

FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELENA LIVENSON,

Plaintiff-Appellant,

v.

AERONAUTICAL RADIO, INC.,
Erroneously Sued As Rockwell Collins,
Inc.,

Defendant-Appellee,

and

ROCKWELL COLLINS, INC., a
Delaware corporation doing business in
California,

Defendant.

Nos. 21-55800, 21-55888

D.C. No. 2:20-cv-09578-SB-SK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stanley Blumenfeld, Jr., District Judge, Presiding

Argued and Submitted November 16, 2022
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: WARDLAW and W. FLETCHER, Circuit Judges, and KORMAN,**
District Judge.

Elena Livenson appeals from the district court’s grant of summary judgment to Aeronautical Radio, Inc. (“ARINC”). Livenson worked for ARINC for twenty years as a software engineer. She alleges that ARINC fired her in violation of California’s Fair Employment and Housing Act (“FEHA”) and the California Family Rights Act (“CFRA”). Livenson suffers from migraines, anxiety, high blood pressure, and an elevated heart rate. She claims that ARINC failed to accommodate her disabilities and fired her for disability-related limitations.

We review “a district court’s decision to grant summary judgment de novo.” *Dep’t of Fair Emp. & Hous. v. Lucent Techs., Inc.*, 642 F.3d 728, 736 (9th Cir. 2011). To do so, we “must determine, viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law.” *Id.* We affirm the district court’s grant of summary judgment.

Following the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), framework, the district court assumed that Livenson stated a prima facie case of

** The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

disability discrimination. Next, the court found that ARINC articulated a legitimate reason for Livenson's termination: her failure to meet the terms of her Performance Recovery Plan ("PRP"). We agree with the district court's conclusion that Livenson failed to raise a triable factual issue as to pretext.

Summary judgment was also appropriate for the FEHA failure-to-accommodate and interactive process claims. The FEHA requires employers "to make reasonable accommodation[s]" for a known mental disability, Cal. Gov't. Code § 12940(m)(1), and "to engage in a timely, good faith, interactive process" with their employee to determine an effective reasonable accommodation, Cal. Gov't. Code § 12940(n). It is undisputed that ARINC accommodated Livenson by, among other things, moving team meeting times to address her morning migraines, moving the PRP deadlines to account for her medical leave, and approving intermittent days off for health-related issues. We agree with the district court that ARINC adequately engaged in the interactive process and provided the reasonable accommodations that Livenson requested.

Livenson's punitive damages claim fails with the underlying FEHA claims.

AFFIRMED.