United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 04/10/2023.

Case Name: Regina Tate v. Hamilton County Election Commission
Case Number: 22-5288, 22-5340

Docket Text:
ORDER filed: We AFFIRM the district court's judgment and DISMISS the Commission's cross-appeal as moot. Decision not for publication, pursuant to FRAP 34(a)(2)(C), Mandate to issue. Alice M. Batchelder, Helene N. White, and Jane Branstetter Stranch, Circuit Judges. [22-5288, 22-5340]

The following documents(s) are associated with this transaction:
Document Description: Order

Notice will be sent to:

Ms. Regina Tate
915 Oak Street
Chattanooga, TN 37403

A copy of this notice will be issued to:

Mr. Justin L. Furrow
Ms. Kathleen Marie Siciliano
Ms. LeAnna Wilson

NOT RECOMMENDED FOR PUBLICATION

Nos. 22-5288/5340

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REGINA TATE, Plaintiff-Appellant/ Cross-Appellee, v. HAMILTON COUNTY ELECTION COMMISSION, Defendant-Appellee/ Cross-Appellant.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE

ORDER

Before: BATCHELDER, WHITE, and STRANCH, Circuit Judges.

Regina Tate, proceeding pro se, appeals the district court's judgment dismissing her employment-discrimination suit, filed under the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131, et seq. The Hamilton County Election Commission ("Commission") has cross-appealed. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). Because the district court properly granted summary judgment in the Commission's favor, we affirm, and we dismiss the cross-appeal as moot.

In 2019, Tate filed an amended complaint against the Commission, her former employer, claiming that it violated Title I of the ADA by discriminating and retaliating against her. Tate alleged that she was diagnosed with Stage 3 breast cancer in 2012 and that the disease and her treatment caused her to become disabled. In October 2015 she informed the Commission of her disability and requested accommodations in the form of leave and adjusted work hours and job

duties. She alleged that the Commission disciplined and suspended her, extended a probationary period, and ultimately terminated her employment in retaliation for attending doctor's appointments and requesting reasonable accommodations before undergoing a surgery. Tate sought compensatory and punitive damages, reinstatement to her prior position, and the restoration of employer-provided benefits.

In March 2020, Tate moved for an extension of all deadlines, stating that she hoped to find an attorney to represent her. The district court granted the motion, staying all deadlines for 120 days and instructing Tate to file a notice of intent to represent herself if she did not obtain counsel within that timeframe. In July 2020, the district court granted a final, 60-day extension. Two months later, Tate moved for another extension, citing her continued inability to find a lawyer willing to represent her. The district court denied the motion, noting that it had "remain[ed] in a holding pattern for six months," which was a "more than generous" amount of time in which to locate an attorney. It gave Tate 14 days in which to file a notice of her intent to represent herself. Tate complied with that order.

Following discovery, the Commission moved for summary judgment. The district court granted the motion. Although it rejected the Commission's argument that it was entitled to sovereign immunity, it found that Tate failed to show that the Commission's proffered non-discriminatory reason for terminating her employment was a pretext for unlawful discrimination or retaliation.

On appeal, Tate argues that the district court should have appointed counsel to represent her because she was proceeding pro se, she had a history of filing delays, and she is disabled. The Commission responds that Tate has abandoned any challenge to the district court's grant of summary judgment by failing to brief the issue. It also argues that the district court erred by denying its request for sovereign immunity, although it notes that we need consider this argument only if we "conclude that reversal on the merits is warranted."

Under 28 U.S.C. § 1915(e)(1), a district court "may request an attorney to represent any person unable to afford counsel." But there is no constitutional right to the appointment of counsel

in a civil case, and we review the district court's denial of a motion to appoint counsel for an abuse of discretion. *Lavado v. Keohane*, 992 F.2d 601, 605-606 (6th Cir. 1993). The district court did not abuse its discretion here. First, Tate never moved the court to appoint counsel for her. She instead sought numerous extensions so that she could find a private attorney to represent her. Tate appears to argue that the district court should have appointed counsel sua sponte in light of her claimed disability. But she does not explain how her disability affected her ability to represent herself, and she was able to file numerous pleadings in the district court.

