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[DO NOT PUBLISH]
**IN THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH
CIRCUIT**

No. 17-14673
Non-Argument Calendar

Docket No. 4:16-cv-00294-MW-CAS

CRYSTAL WADE,

Plaintiff-Appellant,

Versus

FLORIDA DEPARTMENT OF JUVENILE
JUSTICE,

Defendant-Appellee.

Appeal from the United States District
Court for the Northern District of Florida

(August 27, 2018)

Before WILSON, BRANCH, and FAY,

Circuit Judges.

PER CURIAM:

Crystal Wade, proceeding pro se, appeals the district court's order granting the Department of Juvenile Justice's (Department) motion for summary judgment on Wade's disability-discrimination claims under the Rehabilitation Act, 29 U.S.C. § 794, and the Florida Civil Rights Act, Fla. Stat. Ch. 760. On appeal, Wade argues that the district court erred (1) in concluding that she was not a qualified individual under the Rehabilitation Act and (2) in finding that she failed to put forth evidence showing that the Department's legitimate, nondiscriminatory reason for terminating her was pretextual. Because the

undisputed evidence establishes that Wade was not a qualified individual under the Rehabilitation Act or the Florida Civil Rights Act, we affirm.

I.

Wade began serving as a Juvenile Detention Officer at the Leon Regional Detention Center in May 2013. She had recently been promoted and was on probationary status when she was injured during a workplace altercation with an inmate on July 30, 2014. Both the Tallahassee Police Department and the Department investigated the incident. Due to her injuries, Wade filed claims for workers' compensation and leave under the Family and Medical Leave Act. Initially, Wade's physician recommended she be

placed on light duty, and the Department accommodated her request. About a month later, Wade's physician placed Wade on full work restrictions, after which she stopped working at the Department. On September 4, 2014, the Department mailed Wade a letter notifying her of her termination for failure to complete the probationary period.

Wade, through counsel, filed a complaint against the Department, asserting both disability-discrimination claims and a workers' compensation retaliation claim¹ and Florida Civil Rights Act.

¹ The district court dismissed without prejudice Wade's state workers' compensation retaliation claim under Fla. Stat. § 440.205, which Wade does not appeal.

II.

We review a district court's grant of summary judgment de novo, viewing all the evidence, and drawing all reasonable factual inferences, in favor of the nonmoving party. *Boyle v. City of Pell City*, 866 F.3d 1280, 1288 (11th Cir. 2017).

Summary judgment is appropriate when the movant demonstrates that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Id.*; Fed. R. Civ. P. 56(a). Once the movant submits a properly supported motion for summary judgment, the burden shifts to the nonmoving party to show that specific facts exist that raise a genuine issue for trial. *Boyle*, 866 F.3d at 1288.

The Rehabilitation Act prohibits entities receiving federal funds from discriminating against otherwise qualified individuals with disabilities. *Boyle*, 866F.3d at 1288; 29 U.S.C. § 794. Rehabilitation Act claims are analyzed under the same standards used in Americans with Disabilities Act (ADA) cases. *Cash v. Smith*, 231 F.3d 1301, 1305 (11th Cir. 2000). However, the burden of establishing causation is higher under the Rehabilitation Act, requiring proof that the individual was discriminated against solely by reason of her disability, while the ADA requires a lesser showing of but-for causation. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1212 n.6 (11th Cir. 2008). Disability-discrimination claims

under the Florida Civil Rights Act, Fla. Stat. § 750.01 et seq., are also analyzed under the same framework used for ADA claims. *D'Angelo v. ConAgra Foods, Inc.*, 422 F.3d 1220, 1224 n.2 (11th Cir. 2005).

To establish a *prima facie* case of discrimination under the Rehabilitation Act, a plaintiff must show that (1) she has a disability; (2) she is otherwise qualified for the position, and (3) she was subjected to unlawful discrimination as a result of her disability. *Boyle*, 866 F.3d at 1288. A person with a disability is “otherwise qualified” if she is able to perform the essential functions of the job in question with or without a reasonable accommodation. *Id.* The plaintiff bears the burden of identifying an accommodation

and showing that the accommodation would allow her to perform the essential functions of the job in question. *Id.* at 1289. Although a leave of absence might be a reasonable accommodation in some cases, we have held that a request for an indefinite leave of absence, which may allow an employee to work at some uncertain point in the future, is not a reasonable accommodation. *Wood v. Green*, 323 F.3d 1309, 1314 (11th Cir. 2003).

