

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

STEPHEN A. DAVIS,

Plaintiff

v.

MARVIN T. RUNYON,
UNITED STATES POSTMASTER
GENERAL, et al.,

Defendants

Civil No. 95-346-P-C

GENE CARTER, District Judge

ORDER REJECTING IN PART AND AFFIRMING IN PART
THE RECOMMENDED DECISION OF THE MAGISTRATE JUDGE

The United States Magistrate Judge filed with the Court on December 23, 1996, with copies to counsel, his Recommended Decision on Defendants' Motions to Dismiss and/or for Summary Judgment (Docket No. 48). The Plaintiff having filed an Objection thereto (Docket No. 49), this Court has reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record, and has made a de novo determination of all matters adjudicated by the Magistrate Judge's Recommended Decision. This Court concurs with the recommendations of the United States Magistrate Judge, for the reasons set forth in his Recommended Decision, as to all matters except Count III. This Court fails to concur with the recommendation of the United States Magistrate Judge that Count III of the Complaint be dismissed. Having determined that trial proceedings herein are necessary, it is hereby ORDERED as follows:

- (1) The Recommended Decision of the Magistrate Judge as to Count III of the Complaint is hereby REJECTED. The Court is satisfied that Count III states a cognizable claim, which is separate and distinct from Counts I and II, and that Plaintiff's allegations are broader than the mere assertion that Defendant Postmaster General failed to abide by its own policies or procedures. Moreover, while the Complaint only thinly outlines a prima facie case of disparate impact discrimination under the Rehabilitation Act, the Court is satisfied that the factual allegations contained in ¶¶ 43-55 of the Complaint are sufficient to support each of the three elements of a prima facie claim and, therefore, to pass muster under Rule 12(b)(6). See E.E.O.C. v. Steamship Clerks Union, Local 1066, 48 F.3d 594, 601 (1st Cir. 1995); see also Iacampo v. Hasbro, Inc., 929 F. Supp 562, 574 (D.R.I. 1996).
- (2) The Recommended Decision of the Magistrate Judge as to all other Counts is hereby AFFIRMED;
- (3) Defendant Postmaster General's Motion to Dismiss is hereby DENIED as to Counts I, II, III and IV;
- (4) The Motion to Dismiss filed by Defendants Bennet and Occupational Medicine Associates ("OMA") is hereby DENIED;
- (5) The Motion for Summary Judgment filed by Defendants Bennet and OMA is hereby GRANTED; and
- (6) This matter shall be set to proceed to trial as soon as the Court's calendar will permit.

GENE CARTER
District Judge

Dated at Portland, Maine this 6th day of March, 1997.