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United States District Court, N.D. Florida.

LETIDA CHEESE, Plaintiff,
v.
NAVY FEDERAL CREDIT UNION, Defendant.

Case No. 3:19cv6-TKW-HTC
|
Filed 08/07/2020

ORDER GRANTING SUMMARY JUDGMENT

T. KENT WETHERELL, II UNITED STATES DISTRICT JUDGE

***1** This employment discrimination case is before the Court on Defendant's motion for summary judgment (Doc. 26), Plaintiff's response in opposition (Doc. 30), and Defendant's reply (Doc. 32). Upon due consideration of these filings and the evidence submitted by the parties (attachments to Docs. 25, 29, 31), the Court finds that the motion for summary judgment is due to be granted for the reasons that follow.

Facts

Plaintiff was hired by Defendant as a member[1] service representative (MSR) in August 2012. In that position, Plaintiff was responsible for assisting members who called seeking help with their accounts.

1 Defendant is a credit union and has "members" rather than "customers."

Plaintiff received an overall "not effective" rating on her first annual performance appraisal report (PAR) in August 2013. As a result, she was placed on conditional employment status for 180 days.

Plaintiff successfully completed this term of conditional employment status and she received an overall "meets expectation" rating on her February 2014 PAR.

Plaintiff was promoted (from MSR-I to MSR-II) in December 2014, and she received an overall "successfully meets expectations" rating on her February 2015 PAR.

In March 2015, Plaintiff applied for and received an MSR-IV position in Defendant's fraud branch. In that position, Plaintiff was responsible for helping members deal with account fraud, and because members affected by fraud tend to be frustrated and upset, a critical part of Plaintiff's job was to build a rapport with the member by showing empathy, compassion, and "finesse" while trying to resolve the issue to the member's satisfaction.

While working in the MSR-IV position, Plaintiff had a variety of performance issues, including failure to provide empathetic customer service, failure to demonstrate the appropriate level of knowledge, failure to follow the procedural manual, failure to work cooperatively with coworkers, failure to maintain accurate timekeeping records, and unscheduled leave unrelated to her Family and Medical Leave Act (FMLA) leave. Additionally, Plaintiff was the subject of at least four member complaints, including one by a member who was so upset about her conduct that he drove to a branch office to complain. These performance issues were documented in emails, PARs, and a memorandum of warning (MOW), and Plaintiff's supervisors counseled her about these issues on multiple occasions.

Plaintiff received an overall "needs improvement" rating on her February 2016 PAR. As a result, she was (again) placed on conditional employment status for 180 days.

On June 3, 2016, Plaintiff met with an employee in Defendant's employee relations department and complained about the counseling she received from her supervisor about errors on her timesheets. Although Plaintiff complained about "disparate treatment" generally,[2] she did not specifically raise any concerns during this meeting that the alleged disparate treatment was related in any way to her medical condition or her FMLA leave.[3]

2 *See* Doc. 29-58, at ¶19 (Plaintiff's affidavit) (asserting that she "report[ed] the disparate treatment that [she] was receiving from [her supervisor]"); Doc. 24-2, at ¶13 (declaration of the employee relations department employee with whom Plaintiff met) ("[I]t was my impression that [Plaintiff] thought [her supervisor] was ... simply

being too hard on what she [Plaintiff] viewed as innocent mistakes or minor performance or timekeeping issues.").

3 *See* Doc. 24-2, at ¶13 ("[Plaintiff] did not raise any concerns during my June 3, 2016 meeting with her that [her supervisors] or anyone else at [Defendant] had treated her differently because of her purported medical condition or because she had taken FMLA leave, or had subjected her to any kind of unlawful discrimination, retaliation, or other unlawful conduct."); *see also id.* at ¶¶21, 25, 29 (describing three other meetings with Plaintiff (on August 5 and October 21, 2016, and January 20, 2017) at which Plaintiff also did not raise any concerns about discriminatory or retaliatory conduct because of her purported medical condition or because she had taken FMLA leave).

***2** Four days later, [4] Plaintiff was issued an MOW for failing to accurately record the time she worked. Plaintiff continued to record her time inaccurately after receiving the MOW.

