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No. 22-5360

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 8, 2023
DEBORAH S. HUNT, Clerk

MARY A. KINDRED,)
)
Plaintiff-Appellant,)
) ORDER
v.)
)
MEMPHIS, LIGHT, GAS AND WATER,)
)
Defendant-Appellee.)

Before: GILMAN, GIBBONS, and READLER, Circuit Judges.

Mary A. Kindred petitions for rehearing of this court's order of February 27, 2023, affirming the district court's grant of summary judgment to the defendant, Memphis Light, Gas and Water, in her employment discrimination action brought under the Americans with Disabilities Act and the Age Discrimination in Employment Act.

Upon consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. *See* Fed. R. App. P. 40(a)(2).

We therefore **DENY** the petition for rehearing.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

NOT RECOMMENDED FOR PUBLICATION

No. 22-5360

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MARY A. KINDRED,	)	
	)	
Plaintiff-Appellant,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE WESTERN DISTRICT OF
MEMPHIS LIGHT, GAS AND WATER,	)	TENNESSEE
	)	
Defendant-Appellee.	)	

ORDER

Before: GILMAN, GIBBONS, and READLER, Circuit Judges.

Mary A. Kindred, proceeding pro se, appeals the district court's grant of summary judgment in favor of the defendant, Memphis Light, Gas and Water ("MLGW"), in her employment-discrimination action. 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). For the reasons set forth below, we affirm.

In January 2016, Kindred began working for MLGW as a part-time Special Officer, supporting full-time staff in securing MLGW properties. An essential function of the position was to be present at the property to which the Special Officer was assigned. On June 6, 2017, MLGW received a medical-leave request from Kindred's counselor, Elizabeth Storey, requesting that Kindred be excused from work for approximately four to six weeks beginning June 7, 2017. On June 13, 2017, Kindred's supervisor, Alonsia Hardy, sent Kindred a letter providing her with a "UNUM packet" to complete and return to the MLGW Insurance Department and asking Kindred to update him on her status by calling every Monday.

Seven months later, Kindred remained on leave. Kindred had cancelled an "interactive meeting," supposedly arranged by Hardy in accordance with the Americans with Disabilities Act Amendments Act ("ADAAA"), scheduled for January 8, 2018. On January 10, 2018, MLGW Acting Manager of Employment Services, Eric Conway, notified Kindred that the interactive meeting had been rescheduled for January 17, 2018, and that her presence was mandatory. Conway's letter explained that MLGW had not received any additional documentation to confirm her return to work since Kindred sent medical documentation on June 6, 2017. Conway explained that Kindred's failure to attend the rescheduled meeting would be viewed as a refusal to cooperate in good faith with the ADAAA interactive process and would be considered job abandonment and result in the termination of her employment.

Kindred cancelled the January 17, 2018, meeting due to inclement weather. On that date, Storey sent Conway a note indicating that Kindred was scheduled for an appointment on January 29, 2018. After Kindred's appointment, Storey sent Conway two letters, stating that, "[d]ue to her being symptomatic[,] it is suggested she continue to remain off work." Storey initially advised that a return-to-work date was "undetermined at this time," but stated in the second letter that Kindred might return on April 1, 2018, "subject to change pending progress."

On February 2, 2018, Conway and Hardy conducted an interactive meeting with Kindred over the phone. According to Conway, during the meeting, Kindred became "agitated and rude," disconnected the call, did not answer when he called her back, and did not respond to his subsequent voicemail. Kindred disputed this. She surmised that the call might have been "dropped," and she stated that Conway never called her back or left her a voicemail. By letter dated February 8, 2018, Conway informed Kindred that MLGW could not extend her leave due to the need for her to be physically present to secure its facilities and that her employment with MLGW had been terminated based on her failure to (1) complete and return the UNUM forms to substantiate her absence, in violation of MLGW's policy on sick leave and short-term disability salary continuation, and (2) cooperate in good faith with the ADAAA interactive process.

A final letter from Storey, dated July 31, 2018, stated, "Paperwork requesting leave was submitted to [UNUM] on June 27, 2017. On July 24, 2017, a revised request for leave was

submitted to [UNUM] requesting additional time off. Shortly after, Ms. Kindred reported to [Storey] that she was informed that she did not qualify for benefits through [UNUM]."

