

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10462
Non-Argument Calendar

D.C. Docket No. 0:18-cv-62488-RAR

MARGUERITE T. MARTIN,

Plaintiff-Appellant,

versus

TELEPERFORMANCE INC.,

Defendant-Appellee.

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

(February 23, 2021)

Before JORDAN, GRANT, and LUCK, Circuit Judges.

PER CURIAM:

~~TPUSA hired Marguerite Martin to work in its call center as a customer~~
service representative. But just four months later, it fired her. Martin sued, claiming that the company unlawfully discriminated against her because of a disability—anemia. The district court disagreed, and granted summary judgment in favor of TPUSA. We affirm.

I.

We review de novo a district court’s grant of summary judgment, “viewing the evidence in the light most favorable to the non-moving party and drawing all reasonable inferences in their favor.” *Crane v. Lifemark Hosps., Inc.*, 898 F.3d 1130, 1133–34 (11th Cir. 2018). Summary judgment is appropriate if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Id.* at 1134 (quoting Fed. R. Civ. P. 56(a)).

II.

To make a prima facie showing of disability discrimination, a plaintiff must establish “that, at the time of the adverse employment action, she had a disability, she was a qualified individual, and she was subjected to unlawful discrimination because of her disability.” *U.S. Equal Emp. Opportunity Comm’n v. St. Joseph’s Hosp., Inc.*, 842 F.3d 1333, 1343 (11th Cir. 2016). The Americans with Disabilities Act defines “disability” in three ways. An individual is disabled if she

(1) has a physical or mental impairment that substantially limits one or more of her major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. 42 U.S.C. § 12102(1).

Martin has not shown that she qualifies as disabled within the meaning of the Act. First, she has not established that her impairment—anemia—substantially limits any major life activity. *Id.* § 12102(1)(A).¹ Although this is not a “demanding standard,” 29 C.F.R. § 1630.2(j)(1)(i), Martin has “failed to argue or present evidence” that her anemia “substantially limited” any major life activities, *Standard v. A.B.E.L. Servs., Inc.*, 161 F.3d 1318, 1327 (11th Cir. 1998). She simply points to 2017 bloodwork indicating that she has anemia, and asserts that she could “become impaired when the weather gets a little too cold” and “anything can happen.” But she never points to any major life activity that is impaired by her anemia. In fact, her own testimony confirms that her impairment did not impact her work “in any way.” So Martin has not produced “evidence sufficient to raise a genuine issue of fact that she is actually disabled.” *Lewis v. City of Union City*, 934 F.3d 1169, 1181 (11th Cir. 2019). And because Martin has not established that her impairment substantially limits a major life activity,

¹ Those activities include “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working,” as well as “the operation of a major bodily function.” 42 U.S.C. § 12102(2).

~~she necessarily has not shown a record of such an impairment. See *Hilburn v.*~~

Murata Electronics N. Am., Inc., 181 F.3d 1220, 1229 (11th Cir. 1999).

Nor has Martin established that she was regarded as disabled. Under the Act, a person is “regarded as” disabled if she establishes that she was subjected to a prohibited act because of an “actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.” 42 U.S.C. § 12102(3)(A). But nothing in the record indicates that TPUSA regarded Martin as disabled. During Martin’s onboarding process, for example, she stated that she did not have a mental or physical disability. She also stated that she never provided TPUSA with any documents indicating that she was anemic, and that she never told any of her managers that she was anemic. Nor did she ever request a disability accommodation from TPUSA’s human resources department. And finally, Martin confirmed that she did not inform her supervisor of her anemia until after he told her that she was being fired. Martin has therefore failed to establish a “disability” within the meaning of the Act.

Finally, Martin fleetingly asks that we consider a separate privacy claim. We will not. Her amended complaint consists of a one-count discriminatory termination claim under the Act. Martin did not “clearly present” her privacy issue to the district court in a way that afforded it “an opportunity to recognize and rule on it.” *Ruckh v. Salus Rehab., LLC*, 963 F.3d 1089, 1111 (11th Cir.

~~2020) (quotation omitted). And in any event, a “passing reference to an issue in a~~

brief is not enough, and the failure to make arguments and cite authorities in support of an issue waives it.” *Hamilton v. Southland Christian Sch., Inc.*, 680 F.3d 1316, 1319 (11th Cir. 2012).