The one case that Tate cites in her appellate brief is neither binding nor helpful. It holds that § 1915(e)(2)—formerly § 1915(d)—does not authorize a district court to "appoint" counsel to represent an indigent litigant; rather, it authorizes a district court merely to "request" representation. *United States v. 30.64 Acres of Land, More or Less, Situated in Klickitat Cnty.*, 795 F.2d 796, 801-03 (9th Cir. 1986). The Ninth Circuit decision cited by Tate also echoes our holding in *Lavado* that relief under § 1915(e)(1) is warranted "only under 'exceptional circumstances.'" *Id.* at 799-800; *see Lavado*, 922 F.2d at 606. Even if Tate's first motion for an extension could have been construed as also requesting the appointment of counsel, Tate's case does not involve exceptional circumstances. There is nothing in the record to suggest that Tate was incapable of representing herself, and her case is not overly complex. *See Lavado*, 922 F.2d at 606.

Tate has forfeited any other challenge to the district court's judgment. As noted previously, the district court found that Tate failed to show that the Commission's proffered reasons for the alleged adverse actions were pretext for unlawful discrimination or retaliation. Tate's appellate brief raises no arguments challenging that finding, resulting in forfeiture. *See Scott v. First S. Nat'l Bank*, 936 F.3d 509, 522-23 (6th Cir. 2019); *Geboy v. Brigano*, 489 F.3d 752, 767 (6th Cir. 2007). Because the district court's decision was favorable to the Commission and Tate has not shown reversible error, the Commission's sovereign-immunity argument is moot. *See Burnett v. Griffith*, 33 F.4th 907, 915 (6th Cir. 2022); *Int'l Brotherhood of Boilermakers, Local Union v. Thyssenkrupp Elevator Mfg., Inc.*, 365 F.3d 523, 527 (6th Cir. 2004).

For the foregoing reasons, we **AFFIRM** the district court's judgment and **DISMISS** the Commission's cross-appeal as moot.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

REGINA TATE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:19-CV-00127-JRG-CHS
	)	
HAMILTON COUNTY ELECTION COMMISSION,	)	
	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendant Hamilton County Election Commission's Motion for Summary Judgment [Doc. 69] and Memorandum of Law in Support [Doc. 70]. For the reasons herein, the Court will grant the Commission's motion.

I. BACKGROUND

In 2012, Plaintiff Regina Tate was diagnosed with breast cancer, and between 2012 and 2016, she submitted numerous requests for medical leave and accommodations to Defendant Hamilton County Election Commission, where she formerly worked as a deputy registrar. [Tate Dep., Doc. 69-2, at 23:16–24, 26:16–22; Poe Decl., Doc. 69-5, ¶¶ 6–55]. During this same timeframe, the Commission placed her on suspension and probation several times for her failure to follow policies and procedures. [Poe Decl. ¶¶ 48, 50, 51, 52, 56]. Ms. Tate, however, claims that the Commission acted "in retaliation for scheduled doctor appointments related to [her] disability." [Second Am. Compl., Doc. 11, at 3]. In 2016, the Commission terminated her employment for failing to follow policies and procedures. [Poe Decl. ¶ 62; Termination Letter, Doc. 69-8, at 1–3]. Ms. Tate, however, maintains that the Commission terminated her because

Appendix B

she requested medical leave to undergo surgery to treat her breast cancer. [Second Am. Compl. at 3].

Acting pro se, Ms. Tate now brings suit against the Commission under Title I of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, alleging she received a notice of right to sue from the Equal Employment Opportunity Commission. [*Id.* at 1, 3]. She appears to allege three types of claims under the ADA: retaliatory discharge, failure to accommodate, and discrimination based on a disability. She requests the restoration of her employment and benefits, compensatory damages, and punitive damages. [*Id.* at 3]. The Commission now moves for summary judgment, and Ms. Tate has not responded to the Commission's motion. Having carefully reviewed the Commission's motion, the Court is now prepared to rule on it.

