NOT DESIGNATED FOR PUBLICATION

GERALD LAHOSTE	*	**NO. 2016-CA-0472**
VERSUS	*	**COURT OF APPEAL**
LOUISIANA STATE BOARD OF SUPERVISORS (UNIVERSITY OF NEW ORLEANS)	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

* * * * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2011-11499, DIVISION "J"
Honorable Paula A. Brown, Judge
* * * * * *

Judge Dennis R. Bagneris, Sr.

* * * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Roland L. Belsome, Judge Joy Cossich Lobrano)
LOBRANO, J., CONCURS IN THE RESULT AND ASSIGNS REASONS.

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AFFIRMED

DECEMBER 14, 2016

Plaintiff, Gerald LaHoste, appeals a trial court judgment, which rendered summary judgment in favor of defendant, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College. For the following reasons, we hereby affirm.

FACTS

Dr. LaHoste is a tenured Associate Professor in the Psychology Department at the University of New Orleans ("UNO"). On October 28, 2011, Dr. LaHoste filed suit against defendant, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College[1] ("Defendant"), asserting claims under the Americans with Disabilities Act ("ADA") and Title VII of the Civil Rights Act. Specifically, Dr. LaHoste alleges that he suffers from a major depressive disorder, and that Defendant failed to provide him with reasonable accommodations, despite his request. Although Dr. LaHoste continues to work as an Associate Professor in the Psychology Department at UNO, he argues that his journal articles, and the number of grants generated, have decreased, and that he was intentionally harassed and discriminated against by UNO. Dr. LaHoste alleges that due to UNO's failure

[1] Dr. LaHoste improperly named defendant as "Louisiana State Board of Supervisors."

to accommodate his disability, he was subjected to a hostile work environment in the following ways: (1) failure to promote; (2) an underestimation of grant awards; (3) a salary far below less experienced associate professors; (4) a reduction in salary; (5) assignment of many new course preparations than others of the same rank; (6) public humiliation regarding loss of status; and (7) non-renewal of his Villere Chair.

On July 13, 2015, Defendant filed a Motion for Summary Judgment, contending that Dr. LaHoste cannot prove an ADA violation based upon a failure to accommodate, nor can he prove discrimination. Defendant argues that despite Dr. LaHoste's alleged inability to publish the required number of journal articles and to generate the required grant money, the evidence reflects that he continues to work full time as an Associate Professor, "has consistently been teaching two courses a semester, and his teaching evaluations are always excellent and above average for the department and for the University as a whole." Thus, Defendant argues that the evidence fails to show that Dr. LaHoste's inabilities substantially limit his ability to perform in his job. Defendant also argues that Dr. LaHoste failed to provide the necessary "documentation from each of his physicians providing a narrative with a specific diagnosis and treatment plan, an explanation of the specific functions which plaintiff was unable to perform, and anticipated duration of such limitations, and a description of how the requested accommodations would enable Dr. LaHoste to perform his job." In support of its motion for summary judgment, Defendant attached the following exhibits: (1) the complaint for damages; (2) the petitioner's first amended complaint before answer filed; (3) the petitioner's second amended complaint before answer filed; (4) the deposition of Dr. LaHoste; (5) December 23, 2009, letter from attorney John-

Michael Lawrence ("Mr. Lawrence") requesting Dr. LaHoste's accommodations; (6) January 6, 2010, letter from UNO's counsel, Patricia Adams ("Ms. Adams"), requesting documentation from Dr. LaHoste's health care providers; (7) April 26, 2010, letter from attorney Mr. Lawrence requesting a meeting to discuss accommodations; (8) June 21, 2010, letter from attorney Mr. Lawrence requesting a meeting to discuss accommodations; (9) July 8, 2010, letter from UNO's HRM Director, Ronald P. Boudreaux, requesting Dr. LaHoste's physician to "provide an explanation of the specific functions you [Dr. LaHoste] are unable to perform as well as the anticipated duration of any such limitation;" (10) July 18, 2010, letter from attorney Mr. Lawrence stating the decision to go forward with the lawsuit due to UNO's third request for medical information; (11) June 13, 2011, letter from UNO's counsel, Ms. Adams, acknowledging receipt of the lawsuit and noting that "Dr. LaHoste has neither contacted HR, nor provided any such medical documentation;" (12) September 26, 2011, letter from UNO's HRM Director, Jonette Aughenbaugh, stating that the office received his "Americans with Disabilities Accommodation Request Form" and requested Dr. LaHoste to provide the office with his physician's explanation of the specific functions he is unable to perform and what accommodations are needed for him to perform his job; (13) Dr. LaHoste's "Accomodations Request;" and (14) UNO's Faculty Job Description for Psychology.

