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DES MOINES, IOWA
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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

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

GWEN ELLEN SCHROEDER,	)	
	)	
Plaintiff,	)	Civil No. 3-99-cv-10184
	)	
vs.	)	
	)	
UNITED PARCEL SERVICE,	)	ORDER
	)	
Defendant.	)	

Before the Court is defendant's motion for summary judgment, filed January 12, 2001. Plaintiff filed a resistance to this motion on March 2, 2001. Defendant then filed a reply on March 14, 2001. Defendant's motion is fully submitted.

I. BACKGROUND

The following facts are either undisputed or viewed in a light most favorable to plaintiff. Gwen Schroeder, plaintiff, was hired in 1978 as a part-time loader by defendant, United Parcel Service (UPS), at the company's facility in Davenport, Iowa. Schroeder worked in various capacities for UPS, and in 1985 she became a package car driver. In this position, Schroeder drove her commercial-sized vehicle to deliver and pick-up packages. One of the essential functions listed in UPS's description of the position is that a driver must be able to work in an environment that will contain variable temperatures and humidity.

Unfortunately, Schroeder suffered from frostbite to her toes and feet while working as a driver for UPS. Between 1988 and 1998, Schroeder experienced frostbite on her toes and feet on six separate occasions, the last time on January 8, 1998. Then, on February 9, 1998, Schroeder

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went to see Camilla J. Frederick, M.D., in connection with the recurring frostbite. Dr. Frederick found that plaintiff should be permanently restricted from exposure to cold temperatures that are less than 32° Fahrenheit including the wind chill calculation. Schroeder reports that because of the number of times she had experienced frostbite while working for UPS as a driver, Dr. Frederick felt she should be permanently restricted from working in the cold so as not to risk amputation of her toes if she were to have further episodes of frostbite.

Based on this restriction, Schroeder could no longer perform the duties of the driver position as the job required a driver to be outside on days when the temperature was below 32° Faherenheit. She never worked as a driver after this time. At some point after the permanent restriction was set, UPS offered Schroeder a position as a sorter. The job would have required Schroeder to work a split shift.

Schroeder did not accept the sorter position. Rather the two sides engaged in extensive negotiations regarding the sorter position. They tried to work out which shifts Schroeder would work, what her classification as an employee would be, along with other issues concerning her employee benefits. Ultimately, however, Schroeder did not accept this position. She asserts that as a result of the negotiations, the offer was eventually reneged by UPS.

Following the issuance of a right-to-sue letter from the Iowa Civil Rights Commission ("ICRC") on July 26, 1999, Schroeder filed her complaint in this Court on October 22, 1999. She alleges in Count I that UPS discriminated against her in violation of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12112 *et seq.*; and in Count II that UPS violated the Iowa Civil Rights Act, Iowa Code chapter 216.

Currently, Schroeder is employed at Big Ed's Studio, a photography studio. She performs gardening in the spring and summer, as the studio's photographers take pictures of people in the gardens. In the fall and winter, Schroeder does office work for the studio.

Schroeder is still limited because of her prior incidents of frostbite, as she can only take outdoor walks on warms days in the winter when she wears warm socks and boots with a heating system. She sometimes has numbness and tingling in her toes and feet, and finds it difficult to wear certain types of shoes in the winter. She does not experience any limitations outside of the winter season, and she has not sought treatment for frostbite since February 1998.

Schroeder exercises, walking three to four miles on a treadmill three to five times per week. She can not spend extensive time outside on winter days, and she cannot go sledding or skiing. However, she is able to perform her everyday activities during the winter months.

II APPLICABLE LAW & DISCUSSION

Summary judgment is properly granted when the record, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Walsh v. United States*, 31 F.3d 696, 698 (8th Cir. 1994). The moving party must establish its right to judgment with such clarity that there is no room for controversy. *Jewson v. Mayo Clinic*, 691 F.2d 405, 408 (8th Cir. 1982). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis added). An issue is "genuine," if the evidence is sufficient to

persuade a reasonable jury to return a verdict for the nonmoving party. *Id.* at 248. "As to materiality, the substantive law will identify which facts are material.... Factual disputes that are irrelevant or unnecessary will not be counted." *Id.*

Summary judgment should seldom be used in employment discrimination cases." *Crawford v. Runyon*, 37 F.3d 1338, 1341 (8th Cir. 1994). The Court should not grant defendant's summary judgment motion "unless the evidence could not support any reasonable inference for the nonmovant." *Id.* (citations omitted); *see also Benson v. Northwest Airlines, Inc.*, 62 F.3d 1108, 1111 (8th Cir. 1995) (citation omitted).

