IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Daniel D. Domenico

Civil Action No. 1:23-cv-02456-DDD-CYC

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

A&A APPLIANCE, INC. d/b/a Appliance Factory Mattress Kingdom d/b/a Appliance Factory Outlet, Inc.,

Defendant.

ORDER

I granted Defendant A&A Appliance, Inc. ("A&A") summary judgment on all claims because Plaintiff Equal Employment Opportunity Commission ("EEOC") "cannot make a prima facie case that Defendant was aware of a disability or a request for accommodation." Doc. 172 at 1. A&A seeks an order deeming the EEOC's claims as frivolous, unreasonable, and without foundation and it is thus entitled to a full award of all attorney's fees incurred in this litigation. Doc. 175. The motion is granted.

BACKGROUND

I. Relevant Facts

As set forth in the summary judgment order at Doc. 172, A&A employed Karima Javanzad from February 2019 to June 2020. In April 2020, Ms. Javanzad requested a twelve-week leave of absence under the Family Medical Leave Act ("FMLA"). The reasons for Ms. Javanzad's request appear to have varied but included either contracting COVID-19, caring for her son with COVID-19 or pneumonia, or ailing from a

gastrointestinal disorder. On April 6, 2020, A&A granted Ms. Javanzad retroactive leave from March 15 to June 7. Throughout May and early June, Ms. Javanzad communicated with A&A in a series of emails, phone calls and text messages regarding the details of her leave, when it would expire, and whether her leave could be extended. On June 10, A&A sent a letter to Ms. Javanzad informing her that she was terminated for failing to return to work following the expiration of her FMLA leave. The letter also stated that although A&A provided Ms. Javanzad an opportunity to extend her leave "if the triggering condition for FMLA was extended by [her] medical provider," it could not grant her additional leave for her gastrointestinal disorder, which was unrelated to COVID-19.

In December 2020, Ms. Javanzad filed a charge with the EEOC alleging A&A discriminated against her based on her disability and in retaliation for requesting a reasonable accommodation. After investigating the charge, the EEOC sent A&A a Letter of Determination stating it found reasonable cause to believe A&A discriminated against Ms. Javanzad because of her disabilities and inviting it to engage in conciliation.

II. Procedural History

When conciliation between the parties failed, the EEOC filed the current action against A&A on September 21, 2023, alleging violations of the Americans with Disabilities Act. Doc. 1. The operative complaint brings three claims: (1) failure to provide reasonable accommodation for disability under 42 U.S.C. § 12112(b)(5)(A); (2) disparate treatment based on disability and/or the need to provide accommodation under 42 U.S.C. §§ 12112(a) and (b)(5)(B); and (3) retaliation based on the request for reasonable accommodation under 42 U.S.C. §§ 12203(a). Doc. 21 at 8–12 (¶¶ 56–87).

Discovery closed on July 19, 2024. Doc. 43. On February 21, 2025, the EEOC moved for partial summary judgment and A&A moved for summary judgment on all claims. Docs. 128, 131. On September 3, I granted the latter. Doc. 172. I determined A&A "cannot be found to have been on notice of a disability that required accommodation under the ADA." *Id.* at 7. Relevant here, based on this finding and Tenth Circuit precedent predating the EEOC's filing this litigation in 2023, I held the EEOC had not established a prima facie case for any of its claims.[1] *Id.* at 5, 9–10.

DISCUSSION

The Americans with Disabilities Act provides courts with discretion to allow prevailing parties "a reasonable attorney's fee, including litigation expenses, and costs." 42 U.S. Code § 12205. The Tenth Circuit applies the standard laid out in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978), to the decision to award attorney's fees to a prevailing defendant in an Americans with Disabilities Act case. *Twilley v. Integris Baptist Med. Ctr., Inc.*, 16 F. App'x 923, 925–26 (10th Cir. 2001).

This standard requires:

> [A] court find[ing] that [the plaintiff's] claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so. And, needless to say, if a plaintiff is found to have brought or continued such a claim in *bad faith*, there will be an even stronger basis for charging him with the attorney's fees incurred by the defense.

[1] Relying on the same precedent as well as a 2024 Tenth Circuit opinion, I also found the EEOC failed to make a prima facie case for failure to accommodate even if Ms. Javanzad was disabled under COVID-19. Doc. 172 at 8–9.

Christiansburg Garment Co., 434 U.S. at 422 (emphasis in original). The Supreme Court cautioned:

> In applying these criteria, it is important that a district court resist the understandable temptation to engage in *post hoc* reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation. . . . Decisive facts may not emerge until discovery or trial. The law may change or clarify in the midst of litigation. Even when the law or the facts appear questionable or unfavorable at the outset, a party may have an entirely reasonable ground for bringing suit.