II. LEGAL STANDARD

Summary judgment is proper when the moving party shows, or "point[s] out to the district court," *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986), that the record—the admissions, affidavits, answers to interrogatories, declarations, depositions, or other materials—is without a genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, Fed. R. Civ. P. 56(a), (c). The moving party has the initial burden of identifying the basis for summary judgment and the portions of the record that lack genuine issues of material fact. *Celotex*, 477 U.S. at 323. The moving party discharges that burden by showing "an absence of evidence to support the nonmoving party's" claim or defense, *Celotex*, 477 U.S. at 325, at which point the nonmoving party, to survive summary judgment, must identify facts in the record that create a genuine issue of material fact, *id.* at 324.

Not just any factual dispute will defeat a motion for summary judgment—the requirement is "that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" if it may affect the outcome of the case under the applicable substantive law, *id.*, and an issue is "genuine" if the evidence is "such that a reasonable jury could return a verdict for the nonmoving party." *Id.* In short, the inquiry is whether the record contains evidence that "presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251–52. When ruling on a motion for summary judgment, a court must view the facts and draw all reasonable inferences in the light most favorable to the nonmoving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007). "[T]he judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249. A court may also resolve pure questions of law on a motion for summary judgment. *See Hill v. Homeward Residential, Inc.*, 799 F.3d 544, 550 (6th Cir. 2015).

III. ANALYSIS

The ADA "provide[s] a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). In doing so, it prohibits an employer[1] from "discriminat[ing] against a qualified individual on the basis of disability," *id.* § 12112(a), a term that the ADA defines as (1) "a physical or mental impairment that substantially limits one or more major life activities," (2) a record of such impairment," or (3) "being regarded as having such an impairment," *id.* § 12102(1)(A)–(C). The ADA's definition

[1] An "employer" is "a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person."

of "discrimination" is multifaceted, *see id.* § 12112(b)(1)–(7), and includes an employer's failure to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability," *id.* § 12112(b)(5)(a).

In moving for summary judgment on Ms. Tate's ADA claims, the Commission raises numerous arguments, but the Court, before addressing those arguments, must first note that Ms. Tate's failure to respond to the Commission's motion does not entitle the Commission to a walkover. *See Sammons v. Baxter*, No. 1:06-cv-137, 2007 WL 325752, at *2 (E.D. Tenn. Jan. 31, 2007) ("[A party's failure to] oppos[e] . . . a summary judgment motion does not automatically result in the Court granting the motion. Rather, pursuant to well-established precedent, in the context of a summary judgment motion, the Court must still examine the record and determine whether the movant has met its burden . . . . Thus . . . a party seeking summary judgment must meet its burden as movant regardless of whether the nonmovant files a response[.] (citing *Stough v. Maryville Cmty. Sch.*, 138 F.3d 612, 614 (6th Cir. 1998); *Wilson v. City of Zanesville*, 954 F.2d 349, 351 (6th Cir. 1991); *Carver v. Bunch*, 946 F.2d 451, 454–55 (6th Cir. 1991))). The Court will therefore hold the Commission to its burden as the movant for summary judgment and not impart any leeway to it based on Ms. Tate's silence.

A. Proper Party

The Commission argues, for the first time in this case, that Ms. Tate has failed to sue the proper party. "Ms. Tate, [as] a deputy registrar, is an employee of the State," the Commission argues, "and therefore cannot maintain her ADA claim against" the Commission. [Def.'s Mem. at 13]. In support of its argument, it cites *Murray v. Washington County*, No. 2:17-cv-00184, 2018 WL 4289617 (E.D. Tenn. Sept. 7, 2018), in which the plaintiff, who was a deputy clerk for the Washington County Election Commission, sued Washington County after the Commission

terminated his employment. *Id.* at *1. The Court ruled that the plaintiff was a state employee, not a county employee, and it dismissed Washington County as a party. *Id.* at *2–4. But Murray is not on point with Ms. Tate's case because Ms. Tate has not named a county as the defendant. Rather, she has named the Commission as the defendant, and in *Murray*, the Court specifically stated that "State law directs that [the plaintiff] is an employee of the Election Commission." *Id.* at *3. Ms. Tate has therefore sued the proper party and the Commission's argument fails.

