

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HERBERT HENDRICKS,

Plaintiff,

v.

HENRY COUNTY, GEORGIA,

Defendant.

CIVIL ACTION FILE

NO. 1:19-cv-5775-TCB

ORDER

This case comes before the Court on Magistrate Judge Russell G. Vineyard's final report and recommendation (the "R&R") [42], which recommends granting Defendant Henry County, Georgia's motion [31] for summary judgment. Plaintiff Herbert Hendricks has filed objections [44], to which Henry County responded [45].

I. Background¹

This is a case about an employee who was hired despite lacking certain skills for a job but subsequently fired for lacking those skills.

¹ The Court provides a summary of the facts as relevant here but incorporates by reference the fact summary in the R&R.

On August 27, 2018, Hendricks was interviewed by a foreman, Johnny Barkley, in Henry County's Department of Transportation for a position as an equipment operator with the county.

The job description for the position listed as an essential job function the ability to operate "a variety of moderately heavy equipment such as a rubber tire roller, vibratory roller, bull dozer, [and] front-end loader or backhoe." *See* [31-1] ¶ 3. It also listed as essential job functions the operation of "a truck mounted pothole patcher" and "a motor grader, pan, asphalt paver, tractor trailer or asphalt distributor on an occasional or substitution basis." *Id.* Hendricks told Barkley during his interview that he could only operate a rear-load garbage truck, dump truck, and a zero-turn lawn mower. He was hired anyway.

Hendricks worked for Henry County as an equipment operator for two weeks. During that time, he worked on only one project: clearing a right-of-way. The only equipment he operated included a pick-up truck, weed-eaters, and a blower. His work hours were from 7:30 a.m. to 4:00 p.m.

On September 6 (during the course of his two-week term of employment), Hendricks informed his supervisor that he suffered from vision problems and could not operate a motor vehicle in the dark. He was subsequently called into a meeting with his supervisor, the director of human resources, and others. He was terminated.

On December 23, 2019, Hendricks filed this suit. He alleges that his termination violated the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101, *et seq.*, and the Rehabilitation Act, 29 U.S.C. § 794.

On November 5, 2020, Henry County moved for summary judgment, arguing that Hendricks has not shown that he is a qualified individual for purposes of either the ADA or the Rehabilitation Act because he cannot perform the essential functions of his position. Hendricks responded, arguing that there is a factual dispute as to the essential functions of his job.

On June 11, 2021, the magistrate judge agreed with Henry County. He found that there is no genuine factual dispute as to the essential functions of Hendricks’s position and therefore concluded that Hendricks has not shown that he was a qualified individual.

Accordingly, he recommends granting the motion for summary judgment. Hendricks objected, and Henry County responded to the objections.

II. Legal Standard

A. Review of an R&R

A district judge has a duty to conduct a “careful and complete” review of a magistrate judge’s R&R. *Williams v. Wainwright*, 681 F.2d 732, 732 (11th Cir. 1982) (per curiam) (quoting *Nettles v. Wainwright*, 677 F.2d 404, 408 (5th Cir. Unit B 1982)). This review may take different forms, however, depending on whether there are objections to the R&R. The district judge must “make a de novo determination of those portions of the [R&R] to which objection is made.” 28 U.S.C. § 636(b)(1)(C). In contrast, those portions of the R&R to which no objection is made need only be reviewed for “clear error.” *Macort v. Prem, Inc.*, 208 F. App’x 781, 784 (11th Cir. 2006) (per curiam) (quoting

Diamond v. Colonial Life & Accident Ins., 416 F.3d 310, 315 (4th Cir. 2005)).²

“Parties filing objections must specifically identify those findings objected to. Frivolous, conclusive or general objections need not be considered by the district court.” *Nettles*, 677 F.2d at 410 n.8. “This rule facilitates the opportunity for district judges to spend more time on matters actually contested and produces a result compatible with the purposes of the Magistrates Act.” *Id.* at 410.

After conducting a complete and careful review of the R&R, the district judge “may accept, reject, or modify” the magistrate judge’s findings and recommendations. 28 U.S.C. § 636(b)(1)(C); *Williams*, 681 F.2d at 732. The district judge “may also receive further evidence or

² *Macort* dealt only with the standard of review to be applied to a magistrate’s factual findings, but the Supreme Court has indicated that there is no reason for the district court to apply a different standard to a magistrate’s legal conclusions. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Thus, district courts in this circuit have routinely reviewed both legal and factual conclusions for clear error. *See Tauber v. Barnhart*, 438 F. Supp. 2d 1366, 1373–74 (N.D. Ga. 2006) (collecting cases). This is to be contrasted with the standard of review on appeal, which distinguishes between the two. *See Monroe v. Thigpen*, 932 F.2d 1437, 1440 (11th Cir. 1991) (holding that when a magistrate’s findings of fact are adopted by the district court without objection, they are reviewed on appeal under a “plain error standard” while questions of law always remain subject to de novo review).

recommit the matter to the magistrate judge with instructions.” 28 U.S.C. § 636(b)(1)(C).