4 The MOW was scheduled to be delivered on June 2, but Plaintiff left work early that day due to a family emergency.

In July and August 2016, Plaintiff continued to make errors in calls with members and she received another member complaint. As a result of her continuing performance issues, Plaintiff's conditional employment status (which was scheduled to end in August 2016) was extended.

Plaintiff continued to have documented performance issues after her conditional employment status was extended. For example, in October 2016, another MSR complained that Plaintiff refused to accept the transfer of a call from a member who was concerned about potential fraud; in November 2016, Plaintiff received another member complaint; and in late 2016 and early 2017, Plaintiff's supervisor counseled her about member calls during which she gave incorrect information, was argumentative, and made other errors.

On February 13, 2017, Defendant terminated Plaintiff's employment based on her continuing performance issues.

On six occasions [5] between April 2013 and August 2016, Plaintiff experienced what she claimed to be anaphylactic attacks at work after eating foods or smelling strong odors.

5 These incidents occurred in April 2013, after drinking coffee and eating a chocolate chip cookie; in October 2013, after eating the same type of chocolate chip cookie; in January 2014, after eating a peanut butter cookie of the same brand as the chocolate chip cookies; in July 2014, due to the strong smell of perfume; in January 2016, after eating pizza; and in August 2016, after eating a cookie.

Plaintiff was seen by allergists in October 2013 and February 2014, neither of whom diagnosed her with a food (or other) allergy. Despite this, Plaintiff carries an EpiPen (which she claims to have self-administered over 200 times since April 2013) and she has self-limited the foods that she eats and the cleaning products that she uses. Plaintiff is, however, still able to eat an extremely wide variety of foods and use numerous different cleaning products. [6]

6 *See* Doc. 26, at 16-17 (summarizing Plaintiff's deposition testimony on these issues).

One of the allergists, Dr. Westbrook, opined that Plaintiff's medical episodes could be "a psychological reaction" to a condition with her vocal cords and he recommended a laryngoscopy. A subsequent laryngoscopy conducted by Dr. Kotlarz was "unremarkable."

In August 2014, Dr. Kotlarz completed an Americans with Disabilities Act (ADA) accommodation form stating that Plaintiff did not have a physical or mental impairment that limited her ability to perform any major life activities or the essential functions of her position and that she did not need any accommodations. However, the form included a notation that Plaintiff had "describe[d] supersensitivity to perfumes / odors causing respiratory symptoms."

At some point (the record is unclear about when), Plaintiff asked Defendant to eliminate perfumes and cleaning products on her floor at work. In response, Defendant asked employees (via a sign, emails, and staff meetings) not to spray perfumes and asked its cleaning crew to eliminate harsh chemicals and establish a cleaning schedule for the restrooms on Plaintiff's floor that would allow her to avoid the restrooms when they were being cleaned.

***3** Plaintiff first requested FMLA in October 2013. CIGNA —the company that administers Defendant's FMLA leave

—denied the request because Plaintiff did not return the necessary medical certification form.

Plaintiff was subsequently approved for intermittent FMLA leave for multiple periods between July 2014 and October 2016. Plaintiff testified in her deposition that she did not recall ever being denied FMLA leave that she believed she was entitled to receive.

Procedural History

On January 3, 2019, Plaintiff filed suit against Defendant's chief executive officer (CEO) in his official capacity, alleging claims of disparate treatment and failure to accommodate and retaliation under the Rehabilitation Act. Plaintiff thereafter filed an amended complaint against Defendant (rather than its CEO) alleging claims of disparate treatment and failure to accommodate (Count I) and retaliation (Count II) under the ADA and the Florida Civil Rights Act (FCRA) (rather than the Rehabilitation Act) as well as claims of interference and retaliation under the FMLA (Count III).

Defendant answered the complaint and the parties engaged in an extended period of discovery. After discovery closed, Defendant filed a motion for summary judgment on all the claims alleged in the amended complaint. The motion was fully briefed and is ripe for a ruling. No hearing is necessary.

