

Summary Judgment Review

Case Name: *Natasha L. Franklin v. Northside Hospital, Inc.*

Nature of the Order: Magistrate's Report & Recommendation

Magistrate Judge: John K. Larkins III

District Judge: Steven D. Grimberg

Claims & Outcomes:

1. **Claim:** ADA – Discrimination (Failure to Accommodate)
 - a. **Outcome:** Recommend Granting Defendant's Motion for Summary Judgment
2. **Claim:** ADA – Discrimination (Disparate Treatment)
 - a. **Outcome:** Recommend Granting Defendant's Motion for Summary Judgment
3. **Claim:** ADA – Retaliation
 - a. **Outcome:** Recommend Denying Defendant's Motion for Summary Judgment
4. **Claim:** Intentional Infliction of Emotional Distress
 - a. Recommend Granting Defendant's Motion for Summary Judgment

Summary

Plaintiff Natasha L. Franklin was diagnosed with intracranial hypertension and multiple brain thromboses in 2016. Since then, she has had at least six brain surgeries and suffers from legal blindness in one eye, diminished vision in the other eye, loss of peripheral vision, and low depth perception. Ms. Franklin had spent the majority of her professional life working as a nurse, and in November 2017, she interviewed for a nursing position with Defendant Northside Hospital, Inc. Ms. Franklin included a letter from her neurosurgeon with her application, clearing her to perform the essential functions of her duties without restrictions.

Northside maintains an Attendance Policy, which provides that an employee is tardy if she arrives to work after the start of a scheduled shift. Ms. Franklin arrived to work late several times at the beginning of her employment. Ms. Franklin asked her supervisor, Pam Mize, to “give me a break” and not count her as tardy because she had a medical condition that made her late for work. Nevertheless, Mize continued to assess Ms. Franklin with tardies pursuant to the Attendance Policy. Ms. Franklin then complained to a manager, Cynthia Gist, that she thought she was being unfairly penalized for coming in late. On July 3, 2018, Mize notified Ms. Franklin that she was close to violating the Attendance Policy because she had six attendance violations.

In July 2018, Ms. Franklin submitted reasonable accommodation paperwork pursuant to Northside's Policy, requesting intermittent leave to attend medical appointments and to accommodate her during flare-ups. Ms. Franklin was notified on August 13, 2018, that her accommodation request had been approved and included a total of eight hours of leave each month for doctor visits.

On July 30, 2018, Ms. Franklin was assessed a seventh tardy. It is undisputed that her tardiness was unrelated to her medical condition. This seventh tardy violated the Attendance Policy, and Ms. Franklin was issued a verbal warning on August 8, 2021. The next morning, Ms. Franklin said that she would not be coming in to work her shift because she had a bad headache. This absence was notable because it was Ms. Franklin's fifth in the previous twelve months and would amount to a violation of the Attendance Policy if not excused. On August 9, 2018, Northside received a complaint that Ms. Franklin had yelled at an employee to the point of making her cry.

Gist decided to meet with Ms. Franklin to address her attendance issues and the incident where she allegedly made an employee cry. Just prior to this meeting, Gist was notified that Ms. Franklin's accommodation request had been approved. Ms. Franklin alleges that during this meeting Gist said something about knowing that Ms. Franklin applied for accommodations and Northside not needing to honor her requests. Northside alleges that she resigned. Ms. Franklin admits that she threatened to resign at this meeting, but also says that she explicitly stated that she was not resigning.

Defendant moved for Summary Judgment on all of Plaintiff's claims.

The Court first addressed Ms. Franklin's argument that Northside failed to accommodate her disability when it fired her before she could use her approved leave. Ms. Franklin argued that she requested leave when she asked for some "leeway" with the attendance policy to accommodate her disability, or in the alternative, that Northside denied her the accommodation she was granted when it fired her before she could use it. The Court held that when Ms. Franklin asked Mize to "give me a break," her comments were not sufficiently specific to constitute a request for a reasonable accommodation under the ADA. Next, the Court held that Ms. Franklin's approved accommodation request granted her leave for her to attend doctor's office appointment, but not to arrive to work late without reprimand. There is no evidence that any of Ms. Franklin's tardies related to a medical appointment. Accordingly, Northside did not deprive Ms. Franklin of her opportunity to use her reasonable accommodation.

Ms. Franklin then argued that Northside discriminated against her in violation of the ADA because it did not reprimand nondisabled employees who violated the Attendance Policy. The Court found that Ms. Franklin did not present sufficient evidence of similarly situated employees who were treated more favorably than her. Additionally, Ms. Franklin was unable to demonstrate a convincing mosaic of evidence that Northside applied its Attendance Policy against her in a discriminatory fashion. Therefore, Ms. Franklin could not establish disparate treatment in violation of the ADA.

Moving to Ms. Franklin's retaliation claims, the Court found the Ms. Franklin presented a genuine issue of fact as to whether she suffered an adverse employment action. Specifically, there was an issue of fact as to whether Ms. Franklin resigned or was fired. Additionally, Ms. Franklin established a causal connection due to the close temporal proximity between when Gist discovered Ms. Franklin's approved ADA accommodation and when Gist allegedly told Ms. Franklin during the August 10 meeting that Northside did not have to approve the accommodation. Lastly, the Court found that Ms. Franklin provided sufficient evidence that Northside's justification for the

adverse employment action – that Ms. Franklin resigned voluntarily – was pretext for discrimination. The Court explained that Ms. Franklin’s account of the August 10 meeting could lead a reasonable jury to conclude that Northside did not believe that Ms. Franklin had quit and instead used the opportunity to terminate her employment. Additionally, Ms. Franklin’s testimony could lead a reasonable factfinder to conclude that her protected activity was the but-for cause of her separation. Ms. Franklin therefore established a prima facie case of retaliation.

As for Ms. Franklin’s IIED claim, the Court concluded that, even if Northside construed Ms. Franklin’s words to make it sound as if she had resigned, that was still not sufficient to meet the standard for IIED.

Judge Larkins, therefore, recommended GRANTING Defendant’s Motion for Summary Judgment in part and DENYING Defendant’s Motion for Summary Judgment in part.