

## Summary Judgment Review

**Case Name:** *Muhammad v. City of Atlanta*

**Nature of the Order:** Final Report and Recommendation, Order Adopting the R&R

**Magistrate Judge:** Walter E. Johnson

**District Judge:** Amy Totenberg

**Claims & Outcomes:**

1. **Claim:** Disability Discrimination
  - a. **Outcome:** Summary Judgment Recommended
2. **Claim:** Disability Retaliation
  - a. **Outcome:** Summary Judgment Recommended

**Whether R&R Followed:** Yes

**For Race/Gender Discrimination Cases:**

**Race of Plaintiff:** N/A

**Gender of Plaintiff:** N/A

**Summary**

In 2013, Plaintiff told her employer, the City of Atlanta Department of Watershed Office of Watershed Protection, that due to her fibromyalgia flare-ups she was unable to lift over 50 pounds, unable to stand for long periods, and intolerant to the smell of the chemicals involved in the wastewater analysis process. Defendant and Plaintiff agreed that she would be transferred to the compliance group handling light-duty responsibilities and administrative tasks, on a trial basis.

In 2014, Plaintiff's supervisor gave her an evaluation that Plaintiff did not agree with. After disputing the evaluation, a portion of it was rescinded. At the

beginning of 2016, Defendant informed Plaintiff that she would be reassigned to her original role as a laboratory tech. Defendant offered Plaintiff an administrative position, which she turned down.

Plaintiff's limitation increased over time. She went on medical leave from July to October 2016. Her leave was eventually extended by an additional 8 weeks due to a blood clot. She returned with restrictions including no lift more than 10 pounds, no stooping, no outdoor exposure, no kneeling, and no exposure to chemicals and toxins due to her medical conditions.

Defendant called Plaintiff and told her to apply to a newly available Administrative Assistant Senior position. Plaintiff was informed that if she did not apply for the position, she would be dismissed because all available options had been exhausted. Plaintiff did not apply.

Plaintiff was dismissed on January 15, 2018. The EEOC mailed its Notice of Right to Sue on March 5, 2019, and Plaintiff filed the present case on June 3, 2019.

Defendant argued that most of Plaintiff's claims were outside the 180-day window and thus barred. The Court agreed, and so Plaintiff's claims were deemed abandoned. Those related to her termination, however, survived.

First the Court addressed Plaintiff's failure to accommodate claim. To establish a prima facie case for failure to accommodate, Plaintiff must show that (1) she is disabled; (2) she was a 'qualified individual' at the relevant time, meaning she could perform the essential functions of the job in question with or without reasonable accommodation; and (3) she was discriminated against by way of the defendant's failure to provide a reasonable accommodation. Defendant disputed elements 2 and 3.

The parties did not dispute whether Plaintiff could do the work of a lab tech. Moreover, Defendant did not address whether Plaintiff could perform the administrative role for the compliance group. Defendant argued that it was a temporary role. The Court said the "trial" position Defendant placed Plaintiff in when she requested accommodations was not a temporary position, as she worked in the role for almost three years. Therefore, the Court stated she was a "qualified individual."

However, the Court decided Plaintiff could not establish the final element: that she was discriminated against by way of the defendant's failure to provide a reasonable accommodation. The ADA requires at least (1) a modification of the particular job performed by the employee, or (2) reassignment to another job that can be performed with or without the first type of accommodation. Reassignment

to another position is only reasonable if there is a vacant position available. Defendant attempted to accommodate Plaintiff, but she turned down opportunities or did not interview well. Thus, the Court recommended that summary judgment be granted on her failure to accommodate claim.

The Court also recommended summary judgment for Plaintiff's retaliation case. Analyzed using the burden-shifting framework of McDonnell Douglas, Plaintiff had to prove a prima facie case by showing that: (1) she engaged in statutorily protected expression; (2) she suffered a materially adverse employment action; and (3) there was some causal connection between the two events.

The Court found that Plaintiff could not establish a prima facie case because Plaintiff failed to show a causal connection between her evaluation dispute and reassignment two years later to her original role.

Moreover, the Court also did not agree with Plaintiff's argument that Defendant's policy requiring full duty releases from employees served as a requirement that employees be 100% healed prior to returning to work. The Court determined the releases to be concerned only with the employee's ability to perform her work duties, because the form included a space for restrictions.

Finally, Plaintiff claimed that her termination was in retaliation for her filing a charge with the EEOC. The Court deemed it barred because Plaintiff failed to exhaust her administrative remedies. Moreover, even if she had, the Court stated that while temporal proximity can be used to show causation between protected activity and adverse employment action, a window of more than three months is not enough. Thus, without more evidence, the Court recommended summary judgment be granted.