Summary Judgment Standard

"The Court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "The moving party bears the initial burden of demonstrating the absence of a genuine dispute of material fact." *Baas v. Fewless*, 886 F.3d 1088, 1091 (11th Cir. 2018) (citations omitted). Once the moving party has met its burden, the non-moving party must put forward specific facts showing a genuine issue for trial. *See* *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). The non-moving party "must do more than show that there is some metaphysical doubt as to the material facts," *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986), and although the Court is required to view the facts in the light most favorable to the non-moving party and draw all reasonable inferences in favor of that party, "an inference based on speculation and conjecture is not reasonable," *Hinson v. Bias*, 927 F.3d 1103, 1115 (11th Cir. 2019) (citation omitted); *see also Jacoby v. Baldwin County*, 666 F. App'x 759, 762 (11th Cir. 2016) (stating that "[t]his court has consistently held that conclusory allegations [in an affidavit] without specific supporting facts have no probative value") (quoting *Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985)) (alterations in original).

Analysis

Count I (Disability Discrimination)

Plaintiff alleges two types of disability discrimination—disparate treatment and failure to accommodate—under both the ADA and the FCRA. The same legal standards that apply to the claims under the ADA apply to the claims under the FCRA. *See* *Greenberg v. BellSouth Telecommunications, Inc.*, 498 F.3d 1258, 1263-64 (11th Cir. 2007) (explaining that disability discrimination claims under Florida law "are analyzed under the same framework as the ADA"); *Wimberly v. Sec. Tech. Grp., Inc.*, 866 So. 2d 146, 147 (Fla. 4th DCA 2004) ("Because Florida courts construe the FCRA in conformity with the ADA, a disability discrimination cause of action [under the FCRA] is analyzed under the ADA.").

1. Disability-based Disparate Treatment

***4** The ADA provides that an employer shall not "discriminate against a qualified individual on the basis of disability in regard to ... discharge of employees." 42 U.S.C. § 12112(a). Likewise, the FCRA provides that it is unlawful to "discharge ... any individual ... because of such individual's ... handicap ...." § 760.10(1)(a), Fla. Stat.

"In order to establish a prima facie case of discrimination under the ADA, a plaintiff must demonstrate that [she] (1) is disabled, (2) is a qualified individual, and (3) was subjected to unlawful discrimination because of [her] disability." *Greenberg*, 498 F.3d at 1263 (original alterations omitted).

Here, Defendant argues that Plaintiff is not disabled because she does not have a physical or mental condition that substantially limits a major life activity and that she is not a qualified individual because of her poor job performance. [7] However, the Court need not decide those issues because

there is no evidence from which a reasonable jury could find that Plaintiff was subject to unlawful discrimination "because of" her alleged disability. Specifically, Plaintiff presented no direct evidence of disability-based discrimination;[8] she did not identify any similarly situated non-disabled employee who was treated more favorably than her; and she did not present any other evidence from which an inference of discrimination can be drawn.[9] Accordingly, Plaintiff failed to establish a prima facie case of disability-based disparate treatment and Defendant is entitled to summary judgment on that claim.

7 The latter argument appears to be stronger than the former, which relies on caselaw applying an older version of the ADA whereas the ADA as amended applies to the facts of this case. *See* 42 U.S.C. § 12102(4)(E)(i) ("The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—(I) medication, medical supplies, equipment, or appliances, ... or (IV) learned behavioral ... modifications."); *Harty v. City of Sanford*, 2012 U.S. Dist. LEXIS 111121, at *11 (M.D. Fla. Aug. 8, 2012) (explaining that the ADA's amendments "require courts to look at a plaintiff's impairment in a hypothetical state where it remains untreated"). Under that standard, it appears that a factual dispute remains as to whether Plaintiff is disabled. *See also* *Whillock v. Delta Air Lines*, 926 F. Supp. 1555, 1562 (N.D. Ga. 1995) (finding a factual dispute in a similar case). However, Plaintiff's documented poor job performance, which includes unsuccessful interactions with customers and coworkers, does seem to render her unqualified. *See* *Williams v. Motorola, Inc.*, 303 F.3d 1284, 1290-91 (11th Cir. 2002) (holding that an employee who does not "work reasonably well with others" is not a qualified individual under the ADA).

8 In her deposition, Plaintiff answered "no" when asked whether "anyone ever [said] anything to [her] about [her] medical condition." Doc. 25-1, at 132.

