

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

KATHERINE KELLEY,)	
)	
PLAINTIFF)	
)	
v.)	CIVIL No. 1:10-cv-451-DBH
)	
CORRECTIONAL MEDICAL)	
SERVICES, INC.,)	
)	
DEFENDANT)	

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

On August 8, 2011, the United States Magistrate Judge filed with the court, with copies to counsel, her Recommended Decision on Defendant’s Motion for Summary Judgment. The plaintiff filed an objection to the Recommended Decision on August 25, 2011. Oral argument was held on September 28, 2011.

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; I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in the Recommended Decision; and I determine that no further proceeding is necessary.

With respect to the failure to provide a reasonable accommodation, I add that the record is clear that the plaintiff resisted her supervisor’s direct order to perform the narcotics count (Def.’s Stmt. of Undisputed Material Facts ¶¶ 95,

98-99, 103, 112-113 (Docket Item 15); Pl.'s Stmt. of Material Facts ¶¶ 79 (Docket Item 23)); that the count had nothing to do with the physical restrictions described by the plaintiff's medical notes (Kelley Tr. Dep. Exs. 7-8 (Docket Items 15-11, 15-12)); that her argument is that doing the count would have triggered additional clinic responsibilities that would have implicated her physical restrictions (Pl.'s Stmt. of Material Facts ¶¶ 109-111; Pl.'s Response to Def.'s Stmt. of Material Facts ¶¶ 63, 95-98 (Docket Item 22)); and that her supervisor, during the informal interactive process of considering the accommodation, arranged for another nurse to work with the plaintiff in the clinic and to "do all the running" that night (Pl.'s Stmt. of Material Facts ¶ 54; Def.'s Reply Stmt. of Material Facts ¶ 54 (Docket Item 26); Def.'s Stmt. of Undisputed Material Facts ¶¶ 115-16).

The defendant did say in its Statement of Undisputed Material Facts that at her deposition, the plaintiff reported that, earlier that evening, she told other employees what she couldn't do in the clinic, ¶¶ 68-69 and ¶ 84. Because of the later interactive process, however, that does not change my conclusion.

It is therefore **ORDERED** that the Recommended Decision of the Magistrate Judge is hereby **ADOPTED**. The defendant's motion for summary judgment is **GRANTED**. Judgment is entered for the defendant on the plaintiff's Complaint.

SO ORDERED.

DATED THIS 30TH DAY OF SEPTEMBER, 2011

/s/D. BROCK HORNBY

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE (BANGOR)
CIVIL DOCKET NO. 1:10cv451 (DBH)**

Katherine Kelley,

Plaintiff

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v.

**Correctional Medical Services,
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Defendant

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