B. Sovereign Immunity

Next, the Commission argues that, as a state entity, it is entitled to sovereign immunity. [Def.'s Mot. at 13]. The State of Tennessee and it agencies have sovereign immunity from suit in federal court, unless they consent to suit or Congress has abrogated sovereign immunity. *Boler v. Earley*, 865 F.3d 391, 409–10 (6th Cir. 2017); *Latham v. Office of Atty. Gen. of State of Ohio*, 395 F.3d 261, 270 (6th Cir. 2005). The Commission, in arguing that sovereign immunity shields it from Ms. Tate's claims, cites a pair of cases: *Murray* and *White v. Chester County Election Commission*, No. 1:19-CV-01216-JDB-ATC, 2020 WL 5026868 (W.D. Tenn. Aug. 25, 2020). Again, however, neither case is on point. In *Murray*, this Court ruled that sovereign immunity barred the plaintiff's claims under Title II of the ADA. *Murray v. Washington County*, No. 2:17-cv-00184, at 7–10 (E.D. Tenn. Dec. 5, 2019) (PACER). Ms. Tate brings her claims under Title I, not Title II. *See generally Marble v. Tennessee*, 767 F. App'x 647, 650 (6th Cir. 2019) (noting that the ADA consists of a tripartite structure: Title I, Title II, and Title III); *see United States v. Georgia*, 546 U.S. 151, 159 (2006) (creating a three-part test for determining whether sovereign immunity forecloses an ADA claim under Title II). And in *White*, although the district court ruled that sovereign immunity barred the plaintiff's claims under Title I, it did so only because

the parties conceded the point. 2020 WL 5026868 at *7. Ms. Tate has made no such concession. Again, the Commission's case law is off point and its arguments therefore fail.

C. Ms. Tate's Claims on the Merits

Finally, the Commission attacks Ms. Tate's ADA claims on the merits, contending, first, that she has not established a prima facie case of discrimination and, second, that even if she has established a prima facie case, her claims fail because the Commission has come forward with a legitimate, non-discriminatory reason for terminating her employment. [Def.'s Mem. at 14–24]. Again, Ms. Tate appears to allege three types of claims under the ADA: retaliatory discharge, failure to accommodate, and discrimination based on a disability. [Second Am. Comp. at 3]. Ms. Tate, however, clarified several times during her deposition that she is not pursuing a failure-to-accommodate claim. [Tate Dep. at 79:8–10, 95:9–10, 112:15–18, 193:20–23]. Rather, she is claiming that the Commission retaliated against her because she requested reasonable accommodations, i.e., medical leave. [*Id.* at 95:9–10, 112:15–18, 193:20–23]. So although Ms. Tate, in her complaint, refers to "request[s]" for reasonable accommodations, [Second Am. Compl. at 3], she is not alleging a failure-to accommodate claim but a claim of retaliation. *See A.C. ex rel. J.C. v. Shelby Cty. Bd. of Educ.*, 711 F.3d 687, 697 (6th Cir. 2013) (treating the plaintiffs' claim, in which the plaintiffs had alleged that "retaliation was directed against their requests for accommodation" under the ADA, as a claim of retaliation).

An employee may prove a claim of discrimination through direct or indirect evidence, *see U.S. Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 714 n.3 (1983) ("As in any lawsuit, the plaintiff may prove his case by direct or circumstantial evidence."), but in cases

involving direct evidence, the familiar *McDonnell Douglas* framework[2] and its shifting burdens are inapplicable, *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1985); *Kirilenko-Ison v. Bd. of Educ. of Danville Indep. Schs.*, 974 F.3d 652, 661 (6th Cir. 2020). The term "direct evidence" means "evidence which, if believed, requires no inferences to conclude that unlawful [discrimination] was a motivating factor in the employer's action." *Imwalle v. Reliance Med. Prods., Inc.*, 515 F.3d 531, 544 (6th Cir. 2008) (citations omitted).

