

[Cite as *Frakes v. Ohio Rehab. Servs. Comm.*, 2008-Ohio-4220.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ANDREA FRAKES

Plaintiff

v.

OHIO REHABILITATION SERVICES COMMISSION

Defendant

Case No. 2007-02424

Judge J. Craig Wright

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶ 1} On June 16, 2008, defendant filed a motion for summary judgment pursuant to Civ.R. 56. On July 14, 2008, plaintiff filed a response.¹ On July 18, 2008, the court conducted an oral hearing on the motion.

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." See also *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} On October 18, 2004, plaintiff began her employment with defendant as a vocational rehabilitation counselor. Plaintiff's employment was governed by a collective bargaining agreement. In 2005, plaintiff injured her knee at work. Eventually, plaintiff

underwent arthroscopic surgery. Beginning on October 17, 2005, plaintiff requested a change in her work assignment as an accommodation for her knee injury. Defendant determined that the nature of plaintiff's injury did not qualify her for coverage under the Americans with Disabilities Act (ADA). Because her doctor had placed her on temporary restrictions that prevented her from completing her work as a vocational rehabilitation counselor until her knee healed, defendant directed plaintiff to take temporary leave under the Family and Medical Leave Act and temporary disability programs. On November 2, 2005, Pamela Laing, defendant's Human Resources Coordinator, sent plaintiff a letter informing her of defendant's decision and of her options to seek benefits. (Defendant's Exhibit 1.)

{¶ 5} Instead of taking leave as set forth in the letter, plaintiff negotiated a transfer from the Tri-County team to the Columbus South team effective November 21, 2005. After her transfer to the Columbus South team, plaintiff's job performance worsened and she was placed on three separate "Action Plans" to help her meet defendant's expectations.

{¶ 6} In January 2007, defendant discovered that plaintiff had released confidential information concerning at least 52 consumers to outside agencies and entities, in violation of federal and Ohio laws, defendant's written policies, and general ethical guidelines for counselors. On January 25, 2007, defendant conducted an investigatory interview concerning plaintiff's release of confidential information. A union representative attended the interview on plaintiff's behalf. Plaintiff was informed that she could be disciplined or terminated for failing to cooperate in the interview. Plaintiff refused to cooperate, refused to respond to questions, and refused to look at the documents that she was asked to review. Defendant terminated plaintiff's employment on March 9, 2007.

¹On June 24, 2008, plaintiff filed a stipulation wherein the parties agreed to allow plaintiff to file a response to defendant's motion on July 14, 2008. For good cause shown, the stipulation is hereby APPROVED.

{¶ 7} At the oral hearing, plaintiff conceded that she cannot produce sufficient evidence to support her claim for disability discrimination or wrongful discharge in violation of public policy. Therefore, summary judgment is GRANTED in favor of defendant as to those claims.

{¶ 8} Plaintiff's remaining claim is for retaliation. R.C. 4112.02 states in pertinent part that: "It shall be an unlawful discriminatory practice: (A) For any employer, because of the race, color, religion, sex, national origin, disability, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment."

{¶ 9} Plaintiff claims that she was discharged in retaliation for seeking a reasonable accommodation for her knee injury. In order for plaintiff to support her claim for retaliatory discharge under either R.C. 4112.02(I) or federal law, she must prove that: 1) she engaged in a protected activity under federal or Ohio law; 2) she was the subject of adverse employment action; and, 3) there was a causal link between her protected activity and the adverse action of her employer. *Cooper v. City of North Olmsted* (C.A. 6, 1986), 795 F.2d 1265, 1272.

{¶ 10} Inasmuch as plaintiff has conceded that she did not suffer a disability, as that term is defined under the ADA and Ohio law, her claim for retaliation must fail. Moreover, plaintiff was provided with a reasonable accommodation in that defendant honored her request for a transfer to the Columbus South unit. Furthermore, plaintiff was not engaged in any "protected activity" when her employment was terminated; rather, the uncontested evidence shows that plaintiff's employment was terminated due to her illegal disclosure of confidential information. Therefore, upon review of the evidence and memoranda submitted by the parties, the court finds that no genuine issue exists as to any material fact and that defendant is entitled to judgment as a matter of law with regard to plaintiff's claims. Accordingly, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court

Case No. 2007-02424	- 5 -	ENTRY
---------------------	-------	-------

costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. CRAIG WRIGHT
Judge

cc:

Christopher P. Conomy Assistant Attorney General 150 East Gay Street, 18th Floor Columbus, Ohio 43215-3130	Darren A. McNair Erica A. Probst 88 West Mound Street Columbus, Ohio 43215
---	---

HTS/cmd
Filed August 7, 2008
To S.C. reporter August 18, 2008