SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS Part 25
HON. PATRIA FRIAS-COLÓN, J.S.C.

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Suzanne Sawyer,

PLAINTIFF,

-against-

New York City Health and Hospitals Corporation, Woodhull Medical Center, Woodhull Hospital Auxiliary Board, Inc., Patricia Romeo and Raymon Villa-Real,

DEFENDANTS.

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Index # 510579/2022
Cal. # 33 Mot. Seq. # 3

DECISION/ORDER

Recitation as per CPLR §§ 2219(a) and/or 3212(b) of papers considered on review of this motion:
NYSCEF Doc. #11 by Defendant City
NYSCEF Doc. #'s 15-19 by Plaintiff

Upon the foregoing cited papers and after oral argument on August 9th, 2023, pursuant to CPLR § 3212, Defendants' New York City Health and Hospitals Corporation, Woodhull Medical Center, Woodhull Hospital Auxiliary Board, Inc.("HHC") Motion for Summary Judgment[1] is GRANTED.

BACKGROUND

This action arises from the alleged discrimination of Plaintiff by HHC Defendants on the basis of her disability, which resulted from incidents while she was employed at Woodhull hospital since 2011[2]. On February 7, 2013, Plaintiff alleges being attacked by a patient, causing Plaintiff to sustain severe injuries to her right forearm, neck and shoulder. As a result of said injuries, Plaintiff was out of work for seven months[3]. Subsequently, on October 24, 2015 Plaintiff tore her rotator cuff and suffered injuries to her right hand, and neck. As a result Plaintiff was out of work on medical leave for two years and three months[4]. In 2016, Plaintiff had surgery to her rotator cuff and collarbone[5].

As Plaintiff readied herself to return to work, she requested a reasonable accommodation, including a transfer out of the inpatient unit where she previously worked, restrictions of her movement minimizing repetitive movement of her right arm, reaching overhead, and lifting pushing or pulling more than thirty pounds[6]. Plaintiff returned to work January of 2018, and realized that even with her reasonable accommodations, she remained in pain and she reported her

[1] In opposition to the Summary Judgment Motion Plaintiff filed a motion for extension of time to serve individual Defendants Patricia Romeo and Raymon Villa-Real (Motion Sequence # 4) which was withdrawn.
[2] NYSCEF Doc. #1 at pg. 7:35.
[3] *Id*.
[4] *Id*. at pg. 7:36.
[5] *Id*. at pg. 8:38.
[6] *Id*. at pg. 8:40.

continued struggles to Equal Employment Opportunity ("EEO") Officer David Smart[7]. She requested a transfer, and EEO Officer Smart told Plaintiff she would be contacted by Defendant Villa-Real. Plaintiff was transferred to the Central Patient Transport Department to work as a Dispatcher[8]. Her new duties included assigning patient transport, coordinating with messengers for sample collection and office administration[9]. At times was assigned to the Staffing Office where she assumed certain office duties and on occasion Plaintiff would be called to cover for other employees who were out sick[10]. According to the Plaintiff, the lack of updated technology in the Staffing Office made the work more challenging than the work in the Central Patient Transport Department[11]. In January 2021, as a result of Plaintiff's diagnosis of Lateral Epicondylitis[12], she had to wear an arm brace, take anti-inflammatory medication and attend Occupational Therapy ("OT") sessions multiple times per week[13].

In April 2021, when asked to cover the Staffing Office[14], Plaintiff said she could not work in the Staffing Office and needed to remain in the less labor-intensive position in the Central Patient Transport Department as a dispatcher because of her reasonable accommodation[15]. According to Plaintiff's complaint, she was unaware that her reasonable accommodation had expired and Defendant Romeo informed her that a new request needed to be submitted[16]. During the pendency of Plaintiff filing a new request, she was instructed to continue coming to work[17] and asked to cover the Staffing Office in June 2021[18]. In June of 2021, Plaintiff submitted a new request for a reasonable accommodation which was denied in July 2021[19].

On April 11, 2022, Plaintiff filed this lawsuit alleging violation of her rights under The New York State Human Rights Law ("SHRL") and The New York City Human Rights Law ("CHRL") per Administrative Code of the City of New York §8-107. Pursuant to CPLR § 3212, the HHC Defendants bring the instant motion, seeking summary judgment.

DISCUSSION

As an initial matter, HHC Defendants assert that some of the allegations asserted by the Plaintiff are time-barred. Pursuant to CPLR § 214 (2), a cause of action for discrimination under the SHRL and the CHRL must be commenced within three years of the events leading to the claim. The present action was filed on April 11, 2022[20]. Any portions of Plaintiff's claim that predate April 11, 2019 would be time-barred. However, Plaintiff is not asserting any claims for incidents

[7] *Id*. at pg's 8:42-9:49.
[8] *Id*. at pg's 62-63.
[9] *Id*. at pg. 9:53.
[10] NYSCEF Doc. 1 at pg. 11:63.
[11] NYSCEF Doc. 1 at pg. 11:66.
[12] *Id*. at pg. 70.
[13] *Id*. at pg. 71.
[14] *Id*. at pg. 73.
[15] *Id*. at pg. 75.
[16] *Id*. at pgs.76-77.
[17] *Id*. at pg. 79.
[18] *Id*. at pg. 80.
[19] *Id*. at pgs. 14:91-15:98.
[20] NYSCEF Doc. #1.

that occurred prior to April 11, 2019. Rather, Plaintiff discusses the prior incidents as a means to complete the narrative of the historical nature of her injuries. Consequently it is unnecessary for the Court to reach a decision regarding timeliness of the Causes of Action in this case.

