specialists. (Id. at 35-36.) Mr. Cella and Dr. Boyle assert that on or about April 1999, Dr. Boyle informed Mr. Cella that he should not return to work. (Cella Dep. at 141-43; Boyle Dep. at 31-32.) However, there is no record or documentation of this instruction and no record of a doctor's note to Villanova. (Boyle Dep. at 32.) No doctor known by Villanova to have treated Mr. Cella's injury, Dr. Snedden, Dr. Chalfin, Dr. Bora, and Dr. Zelouf, ever opined to Villanova that he should not resume work duties with restrictions.

In 1999, Mr. Cella was reassigned to the day shift because the work was easier, and

Villanova was better able to accommodate Mr. Cella's light duty requirements there. (Cella Dep. at 204; Mosley Dep. at 43.) Mr. Cella alleges that after his return to the day shift, Ms. Mosley yelled at him on two separate occasions. (Cella Dep. at 216-17.) Ms. Mosley required him to lift items, even when he told her that he was unable. (Id. at 224.) Ms. Mosley stated that whatever assignments were given to Mr. Cella qualified as light duty, though they were not specifically tailored to his abilities. (Mosley Dep. at 49.) During this time, Mr. Cella asserts that he made complaints concerning his treatment to upper management, mainly to Mr. Bull. (Cella Dep. at 182.) Mr. Cella complained about the pain from his injury and his difficulty performing the work he was assigned. (Id. at 182-83.) Mr. Cella alleges that Mr. Bull would "start screaming and hollering saying that [Mr. Cella's] doctor was not a doctor; there's nothing wrong with [Mr. Cella's] arm, and they knew I was an ex-Marine, and he was – he said that Marines should be able to work with pain." (Id. at 183.) Even when Mr. Cella told him that he "can't even lift [his] arm up, Mr. Bull told him to "just go back and do what you can do." (Id. at 183.)

On or about November 1998, Mr. Cella began to have repeated nightmares, which he describe as: "the people from Villanova . . . Nancy Mosley and Tom Bull and Tom Malloy . . . were teasing me and laughing at me. . . . They were like tormenting me." (Cella Dep. at 34-36, 120.) He experienced such nightmares four or five times a week. (Id. at 36; Villanova's Ex. 8, Northwestern Hum. Svcs. Psych. Eval. at 1.) Dr. Boyle gave Mr. Cella an anti-depressent, Zoloft, which Mr. Cella claimed "helped." (Villanova's Ex. 8, Northwestern Hum. Svcs. Psych. Eval. at 1.) Mr. Cella's evaluating psychiatrist, Dr. McDonough, concluded that what Mr. Cella was experiencing included "suggestions of paranoid ideation and auditory hallucinations in addition to the major depression." (Id. at 3.) Mr. Cella never told Villanova that he was

experiencing nightmares or that he was seeking psychiatric support.

Mr. Cella was told by his Villanova supervisors that he had to participate in a work-hardening program designed to assess his physical work capabilities. On May 13, 1999, the day prior to his termination, Mr. Cella received a phone call from a nurse at Villanova's insurer, Giselle Pittner ("Ms. Pittner"), regarding the work hardening program. (Cella Dep. at 153.) Though Dr. Boyle testified that he had recommended to Mr. Cella that he should participate in the program (Boyle Dep. at 62), Mr. Cella told Ms. Pittner that his doctor had told him not to participate because it would exacerbate his injury (Cella Dep. at 151). Despite requests, he refused to give Ms. Pittner the name of his doctor. (Id. at 153-54, 159.) After speaking to Ms. Pittner, Mr. Cella became agitated and telephoned Ms. Valosky and James Kane ("Mr. Kane") to vent his frustrations, at times "rais[ing] his voice." (Id. at 160, 167.) He told Mr. Kane to contact his attorney, but when Mr. Kane asked for his attorney's name, Mr. Cella refused to provide it. (Cella Dep. at 167.) The next day Mr. Cella received written notification from Villanova that he was terminated. (Pl.'s Ex. I.) The termination letter stated that Mr. Cella had a negative attitude, refused to cooperate with Villanova staff, and, in the phone calls to Ms. Pittner and Mr. Kane, had said he "will not follow our instructions to meet . . . in an effort to resolve" the problems. (Pl.'s Ex. I.)