B. Motion for Summary Judgment

Summary judgment is appropriate when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). There is a “genuine” dispute as to a material fact if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *FindWhat Inv. Grp. v. FindWhat.com*, 658 F.3d 1282, 1307 (11th Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). In making this determination, however, “a court may not weigh conflicting evidence or make credibility determinations of its own.” *Id.* Instead, the court must “view all of the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party’s favor.” *Id.*

“The moving party bears the initial burden of demonstrating the absence of a genuine dispute of material fact.” *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). If the nonmoving party would have the burden of proof at trial, there are two ways for the moving party to

satisfy this initial burden. *United States v. Four Parcels of Real Prop.*, 941 F.2d 1428, 1437–38 (11th Cir. 1991). The first is to produce “affirmative evidence demonstrating that the nonmoving party will be unable to prove its case at trial.” *Id.* at 1438 (citing *Celotex*, 477 U.S. at 324). The second is to show that “there is an absence of evidence to support the nonmoving party’s case.” *Id.* (quoting *Celotex*, 477 U.S. at 323).

If the moving party satisfies its burden by either method, the burden shifts to the nonmoving party to show that a genuine issue remains for trial. *Id.* At this point, the nonmoving party must “go beyond the pleadings,’ and by its own affidavits, or by ‘depositions, answers to interrogatories, and admissions on file,’ designate specific facts showing that there is a genuine issue for trial.” *Jeffery v. Sarasota White Sox, Inc.*, 64 F.3d 590, 593–94 (11th Cir. 1995) (quoting *Celotex*, 477 U.S. at 324).

III. Discussion

Hendricks argues that Henry County discriminated against him, in violation of the ADA and the Rehabilitation Act, when it fired him based on his physical disabilities.

The ADA prohibits an employer from discriminating against “a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112(a). Similarly, the Rehabilitation Act prohibits entities receiving federal money from discriminating against individuals with disabilities. *See Garrett v. Univ. of Ala. at Birmingham Bd. of Trs.*, 507 F.3d 1306, 1210 (11th Cir. 2007) (internal citation omitted).

For a plaintiff to make out a prima facie case of discrimination under either statute, he must show that he is a qualified individual. *See* 42 U.S.C. § 12112(a); *Gordon v. E.L. Hamm & Assocs., Inc.*, 100 F.3d 907, 910 (11th Cir. 1996) (explaining that to establish a prima facie case under the ADA, a plaintiff must show that he (1) is disabled; (2) is a

qualified individual; and (3) was subjected to unlawful discrimination because of his disability) (internal citations omitted); *Ellis v. England*, 432 F.3d 1321, 1326 (11th Cir. 2005) (per curiam) (“The standard for determining liability under the Rehabilitation Act is the same as that under the [ADA]; thus, cases involving the ADA are precedent for those involving the Rehabilitation Act.” (internal citations omitted)).

A qualified individual is one who is able to “perform the essential functions of the job in question with or without reasonable accommodations.” *Lucas v. W.W. Grainger*, 257 F.3d 1249, 1255 (11th Cir. 2001) (citing *Reed v. Heil Co.*, 206 F.3d 1055, 1061 (11th Cir. 2000)). Thus, a plaintiff who is “unable to perform an essential function of [his] job, even with an accommodation . . . is, by definition, not a ‘qualified individual.’” *Calvo v. Walgreens Corp.*, 340 F. App’x 618, 622 (11th Cir. 2009) (per curiam) (unpublished) (internal citation omitted).

Here, Henry County points out that Hendricks admitted that he could not operate any equipment other than a rear-load garbage truck, dump truck, and a zero-turn lawn mower. And it notes that the written job description for his position includes the operation of a variety of

moderately heavy equipment such as “a rubber tire roller, vibratory roller, bull dozer, front-end loader or backhoe” as essential functions. *See* [31-1] at 2 ¶ 3. Because Hendricks admits that he could not do what is listed as an essential function on the written job description, it contends that he is not a qualified individual for purposes of either the ADA or the Rehabilitation Act.

Hendricks objects, arguing that the written job description does not conclusively determine what the essential functions of his position were. He points out that he was hired despite his admission during his interview that he could only operate a rear-load garbage truck, dump truck, and a zero-turn lawn mower. And he notes that he was able to perform all tasks asked of him during his two-week period of employment.

