

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA
CIVIL DIVISION**

ASHLEY D. ARD,
Plaintiff,

CASE NO. 2018-CA-000003

v.

DIVISION E

NAVY FEDERAL CREDIT UNION,
Defendant.

_____ /

**ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

The Court having reviewed Defendant’s Motion for Summary Judgment and Memorandum of Points and Authorities, Plaintiff’s Response in Opposition, and Defendant’s Reply to Plaintiff’s Response, the Court also having reviewed applicable caselaw, the pleadings, and record evidence, and the Court having further heard and considered oral argument on such Motion on February 6, 2020, it is **ORDERED**:

Defendant’s Motion for Summary Judgment is hereby granted as to all counts of the Complaint, for the reasons briefly stated below.

Plaintiff’s claims that are based on events that occurred prior to November 1, 2015 (including Plaintiff’s allegation that Defendant failed to promote her to a Supervisor II position) are time-barred. *Woodham v. Blue Cross & Blue Shield of Fla., Inc.*, 829 So. 2d 891, 894 (Fla. 2002). *See also* Fla. Stat. § 760.11(1).

As to Count I (Disability Discrimination) of the Complaint, the record evidence does not support any allegation that Navy Federal discriminated against Ms. Ard based on her disability. While it is uncontroverted that Ms. Ard does have a disability, she was not a “qualified” individual with a disability, as is required to establish a disability claim under the Florida Civil Rights Act. Specifically, the record evidence does not support that Plaintiff was able to perform all of the

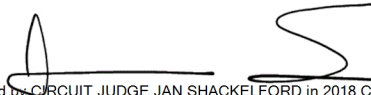
essential functions of her Supervisor position, even with accommodations. *See Garrison v. City of Tallahassee*, 664 F. App'x 823, 826 (11th Cir. 2016). She also is bound by representations that she made to Defendant's Long-Term Disability benefits insurer and the Social Security Administration that she was totally and completely unable to work in any position – even from home. *Siudock v. Volusia Cty. Sch. Bd.*, 568 F. App'x 659, 663 (11th Cir. 2014); *Musarra v. Vineyards Dev. Corp.*, 343 F. Supp. 2d 1116, 1122-23 (M.D. Fla. 2004).

Summary judgment is appropriate as to Count I of the Complaint in that Plaintiff also has not put forth facts from which a reasonable jury could conclude that she suffered unlawful discrimination under the FCRA because of her disability, or that Defendant failed to provide her with reasonable accommodations. Rather, the record facts show that Defendant gave Plaintiff positive performance reviews and bonuses throughout her employment and granted all of Plaintiff's various requests for accommodation, including her request that she be allowed to telework from home in an MSR role when she concluded she could no longer work on-site. *See Batson v. Salvation Army*, 897 F.3d 1320, 1326-27 (11th Cir. 2018) (affirming summary judgment where employee “was never denied a specific accommodation she requested”).

As to Count II (Retaliation), Defendant did not retaliate against Plaintiff. As a matter of law, Plaintiff cannot establish that she suffered a materially adverse employment action, as is required to establish a retaliation claim under the FCRA. Specifically, Plaintiff has not shown she was constructively discharged, in that she has not put forth facts to establish “under an objective standard, that the employer made working conditions so difficult that a reasonable person would feel compelled to resign.” *Webb v. Florida Health Care Mgmt. Corp.*, 804 So. 2d 422, 424 (Fla. 4th DCA 2001).

The Court hereby enters judgment for Defendant on all Counts.

DONE AND ORDERED on the ____ day of February 2020.



eSigned by CIRCUIT JUDGE JAN SHACKELFORD in 2018 CA 000003
on 02/21/2020 14:14:20 jXRu0iWC

Honorable Jan Shackelford
Circuit Judge