Ms. Mosley did not participate in the decision to terminate Mr. Cella. (Kane Dep. at 45; Mosley Dep. at 66.) Mr. Cella filed a union grievance against Villanova, alleging that his termination was improper. (Cella Dep. at 188.) After receiving notification of the grievance, Villanova sent Mr. Cella a letter offering to reinstate him. (Pl.'s Ex. I.) Mr. Cella did not respond and proceeded with the grievance process.

Mr. Cella currently resides with his sister. Mr. Cella states that he does not help much around the home, except that he "straighten[s] up [his] room a little bit, but that's about all." (Cella Dep. at 31.) He claims he cannot help with the other chores because his "arm is too sore - I can't do anything." (Id. at 31.) Mr. Cella states that he is not as coordinated with his left arm, but that he can use it to lift items, and to feed himself. (Id. at 32.) Despite some amount of pain in his right arm, Mr. Cella can comb his hair, shampoo his hair, bathe himself, get dressed in the morning, and is able to sleep. (Id. at 31-33.) While Mr. Cella does not ordinarily drive because "the movement, it pulls on [his] arm," he is able to drive and has periodically done so with his injury. (Id. at 39.) No doctor has ever recommended that he not drive, and his primary physician, Dr. Boyle, testified that he believed Mr. Cella was still driving. (Boyle Dep. at 108.)

Mr. Cella currently receives worker's compensation, which he was awarded on October 11, 2000. (Pl.'s Ex. H.). Additionally, Mr. Cella receives Disability payments under the Social Security Act, though the reasons cited by the administration deal overwhelmingly with mental impairments. (Pl.'s Ex. R.) The report states that Mr. Cella qualifies for coverage because he "suffers from a major depressive disorder, with psychotic features, and a dependent personality disorder," mentioning his arm injury only as background information. (See id.) Mr. Cella states he is physically is capable of working, however, due to his mental state he does not feel that he can try to find a job. (Cella Dep. at 26-27.) He states that his "thinking is not clear" and that he sleeps from eighteen to twenty hours a day. (Id. at 26-27.)

Discussion

Summary Judgment Standard

Under Fed. R. Civ. P. 56(c), summary judgment is proper "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 summary judgment as a matter of law." Celetox Corp. v. Catrett, 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56(c). In order to avoid summary judgment, disputes must be both 1) material, meaning concerning facts that are relevant and necessary and that might affect the outcome of the action under governing law, and 2) genuine, meaning the evidence must be such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Summary judgment is mandated against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, because such a failure as to an essential element necessarily renders all other facts immaterial. Celetox, 477 U.S. at 322-23. In such a case, there can be but one reasonable conclusion as to the verdict under the governing law and judgment must be awarded in favor of the moving party. Anderson, 477 U.S. at 250 (noting that the standard is the same as on a motion for judgment as a matter of law under Fed. R. Civ. P. 50(a)).

The party seeking summary judgment bears the initial responsibility of informing the court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celetox, 477 U.S. at 323. The moving party is not required to produce any evidentiary materials to negate the opposing party's claim. Id. The burden then shifts to the nonmoving party to designate, though the use of and affidavits and other evidentiary materials of record, specifics facts showing that there is a genuine issue for trial. Id. at 324; Fed. R. Civ. P. 56(e). The evidence of the nonmoving party is to be believed and this court must draw all reasonable and justifiable inferences in her favor. Anderson, 477 U.S. at

255. However, it is clear from the rules and Supreme Court decisions that the nonmoving party must present to the court some competent evidence from which the court can draw such inferences.

Americans With Disabilities Act and Pennsylvania Human Rights Act

The ADA and PHRA claims are analyzed under the same rubric. Pennsylvania courts generally interpret the PHRA in accordance with its federal counterparts, which include the ADA. Salley v. Circuit City Stores, Inc., 160 F.3d 977, 979 n.1 (3d Cir. 1998). The standards are treated as such because there is a substantial degree of similarity between the definition of "handicap or disability" under the PHRA and "disability" under the ADA. Kelley v. Drexel Univ., 94 F.3d 103, 105 (3d Cir. 1996).