The Commission argues that the record lacks direct evidence of discrimination. [Def.'s Mem. at 14, 16]. The Court agrees with the Commission. A case with direct evidence is "rare," *Ercegovich v. Goodyear Tire & Rubber Co.*, 154 F.3d 344, 353 (6th Cir. 1998), and it "generally consists of [evidence] where the employer makes admissions of a discriminatory or retaliatory motive," *Mikols v. Reed City Power Line Supply Co.*, No. 1:07-CV-84, 2008 WL 2696915, at *4 (W.D. Mich. July 1, 2008) (citing *Imwalle*, 515 F.3d at 544). The Court finds no admission of this type in the record and it will therefore apply the *McDonnell Douglas* framework to Ms. Tate's claims of retaliation and disability-based discrimination. *See Kirilenko*, 974 F.3d at 661; *Daugherty v. Sajar Plastics, Inc.*, 544 F.3d 696, 703 (6th Cir. 2008).

Under this framework, Ms. Tate has the initial burden of making a prima facie showing of discrimination. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506 (1993). Even if Ms. Tate could muster a prima facie case, *see Nguyen v. City of Cleveland*, 229 F.3d 559, 563 (6th Cir. 2000) ("The burden of establishing a *prima facie* case in a retaliation action is not onerous, but one easily met." (citation omitted)), her claims would still fail because the Commission has put forth a legitimate, non-discriminatory reason for her termination, which Ms. Tate does not

[2] Courts also refer to this framework as the "*McDonnell Douglas-Burdine*" framework because in *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981), the Supreme Court clarified its holding in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Johnson v. Univ. of Cincinnati*, 215 F.3d 561, 572–73 (6th Cir. 2000).

establish as pretextual. *See Talley v. Family Dollar Stores of Ohio, Inc.*, 542 F.3d 1099, 1105 (6th Cir. 2008) ("Once a plaintiff establishes a prima facie case of discrimination, the burden shifts to the defendant 'to articulate some legitimate, nondiscriminatory reason' for its actions." (quotation omitted)).

Specifically, the Commission cites substantial evidence showing that it terminated Ms. Tate for insubordination, i.e., her failure to follow policies and procedures, [Poe Decl. ¶¶ 48, 50, 51, 52, 56; Kincer Decl., Doc. 69-4, ¶¶ 7–57; Termination Letter at 1–3], and this evidence is sufficient to demonstrate that it had a legitimate, non-discriminatory reason for terminating her, *see Howley v. Fed. Express Corp.*, 682 F. App'x 439, 446 (6th Cir. 2017) ("This Court has repeatedly held that violations of company policies, poor managerial skills, or leadership failures are legitimate, non-discriminatory reasons for disciplining or discharging an employee." (citing *Idemudia v. J.P. Morgan Chase*, 434 F. App'x 495, 502 (6th Cir. 2011); *Clark v. Walgreen Co.*, 424 F. App'x 467, 473 (6th Cir. 2011); *Bowie v. Advanced Ceramics Corp.*, 72 F. App'x 258, 263 (6th Cir. 2003))).

The burden now shifts to Ms. Tate, who, to withstand summary judgment, has to show "that the legitimate reason[] offered by the [the Commission] w[as] not its true reason[], but w[as] pretext for discrimination." *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 258, 253 (1981) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 804 (1973)). To make this showing, she has to demonstrate that the Commission's "given reason for its conduct 'had no basis in fact, did not actually motivate [its] challenged conduct, or was insufficient to motivate [its] challenged conduct.'" *Lefevers v. GAF Fiberglass Corp.*, 667 F.3d 721, 725 (6th Cir. 2012) (quotation omitted). Ms. Tate fails to make this showing. As the Commission argues, the record contains no evidence that its stated reason for terminating Ms. Tate was pretextual.

