

NONPRECEDENTIAL

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

PETER MITCHELL,)
)
 Plaintiff)
)
 v.)
)
 VIRGIN ISLANDS WATER AND)
 POWER AUTHORITY,)
)
 Defendant)

CIVIL NO. 2000-0167

ATTORNEYS:

Sharmane Davis-Brathwaite, Esq.
Virgin Islands Water & Power Authority
P.O. Box 1450
St. Thomas, V.I. 00804-1450
Attorney for Defendant

Natalie Nelson Tang How, Esq.
27 & 28 King Cross Street
Phoenix Court Business Complex
Christiansted, St. Croix 00820
Attorney for Plaintiff

MEMORANDUM OPINION

Finch, Chief Judge

This matter comes before the Court on Defendant Virgin Islands Water and Power Authority (“the Authority”)’s Motion for Summary Judgment. For the reasons expressed herein,

Defendant's motion will be denied.

I. Background

Plaintiff Peter Mitchell brings this employment discrimination action alleging that although Defendant Virgin Islands Water and Power Authority recognized he had a disability, Defendant failed to assist or accommodate this disability. Plaintiff's Second Amended Complaint alleges that Plaintiff is entitled to relief under The American with Disabilities Act ("ADA") and Title VII of the Civil Rights Act as amended. (Plaintiff's Second Amended Complaint ¶ 1.) In addition to compensatory damages, costs, and attorney fees, Plaintiff also seeks punitive damages. (Plaintiff's Second Amended Complaint ¶ 21.)

Defendant now moves for summary judgment on the one and only count of Plaintiff's Second Amended Complaint, pursuant to Fed. R. Civ. P. 56(b) for the reason that there are no genuine issues of material fact for trial and that Defendant is accordingly entitled to judgment as a matter of law.

Plaintiff opposes Defendant's motion.

II. Analysis

A. Standard Governing a Rule 56 Motion for Summary Judgment

Under Fed. R. Civ. P. 56, a court may grant summary judgment only if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A dispute involving a material fact is

“genuine” where “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In determining whether such genuine issues exist, the Court must resolve all reasonable doubts in favor of the nonmoving party. Christopher v. Davis Beach Co., 15 F.3d 38, 40 (3d Cir. 1994). The burden of proof for summary judgment lies with the moving party. Adickes v. S.C. Kress & Co., 938 U.S. 144 (1970). A trial court should not act other than with caution in granting summary judgment, and may deny summary judgment where there is reason to believe that the better course would be to proceed to a full trial. Anderson, 477 U.S. at 254.

Although Plaintiff has stated only one count in his Seconded Amended Complaint, Plaintiff brings his employment discrimination claims pursuant to both the ADA and Title VII of the Civil Rights Act as amended.

B. The American with Disabilities Act of 1990 (“ADA”), 42 U.S.C.S. § 12101 et seq.

To make a prima facie case on an ADA claim requires Plaintiff to establish that he: (1) has a disability, (2) is a qualified individual, and (3) suffered discrimination on the basis of his disability. See, e.g., Matheson v. Virgin Islands Community Bank, Corp., 297 F.Supp.2d 819, 826 (D.V.I. 2003) (citing Pritchard v. Southern Co. Servs., 92 F.3d 1130, 1132 (11th Cir.1996)). Defendant moves for summary judgment on Plaintiff’s ADA claim on the basis that Plaintiff is not substantially limited in the major life activity of working. The relevant inquiry, however, it is not whether Plaintiff was disabled, but whether the Authority “regarded” Plaintiff as disabled. Santiago v. City of Vineland, 107 F.Supp.2d 512, 548 (D.N.J. 2000). In Santiago, the Court employed the Third Circuit’s holding that “even an innocent misperception based on nothing more than a simple mistake of fact as to the severity, or even the very existence, of an

individual's impairment can be sufficient to satisfy the statutory definition of a perceived disability." Id. at 548 (quoting Deane v. Pocono Medical Center, 142 F.3d 138, 144 (3d Cir.1998)(en banc) (citing 29 C.F.R. pt. 1630, app. § 1630.2(1))).¹

Both Mr. Mitchell and the Authority agree that while working for the Authority as a crew leader, Plaintiff underwent a complete replacement of his right hip and that after recovering from this surgery, Plaintiff asked to be reinstated to his employment position. (Defendant's Motion at 3; Plaintiff's Second Amended Complaint at ¶ 9; Plaintiff's Deposition at 35.) Plaintiff has produced evidence that upon initially receiving a notice from Plaintiff's doctor after the surgery, the Authority considered Plaintiff to be totally disabled. (Deposition of Cassandra Dunn, 27.) Plaintiff has also produced evidence that a subsequent notice from Plaintiff's doctor on March 5, 1999, advised that Plaintiff could return to work immediately with some restrictions. (Deposition of Cassandra Dunn, 28.) At that time, the Authority determined that Plaintiff was not confident that he would be able to fulfill all of the requirements of his job description and the Authority therefore refused to allow Plaintiff to return to work. (Deposition of Cassandra Dunn, 29 - 30.) Plaintiff was subsequently terminated in December 1999 for the stated reason that Defendant was unsuccessful in finding a vacant position in which Defendant could work within the restrictions given by his physician. (Plaintiff's Exhibit 7, Letter from Glen A. Byron, Human Resources and Industrial Relations Director of the Authority). Based on the evidence presented, the Court finds that a reasonable jury could conclude that the Authority perceived Plaintiff to be

¹In order to be a qualified individual, the Third Circuit has determined that Plaintiff must suffer from an "impairment." Id. at 548. In the instant case, Defendant does not dispute that Plaintiff incurred a physical impairment as a result of his hip surgery. (Defendant's Motion at 12.)

disabled and that the Authority discriminated against Plaintiff by failing to reasonably accommodate him. Defendant is not entitled to judgment as a matter of law based on Plaintiff's ADA claim because there is a genuine issue of material fact as to whether the Authority regarded Plaintiff as disabled.

C. Title VII of the Civil Rights Act

Plaintiff's Second Amended Complaint also alleges employment discrimination in violation of Title VII. Defendant does not seek summary judgment regarding this particular claim.

D. Punitive Damages

Similarly, Defendant does not seek summary judgment regarding Plaintiff's claim for punitive damages. It should be noted that a plaintiff may recover punitive damages based on a claim of employment discrimination in violation of Title I of the ADA. See, e.g., 136 A.L.R. Fed. 63. Additionally, a plaintiff may recover punitive damages for a violation of Title VII of the Civil Rights Act. See 42 U.S.C. §§ 1981a (a)(1); 1981(b); Kolstad v. American Dental Association, 527 U.S. 526, 534-35 (1999); E.E.O.C. v. Waffle House, Inc., 534 U.S. 279, 287 (2002).

In examining the issue of entitlement to punitive damages in the context of a summary judgment motion, the court in Barry ex rel. Cornell v. Manor Care, Inc., 1999 WL 257663 (E.D.Pa. 1999), held that the trial record would determine whether punitive damages were available to Plaintiff at trial. Similarly, in the instant case, such determination will be left to the trial record regarding Plaintiff's ADA and Title VII claims.

III. Conclusion

For the foregoing reasons, Defendant's Motion for Summary Judgment will be denied. An appropriate Order is attached.

ENTER:

Dated: March 16, 2004

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:

Wilfredo F. Morales
Clerk of the Court

By: _____
Deputy Clerk

cc: Honorable Jeffrey L. Resnick, U.S. Magistrate Judge
Sharmane Davis-Brathwaite, Esq.
Natalie Nelson Tang How, Esq.