Under the ADA, employers are prohibited from discriminating "against a qualified individual with a disability of such individual in regard to the job application procedure, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). The Supreme Court has found that the language in the ADA creates a cause of action for discrimination based on a hostile work environment. Patterson v. McLean Credit Union, 491 U.S. 164, 180 (1989), rev'd on other grounds, Landgraf v. USI Film Products, 511 U.S. 244 (1994); Walton v. Mental Health Ass'n of Southeastern Pennsylvania, 168 F.3d 661, 666 (3d Cir. 1999) (applying Patterson to the third circuit). A plaintiff has the initial burden of establishing a prima facie case of a hostile work environment by alleging that: 1) plaintiff is a qualified individual, i.e. that he is disabled; 2) plaintiff was subject to unwelcome harassment; 3) the harassment was based on his disability or request for an accommodation; 4) the harassment was sufficiently severe or pervasive to alter the

conditions of plaintiff's employment and to create an abusive working environment; and 5) that plaintiff's employer knew or should have known of the harassment and failed to take prompt remedial action. Walton, 168 F.3d at 667.

Employer Requirement

Under the ADA, liability can only be imposed on employers. 42 U.S.C. § 12112. Mr. Cella has brought this action against Villanova and Aramark, alleging that they were joint-employers. Aramark contends that, under law, at no point was it qualified as Mr. Cella's employer.

The ADA definition of "employer" does not help resolve this dispute, as it states an employer is "a person engaged in an industry affecting commerce who has 15 or more employees for each working day. . ." 42 U.S.C. § 12111(5)(A). The definition of an "employee" is similarly unhelpful, stating it is "an individual employed by an employer." 42 U.S.C. § 12111(4). Consequently, courts have relied on common law agency principles to determine employer-employee relationships under the ADA. See EEOC v. Zippo Mfg. Co., 713 F.2d 32, 38 (3d Cir. 1983).

Mr. Cella asserts that he was jointly employed by Villanova and Aramark. To determine if independent legal entities are "joint employers" there must be "two or more employers exert[ing] significant control over the same employees–where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment." Nat'l Labor Relations Bd. v. Browning-Ferris Indus. of Pennsylvania, Inc., 691 F.2d 1117, 1124 (3d Cir. 1982) (citing Boire v. Greyhound Corp., 376 U.S. 473, 481 (1964)). To determine whether this test has been met, three factors can be considered: 1) authority to hire and

fire employees, promulgate work rules and assignments, and set conditions of employment, including compensation, benefits, and hours; 2) day-to-day supervision of employees, including employee discipline; and 3) control of employee records, including payroll, insurance, taxes and the like." Podsobinski v. Roizman, No. 97-4076, 1998 WL 67548, at *3 (E.D. Pa. Feb. 13, 1998) (quoting Zarnoski v. Hearst Bus. Communications, Inc., No. 95-3854, 1996 WL 11301, at *8 (E.D. Pa. Jan 11, 1996)).

Mr. Cella has not satisfied any of these three factors to show that he was jointly employed by Villanova and Cella. He was subject solely to the collective bargaining agreement, which governed his employment. Mr. Cella does not allege that Aramark was involved in any capacity in the negotiation or execution of this document. This agreement governed the work rules, job classifications, compensation, methods of termination and discipline, and work assignments for Mr. Cella. (See Aramark's Ex. 2, Agreement.) Only Villanova could supervise his work, evaluate it, and impose discipline, if believed warranted. He received all of his compensation, benefits, tax forms, and workers's compensation payments from Villanova.

Although Mr. Cella asserts that Ms. Mosley, an Aramark employee, often directed him to complete certain tasks, he has never alleged or otherwise contended that Ms. Mosley was his supervisor on a day-to-day basis. He had Villanova shift supervisors, each of whom directed him to his daily tasks, supervised his work, and, when necessary, disciplined him. The contract role of Ms. Mosley was to supervise the shift supervisors, and though she occasionally gave direct assignments to custodians, these were isolated incidents and not the daily practices of the department. Finally, the decision to terminate Mr. Cella was made by Tom Bull with input from other Villanova employees, and did not involve Ms. Mosley.

For the foregoing reasons, Aramark and Villanova cannot be considered to have jointly employed Mr. Cella. Because Villanova had exclusive control of the conditions of Mr. Cella's employment, as well as his supervision and the right to hire and terminate him, Villanova was Mr. Cella's sole employer. EEOC v. Zippo Mfg. Co., 713 F.2d 32, 38 (3d Cir. 1983). Since Mr. Cella has failed to present evidence sufficient to create a genuine issue of material fact, summary judgment is granted in favor or Aramark on this basis.