At best, Ms. Tate, during her deposition, *questioned* the Commission's stated reason, but she has not gone so far as to show, with evidence, that its stated reason "had no basis in fact, did not actually motivate the [Commission's] challenged conduct, or was insufficient to motivate the [Commission's] challenged conduct." *Id.* (internal quotation mark and quotation omitted); *see Brocklehurst v. PPG Indus., Inc.*, 123 F.3d 890, 898 (6th Cir. 1997) ("The soundness of an employer's business judgment . . . may not be questioned as a means of showing pretext." (quotation omitted)). For example, Ms. Tate stated during her deposition that she "fe[lt] like [she] was targeted," "fe[lt] like that [she] was chastised," and "fe[lt] like that [she] was retaliated against." [Tate Dep. at 79:19, 112:12–14]. Although she also stated that the Commission was applying its procedures and policies more strictly to her than other employees, she was not able to identify other employees who enjoyed more lenient treatment under these procedures and policies. [*Id.* at 87:11–25, 88:1–9].

Ms. Tate's statements are simply inadequate to create a genuine issue of material fact as to whether the Commission's stated reason was pretextual. *Gooden v. City of Memphis Police Dep't*, 67 F. App'x 893, 895 (6th Cir. 2003) (stating that "[c]onclusory allegations, speculation, and unsubstantiated assertions are not evidence, and are not enough to defeat a well-supported motion for summary judgment" (citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990)). Because the Commission has shown "an absence of evidence to support" any contention that its stated reasons for terminating Ms. Tate was pretextual and Ms. Tate, in response, has identified no evidence of pretext, the Commission is entitled to summary judgment. *Celotex*, 477 U.S. at 325; *see Cline v. Diocese of Toledo*, 206 F.3d 651, 661 (6th Cir. 2000) (stating that "[o]n a motion for summary judgment, a district court considers whether there is sufficient evidence to create a genuine dispute at each stage of the *McDonnell Douglas* inquiry").

IV. CONCLUSION

As the movant for summary judgment, the Commission meets its burden of establishing that it is entitled to summary judgment on Ms. Tate's claims. The Commission's Motion for Summary Judgment [Doc. 69] is therefore **GRANTED**. The Clerk of Court is **DIRECTED** to close this case.

So ordered.

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT:

s/ LeAnna R. Wilson
District Court Clerk

U.S. EQU/ :MPLOYMENT OPPORTUNITY \ /MISSION
Nashville Area Office

220 Athens Way, Suite 350
Nashville, TN 37228-1327
Intake Information Group (800) 669-4000
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FAX (615) 736-2107

EEOC CHARGE NO. 846-2016-06235

Regina Tate
915 Oak St.
Chattanooga, TN 37403

Charging Party

vs.

Hamilton County Election Commission
700 River Terminal Road
Chattanooga, TN 37406

Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under the Americans with Disabilities Act Amendment Act of 2008 (ADAAA).

All requirements for coverage have been met. Charging Party alleges that Respondent was aware of her disability and reasonable accommodation requests for time to attend medical appointments, receive medical treatment, and take medical leave. Charging Party alleges that because of her ongoing reasonable accommodation requests, Respondent retaliated against her through written discipline, suspension without pay, probation, and discharge.

Respondent denies discriminating and retaliating against Charging Party. Respondent contends that Charging Party received written discipline and a three-day suspension for failure to follow paid time off (PTO) policies and procedures. Respondent contends Charging Party received a 10-day suspension and 90-day probationary period for insubordination. Respondent contends Charging Party was discharged for failure to follow established policies and procedures.

Evidence obtained during the investigation establishes that Respondent was aware of Charging Party's disability as evidenced by documents provided by her medical provider. Respondent participated in the interactive process in October 2015, by providing Charging Party with reasonable accommodations of leave and adjustments to her work hours and job duties. Further evidence obtained revealed that she was subjected to disciplines, suspensions, and extended probationary period in retaliation for scheduled doctor appointments related to her disability. Charging Party was discharged after requesting another reasonable accommodation for leave due to her disability, and after she provided the requested medical documentation.

Based on the evidence obtained, I conclude that there is reasonable cause to believe that Respondent subjected Charging Party to discipline, suspension, probation, discharge, and retaliation in violation of the ADAAA.

The ADAAA requires that if the Commission determines that there is reasonable cause to believe that the charge is true; it shall endeavor to eliminate the alleged unlawful employment practice by informal

Appendix C

methods of conference, conciliation, and persuasion. Having determined that there is reasonable cause to believe that a violation has occurred, the Commission now invites parties to join with it in a collective effort toward a just resolution of this matter.