9 The Court did not overlook Plaintiff's assertion in her affidavit filed with the response in opposition to the motion for summary judgment that "[she] was subjected to disparate treatment and held to a different standard because of [her] disability," Doc. 29-58, at ¶5, but this conclusory assertion has no probative value because it is unsupported by any record evidence. *See Jacoby*, 666 F. App'x at 762.

***5** Based on this determination, the Court need not consider whether the legitimate non-discriminatory reasons proffered by Defendant for Plaintiff's termination were pretextual. That said, for the sake of completeness, the Court finds that even if Plaintiff had established a prima facie case, she failed to establish pretext because the reason proffered by Defendant for Plaintiff's termination—her continued poor job performance—is a legitimate reason that might motivate an employer to fire an employee and Plaintiff failed to "meet that reason head on and rebut it." *Chapman v. AI Transp.*, 229 F.3d 1012, 1030 (11th Cir. 2000); *see also Springer v. Convergys Customer Mgmt. Grp. Inc.*, 509 F.3d 1344, 1349 (11th Cir. 2007) ("[A] reason is not pretext for discrimination unless it is shown *both* that the reason was false, *and* that discrimination was the real reason.") (emphasis in original) (internal quotation marks omitted); *Jackson v. Ala. State Tenure Comm'n*, 405 F.3d 1276, 1289 (11th Cir. 2005) (explaining that, to establish pretext at the summary judgment stage, a plaintiff must demonstrate "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence"). The Court has not overlooked Plaintiff's argument that she consistently ranked highly on the statistical measures maintained by Defendant; however, it is undisputed that these statistics only measured quantitative performance (not qualitative performance) and that they were not intended to (nor did they) provide an overall assessment of an employee's job performance. *See* *Holifield v. Reno*, 115 F.3d 1555, 1565 (11th Cir. 1997) ("The inquiry into pretext centers upon the employer's beliefs, and not the employee's own perceptions of his performance. Thus, where the employer produces performance reviews and other documentary evidence of misconduct and insubordination that demonstrate poor performance, an employee's assertions of his own good performance are insufficient to defeat summary judgment, in the absence of other evidence.") (citations omitted). Accordingly, even if Plaintiff established a prima facie case, Defendant would be entitled to summary judgment on her disability-based disparate treatment claim.

2. Failure to Accommodate

The ADA defines prohibited discrimination to include "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an ... employee," unless the employer can show that "the accommodation would impose an undue hardship on the operation of [its] business." § 12112(b)(5)(A); *see also* 29 C.F.R. § 1630.9(a). The FCRA does not contain any explicit provision regarding an employer's duty to reasonably accommodate an employee's disability, but Florida courts have held that "such [a] duty can be reasonably implied from various statutory provisions [in the FCRA]." *Brand v. Fla. Power Corp.*, 633 So. 2d 504, 511 n.12 (Fla. 1st DCA 1994).

To establish a prima facie case of failure to accommodate, the plaintiff must show "(1) [s]he was disabled, (2) [s]he was otherwise qualified, and (3) a reasonable accommodation was not provided." *Nadler v. Harvey*, 2007 U.S. App. LEXIS 20272, at *14 (11th Cir. Aug. 24, 2007) (citing *Lucas v. W.W. Grainger, Inc.*, 257 F.3d 1249, 1255 (11th Cir. 2001)).

Here, putting aside the question of whether Plaintiff is disabled and otherwise qualified for the MSR-IV position, *see* note 7 *supra*, Plaintiff cannot establish a prima facie case because there is no evidence from which a reasonable jury could find that Defendant failed to provide her a reasonable accommodation.

The only accommodations requested by Plaintiff were FMLA leave and that Defendant prohibit the use of cleaning products and perfumes. With respect to the first accommodation, it is undisputed that Plaintiff was approved for intermittent FMLA leave over multiple periods between July 2014 and October 2016, and Plaintiff testified in her deposition that she could not recall being denied any FMLA leave that she thought she should have received. With respect to the second accommodation, a prohibition on the use of all perfumes and cleaning products is not a reasonable accommodation, *see Terrell v. USAir*, 132 F.3d 621, 626 (11th Cir. 1998) ("[A plaintiff does not satisfy her ... burden by simply naming a preferred accommodation—even one mentioned in the statute or regulations; she must show that the accommodation is 'reasonable' given her situation."), and it is undisputed that Defendant took reasonable actions to address Plaintiff's sensitivities to perfumes and cleaning supplies by asking people not to use perfumes or sprays in the bathroom Plaintiff frequented and not to spray perfumes or other strong scents at work (or even before work) and by arranging office cleaning to prevent Plaintiff from coming into contact with potentially triggering cleaning products.

