

Summary Judgment Review

Case Name: *Olliff v. Emory Univ.*

Nature of the Order: Final Report and Recommendation

Magistrate Judge: J. Clay Fuller

District Judge: Amy Totenberg

Claims & Outcomes:

1. **Claim:** Disability Discrimination – Failure to Make Reasonable Accommodation
 - a. **Outcome:** Summary Judgment Recommendation - Denied
2. **Claim:** ADA Retaliation
 - a. **Outcome:** Summary Judgment Recommendation - Denied

Whether R&R Followed: n/a

For Race/Gender Discrimination Cases:

Race of Plaintiff: n/a

Gender of Plaintiff: n/a

Summary

Plaintiff Brian Olliff (“Olliff”) was employed by Defendant Emory University (“Emory”). He brought claims under the Americans with Disabilities Act of 1990, as amended (“ADA”) based on Defendant’s alleged failure to make reasonable accommodation to his disability.

The Court first addressed deficiencies in Olliff’s response to Emory’s motion for summary judgment. Due to his failure to include citations to the record for his 119-paragraph Separate Statement Of Undisputed Material Facts In Support Of His Response In Opposition To Defendant’s Motion For Summary Judgment, the Court could properly disregard all of them.

During the interview process for his position as a Senior Associate Sponsored Research Analyst (“SASRA”), Olliff informed Tammie Bain, the Assistant Director of Industry Contract, that he has anxiety and depression. The Assistant Director recommended that Emory hire him, which it did on February 12, 2018.

During his first month of employment, Olliff struggled with understanding the status of agreements, which resulted in him sending confusing emails to outside parties, for example asking parties to review agreements that were partially

executed or otherwise ready for signatures. Olliff did not always follow instructions or pay attention to details, so Bain began reviewing all of his deliverables and emails to avoid errors being sent out from their office. Olliff also did not issue subcontracts in a timely manner, which resulted in a co-worker handling some of his assigned work. Bain met with Olliff on March 12, 2018, to discuss her concerns and to help him understand the importance of his work, how his mistakes could affect Emory, and learn and improve.

After the meeting, Olliff contacted Emory's Office of Accessibility Services ("OAS") to request a workplace accommodation for his attention deficit hyperactivity disorder ("ADHD"), anxiety, and depression. Over the course of his employment, Olliff received several accommodations, including reduced workloads which created more time for him to handle his tasks, an ability to close his door from distractions, as well as other accommodations that Emory provided him, such as a less complex workload, additional counseling, feedback, and training.

Olliff's performance and reduced workload placed an additional burden on his co-workers to handle Plaintiff's work. The increased workload on the other analysts reduced the quality of their work, caused them to work more hours, and caused increased stress on the team. Despite the various accommodations, Olliff continued to make substantive errors and failed to follow instructions.

Emory argued that: (1) Plaintiff's ADA failure to accommodate claim fails because Emory provided every reasonable accommodation Plaintiff requested; (2) Plaintiff's termination claim fails because (a) Defendant terminated him for poor performance, and (b) Plaintiff failed to exhaust administrative remedies regarding his termination; and (3) Plaintiff's other, i.e., non-termination, retaliation claims are meritless because (a) denial of training and seminars and the final written warning were not adverse actions, and (b) there is no causal connection between his alleged protected activity and the alleged adverse actions.

Olliff, however, did not address Emory's motion for summary judgment arguments concerning any accommodation Emory did, or did not, provide other than the alleged failure to give him more time to complete his work; he did not address Emory's arguments about his termination; and he did not address Emory's arguments about any other purported retaliation claims. Emory, on the other hand argued that, consequently, Olliff abandoned any claims based on his termination, alleged retaliation, or any claim based on a failure to accommodate other than a failure to provide additional time. The Court agreed and recommended that Defendant's summary judgment be granted on Olliff's ADA claims concerning failure to accommodate with respect to any accommodation other than an alleged

failure to provide Plaintiff with more time to complete his work, any ADA claim arising from Plaintiff's termination, and any ADA retaliation claim based on other alleged acts of retaliation.

The Court also granted summary judgment on Olliff's ADA failure to accommodate claim. Olliff had tried to argue that Emory failed to provide him with a reasonable accommodation by refusing to include in an accommodation agreement his requested additional time to complete tasks and work activities. Emory argued that it provided extra time to him in the form of a reduced workload. The Court stated that Olliff "pointed to no authority that requires an employer to accommodate a disability by reducing the complexity of the assigned work, reducing the workload, *and* giving additional time to perform the reduced amount of less complex work." Thus, the Court determined the accommodation request to be unreasonable, stating that "employers are not required to change the essential functions of a position or to reassign an employee when no positions are available."

He also argued that his doctor indicated that Olliff's impairment was "long-term" and "permanent," but the accommodations agreement only approved him for temporary accommodations and placed a 60-day limit on "[t]he very first and most relevant accommodation," i.e., being assigned "the simpler tasks of contract review" and having a reduced workload. The Court determined this to be an insufficient argument because an earlier draft of the agreement contemplated that Olliff would receive simpler tasks, but Olliff himself proposed that he be given more complex work as he progressed. This, the Court stated, indicated that Olliff was seeking temporary accommodations.

Thus, the Court recommended that Defendant's Motion for Summary Judgment be granted.

Short Summary

Plaintiff Brian Olliff brought claims against his former employer and Defendant Emory University. Olliff informed his then employer that he had anxiety, depression, and ADHD. After struggling to understand tasks assigned to him, instructions, and failing to meet expectations, his supervisor expressed her concerns. He then asked the employer for accommodations for his ADHD. Emory provided him with various accommodations, including a reduced workload (which they contend provided him with more time to handle his assigned workload), and the ability to close his door to cut down on distractions.

First, Olliff erred in not addressing many of Defendants motion for summary judgment arguments. Those claims, the Court decided, were to be considered abandoned. The court found the remaining claims to be equally unconvincing.

Emory argued it provided Olliff every reasonable accommodation he had requested. The Court agreed with Emory, stating that Emory had no obligation to change the essential functions of the job to accommodate Olliff, who continued to miss deadlines (causing more work and productivity issues for coworkers), failed to follow instructions, and continued to make mistakes, despite all the various forms of accommodation that had been provided to him. Thus, the Court granted Emory's motion for summary judgment.