In March 2018, Kindred filed a charge with the Equal Employment Opportunity Commission ("EEOC") and the Tennessee Human Rights Commission. In the section of the standard form for indicating the basis for the charge, Kindred checked only the box for disability. She provided the following "particulars" of the charge:

> On June 7, 2017, I went out on medical leave. On January 29, 2018, a request was made for additional medical leave thereafter; I was terminated February 9, 2018, for alleged noncompliance regarding ADA[] interactive process.
>
> I believe that I have been discriminated against due to my disability in violation of the [ADA].

On the EEOC pre-charge inquiry form, however, Kindred checked the box for age discrimination, not disability discrimination. On that form, Kindred provided the following description of the alleged discrimination: "Using a false allegation of noncompliance with provisions of the [ADA] to justify terminating my employment, no younger employee has been subjected to similar treatment." She further stated that "[a]ll younger employee[s] were given the opportunity to work full time without har[as]sment or job loss."

In September 2019, Kindred sued MLGW, Hardy, Conway, Renee Daniel, and Angela R. Hewitt, citing the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq., and the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, et seq. She alleged that, prior to January 2016, she was employed for ten years as an armed security officer with Clifford Dates and Associates Security ("CDA"), the company that MLGW contracted with to provide security in their facilities. In 2015, MLGW decided to terminate this contract and to convert the CDA employees who were providing security in their facilities to MLGW employees. According to Kindred, these employees were approved to receive an annual salary and benefits for 40 hours of work per week. She alleged that, initially, all former CDA employees worked a maximum of 30 hours per week and that, beginning in July 2016, "groups of former CDA workers" began to transition to full-time employment. Kindred alleged, however, that her "work schedule began to

fluctuate" and her hours dropped to 20 to 28 hours per week. She stated that she asked Hardy and a human-resources representative when she would transition to full-time, but did not receive "a full and succinct answer." Kindred alleged that, "A succession of actions followed my inquiries about my work status which were part of the overall maltreatment and disadvantageous measures and tactics used in relationship to my employment, but . . . did not apply to younger employees." She alleged that she was "excluded . . . from the group of former CDA employees who were converted to full-time status" because of her age and was removed from her post and replaced with a younger employee who had worked for CDA for only three years. She further alleged that, in 2017, when she asked about the discrepancy between the annual salary entered on her paystub, which reflected full-time employment, and the amount of hours she had actually been permitted to work, her "work hours became even more erratic."

With respect to her claim of disability discrimination, Kindred alleged that, due to "the stress of unstable and inadequate earnings," the removal from her full-time position, and assignment to "a potentially dangerous [job] site with no backup employee on duty," she took a medical leave of absence beginning on June 7, 2017. She alleged that, in accordance with MLGW requirements, she called or texted Hardy every Monday to advise him that she was still under a doctor's care and had not been cleared to return to work. Kindred stated that Storey, her healthcare provider, sent verification of her medical condition to UNUM and that UNUM denied her claim for short-term disability because she was not eligible as a part-time employee. She further alleged that she did not fail to participate in the ADA interactive process. She stated:

> I never broached the subject of . . . ADAAA as MLGW describes it. The first time MLGW mentioned anything to me about ADAAA was in the letter Mr. Conway wrote on January 10, 2018 when he attempted to recharacterize the scheduled meeting for that day as an attempt to conduct an ADAAA discussion. At no time by telephone or in person did Mr. Conway or Mr. Hardy mention ADAAA to me. I did not refuse to do anything and I did not disconnect our call. The only directive I received from any management person was a request for a return to work date. I did my best to comply with that directive.

Kindred alleged that, contrary to Conway's stated reasons for her termination, Kindred never refused to engage in the interactive process. She further alleged that she had complied with the

MLGW policy for sick leave and short-term disability salary continuation and with the requirement that she call in weekly during her leave of absence.

Finally, Kindred alleged that she made her request for medical leave pursuant to the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601, et seq. She stated that Conway denied her request "based on insufficient hours to qualify for it," but, by her count, she had "sufficient hours within the appropriate time frame." As an "attachment" to her complaint, Kindred later submitted a letter from the United States Department of Labor, Wage and Hour Division regarding a complaint for violations of the FMLA that she had filed.

