

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Kennedy :
v. : No. 3:00cv604(JBA)
St. Francis Hospital :

Ruling on Oral Motion for Summary Judgment

Following the Court's ruling [Doc. #55]¹ granting in part and denying in part St. Francis's motion for summary judgment, St. Francis made a supplemental motion for summary judgment, in open court, based on evidence that was omitted from the original summary judgment record. Kennedy filed her opposition to the motion, and for the reasons set out below, defendant's motion is granted.

I. Background

In the Court's ruling on defendant's original motion, summary judgment was denied on Kennedy's claim that St. Francis failed to consider her for a position (the "coordinator position") because of her disability. The Court concluded:

While close, this evidence with all inferences drawn in Kennedy's favor could support a jury conclusion that in late 1992 St. Francis had funding and a job

¹Kennedy v. St. Francis Hosp., No. 3:00cv604(JBA), 2002 WL 31109535 (D. Conn. Aug. 22, 2002).

description for a reconfigured version of Kennedy's position, which it planned to offer . . . instead to Odesina, but when Kennedy expressed her intention to apply, St. Francis sent back the grant funding rather than hire her, based on her disability. Thus, Kennedy has established for summary judgment purposes a prima facie case, and while St. Francis points to the fact that the position was never created as a legitimate, non-discriminatory reason for Kennedy's failure to be selected, Kennedy has adduced facts sufficient for a jury to infer pretext. Thus, on this evidence, a jury could conclude that unlawful disability discrimination was the actual reason Kennedy was not considered for the coordinator position in late 1992.

Ruling [Doc. #55] at 23-24, 2002 WL 31109535 at *9 (citations omitted).

St. Francis moved for reconsideration of this conclusion, asserting two legal arguments and submitting a page from Kennedy's deposition testimony, not contained in the original summary judgment record, reflecting her testimony that there has been no time since September 1992 in which she has been able to hold full-time employment:

Q: Were you able to return to full-time work on September 11, 1992?

A: No.

Q: Since September 1992 has there been a time when you were able to return to full-time work?

A: No.

Kennedy Dep. at 98 [Doc. #58 Ex. A].

In light of the representation that this testimony had

been mistakenly omitted earlier, the Court permitted St. Francis to make a supplemental oral motion for summary judgment. St. Francis now argues that in light of Kennedy's deposition testimony, no reasonable jury could find that Kennedy was capable of performing the coordinator's position.

In opposition, Kennedy submitted her own affidavit, as well as minutes from a Steering Committee meeting in 1992 describing the essential functions of the coordinator position as part time in nature:

After much discussion, it was decided that the position of Clinical Services Coordinator would be a .5 FTE with the understanding that anyone taking that position would assume another .5 FTE responsibility in another professional area.

June 10, 1992 Minutes [Doc. #69 Ex. 1].

II. Analysis

The new evidence relied on by St. Francis in its oral summary judgment motion conclusively establishes that Kennedy was not able to work a full time job anytime after September 11, 1992. Additionally, Kennedy's supplementary evidentiary submissions fail to create a genuine dispute of material fact as to Kennedy's ability to work part time. Kennedy avers that her doctor declared her to be "temporarily totally disabled" as of September 11, 1992, Kennedy Aff. [Doc. #70] ¶ 5, and she

does not dispute the accuracy of this medical conclusion. Nothing in her affidavit or deposition, or any other evidence, shows that by November 1992 (when the decision was made not to create the coordinator position) she had recovered from her temporary total disability such that she was then capable of working part time. While she does aver that she worked part time from 1996 through 1999, Id. ¶ 8, and that "[a]fter leaving the employ of St. Francis [she] searched for full-time employment," id. ¶ 7, nothing shows that in the few months between September and November 1992 she had recovered sufficiently from her temporary total disability such that a jury could conclude that she could have worked part time as of November 1992. Thus, regardless of whether the essential functions of the coordinator position could have been performed by an employee only capable of working part time, there has been no evidence offered showing as a triable issue whether Kennedy's total disability as of September 11, 1992 had abated such that she was capable of at least part time work. The record remains that according to her treating physician she was "temporarily totally disabled until further notice" and absent evidence that she was able to work part time at the time of the allegedly discriminatory elimination of the coordinator position, she cannot make out a prima facie

case of disability discrimination. See Disanto v. McGraw-Hill, Inc., 220 F.3d 61 (2d Cir. 2000).

Kennedy's remaining arguments are unavailing, as well. While she attempts to draw a distinction between being physically able to work and being psychologically able to work, she offers no legal authority for drawing such a distinction. Kennedy's argument that the coordinator position was under consideration at some time prior to her September 11 temporary total disability onset is unavailing because the hospital's allegedly discriminatory decision to not create the coordinator position occurred in or after November 1992, see Ruling [Doc. #55] at 23; 2002 WL 31109535 at *9, as of which date Kennedy would have to demonstrate her qualification for hire. Cf. Delaware State College v. Ricks, 449 U.S. 250 (1980). Finally, Kennedy's assertion that the cause of her inability to hold full time employment was the stress of St. Francis's mistreatment of her misperceives whether the cause of her disability is relevant to a prima facie case. Regardless of the cause of her disability, the undisputed evidence of record is that Kennedy was never able to work full time after September 11, 1992,² and there is no evidence from

²While Kennedy's affidavit asserts that she "searched" for full time employment after leaving St. Francis, her deposition testimony could not be more clear: "Q: Since September 1992

which reasonable jurors could conclude she could work part time as of November 1992.

III. Conclusion

For the reasons set out above, St. Francis's oral motion for summary judgment is GRANTED and its motion for reconsideration is DENIED AS MOOT. Trial will therefore proceed only on Kennedy's assertion that she was unlawfully prevented from returning to work from August 3, 1992 to September 11, 1992 due to defendant's alleged perception of her as having a psychological disorder, in violation of the ADA.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, this 4th day of November, 2002.

has there been a time when you were able to return to full-time work? A: No." Kennedy Dep. at 98. "It is beyond cavil that a party may not create an issue of fact by submitting an affidavit in opposition to a summary judgment motion that contradicts the affiant's previous deposition testimony." Bickerstaff v. Vassar College, 196 F.3d 435, 455 (2d Cir. 1999) (citation and internal quotation and alteration omitted).