The Court has not overlooked Plaintiff's argument that Defendant could have relocated her or set up a designated work area to ensure a workspace free of allergens or used job restructuring, part-time or modified work schedules, reassignment to a vacant position, or the acquisition or modification of equipment or devices as a reasonable accommodation for her condition. However, it is undisputed that Plaintiff never requested such accommodations and she submitted no documentation that would have put Defendant on notice of her need for such accommodations. [10] Defendant's failure to provide these unrequested (and unneeded) accommodations does not provide any support for Plaintiff's failure to accommodate claim. *See Branscomb v. Sec'y of the Navy*, 461 F. App'x 901, 905 (11th Cir. 2012) ("[A] plaintiff cannot maintain a claim of disability discrimination based on h[er] employer's failure to provide a reasonable accommodation unless [s]he specifically demanded such an accommodation.").

10 On the latter point, it is noteworthy that the only documentation submitted by Plaintiff (from Dr. Kotlarz) certified that Plaintiff did not need any reasonable accommodations to perform her job.

***6** Accordingly, Defendant is entitled to summary judgment of the failure to accommodate claim.

Count II (Retaliation)

The ADA and FCRA both prohibit retaliation. The ADA provides that "[n]o person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by [the ADA] or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [the ADA]." 42 U.S.C. § 12203(a). Similarly, the FCRA provides that "[i]t is an unlawful employment practice for an employer ... to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under [the FCRA], or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [the FCRA]." § 760.10(7), Fla. Stat.

To establish a prima facie case of retaliation, Plaintiff must show (1) statutorily protected activity, (2) adverse employment action, and (3) a causal connection between the protected activity and adverse action. *See* *Duble v. FedEx Ground Package Sys.*, 572 F. App'x 889, 895 (11th Cir. 2014).

Here, there is no evidence that Plaintiff complained about discrimination when she met with the employee relations department in June 2016 (or at any other time); however, even if the affidavit filed with her response in opposition to Defendant's motion for summary judgment could be interpreted to raise a factual dispute on that issue, there is no evidence from which a reasonable jury could find a causal connection between this protected activity and her termination. Plaintiff's termination occurred more than eight months after the June 2016 meeting with the employee relations department, so causation cannot be inferred from the temporal proximity alone. *See* *Drago v. Jenne*, 453 F.3d 1301, 1307 (11th Cir. 2006) (holding that causation cannot be inferred from a temporal proximity of three months or more between the protected activity and the adverse action). There is no other evidence from which causation could be inferred because Plaintiff was already on conditional employment status when she complained to the employee relations department and she continued to have performance issues (including multiple member complaints and recurring timesheet issues) in the months after she met with the employee relations department and leading up to her termination. *See* *Hankins v. AirTran Airways, Inc.*, 237 F. App'x 513, 521 (11th Cir. 2007) ("[The plaintiff's] failure to meet the performance standards set by the employer broke the causal connection (if any) between the protected activity and her eventual termination.... Accordingly, the district court properly concluded that [her] prima facie case of retaliation failed on causation grounds, and properly granted summary judgment for [the employer] on that basis.").

The Court did not overlook Plaintiff's argument that causation can be inferred from the timeline of events in this case because, according to Plaintiff, the timeline shows that Defendant did not start criticizing her performance until after she was required to take medical leave due to her disabilities, *see* Doc. 30, at 25; however, as Defendant correctly points out in its reply, the actual timeline (as established by the undisputed evidence) refutes an inference of causation because it shows that "Plaintiff first experienced apparent medical episodes ... , *then* [Defendant] promoted her, *then* she continued to experience such episodes, *then* [Defendant] promoted her again. Only after Plaintiff was unsuccessful for two years in the more challenging MSR-IV role was she discharged." Doc. 32, at 12-13 (emphasis in original).

***7** Accordingly, Defendant is entitled to summary judgment as to the retaliation claim in Count II of the amended complaint.

