

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

MARY MEIER,  
Plaintiff

v.

FEDERAL EXPRESS CORPORATION,  
Defendant

Civil No. 96-CV-226-P-C

GENE CARTER, District Judge

ORDER DENYING PLAINTIFF'S AND DEFENDANT'S  
CROSS-MOTIONS FOR SUMMARY JUDGMENT

Plaintiff, Mary Meier, has brought an action against Defendant, Federal Express Corporation ("Federal Express"), alleging discrimination on the basis of a mental disability in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 et seq. and the Maine Human Rights Act ("MHRA"), 5 M.R.S.A. § 4551 et seq. Now before the Court are Plaintiff's and Defendant's cross-motions for summary judgment (Docket Nos. 16 and 13, respectively).

Summary judgment is appropriate only when there are no genuine issues as to any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). After a thorough review of the pleadings, affidavits, and depositions on file, the Court concludes that the record is replete with issues of material fact pertaining to each element of Plaintiff's claim under the ADA and Plaintiff's claim under the MHRA. These issues include, inter alia, whether Plaintiff's

limitations due to bipolar disorder, or her hospitalizations for episodes relating to the disorder, or the perceptions of her disorder by her employer are such that Plaintiff fits within any one of the definitions of an "individual with a disability" under the ADA, or an individual with a "mental disability" under the MHRA; what the essential functions of Plaintiff's position at Federal Express were; and, whether Plaintiff was qualified -- with or without reasonable accommodation -- to perform such functions. These issues require resolution by a fact finder.<sup>1</sup>

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<sup>1</sup>Among numerous factual disputes remaining in the record, there is controverted testimony as to the sequence of events that occurred on and after June 28, 1994, resulting in a breakdown in communication between Plaintiff and her employer, and ultimately leading to Plaintiff's termination. One such issue is what Frank Brogan, Plaintiff's senior manager, told her upon sending her home on the evening of June 28, after her release from the hospital. Plaintiff testified at her deposition that "[h]e told me to go home and he would call me and that I shouldn't call him" (Meier Dep. at 84), whereas Brogan testified that he "told Mary she needed to go see her doctor and let us know what's going on." Brogan Dep. at 139. Defendant asserts that Plaintiff violated company policy by failing to report to work or contact the company for more than two days. Brogan Aff. ¶ 27. Plaintiff argues that she was not in violation of the policy, because Brogan had told her he would contact her, and the policy refers to absences for two consecutive work days "without notifying their manager or another member of management in their work area." Defendant's Attendance Policy, attached to Brogan Aff. as Exhibit 4.

The issue generated by this dispute is whether Defendant terminated Plaintiff for a legitimate reason, or in the alternative, used Plaintiff's failure to communicate in a timely fashion as an excuse to discharge her because of her disability. In a recent ADA case involving mental illness, Bultemeyer v. Fort Wayne Community Schools, 100 F.3d 1281, 1285 (7th Cir. 1996), the court noted that

neither party should be able to cause a breakdown in the [communication] process for the purpose of either avoiding or inflicting

(continued...)

It is, therefore, ORDERED that Plaintiff's and Defendant's Motions for Summary Judgment be, and they are hereby, DENIED.

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GENE CARTER  
District Judge

Dated at Portland, Maine this 22d day of May, 1997.

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<sup>1</sup>(...continued)

liability. Rather, courts should look for signs of failure to participate in good faith or failure by one of the parties to help the other party determine what specific accommodations are necessary. . . .

It should be noted that the court in that case emphasized that, "in a case involving an employee with mental illness, the communication process becomes more difficult." Id. at 1285. The record in this case leads the Court to conclude that it is not possible to assign responsibility for the breakdown in communication without resolving a host of other factual issues.

Additionally, the Court finds that there are disputed facts in the record as to whether, inter alia, Plaintiff was compliant in taking her prescribed medications during the time period leading up to June 28, 1994, and to what extent Plaintiff was able to think rationally and care for herself during the time period from June 28, 1994, until her termination on July 19, 1994.