The HHC Defendants sufficiently established its *prima facie* entitlement to judgment as a matter of law, requiring dismissal of Plaintiff's complaint. Plaintiff failed to show material fact issues to be determined at trial. The moving party on a motion for summary judgement has the burden to establish "a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." *Voss v. Netherlands Ins. Co*., 22 N.Y.3d 728 (2014) (citing *Alvarez v Prospect Hosp*., 68 N.Y.2.d 320 [1986]). If a moving party fails to meet their burden, summary judgment must be denied "regardless of the sufficiency of the opposing papers." *Id*. (citing *Vega v. Restani Constr. Corp*., 18 N.Y.3d 499 [2012]). "A motion of summary judgment is a drastic remedy that should be granted only where there is no clear triable issue of fact presented." *Marino v. Jamison*, 189 A.D.3d 1021 (2d Dept. 2020).

Plaintiff has provided the Court with a detailed account of the events that transpired after she was injured in February 2013 and October 2015. Plaintiff may have had a long recovery because of these injuries and subsequent surgery in 2016 but under the SHRL and the CHRL the Plaintiff had to show that these injuries caused permanent disability. It has been held under the SHRL, CHRL and the American with Disabilities Act ("ADA") that temporary conditions do not qualify as a disability under the discrimination laws (*Dillon v Silverman*, 2014 NY Slip Op 30934[U], Sup Ct, NY County (2014) citing *Guary v. Upstate National Bank*, 618 F Supp 2d 272, 275. WDNY (2009) ("plaintiff's broken ankle, which resulted in a single, twelve-week disability leave with no alleged physical disability thereafter, is not a disability for purposes of the ADA or the parallel New York statute").

Even if Plaintiff demonstrated her injuries were permanent, she failed to show that under the SHRL the "disability engendered the behavior for which he or she was discriminated against in the terms conditions or privileges of his or her employment". *See Thide v. New York State Department of Transportation*, 27 AD3d 452, 2d Dept. (2006). According to Plaintiff's complaint she was granted a reasonable accommodation in 2018. When that accommodation expired, Plaintiff did not renew it yet relied on an expired accommodation to allege that she was discriminated against since she was placed in areas of the workplace that aggravated her injuries. Plaintiff failed to demonstrate that these work assignments were despite the presence of a reasonable accommodation and therefore discriminatory. Since a reasonable accommodation was not in place, Defendants appropriately assigned Plaintiff to work where she was most needed. While the protections under the CHRL are substantially the same as the SHRL, it also requires a plaintiff show they were treated less well than other employees. *Ciulla v Xerox Corporation*, 70 Misc 3d 1205[A], 2021 NY Slip Op 50007[U]. Sup Ct, NY County (2021). Plaintiff failed to demonstrate that she was treated *less well* than other employees.

Plaintiff has not shown that she worked in a hostile work environment. Plaintiff alleges several instances of behavior directed towards her after she asked not to be placed in the Staffing Office. Despite these alleged incidents she did not sufficiently demonstrate that Defendants violated SHRL in that she did not show that her "workplace was permeated with discriminatory

intimidation, ridicule and insult that is sufficiently severe or pervasive to alter the conditions of the plaintiff's employment and create an abusive working environment". *Bilitch v. New York City Health & Hospitals Corporation*, 194 AD3d 999, 2d Dept. (2021). Additionally, regarding her allegations of the HHC Defendants' violation of the CHRL, Plaintiff did not show she was treated less well than any other employees because of her disability. *Id*.

Plaintiff failed to show that there was any retaliation against her. Plaintiff unpersuasively argues that the mere asking her to work in the Staffing Office was retaliatory. She was assigned where employees were needed at the time and the assignment was made when the reasonable accommodation had expired. To sustain a claim since under the SHRL, a plaintiff had must allege "she engaged in a protected activity[21]; defendant was aware of plaintiff's protected activity; she suffered an adverse employment action and a causal connection between the adverse employment action and the protected activity". *Harrington v. City of New York*, 157 AD3d 582. 1st Dept. (2018). Under the CHRL she also had to show that a defendant took an action that disadvantaged her, which Plaintiff also failed to demonstrate.

Plaintiff failed to establish a *prima facie* cause of action in that she has failed to demonstrate that she suffers from a permanent disability, that she suffered an adverse action as a result of that disability, that she was retaliated against as a result of said disability or that that she was subject to a hostile work environment. Therefore, the HHC Defendants' summary judgment motion is granted and the complaint is dismissed with prejudice as to the HHC Defendants.

This constitutes the Decision and Order of the Court.

Date: May 13, 2024
Brooklyn, New York

Hon. Patria Frias-Colón, J.S.C.

[21] Pursuant to NYC Administrative Code 8-107 "protected activity" is an action taken to oppose or protest unlawful discrimination.