

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

DANIELLE BOWER : CIVIL ACTION
 :
 v. :
 :
 FEDERAL EXPRESS CORPORATION : NO. 06-2344

MEMORANDUM

Bartle, C.J.

April 19, 2007

Plaintiff Danielle Bower ("Bower") instituted this employment discrimination action against her former employer, defendant Federal Express Corporation ("FedEx") alleging the following three claims: Count I for violations of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq.; Count II for violations of the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 et seq.; and Count III for violations of the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Stat. Ann. § 951, et seq. Bower alleges that she was constructively discharged when FedEx would not authorize her to return to work after her asthma forced her to take approximately one month of leave under the FMLA. Now pending before the court is the motion of FedEx for summary judgment.

Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); see Fed. R. Civ. P. 56(c). A dispute is genuine if the evidence is such that a reasonable jury could

return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986). After reviewing the evidence, the court makes all reasonable inferences from the evidence in the light most favorable to the non-movant. In re Flat Glass Antitrust Litig., 385 F.3d 350, 357 (3d Cir. 2004).

Genuine issues of material fact presently exist in this action such that a jury must decide them. First are the contested threshold questions of whether Bower's asthma is severe enough to render her "disabled" as defined by the ADA and whether she is otherwise "qualified" for her position, that is, whether with or without reasonable accommodation she would be able to perform the essential functions of her job. 42 U.S.C. § 12112(a); Gaul v. Lucent Tech., 134 F.3d 576, 580 (3d Cir. 1998). Second, there is a series of hotly disputed issues regarding the determination of what a "reasonable accommodation" would have been in this situation. Among these questions of fact are: (1) whether Bower in fact made a request for accommodations in the form of modification of her schedule and/or duties; (2) whether such a modification would have been considered a "reasonable" accommodation; and (3) assuming that the request was made and it was reasonable, whether FedEx engaged in a good faith attempt to make those accommodations. Similarly, there is a question of whether Bower's request for intermittent leave under the FMLA was reasonable and whether FedEx's refusal to allow Bower to return to work was in retaliation for her prior use of FMLA leave. Finally, there is the question of whether Bower was

constructively discharged, that is, whether FedEx "knowingly permitted conditions of discrimination in employment so intolerable that a reasonable person subject to them would resign." Pa. State Police v. Suders, 542 U.S. 129, 146-47 (2005).

Accordingly, the motion of FedEx for summary judgment will be denied because of the existence of genuine issues of material fact.

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ORDER

AND NOW, this 19th day of April, 2007, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of defendant Federal Express Corporation for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

C.J.