

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE

CALVIN LEWIS, JR.,	)	
Plaintiff	)	
	)	
v.	)	Docket No: 1:21-CV-00224-GZS
	)	
T-MOBILE USA, Inc.	)	
Defendant.	)	

**DEFENDANT’S OBJECTION TO RECOMMENDATION AND MEMORANDUM IN SUPPORT OF OBJECTION**

Defendant T-Mobile USA, Inc. (“T-Mobile” or “Defendant”), by and through its undersigned counsel and pursuant to Fed. R. Civ. P. 72(b)(2), hereby files its objections to the Magistrate Judge’s Recommended Decision on Defendant’s Motion to Dismiss (the “Recommendation”). The grounds upon which Defendant’s objections are based are set forth in the following Supporting Memorandum of Law.

**A. Defendant Does Not Object to the Recommendation’s Findings as to Plaintiff’s Age Discrimination in Employment Act (ADEA) Claim.**

T-Mobile does not object to the Recommendation’s findings as to Plaintiff’s claims under ADEA and respectfully requests that the Court adopt the Recommendation’s findings that Plaintiff has failed to present sufficient facts and information to support a finding of violation of the ADEA.

**B. Defendant Objects to the Recommendation’s Findings as to Plaintiff’s Americans with Disabilities Act (ADA) Claim(s).**

As set forth in detail below, the Recommendation includes errors of law and fact as it relates to the Court’s findings related to Plaintiff’s claims under the Americans with Disabilities Act.

**i. The Plausibility Inquiry Under Iqbal/Twombly Requires the Court to Review Only the Factual Allegations, not the Legal Conclusions, Set Forth in Plaintiff's Pleadings.**

As set forth in detail below, Defendant respectfully submits that the Recommendation improperly includes facts outside of the pleading to support the Recommendation and the facts set forth in the Complaint and accompanying documents does not plausibly support a violation of the Americans with Disabilities Act. In Stile v. Somerset Cty., No. 1:13-CV-00248, 2015 WL 667814, at \*2 (D. Me. Feb. 17, 2015), this Court noted:

The motion to dismiss challenges the legal sufficiency of the allegations in a complaint and a court must determine “whether, construing the well-pleaded facts of the complaint in the light most favorable to the plaintiff[ ], the complaint states a claim for which relief can be granted.” The law allows the Court to consider a limited set of documents in ruling on a motion to dismiss, including documents attached to the complaint or any other documents “integral to or explicitly relied upon in the complaint, even though not attached to the complaint.”

Id. (citations omitted). The Recommendation relies upon Waterman v. White Interior Sols., No. 2:19-cv-00032, 2019 WL 5764661, at \*2 (D. Me. Nov. 5, 2019), for the proposition that a Court can rely upon the response to a motion to dismiss to understand the nature and basis of a *pro se* litigants claims. In Waterman, the documents cited in support of the factual findings were limited to the documents accompanying the Complaint. This Court has also described its obligations with reference to First Circuit case law noting:

The First Circuit explained that “[t]he plausibility inquiry necessitates a two-step pavane.” García-Catalán v. United States, 734 F.3d 100, 103 (1st Cir. 2013) (citing Rodríguez-Reyes v. Molina-Rodríguez, 711 F.3d 49, 53 (1st Cir. 2013)). “First, the court must distinguish ‘the complaint's factual allegations (which must be accepted as true) from its conclusory legal allegations (which need not be credited).’ ” Id. (quoting Morales-Cruz v. Univ. of P.R., 676 F.3d 220, 224 (1st Cir. 2012)). “Second, the court must determine whether the factual allegations are sufficient to support ‘the reasonable inference that the defendant is liable for the misconduct alleged.’ ” Id. (quoting Haley v. City of Boston, 657 F.3d 39, 46 (1st Cir. 2011) (quoting Iqbal, 556 U.S. at 678, 129 S.Ct. 1937)).

Cutting v. Down E. Orthopedic Assocs., P.A., 278 F. Supp. 3d 485, 491 (D. Me. 2017).

Here, the only allegations that are included in Plaintiff's pleadings related to his ADA claim are as follows:

- 1) T-Mobile discriminated against me by allowing Broadspire their agent for leave of absence to deny me short-term benefits because of my disability of PTSD. (Complaint at 4.)
- 2) T-Mobile also discriminated when my request for an accommodation on 1/23/2020 was not approved. (Complaint at 5.)
- 3) I am disabled. (CMECF Doc. 1-2, at 1.)
- 4) I am currently employed as a coach at T-Mobile USA, Inc. ("Respondent"). (CMECF Doc. 1-2, at 1.)
- 5) Respondent is aware of my disability because I have had approved intermittent leave for my \_\_\_\_\_ since 2012. (CMECF Doc. 1-2, at 1.)
- 6) On or around June/17/19 I applied for short term disability related to my disability. (CMECF Doc. 1-2, at 1.)
- 7) On or around August/22/19 my request for short term disability was denied because I did not meet the definition of disability as outlined in their disability Program. (CMECF Doc. 1-2, at 1.)
- 8) I believe that the reason for the denial was because of my disability. I was denied because of how my therapist notes were [interpreted] when describing my symptoms. (CMECF Doc. 1-2, at 1.)
- 9) I believe Respondent discriminated against me based on my disability. (CMECF Doc. 1-2, at 1.)
- 10) The Respondent delayed my return to work after getting a certification to return to work from my therapist as another form of discrimination based on my disability. (CMECF Doc. 1-2, at 1.)

There are factual allegations included in Plaintiff's Intake Questionnaire (CMECF Doc. 1-1), which was attached to Plaintiff's Complaint, however none of the allegations included in that document relate to Plaintiff's ADA claim. Pursuant to this Court's precedent, see Cutting, 278

F. Supp. 3d at 491, if we remove conclusory legal allegations we are left with the following:

- 1) T-Mobile [allowed] Broadspire their agent for leave of absence to deny me short-term benefits. (Complaint at 4.)
- 2) I have a PTSD. (Complaint at 4.)
- 3) T-Mobile did not approve my request for an accommodation on 1/23/2020. (Complaint at 5.)
- 4) I am currently employed as a coach at T-Mobile USA, Inc. ("Respondent"). (CMECF Doc. 1-2, at 1.)
- 5) Respondent is aware I have had approved intermittent leave since 2012. (CMECF Doc. 1-2, at 1.)

- 6) On or around June/17/19 I applied for short term disability. (CMECF Doc. 1-2, at 1.)
- 7) On or around August/22/19 my request for short term disability was denied because I did not meet the definition of disability as outlined in their disability Program. (CMECF Doc. 1-2, at 1.)
- 8) I was denied because of how my therapist notes were [interpreted] when describing my symptoms. (CMECF Doc. 1-2, at 1.)
- 9) The Respondent delayed my return to work after getting a certification to return to work from my therapist. (CMECF Doc. 1-2, at 1.)

With these factual allegations, the determination must be made as to whether the behavior alleged amounts to disability discrimination under the ADA—T-Mobile contends it does not for the reasons set forth in previous briefing and as described in further detail below.

**ii. The Recommendation Improperly Relies Upon Facts Outside of the Record in Support of Its Findings.**

The Recommendation improperly relies upon facts outside of the pleadings to support its conclusion that Plaintiff suffers from a disability as defined by the ADA. In order to maintain a claim under the ADA, for disability discrimination, “Plaintiff must demonstrate: (1) that he has an impairment that qualifies as a ‘disability’ under the applicable statutory definition; (2) that he could perform the essential functions of the job, with or without reasonable accommodation; and (3) that Defendant took adverse action against him, in whole or in part, because of his disability.” Young v. City of Bar Harbor, 2015 WL 2337868, at \*8 (D. Me. Apr. 23, 2015).

The Maine Law Court in Grief v. Independent Fabrication, Inc., 215 A.3d 1289, 1291, 2019 ME 142, ¶ 4 (Me. 2019), stated, “the application of the law to facts outside of the pleadings is not allowed on a motion to dismiss,” and “[a]lthough the parties may stipulate to facts relevant to the court’s consideration of a motion to dismiss, including facts outside of the pleadings, in the absence of the parties’ clear agreement to present such stipulated facts, a court may not consider matters outside the pleadings on a motion to dismiss, except in limited circumstances.” As in

Grief, none of the limited circumstances are present in this matter.<sup>1</sup> This standard was similarly set forth by this Court in Stile v. Somerset Cty., 2015 WL 667814, at \*2.

In Waterman v. White Interior Sols., No. 2:19-cv-00032, 2019 WL 5764661, at \*2 (D. Me. Nov. 5, 2019), cited in support of the Recommendation findings, the Court indicated that responses to motions to dismiss can be used to understand the nature and basis of a claim. Waterman, however, does not go so far as it provide a court with the ability to rely upon factual allegations outside of the pleadings. This finding is further set forth—but not expanded—in the decisions issued in Wall v. Dion, 257 F. Supp. 2d 316, 318 (D. Me. 2003), and Sirois v. United States, 2018 WL 2142980, \*1 (D. Me. May 9, 2018).

In the current matter, the Recommendation indicates that “Plaintiff alleges that he has PTSD, depressive disorder, generalized anxiety disorder, and panic disorder, which conditions have caused Plaintiff to request several leaves of absence from his work with Defendant.” (Recommendation, at 5.) In support of this conclusion, the Court cites to Complaint Exhibit 2 at 1; none of this information is however included in this document and the conclusion that any of this information (aside from having PTSD) is set forth in the Complaint or accompanying documents, is not supported by Plaintiff’s Complaint.

Page 4 of Plaintiff’s Complaint identifies PTSD as the disability in question (but as discussed below, determining that the PTSD is a disability is a legal conclusion). On that same page of the Complaint, Plaintiff states, “T-Mobile discriminated against me by allowing Broadspire their agent for leave of absence to deny me short-term benefits because of my

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<sup>1</sup> As set forth in Grief, the narrow exceptions previously identified are “official public documents, documents that are central to the plaintiff’s claim, and documents referred to in the complaint may be properly considered on a motion to dismiss without converting the motion to one for a summary judgment when the authenticity of such documents is not challenged.” 215 A.3d 1289, 2019 ME 142, n.2.

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