If the Respondent wishes to accept this invitation to participate in conciliation efforts, it may do so by accepting the enclosed agreement as presented, or providing a counter proposal to the Commission representative, within 14 days of the date of this determination. The assigned Commission Representative for purposes of conciliation is Federal Investigator James Foster, (615) 736-5543. The remedies for violations of the statutes we enforce are designed to make the identified victims whole and to provide corrective and preventive relief.

Should the Respondent have further questions regarding the conciliation process or the conciliation terms it would like to propose, we encourage it to contact the assigned Commission Representative. Should there be no response from the Respondent within fourteen (14) days of the date of this determination, the Commission may conclude that further conciliation efforts would be futile or nonproductive. Where the Respondent declines to enter into settlement discussions, or when the Commission's representative for any other reason is unable to secure a settlement acceptable to the Office Director, the Director shall so inform the parties in writing and advise them of the court enforcement alternative available to the Aggrieved Parties and the Commission.

You are reminded that Federal Law prohibits retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in the Commission's investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the charge.

On behalf of the Commission:

AUG 2 3 2018

Date

Deborah K. Walker

Deborah K. Walker
Area Director

Enclosure: proposed Conciliation Agreement

LOYD
Copy
GUA
U.S. EQUAL **EMPLOYMENT OPPORTUNITY COMMISSION**
Nashville Area Office
OPPOR
MISSION
UTY COP
220 Athens Way, Suite 350
Nashville, TN 37228-1327 Intake Information Group: (800) 669-4000 Intake Information Group
TTY: (800) 669-6820
Nashville Status Line: (866) 408-8075 Nashville Direct Dial: (615) 736-5863
TTY (615) 736-5870 FAX (615) 736-2107

IN THE MATTER OF:

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

And

EEOC CHARGE NO. 846-2016-06235

Charging Party
Regina Tate 915 Oak St. Chattanooga, TN 37403

Respondent
Hamilton County Election Commission 700 River Terminal Road Chattanooga, TN 37406

An investigation having been made under the American with Disabilities Act Amendment Act of 2008 (ADAAA) by the U. S. Equal Employment Opportunity Commission (EEOC) and reasonable cause having been found, the parties do resolve and conciliate this matter as follows:

GENERAL PROVISIONS

Commission May Review Compliance with Agreement. Respondent agrees that the Commission, on request of Charging Party or on its own motion, may review compliance with this Agreement. As part of such review, the Commission may, provided that it is reasonably

necessary to a review of compliance with this Agreement, require written reports concerning compliance, inspect the premises, examine witnesses, and examine and copy any documents.

2. All Parties agree that the settlement of the instant charge is without prejudice to any other case Respondent may have pending before the EEOC.

3. It is mutually agreed that this Agreement shall become effective as of the date of the Commission's approval and shall remain in effect for one year from the effective date.

4. Agreement May Be Used as Evidence. The Parties agree that this Agreement may be used only as evidence in a subsequent proceeding in which any of the parties allege a breach of this Agreement.

5. The Charging Party agrees not to sue the Respondent with respect to any allegations contained in the above-referenced charge. EEOC agrees not to sue the Respondent with respect to any allegations contained in the above- referenced charge. EEOC agrees not to use the above referenced charge as the jurisdictional basis for filing a civil lawsuit under the American with Disabilities Act Amendment Act of 2008 (ADAAA). However, nothing in this Agreement shall be construed to preclude EEOC and/or Charging Party, from bringing suit to enforce this Agreement in the event that the Respondent fails to perform the promises and representations contained herein. Neither does it preclude the Charging Party nor the Commission from filing charges in the future based on new and different allegations.

CHARGING PARTY
RELIEF

Respondent agrees to pay the Charging Party $81,500.05 in back pay. Respondent will make payment to Charging Party no later than ten (10) days after receipt by Respondent of a fully executed copy of this Agreement. Respondent agrees to send a copy of the check to EEOC (Attn: Area Director Deborah K. Walker, Nashville Area Office, U.S. Equal Employment Opportunity Commission, 220 Athens Way, Suite 350, Nashville, TN 37228) not later than ten (10) days after making payment to Charging Party.

2. Respondent agrees to pay the Charging Party $40,000.00 in compensatory damages for emotional and psychological harm. Respondent will make payment to Charging Party no later than ten (10) days after receipt by Respondent of a fully executed copy of this Agreement. Respondent agrees to send a copy of the check to EEOC (Attn: Area Director Deborah K. Walker, Nashville Area Office, U.S. Equal Employment Opportunity Commission, 220 Athens Way, Suite 350, Nashville, TN 37228) not later than ten (10) days after making payment to Charging Party.

ent agrees to maintain in a separate file all employment documents related to the charge such as, the Notice of the Charge of Discrimination; the Charge of Discrimination, all correspondence and investigative information directed to and from the Commission relating to

the facts and circumstances, which led to the filing of the instant charge of discrimination and the related events, which occurred thereafter.

4. Respondent agrees that Charging Party shall not be harassed, intimidated, or penalized in any future considerations for employment or other employment related matters due to the proceeding of this charge.

5. Respondent agrees to prohibit dissemination, directly or indirectly, to any other employer or potential employer of any facts or circumstances relating to this charge. In furnishing
EEOC CHARGE NO. 846-2016-
06235

references to prospective employers, Respondent agrees to provide Charging Party a positive reference.

6. Respondent agrees to place Charging Party in her old position without loss of tenure, pay and reinstatement of any and all benefits due to charging party at time of termination and rehire such as any pay increase.

EMPLOYMENT POLICIES AND PRACTICES

1. Respondent agrees not to unlawfully discriminate, including not to engage in unlawful risdiction of EEOC in violation of under the American with Disabilities Act Amendment Act of 2008 (ADAAA), in all phases of employment, including discharge, recruitment, hiring, job assignment, promotion, training, other terms and conditions or privileges of employment.

2. Retaliation. Respondent agrees not to engage in or allow any of its employees to engage in any retaliatory conduct against any employee, who protests an unlawful employment practice by complaining about discrimination or any person who files an EEOC complaint.

3. Training Respondent agrees to conduct ADAAA training within ninety (90) days of the execution date of this Agreement to all Hamilton County Election Commission managers. Respondent agrees to certify within thirty (30) days of the completion of the ADAAA training, that the training was conducted and provide a list of all training attendees by name and position. Respondent agrees to provide an approximate number of managers to be trained simultaneously with this signed *A*greement.

4. All Employment Practices to be Conducted in a Non-Discriminatory Manner. The Respondent agrees to maintain and conduct discharge practices and other terms and conditions of employment in a manner, which does not discriminate in violation of under the American with Disabilities Act Amendment Act of 2008 (ADAAA).

NOTICE
REQUIREMENT

Respondent agrees to sign and conspicuously post the Notice to employees found as Appendix A. Respondent will post copies of the Notice on all employee bulletin boards for a period of twelve months from the date of execution of this Agreement.

REPORTING REQUIREMENT

1. Respondent agrees to provide notification to EEOC that Respondent removed the following information from Charging Party's personnel file: The Notice of the Charge of EEOC CHARGE NO. 846-2016-06235

Discrimination; the Charge of Discrimination; all correspondence and investigative information directed to and from the Commission relating to the charge.

2. Within thirty (30) days from the effective date of this Agreement, the Respondent will report to the Office Director, Equal Employment Opportunity Commission, Attn: Area Director Deborah K. Walker, Nashville Area Office, U.S. Equal Employment Opportunity Commission, 220 Athens Way, Suite 350, Nashville, TN 37228 the following information:

3. Respondent agrees to provide copies of all documents showing Respondent has complied with provisions of the Charging Party's relief section, and documentation showing Respondent has posted the notice.

SIGNATURES

I have read the foregoing Conciliation Agreement and I accept and agree to the provisions contained therein:

Date
Date
Signature of Respondent

Date
Signature of Charging Party

Approved on Behalf of the Commission:

Date
Deborah K. Walker Area Director