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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

ROI J. BROWN,	*	
	*	3-98-CV-90097
Plaintiff,	*	
	*	
v.	*	
	*	
PLEASANT VALLEY COMMUNITY SCHOOL DISTRICT,	*	MEMORANDUM OPINION AND ORDER
Defendant.	*	

Before the Court is Defendant's Motion for Summary Judgment on the sole remaining count in Plaintiff's Complaint, discrimination in violation of the Americans Disability Act of 1990, 42 U.S.C. § 12101 *et seq.* ("ADA"). Plaintiff claims that Defendant demoted him and then fired him because of his alleged disability. For the following reasons, the Court will grant Defendant's motion.

I. Facts

Defendant, Pleasant Valley Community School District ("Pleasant Valley") hired Plaintiff, Roi J. Brown ("Brown") to teach at Cody Elementary School in 1968. On November 1, 1994, Brown became ill and asked to be relieved of his teaching duties due to emotional distress arising out of a divorce from his wife of thirty-five years. Brown received psychiatric care and treatment for depression for approximately two weeks and returned to teaching on January 23, 1995. At this time, Brown's physician declared he was "fit to return to his regular teaching capacity."

Brown again experienced mental health problems in late spring of 1995. Brown's

Pleading # 81.

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physician diagnosed him with a hypomanic reaction to his prior tricylic anti-depression medications. This condition causes an accelerated, irritable state with pressured speech and action which at times could lead to impaired judgment. Brown spent two weeks in the hospital and continued out-patient treatment throughout the summer. On August 22, 1995, Brown's treating psychiatrist released him to return to work without restrictions.

During the 1994-95 school year and school registration for the 1995-96 school year, Pleasant Valley received several complaints about Brown's behavior. The complaints came from parents, students, and other teachers, with some parents requesting that their children not be placed in Brown's classroom in the fall of 1995. Parents complained of Brown telling outlandish stories, using inappropriate language such as "potty partners" and "bloody bastard," belittlement of children, lack of structure in the classroom, and his demeaning attitude toward students who were not his "pets." Three female students complained that Brown made physical contact with them in a manner that made them feel uncomfortable. One of the girls reported that after Principal Hofmann discussed the girls' complaints with Brown, Brown told the class that some girls were trying to get him fired and that a teacher in another city committed suicide when students tried to do something similar. Other complaints consisted of Brown not arriving to his classroom on time, Brown sitting with his head in his hands and apparently unaware of the students who were present, and talking to students about incest and other such things. Pleasant Valley claims that as a result of these complaints, it believed it was not in the school's best interest to allow Brown to return to the classroom unsupervised. Pleasant Valley therefore reassigned Brown from his sixth grade teaching position to that of reading teacher, Chapter One Teacher Helper and general assistant for the 1995-1996 school year.

Between mid-September 1995 and mid-January 1996, Principal Hofmann issued Brown

five written reprimands for inappropriate behavior. This behavior consisted of the following: (1) failing to report to work on time without notifying the school, and then failing to check in after he arrived, in violation of school policy; (2) inappropriate language and story-telling; (3) failing to take responsibility for planning and delivering reading lessons; (4) poorly supervising students in the hallways and at recess; (5) running through a sixth grade classroom door and bounding across the room while class was in session; (6) failing to stop a student from twisting around a bar 57 times, which resulted in an injury, while he was on recess duty; and (7) engaging in unsafe behavior. The inappropriate language Brown was cited for was saying "that's enough of that crap" to students. The inappropriate stories included Brown telling his class that he killed cats in his yard because they kill birds. Brown denies that he told students he killed cats, but he admits he told the students he chased cats out of his yard with a b.b. gun. Finally, on January 30, 1996, Principal Hofmann conducted Brown's annual performance review. Brown received "unsatisfactory" ratings in three out of five areas.

Pleasant Valley claims that as a result of Brown's negative performance review and the above-mentioned behavior, Principal Hoffman recommended to Superintendant Barber that Brown's contract not be renewed for the 1996-97 school year. Superintendent Barber accepted Principal Hofmann's recommendation and recommended the same to the school board. The school board notified Brown of the recommendation, and Brown failed to request a hearing within the 5-day statutory period. The school board then voted not to renew Brown's contract.

Brown claims that his demotion and eventual termination were motivated by a desire to get rid of him because of his past mental health problems. In support of this theory, Brown states the following. In May of 1995, when he was hospitalized, Principal Hofmann advised him that he would not be able to return to a regular teaching position. Principal Hofmann had

difficulty writing up information on him at the superintendent's request because Principal Hofmann did not know what the superintendent wanted. Principal Hofmann also reprimanded Brown for conduct that immediately preceded his hospitalization. In addition, Principal Hofmann acknowledged using language warning Brown of termination because of concerns she had about Brown's problems during the 1994-95 school year and acknowledged that she thought Brown's incompetency was due to a condition rather than a willful or intentional act. And, before Pleasant Valley terminated Brown, Superintendant Barber and Principal Hofmann counseled him to retire.

