

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RONALD HARDING,)
)
 Plaintiff,)
)
 v.) Civil No. 04-158-B-W
)
 CIANBRO CORPORATION,)
)
 Defendant.)

**ORDER ON DEFENDANT CIANBRO CORPORATION'S MOTION
FOR SUMMARY JUDGMENT REGARDING COUNT V
OF THE FIRST AMENDED COMPLAINT**

On September 2, 2005, Defendant Cianbro Corporation moved for summary judgment on all claims in Plaintiff Ronald Harding's First Amended Complaint. *Def.'s Mot. for Summ. Judg. and Incor. Mem. of Law* at 30 (Docket # 18). On November 10, 2005, this Court granted Plaintiff's Motion to Stay Decision of State Law Claims pending resolution of questions certified to the Maine Supreme Judicial Court in *Whitney v. Wal-Mart*, Civil No. 04-38-P-H.¹ (Docket # 78).

On April 11, 2006, the Law Court answered the certified questions, holding: (1) that the Maine Human Rights Act's definition of "physical or mental disability" found at 5 M.R.S.A. § 4553(7-A) does not require a showing of a substantial limitation on a major life activity as does its federal analogue, 42 U.S.C. § 12102(2)(A); and, (2) section 3.02(C) of the regulations adopted by the Maine Human Rights Commission, defining a "physical or mental impairment," is invalid because it requires a showing of a substantial

¹ The First Amended Complaint set forth two claims under the Maine Human Rights Act: Count V alleged discrimination and Count VI retaliation. *First Am. Compl.* ¶¶ 34-39 (Docket #4). Mr. Harding consented to summary judgment in favor of Cianbro on Count VI and, on May 25, 2006, this Court entered judgment in favor of Defendant on that count. *Supp. Decl. of Jeffrey Neil Young* ¶ 2 (Docket # 66); *Order on Def. Cianbro Corp.'s Mot. for Summ. Judg.* at 2 n.5, 41 (Docket # 92). The only remaining state law claim is Count V.

limitation on a major life activity.² *Whitney v. Wal-Mart Stores, Inc.*, 2006 ME 37, ¶ 1, 895 A.2d 309, 310. In view of *Whitney* and this Court's denial of Cianbro's motion for summary judgment on Counts I and III of the First Amended Complaint,³ see *Order on Def. Cianbro Corp.'s Mot. for Summ. Judg.* at 41 (Docket # 92), this Court DENIES Cianbro's motion for summary judgment with respect to Count V of the First Amended Complaint.

SO ORDERED.

/s/John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 28th day of July, 2006

Plaintiff

RONALD HARDING

represented by **JEFFREY NEIL YOUNG**
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V.

² In its November 10, 2005 Order to Stay Decision of State Law Claims, this Court ordered the parties to notify it once the Law Court rendered a decision in *Whitney*. (Docket # 78). No notification was ever received.

³ Counts I and III of the First Amended Complaint allege violations of the Americans with Disabilities Act and Rehabilitation Act, respectively.

Defendant

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