In opposition to Defendant's Motion for Summary Judgment, Dr. LaHoste argued that Defendant refused to meet to discuss his disability and the accommodations necessary for him to perform his job. In support of his opposition to summary judgment, Dr. LaHoste attached the following exhibits: (1) deposition of Dr. LaHoste; (2) deposition of Dr. Paul Frick; (3) declaration of John Muggivan;

(4) list of PTSD events from 2003 to 2007; (4) August 25, 2009, letter from Amy King, Interim Associate Dean regarding accommodations request for a UNO student; (5) October 19, 2009, report of John Muggivan to Amy King regarding Dr. LaHoste's need for accommodations; (6) November 5, 2009, fax regarding accommodations; (7) Dr. LaHoste's statement provided to UNO for request for accommodations; (8) December 23, 2009, letter from attorney Mr. Lawrence requesting Dr. LaHoste's accommodations; (9) January 6, 2010, letter from UNO's counsel, Ms. Adams, requesting documentation from Dr. LaHoste's health care providers; (10) April 26, 2010, letter from attorney Mr. Lawrence requesting a meeting to discuss accommodations; (11) May 4, 2010, email from Ms. Adams of "draft update of our internal ADA policy;" (12) UNO's Administrative Policy and Procedure; (13) June 13, 2011, letter from UNO's counsel, Ms. Adams, acknowledging receipt of the lawsuit and noting that "Dr. LaHoste has neither contacted HR, nor provided any such medical documentation;" (14) June 21, 2010, letter from attorney Mr. Lawrence requesting Dr. LaHoste's accommodations with detailed requests; (15) July 8, 2010, letter to Ms. Adams, expressing disappointment with UNO's response to 3rd request for meeting; (16) August 9, 2011, ADA form filled out by Dr. LaHoste; (17) August 26, 2011, letter from Dr. LaHoste to UNO HR regarding accommodations form; (18) E-mails to set up meeting for September 11, 2011; (19) September 26, 2011, letter from UNO HR to Dr. LaHoste acknowledging receipt of ADA request form and the request for medicals; (20) October 4, 2011, letter from Dr. LaHoste to Jonette Aughenbaugh, UNO Director of HRM; (21) October 30, 2011, letter from Dr. LaHoste to Jonette Aughenbaugh stating that medical records have been provided; (22) November 4, 2011, letter from Jonette Aughenbaugh requesting medicals; (23) July 7, 2012,

letter from Dr. LaHoste to Paul Frick, Chair; (24) July 27, 2012, report of Dr. Charles K. Billings; (25) August 24, 2012, email from Paul Frick to Dr. LaHoste regarding loss of submission of paper and non-funding to grant; (26) draft of accommodations requested; (27) Biennial Faculty Evaluation Form; (28) University of Washington "Invisible Disabilities and Postsecondary Education: Accommodations and Universal Design;" (29) SUNO Services for Students with Disabilities Faculty Handout; (30) Dr. LaHoste's EEP questionnaire with attachment; and (31) faculty job (Psychology) description.

After a hearing on November 6, 2015, the trial court granted summary judgment in favor of Defendant. Dr. LaHoste now appeals this final judgment, alleging the following assignments of error: (1) the trial court erred in finding that he failed to provide sufficient evidence showing that he informed Defendant of the limitations on his ability to perform the essential functions of his job as a result of his alleged disability; (2) the trial court erred in finding that he failed to provide sufficient evidence that Defendant knew of his limitations arising out of his alleged impairment; and (3) the trial court erred in finding that he failed to produce evidence to establish the adverse employment action in retaliation for protected activity.