Upon initial screening under 28 U.S.C. § 1915(e)(2), a magistrate judge recommended dismissing Kindred's claims against the individual defendants, her claim of retaliation under the ADEA, and any FMLA claims, but allowing her to proceed with her failure-to-accommodate and retaliation claims under the ADA and her disparate-treatment claim under the ADEA. Neither party objected, and the district court adopted the report and recommendation.

After the completion of discovery, MLGW moved for summary judgment. MLGW first argued that Kindred's ADEA claim failed because she did not exhaust her administrative remedies and because, even if she did, she was not qualified for her position and had been terminated for a legitimate, non-discriminatory reason. Next, MLGW argued that Kindred's failure-to-accommodate claim under the ADA failed because (1) she was not a "qualified individual" with a disability entitled to protection under the ADA due to her inability to perform an essential function of her job, i.e., being physically present at the MLGW facility to which she was assigned, (2) an indefinite leave of absence is not a reasonable accommodation, (3) she failed to engage in the interactive process, and (4) continuing an indefinite leave of absence would impose an undue hardship on MLGW. Finally, MLGW contended that Kindred's ADA retaliation claim failed because she never engaged in protected activity and MLGW had a legitimate, non-retaliatory reason for her termination: "she could not perform the essential functions of her position."

A magistrate judge recommended that MLGW's summary-judgment motion be granted. Finding that neither the standard charge form nor the pre-charge inquiry form that Kindred filed with the EEOC served to exhaust her ADEA claim, the magistrate judge concluded that the claim

was procedurally barred. With respect to Kindred's failure-to-accommodate claim, the magistrate judge found that Kindred's request for indefinite leave was not a reasonable accommodation and Kindred thus was not a "qualified" individual under the ADA. Finally, the magistrate judge concluded that Kindred could not demonstrate a genuine dispute of material fact as to whether MLGW's proffered reason for her termination was a pretext designed to mask retaliation. Over Kindred's objections, the district court adopted the report and recommendation and granted MLGW's summary-judgment motion.

On appeal, Kindred argues that MLGW "subverted the discovery process by refusing to answer any questions or furnish any documents requested by [her i]nterrogatory." With respect to her age-discrimination claim, Kindred contends that the district court erred in finding that she failed to exhaust her administrative remedies. Kindred also argues that MLGW "violated ADA[] policies and procedures" by not properly informing her of "an intended interactive interview," failing to a have a "medical coordinator present at what was initially called a meeting to furnish a return to work date and later characterized as an ADA[] interactive interview," "employ[ing] an inflexible Maximum Leave Policy," and falsely accusing her of "failing to return UNUM Insurance forms."

We review a district court's grant of summary judgment de novo, viewing the facts in the light most favorable to the non-moving party. *Flagg v. City of Detroit*, 715 F.3d 165, 178 (6th Cir. 2013). 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." Fed. R. Civ. P. 56(a); *see Est. of Smithers ex rel. Norris v. City of Flint*, 602 F.3d 758, 761 (6th Cir. 2010).

I. Discovery

Kindred first argues that "[t]his case does not meet the criteria for a [s]ummary [j]udgment" in light of the MLGW's refusal to respond to her discovery requests. She contends, "It is not possible . . . to find that there is no longer any dispute left in the facts when [MLGW] withheld pertinent and relevant facts." MLGW responds that, because Kindred failed to comply with the district court's scheduling order and discovery deadlines, it was not required to respond to her requests.

The district court initially set a deadline of November 16, 2020, for written discovery. The order advised the parties that requests for written discovery must be served at least 30 days before the deadline to allow sufficient time for responses. At Kindred's request, the court extended the deadline for written discovery to March 29, 2021, and ordered that "[a]ll written discovery requests must therefore be served by February 26, 2021." On March 15, 2021—17 days after the deadline to request written discovery—Kindred filed her first set of interrogatories with the court. On April 23, 2021, Kindred filed a motion to compel MLGW to respond to her interrogatories. In response, MLGW explained that Kindred never served her interrogatories on the company, asserted that her discovery request was untimely, and noted that her motion to compel was not in compliance with the district court's Local Rule 26.1(b). The court denied Kindred's motion to compel on the ground that her discovery request was untimely. On this record, there is no basis for Kindred's assertion that MLGW "subverted the discovery process."

