IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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| WILBERT J. SPENCER, JR., | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 03-31 GMS |
| | ) | |
| VERIZON CONNECTED SOLUTIONS, INC., | ) | |
| | ) | |
| | ) | |
| Defendant. | ) | |

**MEMORANDUM**

## I. INTRODUCTION

On January 14, 2003, plaintiff Wilbert J. Spencer, Jr. filed a *pro se* complaint against Verizon Connected Solutions, Inc. ("VCSI"), alleging employment discrimination in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et seq*. (D.I. 3.) Presently before the court is the defendant's Motion fo Summary Judgment (D.I. 32). Also pending are four outstanding discovery motions by Spencer. (D.I. 25; D.I. 27; D.I. 29; D.I. 38.) For the following reasons, the court will grant VCSI's motion for summary judgment and deny Spencer's outstanding motions as moot.

## II. FACTS

VCSI provides telecommunications installation and construction services, as well as telecommunications equipment to residence and business customers. (D.I. 33 at 2.) Spencer began employment with VCSI on January 12, 1998, as a Multi-Media Services Technician ("MMST"). (D.I. 34 at A52.) His duties as an MMST were to provide installation, maintenance, and multimedia repair services to the VCSI's residential and business customers. (Id., Ex. A.) One physical requirement of an MMST is the ability to move and lift at least 100 pounds. (Id.) In addition to

moving and lifting, Spencer routinely crawled in tight spaces and climbed telephone poles. (Id. at A18.)

On December 17, 1999, Spencer injured his back in a slip-and-fall accident while on the job. (Id. at A24-A26.) He was hospitalized for the injury and diagnosed with a herniated disc. (Id. at A53.) In January of 2000, Spencer was cleared to return to work on "modified" or "medium" duty (i.e., restricting him from lifting more than twenty-five (25) pounds, and from repetitive bending) by Dr. Peter Bandera, M.D. (Id., Ex. B.) On July 19, 2000, Spencer was examined by another physician, Dr. Jerry Case, M.D. (Id., Ex. C.) Dr. Case concluded that Spencer was "capable of work, avoiding repeated bending and twisting and no lifting over 30 pounds." (Id.) Dr. Case further stated that "someone with a herniated disk would have a permanent restriction of no repetitive lifting over 50 pounds." (Id.)

Because of Spencer's limitations VCSI was unable to permit him to resume his employment as an MMST, however the employee at VCSI in charge of responding to EEO complaints did correspond with Spencer regarding other job opportunities within the company. (Id. at A54; Ex. I-O.) On January 12, 2001, Spencer was "administratively discharged from his position because he had a permanent medical restriction rendering him unable to perform the essential functions of the MMST position." (Id. at A56.)

During this time, Spencer filed a complaint with the Delaware Department of Labor alleging discrimination based on disability and race (Id., Ex. D), but his case was dismissed (Id., Ex. E). He also filed a complaint with the Equal Employment Opportunity Commission, which terminated its processing of his charge and issued a "right to sue" letter. (Id., Ex. F.) Spencer filed the present action on January 14, 2003. (D.I. 3.)

## III. STANDARD OF REVIEW

Summary judgment is appropriate when there are no genuine issues of material fact. *See* Fed. R. Civ. P 56(c). A fact is material if it might affect the outcome of the case, and an issue is genuine if the evidence is such that a reasonable factfinder could return a verdict in favor of the nonmovant. *See In re Headquarters Dodge, Inc.*, 13 F.3d 674, 679 (3d Cir. 1993) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When deciding a motion for summary judgment, the court must evaluate the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. *See Pacitti v. Macy's*, 193 F.3d 766, 772 (3d Cir. 1999). The nonmoving party, however, must demonstrate the existence of a material fact supplying sufficient evidence – not mere allegations – for a reasonable jury to find for the nonmovant. *See Olson v. General Elec. Aerospace*, 101 F.3d 947, 951 (3d Cir. 1996) (citation omitted). To raise a genuine issue of material fact, the nonmovant "need not match, item for item, each piece of evidence proffered by the movant but simply must exceed the 'mere scintilla' [of evidence] standard." *Petruzzi's IGA Supermarkets, Inc. v Darling-Delaware Co.,* 998 F.2d 1224, 1230 (3d Cir. 1993) (citations omitted). The nonmovant's evidence, however, must be sufficient for a reasonable jury to find in favor of the party, given the applicable burden of proof. *See Anderson*, 477 U.S. at 249-50.