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit

February 23, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-10462-GG
Case Style: Marguerite Martin v. Teleperformance Inc.
District Court Docket No: 0:18-cv-62488-RAR

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing, are available at www.ca11.uscourts.gov. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir. R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1.

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Joseph Caruso, GG at (404) 335-6177.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.call1.uscourts.gov

April 20, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-10462-GG
Case Style: Marguerite Martin v. Teleperformance Inc.
District Court Docket No: 0:18-cv-62488-RAR

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Joseph Caruso, GG/lt
Phone #: (404) 335-6177

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10462-GG

MARGUERITE T. MARTIN,

Plaintiff - Appellant,

versus

TELEPERFORMANCE INC.,

Defendant - Appellee.

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

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JORDAN, GRANT, and LUCK, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-CIV-62488-RAR

MARGUERITE T. MARTIN,

Plaintiff,

v.

TELEPERFORMANCE, INC.,

Defendant.

_____ /

FINAL JUDGMENT

Pursuant to Federal Rule of Civil Procedure 58 and in accordance with the Court's Order Granting Defendant's Motion for Summary Judgment [ECF No. 86], it is hereby

ORDERED AND ADJUDGED that Final Judgment is entered in favor of Defendant TPUSA, Inc.¹ Plaintiff shall take nothing from this action and Defendant shall go hence without day.

DONE AND ORDERED in Fort Lauderdale, Florida, this 28th day of January, 2020.



**RODOLFO RUIZ
UNITED STATES DISTRICT JUDGE**

¹ Although Plaintiff's Amended Complaint [ECF No. 9] brings a cause of action against Teleperformance, Inc., Plaintiff's former employer, and the legal entity at issue, is TPUSA, Inc. See Certificate of Interested Parties [ECF No. 42]. Accordingly, all references to Defendant in this case are to TPUSA, Inc.



**U.S. Equal Employment Opportunity Commission
Miami District Office**

Miami Tower, 100 S E 2nd Street
Suite 1500
Miami, FL 33131

NOTICE OF CHARGE OF DISCRIMINATION

(This Notice replaces EEOC FORM 131)

DIGITAL CHARGE SYSTEM

September 27, 2018

To: Ms. H R
Director
TELEPERFORMANCE
1991 s 4650 w
Salt Lake City, UT 84104

This is notice that a charge of employment discrimination has been filed with the EEOC against your organization by Marguerite T. Martin, under: The Americans with Disabilities Act (ADA). The circumstances of the alleged discrimination are based on Disability, and involve issues of Discharge that are alleged to have occurred on or about Jan 18, 2018.

The Digital Charge System makes investigations and communications with charging parties and respondents more efficient by digitizing charge documents. The charge is available for you to download from the EEOC Respondent Portal, EEOC's secure online system.

Please follow these instructions to view the charge within ten (10) days of receiving this Notice:

1. Access EEOC's secure online system: <https://nxcg.eeoc.gov/rsp/login.jsf>
2. Enter this EEOC Charge No.: **510-2018-04852**
3. Enter this temporary password: **dj3938tp**

Once you log into the system, you can view and download the charge, and electronically submit documents to EEOC. The system will also advise you of possible actions or responses, and identify your EEOC point of contact for this charge.

If you are unable to log into the EEOC Respondent Portal or have any questions regarding the Digital Charge System, you can send an email to MiamiDigital@eeoc.gov.

EEOC Form 161 (11/18)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Marguerite T. Martin
10530 SW 203rd terrace
Cutler, FL 33189

From: Miami District Office
Miami Tower, 100 S E 2nd Street
Suite 1500
Miami, FL 33131

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

510-2018-04852

Mercedes Ricardo,
Supervisory Investigator

(305) 808-1747

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible.

On behalf of the Commission

Michael J. Farrell

MICHAEL J. FARRELL,
District Director

SEP 28 2018

(Date Mailed)

Enclosures(s)

cc:

Stephen Butauski, Human Resources Director
TELEPERFORMANCE
7562 Southgate Boulevard
North Lauderdale, FL 33068

Cazeau et al v. TPUSA, Inc.
P.O. Box 26170, Santa Ana, CA 92799

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TELEPERFORMANCE CALL CENTER WORKERS SETTLEMENT
**You Are Entitled To Receive Money From A Proposed Settlement In A Lawsuit
By Employees Against Teleperformance. To Learn More and Get Your Share Of
The Settlement Money, Visit www.tpusasettlement.com and Return The Online
Opt In Form By July 19, 2021.**



MARGUERITE MARTIN
10360 SW 186TH ST UNIT 971234
MIAMI, FL 33197-5163

You have received this Notice because the records of TPUSA, Inc. dba Teleperformance USA ("Teleperformance") indicate that you were hired to work for Teleperformance as a non-exempt customer service agent between April 17, 2016 and April 29, 2021, and you may have received a notice instructing you to arrive 15 minutes early to new hire training. There is a class action pending against Teleperformance, which was filed on behalf of employees against Teleperformance, relating to the notice you may have received.

As a potential class member, you are eligible to receive your share of the settlement money. Participation is voluntary and requires action on your part. **To receive your portion of the Settlement, you must opt in by July 19, 2021. If you wish to object to the Settlement, you must object by July 26, 2021.**

For more information and to opt in or object, visit www.tpusasettlement.com. To access the website, type in your **SIMID 11799** and **Unique ID 9749AD**. If you have any questions regarding the Settlement, need assistance submitting the opt-in form, or would like to request printed opt-in form, contact Simpluris at 833-200-8584.

If you are still employed by Teleperformance, your decision about whether to participate in the settlement will not affect your employment. State law and Teleperformance company policy strictly prohibit unlawful retaliation

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-CIV-62488-RAR

MARGUERITE T. MARTIN,

Plaintiff,

v.

TELEPERFORMANCE, INC.,

Defendant.

ORDER PROVIDING INSTRUCTIONS TO PRO SE LITIGANT

THIS MATTER is before the Court upon a *sua sponte* review of the record. *Pro se* litigants, like all litigants, must comply with the Federal Rules of Civil Procedure and the Court's orders. It is therefore

ORDERED that Plaintiff, Marguerite T. Martin, a *pro se* litigant, shall comply with all Federal Rules of Civil Procedure and Local Rules for the Southern District of Florida. The Local Rules may be obtained from the Clerk of the Court. Failure to comply with the federal and local rules may result in sanctions being imposed against *pro se* litigants. Some of the requirements of these rules are as follows:

1. Every pleading, motion, memorandum or other paper required and/or permitted to be filed with the Court must be filed directly with the Clerk of the Court. No letters, pleadings, motions or other documents may be sent directly to the District Judge or Magistrate Judge's chambers. Any papers improperly delivered directly to chambers will be returned and disregarded by the Court.
2. All papers filed must include the case style, case number, and appropriate title in the

format required by the Local Rules. *See Sample Form Following Local Rule 5.1.* The signature block of each pleading must also contain the *pro se* litigant's name, address and telephone number.

3. All papers filed with the Clerk of Court must also be served on the opposing counsel, or the opposing side if the opposing side is not represented by counsel. Each filing must include a certificate of service indicating the name and address of the attorney served.

4. Litigants must promptly notify the Court of any change in address by filing a "Notice of Change of Address," which also must be served on opposing counsel.


5. A *pro se* litigant who wishes to oppose a motion must respond in writing within the time periods provided by the rules of procedure.

6. Any litigant and his or her family, friends, or acquaintances may not call the Judge's chambers for legal advice about the case. Brief case status information contained on the docket sheet may be available from the Clerk of Court.

7. A *pro se* litigant bears responsibility for actively pursuing his or her case and must obtain any essential discovery, file all necessary pleadings and motions, comply with all scheduling orders, and prepare the case for trial.

8. It is Plaintiff's responsibility to see to it that Defendants are served with the summons and complaint. Under Federal Rule of Civil Procedure 4(m), service of the summons and complaint must be perfected upon Defendants within 120 days after the filing of the complaint.

DONE AND ORDERED in Fort Lauderdale, Florida this 22nd day of May, 2019.



RODOLFO RUIZ
UNITED STATES DISTRICT JUDGE