III.

The district court did not err in granting summary judgment on Wade's disability-discrimination claims because, even viewing the evidence in Wade's favor, she has not shown that she was a "qualified" individual under the

Rehabilitation Act. The record reflects that the Department accommodated Wade's request to be placed on light duty, but that Wade's physician then placed her on full work restrictions indefinitely, and that she had not been taken off full work restrictions as of the filing of her appeal. The undisputed evidence shows that she could not perform the essential functions of her job; her request for indefinite leave to seek medical treatment was not a reasonable accommodation, *id.*; and she failed to identify any evidence showing that, even if granted extended leave, treatment would have permitted her to return to work. Accordingly, we affirm the grant of summary judgment to the Department on Wade's disability.

11a

discrimination claims under the
Rehabilitation Act and Florida Civil Rights
Act.²

AFFIRMED.

² Because we conclude that Wade failed to present a prima facie case of discrimination under the Rehabilitation Act or Florida Civil Rights Act, we need not reach the question of whether she put forth evidence showing that the Department's legitimate, nondiscriminatory reason for firing her was pretextual.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CRYSTAL WADE,

Plaintiff,
v.

CASE NO. 4:16cv294-MW/CAS

STATE OF FLORIDA,
DEPARTMENT OF JUVENILE JUSTICE,

Defendant.

**ORDER GRANTING IN PART AND
DENYING IN PART
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

This Court has considered, after a hearing on September 20, 2017, Defendant's motion for summary judgment, ECF No. 25. For the reasons stated on the record, and as summarized below, that

motion is GRANTED in part and DENIED in part.

I.

This is an employment discrimination and retaliation case. Plaintiff Crystal Wade (“Plaintiff”) was employed by Defendant Florida Department of Juvenile Justice (“Defendant”). ECF No. 26, at 1. On February 7, 2014, Plaintiff was promoted to Juvenile Justice Officer (“JJO”) II and given a one-year probationary period. *Id.* at 1-2.

On July 30, 2014, Plaintiff was involved in an altercation with one of Defendant’s inmates. *Id.* at 2; ECF No. 27-1, at 7. After the altercation, Plaintiff went to the hospital where she received

treatment for her injuries and was advised to take off work for several days. ECF No. 33-6, at 47, 49. During a follow-up appointment, Plaintiff's doctor recommended that she go on light-duty assignments until she recovered from her injuries. Id. Defendant accommodated Plaintiff's need for light-duty assignments by placing her on "Master Control." Id. at 23, 50.

However, during a subsequent follow-up appointment, Plaintiff's doctor recommended that she go on medical leave to see a specialist because her injuries had not improved. Id. 50-51. The duration of Plaintiff's expected leave was unknown. ECF No. 33-14, at 3.

On August 1, 2014, Defendant opened an investigation into the altercation between Plaintiff and the inmate. ECF No. 26, at 2. Captain Sharon Smith (“Smith”) completed a full investigation and concluded that Plaintiff engaged in “Excessive Use of Force” and “Improper conduct.” ECF No. 26, at 3; ECF No. 27-2.

After Major Cody Wood (“Wood”) reviewed Smith’s findings, he recommended Plaintiff be terminated. ECF No. 26, at 3; ECF No. 33-11, at 32. On August 26, 2014, Wood’s recommendation was approved by the Regional Office Personal Liaison, David Peoples, and the Regional Director for the North Region Detention Services, Dixie Fosler. ECF No. 26, at 3; ECF No. 27-1, at 2, 10-11. On August 28, 2014, Plaintiff’s

termination was approved by Assistant General Counsel, Kimberly Ward. ECF No. 27-1, at 2, 11. On September 4, 2014, Defendant sent Plaintiff her official termination letter.¹ Id. at 12.

Plaintiff now alleges disability discrimination under the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Count I), and under Chapter 760, Florida Statutes (Count I);² and retaliation under Section 440.205, Florida Statutes (Count II). ECF

¹ This Court recognizes that Plaintiff submitted her resignation letter on September 3, 2014, after learning of her impending termination.

² Although Plaintiff only brings one count of disability discrimination, she really proceeds under *two* different theories of recovery: (1) disability discrimination; and (2) failure to accommodate her disability.

No. 1, at 3-6. Defendant moves for summary judgment on both counts. ECF No. 25, at 1.