II. Summary Judgment Standard

Federal Rule of Civil Procedure 56(c) provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." An issue is "genuine," "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" if the dispute over it might affect the outcome of the suit under the governing law. *Id.*

The moving party has the burden of demonstrating the absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 323; *Anderson*, 477 U.S. at 248. In meeting its burden, the moving party may support his or her motion with affidavits, depositions, answers to interrogatories, and admissions. *See Celotex*, 477 U.S. at 323. Once the moving party has carried its burden, the nonmoving party must go beyond the pleadings and, by affidavits or by the depositions, answers to interrogatories, and admissions on file, designate the specific facts showing that there is a genuine issue for trial. *See* Fed. R. Civ. P. 56(c), (e); *Celotex Corp.*, 477

U.S. at 322-323; *Anderson*, 477 U.S. at 257. In order to survive a motion for summary judgment, the nonmoving party must present enough evidence for a reasonable jury to return a verdict in his or her favor. *Anderson*, 477 U.S. at 257.

On a motion for summary judgment, the Court is required to "view the evidence in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences." *United States v. City of Columbia*, 914 F.2d 151, 153 (8th Cir. 1990). The Court does not weigh the evidence or make credibility determinations. *See Anderson*, 477 U.S. at 252. The Court only determines whether there are any disputed issues and, if so, whether those issues are both genuine and material. *Id.*

"[S]ummary judgment should seldom be used in employment-discrimination cases." *Crawford v. Runyon*, 37 F.3d 1338, 1341 (8th Cir. 1994) (citing *Johnson v. Minnesota Historical Soc'y*, 931 F.2d 1239, 1244 (8th Cir. 1991), *cited in Snow v. Pidgeview Med. Ctr.*, 128 F.3d 1201, 1205 (8th Cir. 1997); *see Hillebrand v. M-Tron Indus., Inc.*, 827 F.2d 363, 364 (8th Cir. 1987), *cert. denied*, 488 U.S. 1004 (1989). This is because "inferences are often the basis of the claim . . . and 'summary judgment should not be granted unless the evidence could not support any reasonable inference' of discrimination." *Breeding v. Gallagher & Co.*, 164 F.3d 1151, 1156 (8th Cir. 1999) (quoting *Lynn v. Deaconess Med. Ctr.-West Campus*, 160 F.3d 484, 486-87 (8th Cir.1998)).

III. Discussion

In order to make out a claim for disability discrimination under the ADA, a plaintiff must show that (1) he is disabled within the meaning of the ADA; (2) he is qualified to perform the essential functions of his job, with or without reasonable accommodation; and (3) he suffered adverse employment action because of his disability. *See Kellog v. Union Pacific Railroad Co.*,

No. 00-1893, slip op. at 4 (8th Cir. Dec. 4, 2000); *Otting v. J.C. Penny Co.*, 223 F.3d 704, 708 (8th Cir. 2000). If the defendant proffers a legitimate, nondiscriminatory reason, the plaintiff must also demonstrate that the reason is pretextual. *Kellog*, slip op. at 4. Brown fails to show both that he was "disabled" within the meaning of the ADA and that Pleasant Valley's reasons for demoting him and firing him were pretext for discrimination.

A. "Disability"

The ADA defines "disability" as follows: "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(2). Brown claims that he had a record of a disability and that Pleasant Valley regarded him as having a disability. The Court disagrees on both accounts.

Brown did not have a record of an impairment that substantially limited one or more of his major life activities. In *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 482-483 (1999), the Supreme Court held that a person whose impairment is corrected by medication or other measures does not have an impairment that "substantially limits" a major life activity. Brown admits that the medication corrected his condition and that he does not now suffer from a disability. However, Brown argues that his condition was not always corrected by medication and that he suffered from a disability prior to the time the medication corrected his condition–and thus has a record of a disability. This is not the case.

Brown's condition prior to the time that it was corrected by medication was not sufficient to constitute a disability. In determining whether an impairment substantially limits a major life activity, the Court considers the following factors: (1) the nature and severity of the impairment; (2) the duration or expected duration of the impairment; and (3) the permanent or long term

impact of the impairment. 29 C.F.R. § 1630.2(2). Brown was unable to work for two separate two and one-half to three month periods (November, 1994 to mid-January, 1995 and mid-May, 1995 to mid-August, 1995). The duration of Brown's impairment was relatively short and there was little, if any, permanent or long term impact. While Brown concedes that he does not presently have a disability because of his medication, with respect to any past disability caused by his condition the key fact is still that Brown's condition was eventually corrected by medication. Brown's mental health condition never resulted in anything that is protected as a "disability" under the ADA. *See Spades v. City of Walnut Ridge*, 186 F.3d 897, 899 (8th Cir. 1999) (finding that where the plaintiff's depression was corrected by medication he did not have a disability). The Court therefore holds that Brown did not have a record of a disability.

