

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ALVIN EMORY, :  
 :  
 Plaintiff, :  
 : Civil Action No. 02-1466 JJF  
v. :  
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ASTRAZENECA PHARMACEUTICALS, :  
 :  
 Defendant. :  
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Attorneys for Defendant

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**MEMORANDUM OPINION**

December 3, 2003

Wilmington, Delaware

**Farnan, District Judge**

Presently before the Court is Defendant AstraZeneca's Motion for Summary Judgment (D.I. 51-1). For the reasons discussed, the Motion for Summary Judgment will be granted.

**BACKGROUND**

Plaintiff, Alvin Emory, was born with cerebral palsy and paralysis on his right side. Mr. Emory's right arm, hand, and leg are partially deformed and he has problems manipulating objects, gripping, reaching overhead, walking, or carrying objects for long periods of time. As a result of his impairments, Mr. Emory also reads and speaks slowly.

Mr. Emory graduated from high school, where he attended special education classes. He is married with two children and is involved in the community as a volunteer fireman, family mediator, and Shriner. In addition to his position at AstraZeneca, Mr. Emory owns his own cleaning business, but employs individuals to assist him in its operation while he performs the labor.

Mr. Emory has been employed at AstraZeneca for 26 years in a variety of positions, but has spent the majority of his career as a Maintenance Custodian in the Site Engineering and Maintenance Department. Mr. Emory has also spent time as a Detail Foreman, a position with administrative and managerial responsibilities. During his tenure at AstraZeneca, Mr. Emory has received positive

performance evaluations and has taken classes to further his job training.

In July 2001, after internal restructuring, AstraZeneca created the position of Second Shift Services Coordinator ("SSSC") and posted the opening. Mr. Emory and two other candidates, Valerie Kuhlman, an AstraZeneca employee, and Richard Billingsley were interviewed for the job. A three-person hiring panel selected Ms. Kuhlman for the position. Mr. Emory asserts that AstraZeneca's failure to promote him to the position was an act of disability discrimination.

After unsuccessfully filing charges of discrimination with the Delaware Department of Labor ("DDOL") and the Equal Employment Opportunity Commission ("EEOC"), Mr. Emory filed this action alleging that AstraZeneca violated the Americans With Disabilities Act ("ADA"). Defendants have moved for summary judgment on the grounds that Mr. Emory cannot establish a prima facie case of discrimination under the ADA. The motion has been fully briefed and is ripe for the Court's review.

## **DISCUSSION**

### **I. Parties' Contentions**

Mr. Emory contends that he meets the statutory definition of a disabled person and is entitled to protection from employment discrimination under the ADA. Mr. Emory contends that he has major physical and mental limitations which make it extremely

difficult for him to accomplish the basic tasks of everyday living. Mr. Emory also contends that his medical records, school records, mental testing, and employment records are evidence of his severe physical and learning disabilities and demonstrate that he is substantially limited in the major life activities of completing manual tasks and learning. Mr. Emory does not allege that he was discriminated against because he is perceived to be disabled.

In response, AstraZeneca contends that Mr. Emory has not offered any evidence that he is substantially limited in a major life activity. AstraZeneca argues that even if the court accepts Mr. Emory's description of his physical and mental limitations, Mr. Emory has not shown that he is substantially limited in performing any major life activities.

## **II. The Legal Standards**

### **A. Motion for Summary Judgment**

Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the

light most favorable to the non-moving party. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). Thus, to properly consider all of the evidence, the "court should give credence to the evidence favoring the non-movant as well as that evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that evidence comes from disinterested witnesses." Id. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-251 (1986))

To defeat a motion for summary judgment, Rule 56(c) requires the non-moving party to show that there is more than "some metaphysical doubt as to the material facts.... In the language of the Rule, the non-moving party must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (quoting Fed. R. Civ. P. 56(c)). Accordingly, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). Additionally, the Court should consider the evidentiary standard that applies at trial. See Eli Lilly & Co. v. Barr Labs, Inc., 251 F.3d 955, 962 (Fed. Cir. 2001) (stating that "[w]hen evaluating a motion for summary judgment, the court views the record evidence through

the prism of the evidentiary standard of proof that would pertain at trial to the merits”) (citations omitted).