II.

As to Count I, Plaintiff argues she was subjected to discrimination by Defendant because she was terminated for being disabled and because Defendant failed to grant her leave as a reasonable accommodation.

To bring a claim under the Rehabilitation Act, Plaintiff must establish she is an “otherwise qualified” individual. *See* 29 U.S.C. § 794(a) (2012); *Sutton v. Lader*, 185 F.3d 1203, 1207 (11th Cir. 1999). An otherwise qualified individual is one who can perform the essential functions of the job, either with or without

a reasonable accommodation. *See Sutton*, 185 F.3d at 1210.

Plaintiff argues she is an otherwise qualified individual because she would have been able to perform the essential functions of a JJO after she returned from leave. ECF No. 32, at 10-11. However, as Plaintiff's counsel made clear at the hearing, Plaintiff's leave would have been for an unknown duration, which is not a reasonable accommodation. See, e.g., *Wood v. Green*, 323 F.3d 1309, 1314 (11th Cir. 2003). Therefore, this Court holds that Plaintiff was not an otherwise qualified individual and thus Defendant is entitled to summary judgment on Count I.

Additionally, even if Plaintiff could establish that she was an otherwise

qualified individual, her claim must fail. Specifically, Plaintiff's lack of evidence that Defendant's legitimate, nondiscriminatory reason for terminating her was pretextual is fatal to her disability discrimination claim.³ Plaintiff's argues that Defendant's stated reason for terminating her—i.e., for engaging in "Excessive Use of Force" and "Improper conduct" during her probationary period—was pretextual because Defendant's investigation of the incident was inadequate. However, a mere belief that reasonable minds could differ regarding how the investigation could have been conducted, without more, is not

³ However, Plaintiff's lack of pretextual evidence is irrelevant for her failure to accommodate claim. See Holly v. Clairson Indus., LLC, 492 F.3d 1247, 1262 (11th Cir. 2007).

evidence of pretext.⁴ For example, Plaintiff could have established pretext by showing that other JJOs who engaged in “Excessive Use of Force” by striking an inmate were not terminated by Defendant. See, e.g., *Rioux v. City of Atlanta*, 520 F.3d 1269, 1276-81 (11th Cir. 2008). Regardless, Plaintiff has not provided even a scintilla of evidence to establish that Defendant’s legitimate, nondiscriminatory reason for terminating her was pretextual. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Jackson v. Agency for Perss. with Disabilities*, 608 F. App’x 740, 743-44 (11th Cir. 2015). As a result, this Court holds

⁴ By contrast, facts suggesting that the investigation was a sham—for example, if Defendant did not interview key witnesses—could be evidence of pretext.

that no reasonable jury could find, based on the evidence in the record, that Defendant's stated reason for terminating Plaintiff was pretextual. In so ruling, this Court recognizes there are other problems with Plaintiff's disability discrimination claims. In any event, for the reasons stated, Defendant is entitled to summary judgment on Count I.

III.

Finally, with respect to Count II, this Court finds that Plaintiff's state law claim would be better addressed by the state court system given the nature of section 440.205, Florida Statute, claims. Section 1367(c)(3) gives a district court discretion to dismiss state law claims before it if the "court has dismissed all

claims over which it has original jurisdiction.” 28 U.S.C. §1367(c)(3); *Graham v. State Farm Mut. Ins. Co.*, 193 F.3d 1274, 1282 (11th Cir. 1999) (“If no federal claim survives summary judgment, the court sees no reason why the other claims should not be dismissed . . . pursuant to 28 U.S.C. § 1367(c)(3.”). Therefore, Plaintiff’s state law claim will be dismissed without prejudice.

Accordingly,

IT IS ORDERED:

1. Defendant’s motion for summary judgment, ECF No. 25, as to Plaintiff’s disability discrimination claim is GRANTED. Defendant’s motion for summary judgment, ECF No. 25, as

to Plaintiff's state law claim is
DENIED.

2. This Court declines to exercise supplemental jurisdiction over Plaintiff's state law claim. That claim is DISMISSED without prejudice.

3. The Clerk is directed to enter judgment stating, "Plaintiff's federal claim, Count I, is dismissed with prejudice, and Plaintiff's state law claim, Count II, is dismissed without prejudice."

4. The Clerk shall close the file.

SO ORDERED on September 21, 2017.

s/Mark E. Walker
United States District Judge