Nor did Pleasant Valley regard Brown as having an impairment that substantially limited one or more of his major life activities. A person may be regarded as having a disability in one of two ways: (1) an employer mistakenly believes that a person has an impairment that substantially limits one or more major life activities; or (2) an employer mistakenly believes that an actual, nonlimiting impairment substantially limits one or more major life activities. *Sutton*, 527 U.S. at 2149-50. The Court explained:

> In both cases, it is necessary that a covered entity entertain misperceptions about the individual–it must believe either that one has a substantially limiting impairment that one does not have or that one has a substantially limiting impairment when, in fact, the impairment is not so limiting.

Id. at 2150. The point is that a plaintiff alleging that their employer regarded them as having a disability must demonstrate that the employer entertained some misperception about their abilities.

Cases both before and after *Sutton* have elaborated on this basic point. After *Sutton*, the

court in *Krocka v. City of Chicago*, 203 F.3d 507, 514 (7th Cir. 2000), held that the employer did not regard the employee as disabled where it found that while the employer was aware of the employee's severe depression there was no evidence that the employer perceived the plaintiff has having an impairment he did not in fact possess. Before *Sutton*, the Eighth Circuit issued two similar rulings. In *Cody v. Cigna Healthcare of St. Louis, Inc.*, 139 F.3d 595, 599 (8th Cir. 1998), the court held that an employer's mere knowledge of behavior that could be associated with an impairment is not enough to establish that the employer regarded the employee as disabled. And in *Olson v. Dubuque Community School District*, 137 F.3d 609, 612 (8th Cir. 1998), the court held that mere awareness of the employee's depression was not sufficient to establish that the employer regarded her as disabled; the court rejected the suggestion that criticism of the employee's work performance in an evaluation offered more proof, because it just showed that her supervisors believed her work was deficient.

There is no evidence the Pleasant Valley mistakenly believed that Brown had an impairment that he did not in fact have or that he actually had a nonlimiting impairment which it mistakenly believed to limit one or more major life activities. All the evidence Brown points to seems to revolve around on Pleasant Valley's disapproval of conduct that Brown does not much refute. Moreover, Pleasant Valley's first action after Brown's two absences for treatment was to reassign Brown within the teaching field. Pleasant Valley did not even perceive Brown as being unable to perform a class of jobs at that point. *See* 29 C.F.R. § 1630.2(3)(i) (defining the major life activity of working as being unable to perform either a class of jobs or broad range of jobs in various classes). Thus, even viewing the evidence in a light most favorable to Brown, the Court finds no genuine issue as to whether Pleasant Valley regarded Brown as disabled.

B. Pretext

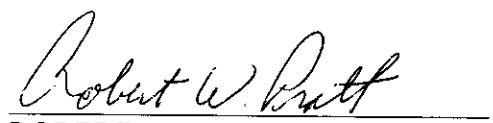
Even if Brown could establish a prima facie case of disability discrimination, he fails to show that Pleasant Valley's reasons for demoting him and firing him were pretextual. The Supreme Court recently took the opportunity to further explain the evidentiary burden a plaintiff must meet in order to show pretext. In *Reeves v. Sanderson Plumbing Products, Inc.*, –U.S.–, 120 S.Ct. 2097, 2109 (2000), the Court held that while evidence sufficient to find that an employer's asserted justification is false, combined with the plaintiff's prima facie case, will sometimes be enough to show pretext by itself–it will not always be enough. Brown essentially contends that Pleasant Valley's reasons for demoting him and firing him should be discredited based on a theory that Pleasant Valley trumped up the complaints against him in order to get rid of him. However, Brown does not really refute any of the allegations underlying Pleasant Valley's complaints against him. Brown also contends that Principal Hofmann's belief that Brown's incompetence is due to a condition shows pretext for discrimination. But that does not put him over the finish line. In sum, Brown fails to establish that a reasonable juror could infer that Pleasant Valley's reasons for demoting and firing Brown were not the real reasons, let alone that discrimination was the real reason.

IV. Conclusion

Defendant's Motion for Summary Judgment (Clerk's #61) is **granted**. The case is **dismissed**.

IT IS SO ORDERED.

Dated this 2nd day of January, 2001.



ROBERT W. PRATT,
U.S. DISTRICT JUDGE