IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA PANAMA CITY DIVISION

THOMAS FREEMAN,

Plaintiff,

v. **Case No. 5:22-cv-48-AW-MJF**

GEOWIRELESS INC.,

Defendant.

_____/

ORDER GRANTING SUMMARY JUDGMENT

Thomas Freeman sued GeoWireless, alleging disability discrimination and retaliation under Florida law. ECF No. 1-1. GeoWireless moved for summary judgment, and the court held a telephonic hearing. Having considered the parties' arguments and the cited record portions,[1] I conclude GeoWireless is entitled to summary judgment.

I.

A party is entitled to summary judgment if it establishes that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). There is a genuine dispute of material fact if

[1] Parties must cite "particular parts of materials in the record" to support factual assertions. Fed. R. Civ. P. 56(c)(1)(A). And "[t]he court need consider only the cited materials." Fed. R. Civ. P. 56(c)(3). In my discretion, I decline to consider materials not pinpoint cited in the briefs or addressed in this order. *See* N.D. Fla. Loc. R. 56.1(F).

"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). In considering summary judgment, the court must view the record in a light most favorable to the nonmoving party, drawing all reasonable inferences it that party's favor. *Carlson v. FedEx Ground Package Sys., Inc.*, 787 F.3d 1313, 1317 (11th Cir. 2015).

II.

The following are the facts, viewed in a light most favorable to Freeman. GeoWireless is a federal contractor that provides information technology and cybersecurity services. ECF No. 18-4 ¶ 2. In February 2018, Freeman began working for GeoWireless as a web developer. *Id.* ¶ 3. He worked at the Naval Surface Warfare Center ("NSWC") in Panama City, Florida, which GeoWireless serviced through a Navy contract. *Id.*

In September 2018, Freeman notified GeoWireless that he was seeking treatment for eyesight issues and that he had detached retinas. ECF No. 18-1 at 30 (107:2-16). Freeman requested time off for the treatment, and GeoWireless treated this as a request for an accommodation, which it granted. ECF No. 18-4 ¶ 4. Freeman's last day before his leave was September 21, 2018, *id.* ¶ 4, and he had two eye surgeries before the end of the year, ECF No. 18-1 at 29-30 (105:8-106:3).

Freeman never returned from his leave, and GeoWireless terminated him in March 2019. Although Freeman needed doctor clearance (which he had not

secured), he reported that he *expected* to return in April. ECF No. 18-1 at 36 (131:4-133:16); *see also* ECF No. 20-1 ¶¶ 2, 6-7; ECF No. 21-3 ¶¶ 2, 6-7 (same document). Freeman told his supervisor (Mike Sumpter) that GeoWireless should speak to Florida Division of Blind Services so GeoWireless could learn what accommodations Freeman needed. Freeman also spoke with his supervisors about the possibility of using different computer monitors, and he asked about working remotely. ECF No. 20-1 ¶ 3.

The NSWC contract provided that the web developer position was a full-time, forty-hour-per-week role. ECF No. 18-4 ¶ 3. The contract further required a physical presence at the NSWC; the Navy did not permit contract services to be provided remotely. *Id.* But despite this prohibition, it was possible for Freeman to conduct *some of* his tasks by phone or email. ECF No. 21-4 at 11 (37:10-23). In fact, Freeman was permitted to join work calls while on leave. ECF No. 20-1 ¶ 3. And he also worked on research up to five hours per week during his leave. ECF No. 18-1 at 33-34 (121:21-124:6).[2]

In March 2019, GeoWireless determined it could not allow Freeman to remain on an extended leave. ECF No. 18-4 ¶ 7. After Freeman had been on leave for more

[2] It is unclear why Freeman was doing research on leave. Some evidence suggests it might have been on a volunteer basis. *See* ECF No. 18-2 at 15 (49:10-21); ECF No. 21-6 at 50 (49:10-21). Regardless, the parties agree Freeman was on leave at this point. ECF No. 19 at 2-5; ECF No. 20 at 10; ECF No. 20-1 ¶¶ 1, 4.

than six months, GeoWireless told Freeman that he must return to work at the base within an hour or GeoWireless would discharge him. *Id.*; ECF No. 20-1 ¶ 8. Freeman previously told GeoWireless that he would need a few days' notice to return because he could not drive himself and did not know anyone with base access who could drive him. ECF No. 20-1 ¶ 9. When Freeman indicated he was unable to return, GeoWireless terminated him. ECF No. 18-4 ¶ 7.