Id. at 421–22.

A&A seeks an order deeming the EEOC's claims frivolous, unreasonable, and without foundation to obtain attorney's fees incurred in this litigation.[2] Docs. 175; 188. A&A relies on factors from the Eleventh Circuit which the EEOC disputes is "the wrong standard." Doc. 183 at 11. But the Tenth Circuit has affirmed opinions considering the Eleventh Circuit's factors to determine whether a claim is "frivolous, unreasonable, or groundless" under *Christiansburg Garment Co.*:

> (1) whether the plaintiff established a prima facie case;
>
> (2) whether the defendant offered to settle; and
>
> (3) whether the trial court dismissed the case prior to trial or held a full-blown trial on the merits.

E.E.O.C. v. TriCore Reference Lab'ys, No. 09-cv-956 JEC/DJS, 2011 WL 11717377, at *2 (D.N.M. Apr. 27, 2011) (acknowledging "the Tenth Circuit has not adopted any criteria for" this determination and applying factors from *Walker v. NationsBank of Fla., N.A.*, 53 F.3d 1548, 1559

[2] The *Christiansburg Garment Co.* standard requires just one of these. 434 U.S. at 422 ("frivolous, unreasonable, *or* groundless" (emphasis added)).

(11th Cir. 1995)), *aff'd*, 493 F. App'x 955 (10th Cir. 2012); *see also Mayo v. Fowler Fitness, Inc.*, No. CV 02-0222 JB/RLP, 2004 WL 7337909, at *4 (D.N.M. June 15, 2004) (citing *Hughes v. Regents of the University of Colorado*, 967 F. Supp. 431, 440 (D. Colo. 1996) (citing *Walker*, 53 F.3d at 1558)), *aff'd*, 115 F. App'x 46 (10th Cir. 2004). Given these affirmations, applying the Eleventh Circuit's factors is not "wrong," as the EEOC asserts. Doc. 183 at 11.

All three of these factors weigh in favor of finding the claims here are frivolous under the *Christiansburg Garment Co.* standard. The EEOC failed to establish a prima facie case on summary judgment, A&A offered to settle, and the case was dismissed before trial. Doc. 172 (September 3, 2025 order granting A&A summary judgment because the EEOC cannot make a prima facie case); Doc. 183 at 13 (acknowledging A&A's offer to settle); Doc. 175 at 10 (citing A&A's April 18, 2024 settlement offer). This is sufficient to impose the discretionary *Christiansburg Garment Co.* standard. *See, e.g.*, *TriCore Reference Lab'ys*, 2011 WL 11717377, at *2; *Mayo*, 2004 WL 7337909, at *4; *Hughes*, 967 F. Supp. at 440. Still, additional facts weigh in favor of finding this standard satisfied.

Even applying the test the EEOC focuses on, the result is the same. The EEOC's focus on the Tenth Circuit's statement that the *Christiansburg Garment* standard "is met when a party utterly fails to produce *any* evidence in support of material issues necessary to withstand summary judgment" is misplaced. *Twilley*, 16 F. App'x at 926 (emphasis in original). Of course in the extreme case where a party fails to produce *any* evidence to support material issues the standard is met. But I don't read *Twilley* to suggest that is the only way the standard can be met. Doing so would be contrary both to the plain language of the statute and to the

guidance in *Christiansburg Garment* and *Twilley* itself.[3]

While the EEOC focuses on evidence it showed that Ms. Javanzad had a disability and requested leave as an accommodation for her disability, it did not present evidence for another element of its claims: A&A's knowledge of the claimed disability. As the summary judgment order held, "Plaintiff cannot make a prima facie case that *Defendant was aware* of a disability or a request for accommodation."[4] Doc. 172 at 1 (emphasis added). This failure required granting the motion for summary judgment and also satisfies the Supreme Court and Tenth Circuit's standards.

The EEOC claims:

> The EEOC cited emails from March-June 2020 where Javanzad notified Defendant of ***her health conditions***, including difficulty breathing and coughing after contracting what her doctor said was COVID-19 and stomach pain due to the virus, along with difficulty speaking, and requested leave to recover from those conditions and attend a June 9 endoscopy to determine her symptoms' cause and obtain appropriate treatment.

