UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOSEPH CONNOR, Plaintiff,	: :	
v.	:	NO. 3:02CV382 (SRU)
McDONALD'S RESTAURANT, et al., Defendants.	: :	

RULING ON MOTION TO DISMISS

Plaintiff Joseph Connor ("Connor") complains that defendants McDonald's Restaurant and McDonald's Corporation (collectively "McDonalds") discriminated against him in violation of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et seq., and the Connecticut Fair Employment Practices Act ("CFEPA"), Conn. Gen. Stat. § 46a-60 et seq., by refusing to hire him as a cook at a McDonald's restaurant in Hamden, Connecticut (the "Hamden McDonalds"). Specifically, Connor, who is allegedly 420 pounds, charges that McDonalds: (1) violated the ADA and the CFEPA when it "regarded" him as physically disabled -- morbidly obese -- and refused to hire him based on that perception; and (2) violated the CFEPA by deliberately not hiring him because he is, in fact, physically disabled, as defined by the CFEPA.

McDonalds moves to dismiss Connor's Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim under the ADA because Connor failed to plead that his obesity is linked to a physiological impairment. In addition, McDonalds moves to dismiss Connor's claims under

the CFEPA because: (1) it could not have "regarded" Connor as physically disabled in violation of the CFEPA, because there is no cause of action for being "regarded as" physically disabled under the CFEPA; and (2) Connor may not be considered physically disabled under the CFEPA unless his obesity is linked to a physiological impairment; an allegation he failed to plead. For the following reasons, McDonalds' motion to dismiss is denied on both grounds.

I. *Background*

For purposes of this motion, the following allegations, taken from the Amended Complaint, are assumed to be true.

In September 2000, Connor, and approximately ten other applicants, applied for employment at the Hamden McDonalds. Connor applied for, and was offered, a cook's position. Connor told "Jay," the Manager of the Hamden McDonalds, his waist (54") and shirt size, and Jay replied that he would call him in about three days, after his uniform arrived. When three days had passed without a call from anyone at McDonalds, Connor called the Hamden McDonalds, and Jay repeated that he would call once the uniform arrived. By mid-October, McDonalds had still not contacted Connor, so Connor called back. Jay told him that the uniform shirt, but not the uniform pants, had arrived. Jay promised to call once the pants arrived.[1] McDonalds never contacted Connor after that last phone call. Over the course of the next three months, Connor visited the Hamden McDonalds to find out why he had not started working. During each visit he saw candidates who had been hired at the same time he was who were already working. On one occasion, Connor saw a "help wanted" sign in the window,

[1] Connor contends that McDonald's does not even require its employees to wear uniform pants.

and on a separate visit, a Hamden McDonalds employee told Connor that McDonalds had hired that employee's cousin the day before and the cousin was expected to start working that day. Connor was never told why he had never been told to start working, yet he was repeatedly told someone would contact him. As of August 9, 2002, the date the Amended Complaint was filed, McDonalds had still not contacted Connor. In addition, Connor claims that, at all times relevant to this case, he was qualified to perform the essential functions of the cook's job.[2]

II. *Standard of Review for a Motion to Dismiss*

When deciding a motion to dismiss for failure to state a claim, the court "must accept the factual allegations of the complaint as true and must draw all reasonable inferences in favor of the plaintiff." Bernheim v. Litt, 79 F.3d 318, 321 (2d Cir. 1996); Gant v. Wallingford Bd. of Educ., 69 F.3d 669, 673 (2d Cir. 1995). The court's function on a motion to dismiss is "not to weigh the evidence that might be presented at trial, but merely to determine whether the complaint itself is legally sufficient." Goldman v. Belden, 754 F.2d 1059, 1067 (2d Cir. 1985). A complaint is legally sufficient when it includes a "short and plain statement of the claim showing that the pleader is entitled to relief." Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002) ("Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions."); Fed. R. Civ. P. 8(a)(2); cf. Fed. R. Civ. P. 9(b). "Such a statement

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[2] Connor also alleges that he has a sleep disorder. Connor has not plead that he informed McDonalds of the sleep disorder or that McDonalds knew, or reasonably should have known about his sleep disorder. Thus, McDonalds could not have conceivably discriminated against Connor on the basis of an alleged sleep disorder. Cf. Hamm v. Runyon, 51 F.3d 721, 724-26 (7th Cir. 1995) (employer did not "regard" employee as disabled where there was no evidence that the person who made the decision to fire him was even told about the employee's arthritis; employee told his direct supervisor that it was "nothing" and "would pass" and continued to do all of the functions of his job).

must simply give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id. (citing Conley v. Gibson, 355 U.S. 41, 47 (1957)). If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding. Id. at 514. In addition, if a pleading lacks merit, a defendant can move for summary judgment under Rule 56. Id. Therefore, it is only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle him to relief," that it is appropriate to grant a motion to dismiss for failure to state a claim. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Cohen v. Koenig, 25 F.3d 1168, 1172 (2d Cir. 1994).

III. *Discussion*

Connor alleges that McDonalds refused to hire him in violation of the ADA and the CFEPA.

1. ***The ADA***

The ADA provides that "no covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, 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).[3] A "qualified individual with a disability" is defined as "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). A disability is defined 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 such an impairment; or

[3] There is no dispute that McDonalds is a 'covered entity' for purposes of the ADA.

(C) being regarded as having such an impairment." 42 U.S.C. § 12102(2); see also Francis v. City of Meriden, 129 F.3d 281, 286 (2d Cir. 1997) ("an impairment within the meaning of subsection (C) plainly refers to a 'physical or mental impairment' within the meaning of subsection (A)"). Connor's claim lies under subsection (C).

In order to state a claim under subsection (C), a plaintiff "must allege that the employer believed, however erroneously, that the plaintiff suffered from an 'impairment' that, if it truly existed, would be covered under the statute and that the employer discriminated against the plaintiff on that basis." Francis, 129 F.3d at 284; 29 C.F.R. § 1630.2(l). "As the Supreme Court explained in School Board of Nassau County v. Arline, [480 U.S. 273, 283 (1987),] 'disability' in this situation results from the negative myths or stereotypes of others; an employer may regard a perfectly able individual with a visible physical impairment as substantially limited in the ability to work." Hazeldine v. Beverage Media, Ltd., 954 F. Supp. 697, 705 (S.D.N.Y. 1997).

McDonalds claims that Connor failed to state a claim under the "regarded as" prong of the ADA. Relying on the Second Circuit's opinion in Francis v. City of Meriden, 129 F.3d 281 (2d Cir. 1997), McDonalds argues that, because "obesity, except in special cases where the obesity relates to a physiological disorder, is not a 'physical impairment'" within the meaning of the ADA, Connor is required to plead that his obesity is related to a physiological impairment in order to state an ADA claim.[4] Francis, 129 F.3d at 286. The court declines to accept McDonalds' heightened interpretation

[4] The court in Francis also stated, however, that "a cause of action may lie against an employer who discriminates against an employee on the basis of the perception that the employee is morbidly obese, *or* suffers from a weight condition that is the symptom of a physiological disorder." Francis, 129 F.3d at 286 (emphasis added); Furst v. State of New York Unified Court System, 1999 WL 1021817

of Connor's pleading requirements.

First, for purposes of the "regarded as" prong, the issue is not whether Connor's obesity is related to a physiological impairment; rather the issue is whether McDonalds perceived Connor's obesity as relating to a physiological impairment. Thus, Connor does not need to plead that *his* obesity is related to a physiological disorder in order to state a claim under the "regarded as" prong. Second, Connor is not required to plead that McDonalds perceived his obesity as relating to a physiological disorder; rather Connor is only required to provide "a short and plain statement of the claim showing that [he] is entitled to relief. Such a statement must simply 'give the defendant fair notice of what [Connor's] claim is and the grounds upon which it rests.'" Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002) (a plaintiff in an employment discrimination case need only comply with Fed. R. Civ. P. 8(a)'s minimal notice pleading requirement in order to survive a motion to dismiss) (citing Conley v. Gibson, 355 U.S. 41, 47 (1957)); Fed. R. Civ. P. 8(a)).

Connor alleges that McDonalds regarded him as morbidly obese, that morbid obesity may qualify as a physical disability under federal law, and that McDonalds refused to hire him because it perceived him as substantially limited in the major life activity of working based due to his morbid obesity. Thus, Connor has plead a "short and plain statement"of his claims. Burch v. Beth Israel Medical Center, 2003 WL 253177, *5 (S.D.N.Y. 2003) ("Even if plaintiff's allegation 'I was not accommodated for this position' is groundless, the statement is sufficient under the Federal Rules'

(E.D.N.Y. 1999) (the same). Thus, Francis can potentially be interpreted as requiring obesity to be linked to a physiological impairment, yet not requiring morbid obesity to be linked to such an impairment.

pleading requirements to state an ADA claim."). Connor has also provided McDonalds with "fair notice" of the grounds on which his claims rest. The complaint detailed, and the court must therefore accept as true, the following allegations: Connor's weight of 420 pounds; Connor's ability to perform the essential function of the desired job; the relevant dates and people involved in McDonalds' refusal to hire him; and that other individuals who were offered jobs at the same time as Connor, in September 2000, had already started working at McDonalds.