II. Age Discrimination and Failure to Exhaust Administrative Remedies

Kindred next challenges the district court's conclusion that she failed to exhaust her administrative remedies with respect to her age-discrimination claim under the ADEA. Before filing a civil action under the ADEA, a plaintiff must first file a charge alleging unlawful discrimination with the EEOC. 29 U.S.C. § 626(d). "A charge shall be in writing and shall name the prospective respondent and shall generally allege the discriminatory act(s)." 29 C.F.R. § 1626.6. In addition, to be deemed a charge, a filing "must be reasonably construed as a request for the agency to take remedial action to protect the employee's rights or otherwise settle a dispute between the employer and the employee." *Fed. Express Corp. v. Holowecki*, 552 U.S. 389, 402 (2008). In other words, a filing constitutes a charge if an "objective observer" would reasonably construe the filing as a "request[for] the agency to activate its machinery and remedial processes." *Id.* This is a "permissive standard" under which a "wide range of documents" may constitute a charge, including, in certain circumstances, pre-charge documents filed with the EEOC. *See id.* at 402, 404–06 (construing employee's EEOC intake questionnaire and an accompanying affidavit that expressly asked the EEOC to take action as a charge); *Littlejohn v. City of New York*, 795 F.3d 297, 305 n.2 (2d Cir. 2015) ("When the Intake Questionnaire manifests intent to have the agency

initiate its investigatory processes, the questionnaire can itself constitute a charge of discrimination."); *Hildebrand v. Allegheny County*, 757 F.3d 99, 113 (3d Cir. 2014) (concluding that an employee who completes an EEOC Intake Questionnaire and checks the box indicating that he wants to file a charge of discrimination "unquestionably files a charge of discrimination").

Here, Kindred filed a formal charge of discrimination, alleging discrimination on the basis of disability, along with the EEOC pre-charge inquiry form, in which she alleged discrimination on the basis of her age. On the formal charge, only the box for disability discrimination was checked. Kindred contends that this was due to the EEOC investigator's failure to check the box for age and was "beyond [her] control." But even assuming that this is true, it does not explain the absence of any substantive allegations of age discrimination in the formal charge.

With respect to Kindred's pre-charge inquiry form, the district court concluded that it too did not serve to exhaust her administrative remedies as to her ADEA claim for two reasons. The court first noted that the document was not verified. But the case on which the court relied to find that Kindred's charge had to have been verified, *Williams v. CSX Transp. Co.*, 643 F.3d 502, 509 (6th Cir. 2011), concerned a claim brought under Title VII of the Civil Rights Act of 1964, not the ADEA. And unlike Title VII, the ADEA and its implementing regulations do not require verification. *Compare* 42 U.S.C. § 2000e-5(b) *with* 29 C.F.R. § 1626.6; *see also Diez v. Minn. Mining & Mfg. Co.*, 88 F.3d 672, 675 (8th Cir. 1996). Thus, the lack of verification does not preclude Kindred's pre-charge inquiry form from being construed as a charge of age discrimination.

The district court, however, correctly determined that Kindred's pre-charge inquiry form does not constitute a charge because it does not satisfy *Holowecki*'s requirement that it objectively demonstrate that she asked the EEOC to take remedial action. Nowhere on the pre-charge inquiry form does Kindred request that the EEOC take any action with respect to her allegations of age discrimination. And as the district court noted, each page of the form stated in bold, "THIS PRE-CHARGE INQUIRY IS NOT A CHARGE OF DISCRIMINATION." What is more, the form explains to employees that its purpose is to help the agency "assist you and determine if your concerns are covered by the employment discrimination laws." In *Holowecki*, the Supreme Court