Time Limits

Even if Aramark had qualified as a joint employer, Mr. Cella's claim still would fail as matter of law for failure to comply with filing requirements under the ADA. In a deferral state such as Pennsylvania, to preserve a claim under the ADA, an individual has 300 days to file a charge with the EEOC for an alleged discriminatory act. 42 U.S.C. § 2000e-5(e); see also Seredinski v. Clifton Precision Products Co., Div. of Litton Systems, Inc., 776 F.2d 56, 61 (3d Cir. 1985). To preserve a claim under the PHRA, a plaintiff must file his administrative complaint within 180 days of any discriminatory practice. Snyder v. Pennsylvania Ass'n of School Retirees, 566 A.2d 1235, 1242 n.7 (Pa. Super. Ct. 1989). Additionally, an individual may raise an employment discrimination claim in district court *only* against a defendant that has been previously named in an administrative charge. 42 U.S.C. § 2000e-5(f)(1).

Any claim for judicial relief must have been exhausted administratively before it can be filed with the district court. Robinson v. Dalton, 107 F.3d 1018, 1020 (3d Cir. 1997). Despite this requirement, information that "grow[s] out of the charge of discrimination, including new acts which occurred during the pendency of the proceedings" are at times permitted to be raised

in the district court. Robinson, 107 F.3d at 1025. Mr. Cella argues his claim against Aramark naturally grows out of his initial charge and that he should be permitted to add Aramark as a respondent, despite the his failure to timely file against Aramark. He does not allege that Aramark committed any new conduct, or that he did not know Ms. Mosley was an Aramark employee at the time of his initial charge. Mr. Cella merely asserts that because Ms. Mosley was mentioned at several points in the original administrative charge, he should be able to now add Aramark as a defendant.

Mr. Cella seeks to greatly expand the amendment standard, arguing that the allowance of additional incidents or acts also permits the addition of a defendant. Courts may permit the addition of a party past the statute of limitations when "the unnamed party received notice and when there is a shared commonality of interest with the named party." Schafer v. Bd. of Pub. Educ., 903 F.2d 243, 252 (3d Cir. 1990). The mere mention of party is not sufficient for notice that it later will be added as a co-defendant to the action. Here, there is no evidence that any attorney, any human resources representative, or any individual with the authority to appropriately direct the investigation of such a complaint, was aware of the charge prior to April 2000. Mr. Cella claims that Deborah Fickler ("Ms. Fickler") knew about the claim, and was in-house counsel to Aramark, thus, giving Aramark notice. (Pl.'s Res. to Mot. for Summ. Judgment at 23.) However, this allegation is in error, as Ms. Fickler was actually in-house counsel to Villanova. (Noelle Monahan Dep. at 34-35.) Thus, Mr. Cella has not alleged notice of the discrimination charge was given to any appropriate individual at Aramark. Additionally, Mr. Cella has not alleged that Aramark and Villanova share a commonality of interest. To permit such an amendment absent notice and common interest would permit the statute of limitations to

be circumvented whenever multiple defendants exist. Further, Mr. Cella states no excuse for his failure to timely file. Therefore, the action against Aramark is dismissed as a matter of law for failure to comply with procedural requirements.

Disability Definition

Even if Mr. Cella could establish that his claim was properly filed against Aramark, his claim fails as a matter of law against both defendants because he has not established that his injury is a qualifying disability under the ADA. The court addresses solely Mr. Cella's contention that he was disabled as a result of his lateral epicondylitis because because at no point has Mr. Cella alleged an ADA claim based on his mental deficiencies.

Mr. Cella first must establish that his injury qualifies as a disability under the ADA. The ADA defines "disability" as: (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of having such impairment; or (C) being regarded as having such an impairment. 42 U.S.C. § 12102(2). Initially, to qualify as disabled under subsection (A) of the ADA's definition, a claimant must prove that he has a physical or mental impairment. See 42 U.S.C. § 12102(2)(A). In Toyota Motor Manufacturing Kentucky, Inc. v. Williams, 534 U.S. 184, 122 S. Ct. 681 (2002), the Supreme Court analyzed the construction of the ADA, determining that Congress specifically prescribed that "nothing in [the ADA] shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 . . . or the regulations issued by Federal agencies pursuant to such title." 42 U.S.C. § 12201(a). The Rehabilitation Act regulations broadly define "physical impairment" as, "any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special

sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine." 45 C.F.R. § 84.3(j)(2)(i) (2001). Under such definition, Mr. Cella's lateral epicondylitis qualifies as an impairment.