III.

Freeman's complaint contains two counts, both under the Florida Civil Rights Act ("FCRA"). Count I alleges disability discrimination and includes allegations that GeoWireless unlawfully terminated Freeman based on his disability, that it failed to engage in the interactive process, and that it failed to provide a reasonable accommodation. Count II alleges retaliation.

FCRA claims are analyzed under the ADA framework, so ADA precedents bind the court. *Greenberg v. BellSouth Telecomms., Inc.*, 498 F.3d 1258, 1259, 1263-64 (11th Cir. 2007) (per curiam); *Holly v. Clairson Indus., L.L.C.*, 492 F.3d 1247, 1255 (11th Cir. 2007) (citing *D'Angelo v. ConAgra Foods, Inc.*, 422 F.3d 1220, 1224 n.2 (11th Cir. 2005)).

A.

1.

"To establish a *prima facie* case for disability discrimination, a plaintiff must produce sufficient evidence to permit a jury to find that she: (1) is disabled, (2) is a qualified individual, and (3) was discriminated against because of her disability." *Lewis v. City of Union City*, 934 F.3d 1169, 1179 (11th Cir. 2019) (citing *Mazzeo v. Color Resolutions Int'l, LLC*, 746 F.3d 1264, 1268 (11th Cir. 2014)).

Here, Freeman has not shown that he is a "qualified individual" for purposes of the ADA (and thus the FCRA). A qualified individual is one who can fulfill the essential functions of his position with or without a reasonable accommodation. *D'Angelo*, 422 F.3d at 1225.[3] It is undisputed that Freeman could not fulfill the role without an accommodation. The question, then, is whether Freeman has shown that there was a reasonable accommodation that would allow him to do so. He has not.

Both in his papers and at oral argument, Freeman struggled to explain what the reasonable accommodation sought was. He wanted to work from home. He wanted to work part-time. He wanted additional time off—at least until April. He

[3] Freeman claims he was necessarily qualified for the position because he was previously hired for it. ECF No. 20 at 7. But that is not the standard. What matters is whether, at the time the adverse action was taken, he was "able to perform the essential functions of the employment position that he holds or seeks with or without reasonable accommodation." *D'Angelo*, 422 F.3d at 1226 (quoting *Reed v. Heil Co.*, 206 F.3d 1055, 1061 (11th Cir. 2000); then citing *Lucas v. WW Grainger, Inc.*, 257 F.3d 1249, 1255 (11th Cir. 2001)).

wanted a special computer monitor at work. (Of these, only the computer monitor has any obvious connection to a vision impairment.)

The Eleventh Circuit has "made clear that 'an employer is not required to accommodate an employee in any manner that the employee desires—or even provide that employee's preferred accommodation.'" *Owens v. Governor's Office of Student Achievement*, 52 F.4th 1327, 1335 (11th Cir. 2022) (quoting *D'Onofrio v. Costco Wholesale Corp.*, 964 F.3d 1014, 1022 (11th Cir. 2020)).[4] All an employer must do is provide a "reasonable accommodation," and an accommodation is reasonable "only if it enables the employee to perform the essential functions of the job." *Lucas*, 257 F.3d at 1255-56.

Freeman has not shown that the request for extended leave was reasonable because he has not cited evidence suggesting he would soon be able to return to work. True, Freeman said he could return in April after clearance from his physicians, ECF No. 21-3 ¶¶ 6, 8, but he has not pointed to evidence showing that he ever obtained that clearance. Nor has he shown it would be reasonable to wait for another month on the hope that he *might* then be able to work. *See Wood v. Green*, 323 F.3d 1309, 1314 (11th Cir. 2003) (noting that "requesting an accommodation of

[4] The *Owens* decision addressed the Rehabilitation Act, but "[c]ases decided under the Rehabilitation Act are precedent for cases under the ADA, and vice-versa." *Cash v. Smith*, 231 F.3d 1301, 1305 n.2 (11th Cir. 2000) (citing *Pritchard v. S. Co. Servs.*, 92 F.3d 1130, 1132 n.2 (11th Cir. 1996)).

indefinite leaves of absence so that [plaintiff] could work at some uncertain point in the future" was not a reasonable accommodation). Although "the ADA might be violated if an employee was terminated immediately upon becoming disabled without a chance to use his leave to recover," *id.* (cleaned up), here Freeman was on leave for months before his termination.

Freeman has not pointed to evidence that the request for remote work was reasonable either. While he cites evidence that the Navy permitted some personnel to work remotely, ECF No. 20-1 ¶ 1, Freeman cites no evidence that those were GeoWireless employees. And Freeman identifies no evidence to dispute GeoWireless's evidence that the Navy contract would not permit GeoWireless employees to work remotely. ECF No. 18-3 at 18-19 (59:9-62:3); ECF No. 18-4 ¶ 3. Indeed, he testified he was not sure if GeoWireless's Navy contract would permit remote work. ECF No. 18-1 at 21 (72:22-73:2). Moreover, his insistence that *some* of his work could be done from home does nothing to show that remote work would allow him to do *all* essential functions of the job.

Similarly, Freeman identified no evidence to show that part-time work was available. GeoWireless submitted evidence showing that the position was a full-time, in person, forty-hour-per-week position, and that the Navy contract required a full-time employee. ECF No. 18-3 at 18-19 (59:9-62:3); ECF No. 18-4 ¶ 3. "[W]hile part-time work may be reasonable if the employer has part-time positions 'readily

available,' there is no duty to create a part-time position" if there are no other part-time positions. *Rabb v. Sch. Bd. of Orange Cnty.*, 590 F. App'x 849, 851 (11th Cir. 2014).

Regardless, Freeman has not shown how part-time or remote work would accommodate his blindness. *See Owens*, 52 F.4th at 1335 ("[A]n employee must provide [his] employer enough information to assess how [his] proposed accommodation would help [him] overcome [his] disability's limitations."). At the hearing, his counsel speculated that part-time work might help because if he used a screen reader it would take him longer to complete his tasks. But she pointed to no evidence to support that. Similarly, she said the work-from-home arrangement would help because he had equipment at home that would allow him to do the work. Again, she pointed to no evidence in support. And even if she had, that would only suggest that he needed that particular equipment (which counsel did not specify)—not a work-from-home arrangement.

Freeman also insists that GeoWireless refused to provide new computer monitors for him. ECF No. 20-1 ¶ 6. But he testified that he never requested any specific equipment, *cf. Owens*, 52 F.4th at 1335, and that GeoWireless would have evaluated what monitors were needed later—when he was able to return to work. ECF No. 18-1 at 36 (130:21-131:3); ECF No. 20-1 ¶ 6; *see also* ECF No. 18-2 at 10

(26:1-28:3). He has, in short, not shown that with any special computer monitor, he would have been able to return to work (much less full-time).

Finally, Freeman argues that he invited GeoWireless to visit with representatives from Blind Services to explore other possible accommodations but that GeoWireless refused. Assuming this to be true, it still does not support a claim. Employers do have an obligation to engage in the interactive process, but only after the employee makes a specific demand for an accommodation and shows that it is reasonable. *Owens*, 52 F.4th at 1334. That never happened here.

In sum, Freeman has failed to show that any of his requested accommodations were reasonable.[5] He has not shown that he was a qualified individual, so GeoWireless is entitled to summary judgment on the discrimination and failure-to-accommodate claims cannot succeed.

2.

As to the disability-discrimination claim, there is a separate, independent reason GeoWireless is entitled to summary judgment. Even assuming Freeman had made out a prima facie case of discrimination, the claim would fail under the

[5] Freeman also asserts that GeoWireless's demand that he return to work in one hour—rather than, say, a week—was unreasonable. That may have been unreasonable as a general matter, but for purposes of the legal claims at issue, it makes no difference. Freeman has not shown that a week's notice would have mattered, much less that additional notice was a means of accommodating his disability.

McDonnell Douglas framework.[6] GeoWireless has articulated a legitimate, nondiscriminatory reason for Freeman's termination: GeoWireless made a business decision, determining that it could not allow Freeman to continue his indefinite leave of absence. ECF No. 19 at 13-14; ECF No. 18-4 ¶ 7. This satisfies the "exceedingly light" burden to proffer a legitimate reason. *Perryman v. Johnson Prods. Co.*, 698 F.2d 1138, 1142 (11th Cir. 1983). That means Freeman has the burden to show pretext, and he did not meet this burden.

Freeman has not pointed to evidence showing "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in [GeoWireless]'s rationale." *Holland v. Gee*, 677 F.3d 1047, 1055-56 (11th Cir. 2012) (cleaned up). In fact, Freeman never mentions the pretext analysis in his response at all. And even if he had undermined GeoWireless's proffered nondiscriminatory reason, Freeman certainly has not pointed to evidence from which a jury could conclude GeoWireless's "true motivation" was discrimination. *Matamoros v. Broward Sheriff's Off.*, 2 F.4th 1329, 1336 (11th Cir. 2021) (citing *Sullivan v. Nat'l R.R. Passenger Corp.*, 170 F.3d 1056, 1059 (11th Cir. 1999)).

[6] The *McDonnell Douglas* framework does not apply to a pure failure-to-accommodate claim. *Holly*, 492 F.3d at 1262.

B.

GeoWireless is entitled to summary judgment on Freeman's retaliation claim also. The *McDonnell Douglas* framework applies to FCRA retaliation claims. *Matamoros*, 2 F.4th at 1336-38. Under that framework, Freeman must establish a prima facie case of retaliation. If he does, GeoWireless must articulate a nonretaliatory, legitimate reason for the adverse action. And if GeoWireless does so, then Freeman must show pretext. *Id.*

As a threshold matter, Freeman did not develop any retaliation argument in his summary-judgment response. All Freeman said of retaliation is that the Florida Commission on Human Relations issued a finding of cause and that "Plaintiff has met the elements of proof required . . . for retaliation due to his request for accommodations." ECF No. 20 at 1, 7. This failure to formulate an argument at summary judgment provides an independent basis for dismissing the retaliation claim. *Resol. Tr. Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995) ("There is no burden upon the district court to distill every potential argument that could be made based upon the materials before it on summary judgment. Rather, the onus is upon the parties to formulate arguments; grounds alleged in the complaint but not relied upon in summary judgment are deemed abandoned." (citations omitted)). In short, Freeman has not made any prima facie case. That is the end of the matter.

Regardless, even if I assumed a prima facie case, GeoWireless would still be entitled to summary judgment. As noted above, GeoWireless offered a legitimate, nonretaliatory reason for the termination. *See* ECF No. 18-4 ¶ 7; ECF No. 19 at 17-18. That leaves Freeman to show pretext, and he has pointed to no evidence of any. In fact, he says nothing about pretext at all.

CONCLUSION

GeoWireless's motion for summary judgment (ECF No. 17) is GRANTED. The clerk will enter a judgment that says: "This case was resolved at summary judgment. All claims are dismissed on the merits. Plaintiff will take nothing." GeoWireless's motion to strike (ECF No. 22) is DENIED as moot. The clerk will close the file.

SO ORDERED on February 2, 2023.

s/ *Allen Winsor*
United States District Judge