

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

DONNA ROWE,)	
)	
PLAINTIFF)	
)	
v.)	CIVIL No. 09-182-B-H
)	
AROOSTOOK MEDICAL CENTER,)	
)	
DEFENDANT)	

**ORDER AFFIRMING RECOMMENDED DECISION
OF THE MAGISTRATE JUDGE**

The United States Magistrate Judge filed with the court on August 17, 2010, with copies to counsel, her Recommended Decision on Motion for Summary Judgment. The defendant filed an objection to the Recommended Decision on September 3, 2010. I have reviewed and considered the Recommended Decision, together with the entire record; I have made a *de novo* determination of all matters adjudicated by the Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in the Recommended Decision.

While this case was pending, the defendant terminated employment of the plaintiff. The defendant then consented to extra discovery surrounding the termination, because the plaintiff's lawyer said that he would amend the complaint to challenge the termination as well as assert the previous claims. In fact, the plaintiff never did amend the complaint, but the defendant moved for

summary judgment on termination as well as all other claims. I agree with the Magistrate Judge's recommendation that summary judgment on termination be denied. Although the defendant may feel aggrieved at having provided discovery, the remedy is not summary judgment on a claim that has never been made in the lawsuit.¹ I am aware of no basis for holding a plaintiff to some kind of implied amendment to a complaint, on which summary judgment can then be granted.

It is therefore **ORDERED** that the Recommended Decision of the Magistrate Judge is hereby **ADOPTED**. The defendant's motion for summary judgment is **GRANTED** with respect to the plaintiff's discriminatory/retaliatory failure to hire claims and **DENIED** with respect to the plaintiff's claim that the defendant failed to reasonably accommodate her disability.

SO ORDERED.

DATED THIS 28TH DAY OF SEPTEMBER, 2010

/s/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

¹ The plaintiff has challenged her termination in a new complaint filed with the Maine Human Rights Commission. Pl.'s Resp. in Opp'n to Def.'s Mot. for Summ. J. (Docket Item 42).

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE (BANGOR)
CIVIL DOCKET NO. 1:09cv182 (DBH)**

Donna Rowe,

Plaintiff

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v.

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