However, the ADA requires more than a mere impairment in order to qualify as disabled; the individual also must show that such impairment limits his or her ability to engage in a major life activity. See Toyota Motor, 122 S. Ct. at 690 (citing 42 U.S.C. § 12102(2)(A)). Examples of "major life activities" are found in the Rehabilitation Act regulations, and include "walking, seeing, hearing, speaking, breathing, learning, " and, as relevant here, "performing manual tasks." 45 C.F.R. § 84.3(j)(2)(ii) (2001). Further, this limitation must be "substantial." Texas Motor, 122 S. Ct. at 691. While the Supreme Court did not decide the level of deference that is due to the EEOC regulations, Id., these regulations define "substantially limited" as "[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 major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform the same major life activity." 29 C.F.R. § 1630.2(j) (2001).

In Texas Motor, the Supreme Court noted the importance of the terms "substantially" and "major" in the ADA's definition of "disability." 122 S. Ct. at 691. The Court emphasized that "these terms need to be interpreted strictly to create a demanding standard for qualifying as dsiabled by the first section of the ADA. . .," and held that, "to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily

lives. The impairment's impact must also be permanent or long term." Id. Each disability determination must be analyzed based on the effect the disability has on the individual, not merely the medical diagnosis or general symptoms of the condition. Id. at 692 (citing 42 U.S.C. § 12102(2)); see also Sutton v. United Air Lines, Inc., 527 U.S. 471, 483 (1999). The Court emphasized that in making such a determination the capabilities to focus on were those which are "an important part of most people's daily lives," and that "occupation specific tasks may only have a limited relevance to the manual task inquiry." Texas Motor, 122 S. Ct. at 693. Such crucial tasks include those involving personal hygiene, such as getting dressed, bathing, brushing one's teeth, and household chores, such as preparing food, doing laundry, and cleaning up around the house. Id. at 693-94.

Here, Mr. Cella had tennis elbow. This condition involves the inflamation of tendons in the elbow region, which limits the individual's ability to utilize their arm and hand. In some individuals, this condition may become so severe as to prevent performance of central daily tasks, thus rendering them qualified individuals under the ADA. However, such is not the case with Mr. Cella's circumstances. He is able to bathe, comb his hair, brush his teeth, drive a car, and straighten up his room. While he may have experienced some degree of pain while performing these activities, he has not been rendered incapable of accomplishing them.

Mr. Cella's main complaint is that, with his right arm, he is unable to lift over ten pounds or to perform tasks that required repetitive arm motions. His left arm is medically unimpaired. These restrictions do not qualify Mr. Cella as disabled under the ADA. Additionally, there is no indication that Mr. Cella's condition is permanent, or even long-term. After Mr. Cella's initial injury, he shortly informed his physical therapists that the condition was improving, and was

recommended to return to full activity after only eight weeks. Further, he soon requested to be transferred to the night shift, despite his knowledge that the work involved was more strenuous. According to his supervisors, he performed satisfactorily on the night shift. Mr. Cella's improved condition allowed him to continue work on the night shift until he re-injured his arm in 1998. At that time, he was returned to the day shift, and was placed again on light duty. However, the doctors gave no indication that the condition would last any indefinitely, or even for a significant duration. Mr. Cella's current inability to work results primarily from his mental impairments, and he admitted that, absent his mental difficulties, he would seek employment.

"[T]hese changes in [his] life did not amount to such severe restrictions in the activities that are of central importance to most people's daily lives that they establish a manual task disability as a matter of law." Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 122 S. Ct. 681, 694 (2002). In light of Mr. Cella's individual situation, he was not rendered substantially limited in performing a major life activity, and thus, is not considered disabled under the ADA and Mr. Cella's claims fail as a matter of law.

Conclusion

For the foregoing reasons, plaintiffs has failed to present evidence sufficient to create a genuine issue of material fact and summary judgment is granted in favor of defendant Aramark and defendant Villanova, and against plaintiff.

An appropriate order follows.