Doc. 183 at 4 (emphasis added); *accord id.* at 8 ("At filing, the EEOC possessed . . . emails Javanzad sent Defendant showing Javanzad

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[3] Indeed, the Tenth Circuit quoted *Smith v. Smythe–Cramer Co.*, 754 F.2d 180 (6th Cir. 1985) in support, showing this is but one way to satisfy the standard: "Courts have awarded attorneys fees [sic] to prevailing defendants where no evidence supports the plaintiff's position or the defects in the suit are of such magnitude that the plaintiff's ultimate failure is clearly apparent from the beginning or at some significant point in the proceedings after which the plaintiff continues to litigate." *Twilley*, 16 F. App'x at 926 (quoting *Smith*, 754 F.2d at 183).

[4] The EEOC's opposition largely relitigates summary judgment findings that are not appropriately raised here; the correct mechanism is its pending appeal. *See, e.g.*, Doc. 183 at 7 ("Overall, the EEOC presented ample evidence demonstrating Javanzad requested a reasonable accommodation for her disability to support the EEOC's *prima facie* claim.").

requested leave until she could receive her endoscopy results and get treatment. . . ."). A "health condition" does not equate to a qualifying disability under the ADA. Indeed, the alleged notifications are mostly distinct from the purported disabilities the EEOC appears to argue it presented evidence on: "chronic active gastritis," "a diagnosis of vocal cord paralysis," and "intermittent difficulty speaking." *Id.* at 4. Knowledge of a health condition is not necessarily knowledge of a disability. And as the Tenth Circuit has long held, "when an individual's disability is not obvious, the individual must inform its employer of the disability." *Robertson v. Las Animas Cnty. Sheriff's Dep't*, 500 F.3d 1185, 1196 (10th Cir. 2007)); *see also* Doc. 172 at 5, 9–10 (holding lack of notice detrimental to establishing a prima facie case for all three claims and citing *Edmonds-Radford v. Southwest Airlines, Co.*, 17 F.4th 975, 992 (10th Cir. 2021), *Hawkins v. Schwan's Home Serv., Inc.*, 778 F.3d 877, 883 (10th Cir. 2015), *Winston v. Ross*, 725 F. App'x 659, 664 (10th Cir. 2018)). The EEOC's continued effort to press the case after it became clear it had no evidence A&A knew or should have known of an actual disability, is unreasonable and groundless.

Before initiating this action on September 21, 2023, the EEOC had multiple years to investigate the facts and apply this established case law. Its initial complaint shows that in 2023 it knew (1) Ms. Javanzad was diagnosed with vocal cord paralysis and gastritis *after* her June 9 endoscopy, and thus presumably after her June 10 termination; (2) she was diagnosed with COVID-19 *after* termination; and (3) these diagnoses all took place *after* the alleged accommodation requests which ended on June 9, 2020. Doc. 1 at 5–8 (¶¶ 20, 23, 26, 34–53). This belies, at least in part, the EEOC's assertions "[t]hat the nuances of and evidence supporting the EEOC's *prima facie* claims changed throughout discovery." Doc. 183 at 8. Even if they had changed during discovery,

fact discovery closed seven months before the dispositive motion deadline. Doc. 43 (fact discovery closed July 19, 2024); Doc. 129 (February 21, 2025 dispositive motion deadline). And as A&A argues and the EEOC does not dispute, A&A raised issues of factual and legal deficiencies throughout discovery and after its closure. Doc. 175 at 8–10; Doc. 188 at 9–10; Doc. 183 at 12–13 (acknowledging continued assertions and disputing this alone entitles A&A to fees).

Nor is the EEOC a regular plaintiff. "[A] district court may consider distinctions between the Commission and private plaintiffs in determining the reasonableness of the Commission's litigation efforts." *Christiansburg Garment Co.*, 434 U.S. at 422 n.20. As the Fifth Circuit has explained:

> The EEOC must vigorously enforce the Americans with Disabilities Act and ensure its protections to affected workers, but in doing so, the EEOC owes duties to employers as well: a duty reasonably to investigate charges, a duty to conciliate in good faith, and a duty to cease enforcement attempts after learning that an action lacks merit.

E.E.O.C. v. Agro Distribution, LLC, 555 F.3d 462, 473 (5th Cir. 2009). Ms. Javanzad might have been excused from pressing these issues. The EEOC is not.

Given the totality of the circumstances, the discretionary *Christiansburg Garment Co.* standard is met. A&A is entitled to reasonable attorney's fees in this action.

CONCLUSION

It is **ORDERED** that:

Defendant A&A's Motion for Order Deeming the EEOC's Claims as Frivolous, Unreasonable, and Without Foundation, **Doc. 175**, is **GRANTED**; and

On or before **July 1, 2026**, Defendant A&A may move for reasonable attorney's fees.

DATED: June 1, 2026

BY THE COURT:

~~Daniel D.~~ Domenico
Chief United States District Judge