Count III (FMLA)

Plaintiff alleges claims for interference and retaliation under the FMLA. The claims have different elements and will be analyzed separately.

1. FMLA Interference

It is unlawful to "interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under [the FMLA]." 29 U.S.C. § 2615(a)(1).

"An FMLA interference claim has two elements: '(1) the employee was entitled to a benefit under the FMLA, and (2) her employer denied her that benefit.' " *Avena v. Imperial Salon & Spa, Inc.*, 740 F. App'x 679, 680-81 (11th Cir. 2018) (quoting *White v. Beltram Edge Tool Supply, Inc.*, 789 F.3d 1188, 1191 (11th Cir. 2015)).

Here, it is undisputed that Plaintiff was entitled to (and granted) FMLA leave, but there is no evidence from which a reasonable jury could find that she was denied any leave to which she was entitled. Indeed, Plaintiff testified in her deposition that she could not recall being denied any FMLA leave that she thought she should have received. Accordingly, there is no evidence from which a reasonable jury could find that Defendant interfered with Plaintiff's FMLA leave.

The Court has not overlooked Plaintiff's argument that her termination effectively denied her the right to be restored to the position she was in when her FMLA leave commenced. However, it is well established that "an employer can deny reinstatement 'if it can demonstrate that it would have discharged the employee had [s]he not been on FMLA leave.' " *Martin v. Brevard Cty. Pub. Sch.*, 543 F.3d 1261, 1267 (11th Cir. 2008) (quoting *Strickland v. Water Works and Sewer Bd. of Birmingham*, 239 F.3d 1199, 1208 (11th Cir. 2001)). Here, there is no evidence that Plaintiff was on FMLA leave when she was terminated, but even if she was, the

undisputed evidence establishes that Defendant would have terminated her regardless of her FMLA leave status. *See supra*, at 10-12.

Accordingly, Defendant is entitled to summary judgment on the FMLA interference claim in Count III of the amended complaint.

2. FMLA Retaliation

It is unlawful for an employer to discharge an employee for exercising her rights under the FMLA. *See* 29 C.F.R. § 825.220(c) ("The Act's prohibition against interference prohibits an employer from discriminating or retaliating against an employee ... for having exercised or attempted to exercise FMLA rights.").

"To establish a prima facie case of retaliation under the FMLA, a plaintiff must show that (1) she engaged in statutorily protected conduct, (2) she suffered an adverse employment action, and (3) there is a causal connection between the protected conduct and the adverse employment action." *Word v. AT & T*, 576 F. App'x 908, 916 (11th Cir. 2014).

Here, it is undisputed that Plaintiff engaged in statutorily protected activity by taking FMLA leave and that she suffered an adverse employment action when her employment was terminated. However, there is no evidence from which a reasonable jury could find a causal connection between the protected conduct and her termination. The last period for which Plaintiff's FMLA leave was approved ended in October 2016, which is not temporally proximate with her termination in February 2017. Additionally, there is no other evidence from which a reasonable jury could infer causation because it is undisputed that (1) Defendant promoted Plaintiff twice after she started taking FMLA leave for her medical condition and (2) she was terminated based on performance issues unrelated to her FMLA leave. *See de la Cruz v. Children's Tr.*, 843 F. Supp. 2d 1273, 1282 (S.D. Fla. 2012); *Griffin v. Neptune Tech. Grp.*, 2015 U.S. Dist. LEXIS 48000, at *29 (M.D. Ala. Apr. 13, 2015).

***8** Accordingly, Defendant is entitled to summary judgment on the FMLA retaliation claim in Count III of the amended complaint.

Conclusion

In sum, because there are no disputed facts from which a reasonable jury could find that Defendant unlawfully discriminated against Plaintiff (under the ADA, FCRA, or FMLA) or that the reasons given for her termination (i.e., poor job performance) were pretextual, Defendant is entitled to judgment as a matter of law on all the claims alleged in the amended complaint. Accordingly, it is

ORDERED that:

1. Defendant's motion for summary judgment (Doc. 26) is **GRANTED**.
2. The trial scheduled for September 28, 2020, is cancelled.
3. The Clerk shall enter judgment for Defendant and close the case file.

DONE and ORDERED this 7th day of August, 2020.

All Citations

Slip Copy, 2020 WL 7485361