## IV. DISCUSSION

To survive VCSI's motion for summary judgment, Spencer bears the burden of supplying evidence sufficient to permit a reasonable jury to find in his favor on each element of his *prima facie* ADA discrimination claim, which are:

(1) He is a disabled person within the meaning of the ADA;
(2) He is otherwise qualified to perform the essential functions of the job, with or

without reasonable accommodations by the employer; and

(3) He has suffered an otherwise adverse employment decision as a result of discrimination.

*Gaul v. Lucent Techs., Inc.*, 134 F.3d 576, 580 (3d Cir. 1998).

At step (1), Spencer must present evidence that he is disabled within the meaning of the relevant statute:

The term "disability" means, with respect to an individual –

(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.

42 U.S.C. § 12102(2) (1995).

Under § 12102(2)(A), "'[m]ajor life activities' . . . refers to those activities that are of central importance to daily life." *Toyota Motor Mfg. v. Williams*, 534 U.S. 184, 197 (2002). "In order for performing manual tasks to fit into this category – a category that includes such basic abilities as walking, seeing, and hearing – the manual tasks in question must be central to daily life. If each of the tasks included in the major life activity of performing manual tasks does not independently qualify as a major life activity, then together they must do so." *Id.*

Spencer has not put forth sufficient evidence tending to demonstrate that the manual tasks to which he has been limited by his physicians preclude him from major life activities. Going by the most conservative estimate, Spencer is limited to lifting no more than twenty-five (25) pounds, and he is to avoid repetitive bending. (D.I. 34, Ex. B.) Other than that, he is able to stand, walk with a normal gait, and he has been cleared for work within his restrictions. (D.I. 34, Ex. A.) It does not take a vocational expert to conclude that Spencer is physically able to perform a multitude of jobs. Although it may be his desire to resume his former job as an MMST, he no longer meets the physical

requirements for that job. It is an unfortunate situation, but Spencer's inability to perform a particular job does not render him disabled under § 12102(2)(A). *See Williams*, 534 U.S. at 200-01 ("[w]hen addressing the major life activity of performing manual tasks, the central inquiry must be whether the claimant is unable to perform the variety of tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with her specific job").

Spencer also fails to present evidence that he is disabled under § 12102(2)(C).[1] "A person is 'regarded as' disabled within the meaning of the ADA if a covered entity mistakenly believes that the person's actual, nonlimiting impairment substantially limits one or more major life activities." *Murphy v. United Parcel Service*, 527 U.S. 516, 521-22 (1999). There is simply no evidence that VCSI ever mistakenly believed Spencer was disabled within the meaning of the ADA.

Therefore, because Spencer has not supplied sufficient evidence from which a reasonable jury could find that he is disabled within meaning of the ADA, summary judgment in favor of the defendant must be granted.

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[1]Section 12102(2)(B) is not relevant to this discussion because Spencer does not claim a history of impairment from major life activities.

## V. CONCLUSION

For the aforementioned reasons, VCSI's motion for summary judgment is granted and all of Spencer's outstanding motions are denied as moot.[2]

Dated: October 4, 2004

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE

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[2]Although the fruits of discovery can lead to evidence sufficient to defeat a motion for summary judgment, none of Spencer's discovery motions pertain to evidence tending to show he is in fact disabled under the ADA. The only one that is arguably relevant is his motion to "Grant plaintiff a special order to produce people who will not talk to plaintiff," in which he asks the court to produce Dr. Case. (D.I. 27.) However, he does not allege that Dr. Case will somehow change his diagnosis. In fact, Spencer's main concern in this motion seems to be figuring out how Verizon obtained his medical records. Since this has no bearing on the issue of whether he is disabled, the court need not consider it before granting the defendant's motion.

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| Defendant. | ) | |

**ORDER**

IT IS HEREBY ORDERED that:

1. The defendant's motion for summary judgment (D.I. 32) is GRANTED;

2. The plaintiff's complaint (D.I. 3) is DISMISSED; and

3. The plaintiff's four outstanding discovery motions (D.I. 25; D.I. 27; D.I. 29; D.I. 38) are DENIED as moot.

Dated: October 4, 2004

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE