

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

KAREN CASSIDY, )  
 )  
 Plaintiff )  
 )  
 v. ) Civil No. 96-0106-B  
 )  
 CRA MANAGED CARE, INC., f/k/a )  
 COMPREHENSIVE REHABILITATION )  
 ASSOCIATES, INC., )  
 )  
 Defendant )

**RECOMMENDED DECISION**

Plaintiff brings this action under the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 and the Civil Rights Act, 42 U.S.C. §§ 1981-2000h-6. Defendant brings this Motion for Summary Judgment on several grounds.

***Discussion***

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993).

However, summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that

party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party has presented evidence of the absence of a genuine issue, the nonmoving party must respond by "placing at least one material fact in dispute." *Anchor Properties*, 13 F.3d at 30 (citing *Darr v. Muratore*, 8 F.3d 854, 859 (1st Cir. 1993)).

### ***I. The ADA Claim.***

Defendant argues that it is entitled to judgment as a matter of law on Plaintiff's claims to the extent they arise under the Americans with Disabilities Act for the reason that Plaintiff has no evidence that she was "disabled" within the meaning of the Act. While the Court agrees with Plaintiff that the question of a plaintiff's disability under the Act is traditionally one of fact, inappropriate for resolution by summary judgment, Plaintiff has failed to place this fact in dispute in this case. *Eg., Oesterling v. Walters*, 760 F.2d 859, 861 (8th Cir. 1985).

The parties agree on the legal standard to be applied to this question. In order to succeed on her claim, Plaintiff must prove by a preponderance of the evidence that she has a disability, which is defined as "(A) a physical or mental impairment that substantially limits one or more of [her] major life activities . . . ; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102. Plaintiff makes several cogent arguments that her condition, ulcerative colitis, "substantially limits one or more of [her] major life activities" but does not articulate how she is personally limited in her factual statement presented in opposition to summary judgment. For example, Plaintiff notes that "if a previously healthy person had to change his or her lifestyle so as to always be within 3 minutes of an accessible bathroom and could expect to have to rush to that bathroom up to 20 times per day, it is reasonable to infer that one's everyday life activities of dressing, washing, going out, riding in a car, commuting, visiting friends and indeed

working will be affected." However, Plaintiff does not indicate in her statement of material facts that her condition required that she "rush to the bathroom up to 20 times per day."

Rather, Plaintiff simply describes symptoms typically encountered by those suffering from ulcerative colitis, without stating that she herself suffers those symptoms. She then asserts that her colitis is "triggered" by various factors including stress (¶ 7), and that stress caused by her supervisor's allegedly offensive remarks "was beginning to have an effect on [her], both for medical and spiritual reasons" in the fall of 1994 (¶ 12). These factual assertions do not amount to a showing that her condition substantially limits one or more of her major life activities. Accordingly, summary judgment is appropriate on Plaintiff's claim under the Americans with Disabilities Act (Count I).

### ***I. The Title VII Claim.***

Defendant asserts that Plaintiff cannot prevail on her claim of religious discrimination because she is unable to show that any negative comments or gossip were of a religious nature. Def. Memo. at 12-13 (citing *Duplessis v. Training & Dev. Corp.*, 835 F. Supp. 671 (D. Me. 1993)). In *Duplessis*, an ethnic origin case, this Court set forth the elements of a hostile work environment claim as follows:

1. unwelcome comments, jokes, acts and other verbal or physical conduct of [a religious] nature in the workplace; and
2. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment; and
3. the employer, or its agents or supervisory employees, knew or should have known of the conduct.

*Id.* at 677.

Plaintiff cites a Maine case for the proposition that the comments need not be of a religious nature, as long as they were offensive and would not have occurred "but for" Plaintiff's religious

beliefs. *Finnemore v. Bangor Hydro-Elec.*, 645 A.2d 15, 17 (Me. 1994). The Court is not persuaded that the "but for" test is appropriate. In *Finnemore*, the Maine Law Court looked to federal law for guidance in interpreting a state provision. Finding no federal authority for the proposition that liability attaches where the comments are not religious in nature, the court nevertheless concluded that it could, as long as the comments were made *because* of the victim's religion. *Id.*

This Court need not determine whether the Maine Law Court's interpretation of state law is appropriately adopted in a Title VII case. Even were the Court to conclude that Plaintiff need only show the causal connection described in *Finnemore*, Plaintiff has failed to do so in her Statement of Material Facts. Specifically, Defendant has presented evidence that the allegedly offensive comments stopped after Plaintiff complained about them. Def. Stmt. of Fact, ¶¶ 40, 43. Plaintiff does not dispute this fact. Indeed, Plaintiff's only allegations regarding her hostile environment claim were that certain statements were made (¶ 9), and that Plaintiff has "strong religious principles" (¶ 10). These factors are connected only tenuously, when plaintiff asserts that "[t]he negativity and stress was beginning to have an effect on [her], both for medical and spiritual reasons." The Court simply cannot find that the comments would not have occurred but for Plaintiff's religious beliefs when they did *not* occur after Plaintiff informed her supervisor she was offended.<sup>1</sup> Accordingly, Plaintiff's claim of religious discrimination must fail as well.

### ***Conclusion***

For the foregoing reasons, I hereby recommend Defendant's Motion for Summary Judgment be GRANTED as to Counts I and III of Plaintiff's Complaint. Inasmuch as the remaining Counts

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<sup>1</sup> Interestingly, there is no evidence in the record that Plaintiff described the affect of the comments on her spiritual nature. According to Plaintiff, she merely stated that she couldn't take the stress.

arise under state law, I recommend the remainder of Plaintiff's Complaint be DISMISSED for lack of subject matter jurisdiction. *Astrowsky v. First Portland Mort. Corp.*, 887 F. Supp. 332, 337 (D. Me. 1995).

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated in Bangor, Maine on November 26, 1996.