Plaintiff has brought his claims for disability discrimination under Title I of the Americans with Disabilities Act ("ADA"), *see* 42 U.S.C. §§ 12112 *et seq.*, and the Iowa Civil Rights Act ("ICRA"), IOWA CODE chapter 216. "Iowa courts look to the ADA, its regulatory interpretations, and its caselaw in construing a disability claim under the ICRA." *See Berg v. Norand Corp.*, 169 F.3d 1140 (8th Cir. 1999) (citing *Fuller v. Iowa Dept. of Human Servs.*, 576 N.W.2d 324, 329 (Iowa 1998), and *Helfter v. United Parcel Serv., Inc.*, 115 F.3d 613, 616 (8th Cir. 1997)). Therefore, while in this Order the Court will only reference the ADA, the same analysis applies to Schroeder's ICRA claim.

ADA claims follow the familiar burden-shifting framework set forth in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). *See Keil v. Select Artificials, Inc.*, 169 F.3d 1131, 1134-45 (8th Cir. 1999) (citing *McDonnell Douglas*, 411 U.S. at 802-05)). First, a plaintiff must present a prima facie case of disability discrimination. *Keil v. Select Artificials, Inc.*, 169 F.3d at 1134-35. "[T]o establish a prima facie case of discrimination under the ADA, an aggrieved employee must show that he or she (1) is disabled within the meaning of the ADA, (2) is

qualified (with or without reasonable accommodation) to perform the essential functions of the job at issue, and (3) has suffered an adverse employment decision because of the disability." *Cravens v. Blue Cross and Blue Shield of Kansas City*, 2000 WL 726433 at *3 (8th Cir. June 7, 2000) (citing *Treanor v. MCI Telecommunications Corp.*, 200 F.3d 570, 574 (8th Cir. 2000). If plaintiff establishes a prima facie case, the burden then shifts to the employer to "rebut the presumption of discrimination by articulating a legitimate, non-discriminatory reason for the adverse employment action." *Kiel*, 169 F.3d at 1135. If the employer is able to provide such a reason, the burden shifts back to the plaintiff to show the employer's proffered reason was pretextual.

As the Eighth Circuit recently reiterated in *Mellon v. Federal Express Corp.*, 239 F.3d 954, 955 (8th Cir. 2001) (addressing ADA claim by plaintiff with injured wrist and weight lifting restriction), "issues of wrongful discharge and failure to accommodate are deficient [] as a matter of law unless there is a submissible claim of disability, actual or perceived." To meet the disability requirement, plaintiff must be either actually disabled, have a record of disability, or be regarded as disabled. *See Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 478 (1999) (citing 42 U.S.C. § 12102(2)(A-C)). Actual disability requires that plaintiff have a physical or mental impairment that substantially limits a major life activity, or that she has a record of such an impairment. *Id.* at 479 (citing 29 C.F.R. § 1630.2(g)). To be regarded as disabled, plaintiff must have been treated as though she had an impairment which substantially limits major life activities. *See Webb v. Mercy Hosp.*, 102 F.3d 958, 959 (8th Cir. 1996) (citing *Wooten v. Farmland Foods*, 58 F.3d 382, 385 (8th Cir. 1995) (citing 29 C.F.R. § 1630.2 (I)(3)).