explained that similar language included in the intake-questionnaire form used by the EEOC in 2001 did not "give rise to the inference that the employee requests action against the employer" and "[i]n fact . . . suggest[ed] the opposite: that the form's purpose [wa]s to facilitate 'pre charge filing counseling' and to enable the agency to determine whether it has jurisdiction over 'potential charges.'" 552 U.S. at 405. Indeed, the Court deemed the intake form in that case to be part of the charge only because it was supplemented with an affidavit in which the employee expressly requested that the EEOC take action. *Id.* Here, given the pre-charge inquiry form's express statement that it does not constitute a charge of discrimination and its design as a tool for determining whether an employee's allegations are covered by employment-discrimination laws, it cannot be considered a charge under the ADEA. *See Holowecki*, 552 U.S. at 405; *see also Shaukat v. Mid Atl. Pros., Inc.*, No. TDC-20-3210, 2021 WL 5743909, at *4 (D. Md. Nov. 30, 2021) (rejecting plaintiff's assertion that the EEOC pre-charge inquiry qualified as a charge and explaining that language on the form stating that it was *not* a charge of discrimination distinguished it from other cases where prior versions of the pre-charge inquiry form, i.e., the intake questionnaire, were deemed to constitute a charge); *Herrera v. Di Meo Brothers, Inc.*, 529 F. Supp. 3d 819, 828 (N.D. Ill. Mar. 29, 2021) (declining to consider the pre-charge inquiry form as part of the charge of discrimination given that the form "denies being a charge"). Because Kindred's charge of discrimination did not allege age discrimination and her pre-charge inquiry form cannot be considered a charge, the district court properly granted summary judgment in favor of MLGW on Kindred's ADEA claim.

III. Failure to Accommodate Under the ADA

Under the ADA, an employer cannot discriminate against a qualified individual on the basis of disability in regard to the terms, conditions, privileges, or termination of employment. 42 U.S.C. § 12112(a). An employer discriminates within the meaning of § 12112(a) when it fails to make "reasonable accommodations to the known physical or mental limitations" of an otherwise qualified employee, unless the employer "can demonstrate that the accommodation would impose an undue hardship on the operation of the business." *Id.* § 12112(b)(5)(A). To establish a prima facie case of failure to accommodate under § 12112(b)(5)(A), an employee must show that (1) she

is disabled within the meaning of the ADA; (2) she is otherwise qualified for the position, such that she can perform the essential functions of the job with or without a reasonable accommodation; (3) the employer knew or had reason to know of her disability; (4) the employee requested an accommodation; and (5) the employer failed to provide a reasonable accommodation thereafter. *Kleiber v. Honda of Am. Mfg., Inc.*, 485 F.3d 862, 869 (6th Cir. 2007). Once an employee establishes a prima facie case, "the burden shifts to the employer to demonstrate that any particular accommodation would impose an undue hardship on the employer." *Johnson v. Cleveland Sch. Dist.*, 443 F. App'x 974, 983 (6th Cir. 2011).

The district court concluded that Kindred failed to satisfy the second prong of the prima facie case, i.e., that she could perform the essential functions of her job as a MLGW Special Officer with or without reasonable accommodation. It was undisputed that an essential function of Kindred's job was the ability to be physically present at her assigned location. The relevant question was thus whether the leave that Kindred requested was a reasonable accommodation.

Medical leave can be a reasonable accommodation under the ADA because "it enables the employee to perform the essential function of attendance." *King v. Steward Trumbull Mem. Hosp., Inc.*, 30 F.4th 551, 561 (6th Cir. 2022). When determining the reasonableness of a leave request, we consider "(1) the amount of leave sought; (2) whether the requested leave generally complies with the employer's leave policies; and (3) the nature of the employee's prognosis, treatment, and likelihood of recovery." *Id.* at 562. "[W]here an employer has already provided an employee with a lengthy period of medical leave, an extension to that leave can be a reasonable accommodation only when its duration is definite." *Maat v. County of Ottawa*, 657 F. App'x 404, 412 (6th Cir. 2016); *see Walsh v. United Parcel Serv.*, 201 F.3d 718, 727 (6th Cir. 2000); *see also King*, 30 F.4th at 562 (noting that "requests for indefinite leave are likely unreasonable"). Thus, here, "the relevant inquiry is whether [Kindred] showed [MLGW] a 'certain or credibly proven end' to the leave." *Maat*, 657 F. App'x at 413 (quoting *Aston v. Tapco Int'l Corp.*, 631 F. App'x 292, 298 (6th Cir. 2015)).