Finally, Connor has stated claims upon which relief could be granted, see Francis, 129 F.3d at 284, (a plaintiff "must allege that the employer believed, however erroneously, that the plaintiff suffered from an 'impairment' that, if it truly existed, would be covered under the statute ..."), because if Connor were morbidly obese, he would be covered under the statute. Hazeldine v. Beverage Media, Ltd., 954 F. Supp. 697, 703 (S.D.N.Y. 1997) (finding that evidence such as frequent twisting of ankles, shortness of breath after physical activity, and diagnosis of hypertension while attending a weight loss clinic is sufficient for a jury to find that plaintiff's obesity is a physical impairment); Cook v. State of Rhode Island, Department of Mental Health, Retardation, and Hospitals, 10 F.3d 17 (1st Cir. 1993) (a morbidly obese plaintiff can be disabled for purposes of the ADA); Francis, 129 F.3d 281, 286 ("a cause of action may lie against an employer who discriminates against an employee on the basis of the perception that the employee is morbidly obese, *or* suffers from a weight condition that is the symptom of a physiological disorder.) (emphasis added); Furst v. State of New York Unified Court System, 1999 WL 1021817 (E.D.N.Y. 1999) (the same). Thus, Connor has complied with the Federal Rules' minimal notice pleading requirement and, taken as true, his allegations state a claim for relief.

2. CFEPA

The CFEPA prohibits:

> An employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's ... physical disability.

Conn. Gen. Stat. § 46a-60.

Connor alleges that McDonalds violated the CFEPA by regarding him as disabled and refusing to hire him based on that perception. McDonalds has averred that there is no specific cause of action for "regarding" an individual as physically disabled under the CFEPA. Although the CFEPA does not specifically provide for an analogous cause of action to the "regarded as" disabled provision of the ADA, the CFEPA was intended "to be at least as co-extensive as its federal statutory counterparts." Shaw v. Greenwich Anesthesiology Associates, P.C., 137 F. Supp. 2d 48, 65 (D. Conn. 2001); CHRO ex. rel. Tucker v. General Dynamics Corp., 1991 WL 258041, *6 ("a person perceived as suffering from a particular handicap falls within the protection of Section 46a-60(a)(1)"). Accordingly, McDonalds' motion to dismiss Connor's claim on the grounds that the CFEPA does not provide a "regarded as" disabled cause of action is denied. Furthermore, consistent with the rationale offered supporting Connor's ADA claim, Connor may be able to prove that McDonalds regarded him as having a physical impairment under the CFEPA.[5]

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[5] Connecticut courts review federal precedent concerning employment discrimination for guidance in enforcing the state's own anti-discrimination statutes. Shaw v. Greenwich Anesthesiology Associates, P.C.,137 F. Supp. 2d 48, 66 (D. Conn. 2001) (citing Levy v. Comm'n on Human Rights & Opportunities, 236 Conn. 96, 103 (1996)).

Connor has also claimed that McDonalds violated the CFEPA by refusing to hire him because he is physically disabled, as defined by the CFEPA. McDonalds argues that Connor must allege that his obesity is a result of a physiological impairment in order to state a claim under the CFEPA.

Connecticut law provides a different definition of "disabled" than does the ADA. Id. (indicating that Connecticut law may be broader than its federal statutory counterpart). To be disabled under Connecticut law, one must suffer "any chronic physical handicap, infirmity or impairment ...." Id. citing Conn. Gen. Stat. § 46a-51(15). "Neither the state statute nor the ADA defines 'chronic.'" Shaw, 137 F. Supp. 2d at 66. The Connecticut Superior Court in Gilman Bros. v. Conn. Comm'n on Human Rights & Opportunities, 1997 WL 275578 (Conn. Super. Ct. 1997), defined 'chronic' as "with reference to diseases of long duration, or characterized by slowly progressive symptoms; deep seated or obstinate, or threatening a long continuance; distinguished from acute." Id. at *4.

Connor claims that he suffers from morbid obesity. At this stage in the litigation, the focus is on whether Connor has alleged a set of facts under which he could show that his morbid obesity is a chronic physical impairment or infirmity. Even if McDonalds is correct that, under Connecticut law, Connor must prove that his morbid obesity is linked to a physiological impairment, Connor does not need to plead that his obesity is linked to a physiological impairment. In light of the fact that Connecticut courts look to federal precedent of ADA claims in reviewing CFEPA claims, it is reasonable to assume that a Connecticut court reviewing a CFEPA claim would also: (1) apply the Federal Rules' minimal notice pleading standard, see Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002); and (2) determine whether Connor is disabled under the CFEPA by analyzing his individual situation, rather than by reference to "abstract lists or categories of impairments, as there are varying

degrees of impairments as well as varied individuals who suffer from the impairments." Cole v. Uni-Marts, Inc., 88 F. Supp. 2d 67, 73 (W.D.N.Y. 2000); Fredregill v. Nationwide Agribusiness Ins. Co., 992 F. Supp. 1082, 1089 (S.D. Iowa 1997) ("As with any claim of disability, an assessment of the individual person's circumstances is required."). Thus, Connor must be given the opportunity to prove that he is protected by the CFEPA.

CONCLUSION

McDonalds' motion to dismiss (doc. #7) Connor's Amended Complaint is DENIED.

It is so ordered.

Dated at Bridgeport, Connecticut this _____ day of March 2003.

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Stefan R. Underhill
United States District Judge