"Whether a person has a disability under the ADA is an individualized inquiry." *Sutton*, 527 U.S. at 483 (citations omitted). "Congress did not intend to bring under the statute's protection all those whose uncorrected conditions amount to disabilities." *Id.* at 484. Corrective and mitigating measures are to be considered in determining whether an individual has a disability. *Id.* In this case, Schroeder's physical impairment is to her toes and feet as a result of frostbite. She has a permanent restriction that she cannot be outside for extensive periods of time when the temperature is below 32° Fahrenheit including the wind chill factor. There does not appear to be a corrective or mitigating measure which will alter this restriction on her ability to be outside in the wintertime in Iowa.[1]

Beyond the restriction on her ability to work outside in the wintertime, Schroeder must present evidence that the nature, duration and long term impact of her frostbite problem causes her to be substantially limited in a major life activity.[2] "Not every physical or mental impairment 'counts' for ADA purposes, because most disabilities from which people suffer (bad vision, impaired hearing, arthritic joints, diabetes) do not have a substantial enough effect on their major life activities." *Berg v. Norand Corp.*, 169 F.3d 1140, 1144 (8th Cir. 1999) (citation omitted). The Court finds that Schroeder cannot show that her frostbite problem amounts to anything more than a moderate limitation on any major life activity. *See Weber v. Strippit, Inc.*, 186 F.3d 907 (8th Cir. 1999) (citations omitted) (finding that plaintiff who had suffered a major heart attack, had ongoing cardiovascular system problems, and had diet and walking restrictions

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[1] Neither party asserts that Schroeder could be outside more extensively, or perform the UPS driver position, if she wore heated boots or certain socks. Schroeder has stated, though, she can walk outside on some winter days if she is wearing such corrective measures.

[2] Major life activities include a number of matters, but relevant to this case are walking and working.

did not have more than a moderate limitation on any major life activity). Schroeder currently works at a position which involves walking, as she gardens for a photography studio during the spring and summer seasons. She walks on a treadmill three to five times per week. She performs her everyday activities even during the winter months – going to her office position at the photography studio, shopping, going to restaurants, and attending church services. She is not actually disabled.

Plaintiff has argued that the restriction on her ability to work outside in the wintertime prevents her from working at a number of different jobs, not just the UPS drivers position, and therefore she should be found to be actually disabled as she is substantially limited in the major life activity of working. "The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working." 29 C.F.R. § 1630.2 (j)(3)(i). To establish that she is actually disabled, Schroeder has to show "she is limited from performing a class of jobs or a broad range of jobs within various classes." *Berg,* 169 F.3d at 1144. While Schroeder has given a list of positions that she states she is precluded from because of her restriction from working in the cold, she has not made a showing that she is qualified to perform any of those positions nor that she would pursue any of those positions but for her restriction.

With respect to Schroeder's claim that UPS regarded her as disabled, the Court does not find that there is a material issue of fact on this issue either. This prong of the disability element under the ADA was intended to prevent employers from making decisions based on erroneous perceptions and not based on medical information *See Gerdes v. Swift-Eckrich, Inc.*, 125 F.3d 634, 637 (8th Cir. 1997). In this case, it is clear that Schroeder and UPS agreed that she could no longer perform the driver position because of her permanent medical restriction. There is

nothing in the record that indicates UPS held an erroneous perception about Schroeder's abilities. Further, UPS did offer Schroeder a job as a sorter. While it appears that Schroeder did not accept this position as a result of negotiations between the parties that were not harmonious, the fact that Schroeder did not end up continuing to work for UPS does not in and of itself indicate that UPS regarded her as disabled.

The Court also notes that Schroeder does not have a record of disability within the meaning of the ADA. Her record demonstrates nothing more than she has experienced frostbite in the past, and does not have any ongoing effects other than the restriction on her ability to be exposed to cold temperatures.

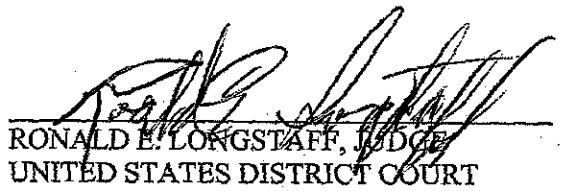
As the Court finds Schroeder can not generate a material issue of fact whether she is disabled, her claims for disability discrimination are deficient as a matter of law. *Mellon*, 239 F.3d at 955.

III. CONCLUSION

For the above stated reasons, defendant's motion for summary judgment is granted. The Clerk of Court is directed to enter judgment for defendant and against plaintiff.

IT IS SO ORDERED.

Dated this 11th day of April, 2001.



RONALD E. LONGSTAFF, JUDGE
UNITED STATES DISTRICT COURT