As recounted above, on January 29, 2018, after Kindred had been on leave for over seven months, Storey informed MGLW that Kindred was still symptomatic and needed to remain off

work. Storey stated that "[a] return to work date is undetermined at this time." The following day, Storey submitted a revised letter to MGLW, this time stating: "A return to work date is undetermined at this time. It is estimated [Kindred] may return to work on April 1, 2018. However, this is subject to change pending progress. An update on progress can be submitted per request prior to April 1." By its own terms, Storey's estimated end date of April 1 was conditional and subject to change. Moreover, she still stated that Kindred's return-to-work date was "undetermined." Given that Kindred had been on leave for more than seven months and that she was still symptomatic despite this extended period of leave, Storey's estimated return date of April 1, 2018, did not provide MLGW with a "certain or credibly proven end" to Kindred's leave. *See Aston*, 631 F. App'x at 298; *see also Williams v. AT&T Mobility Servs. LLC*, 847 F.3d 384, 394 (6th Cir. 2017) ("A physician's estimate of a return date alone does not necessarily indicate a clear prospect for recovery, especially where an employee has repeatedly taken leaves of unspecified duration and has not demonstrated that additional leave will remedy her condition.").

Because Kindred's requested leave was not for a definite or certain duration, it was not a reasonable accommodation. She therefore could not show that she was "otherwise qualified" for the Special Officer position. The district court properly granted summary judgment in favor of MLGW on this claim.

IV. Retaliation

Kindred's retaliation claim under the ADA is analyzed under the burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). *See Thaddeus-X v. Blatter*, 175 F.3d 378, 386–87 (6th Cir. 1999) (en banc). Under this framework, a plaintiff must show that (1) she engaged in protected activity, (2) the activity was known to the defendant, (3) she was subjected to an adverse action, and (4) a causal connection exists between the adverse action and the protected activity. *Walborn v. Erie Cnty. Care Facility*, 150 F.3d 584, 588-89 (6th Cir. 1998). The defendant must then articulate a legitimate, non-retaliatory reason for the adverse action, to which the plaintiff must respond with evidence of pretext. "To demonstrate pretext, a plaintiff must show *both* that the [defendant]'s proffered reason was not the real reason

for its action, *and* that the . . . real reason was unlawful." *EEOC v. Ford Motor Co.*, 782 F.3d 753, 767 (6th Cir. 2015).

Assuming that Kindred set forth a prima facie case of retaliation, the district court concluded that she failed to satisfy her ultimate burden of establishing that the MLGW's proffered reason for terminating her employment—"she could not perform the essential functions of her position"—was merely a pretext designed to mask retaliation. In an apparent effort to show pretext, Kindred argues that MLGW failed to follow proper procedures for conducting the interactive process and falsely accused her of failing to file insurance documents. Without citing any authority, she argues that MLGW failed to properly "introduce the ADAA provisions" and denied her "the proper amount of time due between [her] furnishing the specified 'return to work date' from [her] psychological counselor and their terminating [her], which indicates that the termination was predetermined before the requested documentation was furnished." She contends that MLGW's "use of ADAA terminology was simply for the purpose of terminating my employment."

To establish pretext, Kindred must produce evidence to show that MLGW's proffered reason "(1) has no basis in fact; (2) did not actually motivate the adverse employment action; or (3) was insufficient to warrant the adverse action." *See Ladd v. Grand Trunk W. R.R., Inc.*, 552 F.3d 495, 502 (6th Cir. 2009). As discussed above, it is undisputed that Kindred had been on leave for over seven months at the time of her termination and that Storey could provide only an estimated return-to-work date of April 1, 2018, with an emphasis that such date was subject to change. "[W]hen an employee's return date is not so certain, an employer is not required to keep open a job for an employee indefinitely." *Aston*, 631 F. App'x at 297–98. Kindred's assertions that MLGW falsely accused her of failing to comply with company policy concerning UNUM forms and failed to follow ADA procedures with respect to the interactive process fail to demonstrate that the real reason for her termination was retaliation. The undisputed fact remains that, when Kindred did finally submit medical documentation to support her request for leave, it failed to provide MLGW with a sufficient end date to the leave. On this record, no reasonable jury

could find that MLGW's proffered reason for Kindred's termination was a pretext designed to mask retaliation.

For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk