

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

JACQUELYN M. QUINT,)	
)	
Plaintiff)	
)	
v.)	Civil No. 96-71-B
)	
A. E. STALEY MFG. CO.,)	
)	
Defendant)	

***ORDER AND MEMORANDUM OF DECISION DENYING
DEFENDANT'S MOTION FOR A SUMMARY JUDGMENT***

The defendant, A. E. Staley Mfg. Company, has moved pursuant to Federal Rule of Civil Procedure 56 for a summary judgment on the eleventh count of the plaintiff, Jacquelyn Quint's, complaint brought pursuant to the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 - 2654 (Pamph. 1997) (FMLA). Staley contends that it is entitled to a judgment as a matter of law on this claim because Quint is estopped from asserting it; because Quint failed to pursue the claim through compulsory grievance and arbitration procedures; and because Quint failed to provide reasonable notice to her employer of her intent to take FMLA leave. Concluding that there are genuine issues of material fact remaining for the factfinders' determination, the Court denies the motion.

I. Summary Judgment

A 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 a judgment as a matter of law.” Fed. R. Civ. P. 56(c). An issue is genuine, for these purposes, if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*,

477 U.S. 242, 248 (1986). "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 in the light most favorable to the nonmovant. *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995).

II. Discussion

The gravamen of the plaintiff's claim is that the defendant, her former employer, interfered with her right to return to work as a process operator after she took up to twelve weeks of leave beginning February 28, 1994, in violation of the FMLA. Because it has set forth the relevant facts and procedural history of this matter in its prior decisions, the Court does not now engage in a recitation of the background of this case.

"The FMLA provides that a covered employer must allow an eligible employee up to twelve workweeks of family or medical leave during any twelve-month period. 29 U.S.C. § 2612(a). At the end of such a leave, the FMLA requires an employer to restore the employee 'to the position of employment held by the employee when the leave commenced' or to an equivalent position. *Id.* §§ 2614(a)(1)(A), (B)." *Patterson v. Alltel Information Services, Inc.*, 919 F. Supp. 500, 504 (D. Me. 1996) (footnotes omitted).

A. Whether Quint is estopped from asserting her FMLA claim

Staley first contends that Quint is estopped from asserting this claim because the evidence generated in this matter is "flatly inconsistent" with a claim that Staley unlawfully interfered with Quint's right to return to work. Staley cites such evidence as Quint's application for disability insurance, in which she stated that she was "totally disabled," as well as her own and her doctor's

prior testimony regarding her work restrictions, in support of its contention that Quint was, by her own admission, unable to return to work in late May of 1995. Quint contends that she is not estopped from asserting her FMLA claim because she was entitled to a period of leave even if she had been medically unable to return to work, and because she never represented that she was totally disabled.

The Court does not find that Quint is estopped from asserting her FMLA claim. Although it is arguable that certain inconsistencies exist in the evidence concerning the severity of Quint's medical condition, they are not fatal to her claim. Indeed, as the Court noted in its prior orders, because genuine issues remain regarding her carpal tunnel syndrome, a summary judgment on her claims is inappropriate. The Court instead is persuaded by Quint's argument that she may have been entitled to health benefits during her FMLA leave even though she failed to return from leave. *See* 29 U.S.C. § 2614(c). The Court also is satisfied that it is at least arguable whether Quint ever represented herself as being "totally disabled" for purposes of her claims. The Court moreover does not believe that the definitions set forth in Quint's disability insurance policy necessarily estop her from maintaining her claim, considering that she did not make any claim for benefits until a month after her employment with Staley was terminated.

B. Whether Quint's claim is barred by the arbitration provision in her union's collective bargaining agreement

Staley also contends that Quint's claim is barred because it fell within the grievance and arbitration clause of the collective bargaining agreement governing her employment, and she failed to exhaust her remedies thereunder. Citing this Court's prior order on a similar issue, Quint contends

that this argument must be rejected because the collective bargaining agreement's provision cannot compel the arbitration of statutory rights.

Indeed, this Court held in a prior order in this matter that Quint's failure to exhaust her remedies under the collective bargaining agreement did not preclude her from raising a claim pursuant to the Americans with Disabilities Act, 42 U.S.C. §§ 12101 - 12213 (1995 & Supp. 1997). Central to the Court's holding there was its finding that the collective bargaining agreement governing Quint's employment did not compel the arbitration of her statutory rights. The Court sees little reason to depart now from its prior reasoning, and thus remains convinced that Quint is entitled to bring her statutory claims, including the one derived from the FMLA, despite the fact that she did not arbitrate them.

C. Whether Quint's claim is barred because she failed to give notice to Staley of her intent to take leave

Finally, Staley contends that because she failed to give notice of her intent to take FMLA-qualifying leave, Quint cannot now bring her claim in federal court. Relying on the language set forth in the statute and in the interim final regulations, Staley argues that although Quint was aware of the FMLA's requirements, she failed to mention to Staley or even to consider asking for FMLA leave in connection with her carpal tunnel syndrome, and thus her claim must fail. Quint contends that, contrary to Staley's assertions, she was not required by the FMLA to give notice of her leave, nor was she required to refer specifically to its provisions in order to be protected by them.

The Court concludes that Quint's claim is not barred due to any failure on her part to provide Staley with notice of her intent to take leave under the FMLA. The FMLA requires an employee to give advance notice to the employer of a medical leave only when the leave "is foreseeable based

on planned medical treatment." 29 U.S.C. § 2612(e)(2). Quint contends that she was not aware that she would need to be out of work for an extended period of time until she visited Dr. Labelle on February 28, 1994. She then claims to have provided Staley with written notice of her required medical leave that same day, followed by a phone call the following morning. Even if Staley's contention that she was required to give notice is true, the Court finds that a reasonable factfinder could conclude that Quint satisfied the notice requirement "as soon as practicable under the facts and circumstances of the particular case." Interim Final Reg. § 825.303(a); *see also Manuel v. Westlake Polymers Corp.*, 66 F.3d 758 (5th Cir. 1995) (final regulations of Secretary of Labor that employee seeking leave for unforeseen medical treatment need not expressly invoke protection of FMLA did not confirm that interim regulations required express mention of FMLA in specifying what notice employee must give).

The Court further is satisfied that Quint's claim is not rendered fatal by her supposed failure to expressly invoke the FMLA's provisions when she first sought leave from work. *See Brannon v. Oshkosh B'Gosh, Inc.*, 897 F. Supp. 1028 (M.D. Tenn. 1995) (where employee's need to stay home for work was unforeseeable, and where such need was communicated to employer as soon as practicable, it was employer's duty after such notice to make further inquiry to determine if leave qualified for FMLA protection).

III. Conclusion

For the foregoing reasons, the Court hereby **DENIES** the defendant's motion for a summary judgment on the plaintiff's FMLA claim.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated this 27th day of June, 1997.