B. The Meaning Of “Disability” Under The ADA

For a plaintiff to establish discrimination under the ADA, he initially must establish that he “(1) has a ‘disability’ (2) is a ‘qualified individual’ and (3) has suffered an adverse employment decision because of that disability.” Deane v. Pocono Medical Center, 142 F.3d 138, 142 (3d Cir. 1998). Pursuant to 42 U.S.C. § 12102(2), an individual has a “disability” within the meaning of the ADA if, he or she has “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.” If the plaintiff cannot demonstrate that his or her impairment meets the definition of a “disability” under the ADA, the plaintiff cannot establish a prima facie case of disability discrimination. Kelly v. Drexel, 94 F.3d 102, 105, 109 (3d Cir. 1996). In such circumstances, summary judgment is appropriate. Id.

**III. Decision and Rationale**

A. Whether Mr. Emory Is Disabled Within The Meaning Of The ADA Based On A Physical Or Mental Impairment That Substantially Limits A Major Life Activity

When interpreting the provisions of the ADA, the court may turn to the EEOC regulations for guidance. See Williamson v.

International Paper Co., 85 F. Supp. 2d 1184, 1189 (S.D. Ala. 2000) (citing Gordon v. E.L. Hamm & Associates, Inc., 100 F. 3d 907, 911 (11th Cir. 1996)). The EEOC defines a physical or mental impairment as:

- (1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine; or
- (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

29 C.F.R. §1630.2(h). Applying this definition to Mr. Emory's condition, the Court agrees that Mr. Emory is physically and mentally impaired by cerebral palsy. Cerebral palsy is defined as a physical and mental impairment in 28 C.F.R. § 35.104(1)(ii).

However, physical or mental impairments do not necessarily constitute a disability within the meaning of the ADA. For Mr. Emory's impairments to be considered disabilities under the ADA, his impairments must substantially limit his ability to perform a major life activity. 42 U.S.C.A. § 12102(2); Thalos v. Dillon Companies, Inc., 86 F. Supp. 2d 1079, 1083 (D. Colo. 2000). Major life activities are functions "of central importance to daily life." Toyota Motor Mfg., Kentucky, Inc. v. Williams, 534 U.S. 184, 197 (2002). The ADA does not list specific major life activities; however, court decisions and the EEOC's guidelines

have made it clear that manual tasks, walking, and learning are major life activities. See, 29 C.F.R. §1630.2(h)(I); Toyota, 534 U.S. at 197-98 (stating that walking and performing manual tasks are major life activities); Doyal v. Oklahoma Heart, Inc., 213 F.3d 492, 496 (10th Cir. 2000) (stating that learning is a major life activity).

An individual is substantially limited in his or her ability to complete a major life activity, when that person is at least “[s]ignificantly restricted as to the condition, manner or duration under which [the] individual can perform [the] particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform [the] major life activity.” 29 C.F.R. § 1630.2(j)(1); Toyota, 534 U.S. at 195-96. In determining whether a substantial limitation exists, a court must examine the “nature and severity of the impairment,” “duration or expected duration of the impairment,” and “permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.” 29 C.F.R. § 1630.2(j)(2); Toyota, 534 U.S. at 195-96. Additionally, a court must examine an individual’s ability to compensate for his or her disability and determine an impairment’s effect on the particular individual. Albertson’s Inc. v. Kirkingburg, 527 U.S. 555, 565-67 (1999).

In this case, Mr. Emory contends that his impairments substantially limit his ability to perform the major life



activities of performing manual tasks, walking, and learning. After reviewing the record evidence in the light most favorable to Mr. Emory, the Court concludes that Mr. Emory has not established that his impairments substantially limit a major life activity. Mr. Emory is able to perform tasks which are of "central importance to people's daily lives." Toyota at 197, 200-201 (holding that plaintiff's ability to do household chores, bathe, and brush her teeth despite her impairments demonstrated that she was not significantly restricted in the ability to perform manual tasks). Although Mr. Emory has some limitations in his ability to grip, carry and manipulate objects and needs assistance in accomplishing some household chores, child care duties, and activities involving his right side, his limitations are not substantial or severe. Mr. Emory is able to perform a variety of important daily tasks. He is able to drive a car, engage in marital relations, raise his children, operate his cleaning business, perform as a clown, counsel families as a mediator, and assist his community as a firefighter. (Appendix A to AstraZeneca's Motion for Summary Judgment, Deposition of Alvin Emory, D.I. 53 at A04, A19, A27, A29-31). Mr. Emory may possess a slight limp, but he is not substantially limited in his ability to walk. Thus, while Mr. Emory may accomplish some of his daily activities in an unconventional manner as a result of his impairments, he is not substantially limited in his ability to perform those activities. Accordingly, the Court concludes that

Mr. Emory has not demonstrated that his impairments are disabilities within the meaning of the ADA.

As for Mr. Emory's contention that he is substantially limited in the major life activity of learning, the Court likewise concludes that while Mr. Emory may have learning impairments, those impairments do not rise to the level of a disability within the meaning of the ADA. When determining whether a person is substantially limited in his or her ability to learn, courts must determine how the individual's difficulty to learn compares with the average person's difficulty and whether this disparity means the individual is significantly restricted. See Doyal v. Oklahoma Heart, Inc., 213 F.3d 492, 497 (10th Cir. 2000). Mr. Emory may be limited in his literary and computational skills, but the Court cannot conclude that those limitations are substantial. The record indicates that Mr. Emory graduated from high school and updated his computer skills through occupational training. Mr. Emory passed the certification requirements to become both a family mediator and a fireman, and he has consistently earned positive performance evaluations during his 26 years of employment with AstraZeneca. Because the record does not support Mr. Emory's contention that he is substantially limited in the major life activity of learning, the Court concludes that Mr. Emory cannot establish that his learning difficulties amount to a disability under the ADA.

In sum, the Court concludes that Mr. Emory has not adduced sufficient evidence that his impairments substantially limit his ability to perform at least one major life activity. Because Mr. Emory cannot establish that he suffers from a disability within the meaning of the ADA based on an impairment which substantially limits a major life activity, the Court will grant Defendant's Motion For Summary Judgment.

B. Whether Mr. Emory Is Disabled Within The Meaning Of The ADA Based On A Record Of Disability

Mr. Emory also contends that he is disabled because he has a record of disability. Mr. Emory contends that his medical records, school records, occupational testing, and occupational records demonstrate a disability. After reviewing Mr. Emory's records, the Court agrees with Mr. Emory that those records demonstrate that Mr. Emory possesses a physical and mental impairment. However, the Court is not persuaded that these records demonstrate that Mr. Emory's impairments substantially limit his ability to perform or complete a major life activity. "[I]f an impairment does not substantially limit a major life activity, a history of those same impairments cannot constitute a record of impairment." Buskirk v. Apollo Metals, 116 F. Supp.2d 591, 600 (E.D. Pa. 2000). As the Court has previously concluded, the record evidence does not establish that Mr. Emory is substantially limited in any major life activity. The records of Mr. Emory's impairments are consistent with this conclusion.

Accordingly, the Court will grant Defendants' Motion For Summary Judgment on the grounds that Mr. Emory cannot establish that he suffers from a disability within the meaning of the ADA based on his record of physical and mental impairments.

#### **CONCLUSION**

For the reasons discussed, the Court will grant Defendant AstraZeneca's Motion for Summary Judgment.

An order consistent with this Memorandum Opinion will be entered.

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 Defendant. :  
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**O R D E R**

At Wilmington, this 3rd day of December 2003, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Defendant AstraZeneca's Motion for Summary Judgment (D.I. 51) is GRANTED.

2. The Clerk is directed to enter final judgment in favor of Defendant, AstraZeneca Pharmaceuticals, and against Plaintiff, Alvin Emory.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE

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**FINAL JUDGMENT IN A CIVIL CASE**

For the reasons set forth in the Court's Memorandum Opinion  
and Order dated December 3, 2003;

IT IS ORDERED AND ADJUDGED that judgment be and is hereby  
entered in favor of Defendant, AstraZeneca Pharmaceuticals, and  
against Plaintiff, Alvin Emory.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE

Dated: December 3, 2003

DEBORAH L. KRETT  
(By) Deputy Clerk