

Summary Judgment Review

Case Name: *Colly v. Georgia-Pacific, LLC*

Nature of the Order: Order adopting Judge Walker's R&R

Magistrate Judge:

District Judge: Steven D. Grimberg

Claims & Outcomes:

1. **Claim:** Disability Discrimination (ADA)
 - a. **Outcome:** Summary Judgment Granted
2. **Claim:** Disability Retaliation (ADA)
 - a. **Outcome:** Summary Judgment Granted
3. **Claim:** Retaliation (FMLA)
 - a. **Outcome:** Summary Judgment Granted

Whether R&R Followed: Yes

For Race/Gender Discrimination Cases:

Race of Plaintiff: N/A

Gender of Plaintiff: N/A

Summary

Colly ("Plaintiff") was terminated in August 2018 from her employment with Georgia-Pacific ("Defendant"). Prior to her termination, Plaintiff took FMLA leave from March 2018 to June 2018, and remained on leave once her FMLA leave was exhausted by using Defendant's non-FMLA extended leave policy. That policy grants eligible employees additional leave, but the extended leave may be terminated if the employee's position is filled. Once Plaintiff was on the extended leave, Defendant notified her in June 2018 that it was posting her position for hiring; the position was ultimately filled in August 2018. Additionally, soon after starting her FMLA leave, Plaintiff submitted a complaint, through a 1-800 number used by employees to report concerns, that a former supervisor was "loud, condescending, rude, and . . . bullying," creating a hostile work environment. Plaintiff also contends that, while she was on leave, Defendant terminated her access to the workplace, as well as her work-related accounts and communications.

Specifically, Judge Walker found that Plaintiff's FMLA claims failed because Plaintiff conceded Defendant did not interfere with her FMLA leave, and Plaintiff cannot make out a prima facie case of retaliation under the FMLA because Defendant's termination of her work-related access, while she was on leave, is not an adverse employment action. Even if the termination of

access was an adverse employment action, Judge Walker found that Plaintiff cannot rebut Defendant's legitimate, nondiscriminatory reasons for terminating her access during leave.

Judge Walker then found that Plaintiff's ADA discrimination claim fails because Plaintiff cannot show she was a qualified individual or that she identified any reasonable accommodation Defendant could make based on her alleged disability, and further, Defendant made a showing of undue hardship. Judge Walker also concluded that Plaintiff's ADA retaliation claim fails because

Plaintiff cannot show she engaged in a statutorily protected activity or that there is a causal connection between any statutorily protected activity and Plaintiff's termination, meaning she cannot make out a prima facie case of retaliation under the ADA. Even if Plaintiff could make out a prima facie case of retaliation, Judge Walker found that Plaintiff cannot rebut Defendant's legitimate, nondiscriminatory reasons for her termination. Plaintiff objected to the R&R, to which Defendant responded.

Judge Grimberg addressed five different objections made by Plaintiff. First, he stated that Plaintiff failed to show how her internal complaint rose to the level of protected activity, and how the five-month period between the complaint and Plaintiff's termination are causally created.

Second, Judge Walker correctly decided that a discontinuation of Plaintiff's access while she was on leave did not constitute an adverse action, regardless of whether it was done previously or not – meaning Plaintiff cannot show she was retaliated against as a matter of law.

Third, Judge Walker correctly decided that Defendant made a sufficient showing of legitimate, nondiscriminatory reasons for removing Plaintiff's access that might motivate a reasonable employer. Moreover, Judge Walker properly decided that the undisputed evidence shows there was no policy regarding the removal of access. Plaintiff cannot show deviation from a non-existent policy and she has not made a showing of pretext. In her fourth and fifth objections, Plaintiff argued Judge Walker assumed facts not in evidence, however Judge Walker properly determined that Plaintiff was required to show that she could perform the essential functions of her employment position to be a qualified individual under the ADA.