In the R&R, the magistrate judge found that there is not a genuine dispute as to the essential functions of the equipment operator position. He found it significant that the list of essential functions in the written job description included the operation of heavy equipment, which Hendricks cannot do. He afforded little weight to the fact that

Hendricks was never required to perform these functions during his term of employment because that term was so brief and involved only one of a myriad of possible projects. And the magistrate judge discounted the fact that Hendricks was hired even after informing his interviewer that he could only operate two types of equipment, finding this argument speculative given that the record does not show why he was hired in the first place.³

In his objections to the R&R, Hendricks contends that the magistrate judge prematurely adjudicated a genuine dispute of material fact as to the essential functions of his position. He argues that because there is some evidence to show that the operation of heavy equipment is not an essential function, this matter should proceed to a jury.

The Court agrees with the magistrate judge in finding no genuine dispute as to whether operation of heavy equipment was an essential function of Hendricks's job. "Whether a particular job function is

³ The R&R notes that while Hendricks argued that his hiring was indication that the operation of heavy equipment was not an essential function, it was "equally plausible" that Henry County simply "needed an employee with the particular skills Hendricks possessed at that time." [42] at 29.

essential is evaluated on a case-by-case basis by examining a number of factors.” *Samson v. Fed. Express Corp.*, 746 F.3d 1196, 1200–01 (11th Cir. 2014). Particularly relevant—though not by itself conclusive—is the “employer’s judgment as to which functions are essential,” to which a court is to give “substantial weight.” *Mason v. United Parcel Serv. Co.*, 674 F. Appx. 943, 951 (11th Cir. 2017) (per curiam).

Throughout the job description for an Equipment Operator II are multiple references to the need to operate heavy equipment, including under the heading “Essential Job Functions.” The same is also listed under “Major Duties” and “Knowledge Required by the Position.” The magistrate judge correctly distinguished the instant case from *Calvo*, upon which Hendricks bases his argument. In *Calvo*, the job description contained just one reference to the function in question, and the plaintiff performed satisfactorily without undertaking such function for a period of four years. Here, the job description contained numerous references in different sections to the need to operate heavy equipment, and Hendricks performed few tasks in his short, two-week tenure with Henry County.

Hendricks in his objections also asks that the Court consider the amount of time he spent operating heavy equipment and find that this weighs against holding it an essential function. While it is true that Hendricks did not operate heavy equipment in his two-week tenure at Henry County, the magistrate judge found, and the Court agrees, that this was simply because Hendricks had not yet worked on a project requiring such operation and that “the workflow of his projects would have eventually required him” to operate heavy equipment. *See Khan v. S&C Elec. Co.*, No. 3:11-cv-03621-JCS, 2012 WL 4062811, at *9 (N.D. Cal. Sept. 14, 2012). Additionally, relative infrequent performance of a task does not render that task non-essential. *See Holbrook v. City of Alpharetta*, 112 F.3d 1522, 1527 (11th Cir. 1997) (holding that “[e]ven assuming [an employee] spends a relatively small amount of time performing” the function, the function may still be essential if the record so establishes).

Hendricks’s final objection is that because Henry County hired him with knowledge that he could not operate heavy equipment, it tacitly acknowledged that such operation was not an essential function

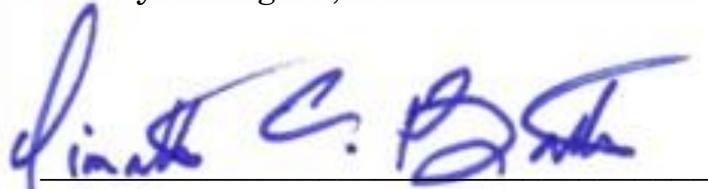
of the job. The magistrate judge correctly concluded that Hendricks's mere speculation about Henry County's intent cannot alone defeat summary judgment, "particularly given the undisputed written job description and the substantial weight that must be afforded Henry County's judgment." [42] at 29. "[U]nsupported speculation . . . does not meet a party's burden of producing some defense to a summary judgment motion. Speculation does not create a *genuine* issue of fact." *Cordoba v. Dillard's Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) (citing *Hedberg v. Ind. Bell. Tel. Co.*, 47 F.3d 928, 931–32 (7th Cir. 1995)). Because the record does not reveal why Henry County hired Hendricks in the first place, attempting to infer Henry County's intent would be mere speculation, insufficient to defeat summary judgment.

The Court agrees with the magistrate judge that, considering all evidence in the light most favorable to Hendricks, no genuine dispute of material fact exists as to whether operating heavy equipment was an essential element of the position of Equipment Operator.

IV. Conclusion

Having conducted a complete and careful review of the R&R, including a de novo review of those portions of the R&R to which Hendricks objects, the Court overrules his objections [44] and adopts as its Order the R&R [42]. Henry County's motion [31] for summary judgment is granted.

IT IS SO ORDERED this 17th day of August, 2021.

A handwritten signature in blue ink, appearing to read "Timothy C. Batten, Sr.", written over a horizontal line.

Timothy C. Batten, Sr.
Chief United States District Judge