STANDARD OF REVIEW

Appellate courts review the grant or denial of a motion for summary judgment *de novo*, using the same criteria applied by trial courts to determine whether summary judgment is appropriate. *Hare v. Paleo Data, Inc.*, 11-1034, p. 9 (La. App. 4 Cir. 4/4/12), 89 So.3d 380, 387. A summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B)(2). A fact is material when its existence or nonexistence may be essential to the plaintiff's cause of action under the applicable theory of recovery; a fact is material if it potentially insures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. *Smith v. Our Lady of the Lake Hosp., Inc.*, 93-2512, p. 27 (La. 7/5/94), 639 So.2d 730, 751. A genuine issue is one as to which reasonable persons could disagree; if reasonable persons could reach only one conclusion, there is no need for trial on that issue and summary judgment is appropriate. *Id.*

The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action. La. C.C.P. art. 966(A)(2). Summary judgments are favored, and the summary judgment procedure shall be construed to accomplish those ends. *Id.* La. C.C.P. art. 966(C)(2) provides that where, as in the instant case, the party moving for summary judgment will not bear the burden of proof at trial, their burden does not require them to negate all essential elements of the adverse party's claim, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim. Thereafter, if the adverse party fails to produce factual support sufficient to establish that it will be able to satisfy its evidentiary burden of proof at trial, there is no genuine issue of material fact, and the movant is entitled to summary judgment as a matter of law.[2]

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[2] This language is from La. C.C.P. art. 966 as it existed at the time the motion for summary judgment in this matter was filed and heard, prior to the article's amendment that became effective on January 1, 2016.

DISCUSSION

The issue on appeal is whether Dr. LaHoste satisfied his evidentiary burden of proof that he suffered from a disability, and that he informed Defendant of the limitations resulting from his disability. Defendant argued that despite repeated requests, Dr. LaHoste failed to identify or inform it of the limitations caused by his disability [depression] or his ability to perform the essential job functions for his position. After a review of the record, we agree with the trial court that Dr. LaHoste failed to satisfy his burden of proof needed to identify his limitations caused by his depression, or his ability to perform the essential job functions for his position as Associate Professor. In her well-written reasons for judgment, the trial judge stated, in pertinent part:

> The crux of Plaintiff's discrimination, failure to accommodate, and harassment/hostile work environment claims require that Plaintiff has a "disability" within the meaning of 42 U.S.C. § 12102. Under the ADA, an actionable disability means: (1) "a physical or mental impairment that substantially limits one or more major life activities of such an individual, (2) a record of such an impairment; or (3) being regarded as having such an impairment." 42 U.S.C. § 12102. The term "'major life activity' is generally defined to include 'caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working," but is not limited to these tasks." 42 U.S.C. § 12102(2)(A). The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual. *Taylor v. Principal Financial Group, Inc*., 93 F.3d 155, 164 (5th Cir. 1996). "Merely having a disability does not make one disabled under disability discrimination laws." *Mazzini v. Strathman*, 2013-0555 (La. App. 4 Cir. 4/16/14); 140 So.3d 253, 258. Because the ADA requires employers to reasonably accommodate limitations, not disabilities, "an employee must show that the employer knew of such employee's substantial physical or mental limitation" in order to

prove discrimination. *Taylor v. Principal Financial Group, Inc*., 93 F.3d 155, 163 (5th Cir. 1996). Therefore, "it is incumbent upon the ADA-plaintiff to assert not only a disability, but also any limitation resulting therefrom." *Taylor v. Principal Financial Group, Inc*., 93 F.3d 155, 164 (5th Cir. 1996). As such, whether an employer has knowledge of the limitations experienced by the employee as a result of the alleged disability is a material fact.

Pursuant to EEOC Regulations: 29 C.F.R. § 1630.9:

> (a) It is unlawful for a covered entity not to make reasonable accommodation to the *known physical or mental limitations* of an otherwise qualified applicant or employee with a disability, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business. (Emphasis in original)
>
> (b) It is unlawful for a covered entity to deny employment opportunities to an otherwise qualified job applicant or employee with a disability based on the need of such covered entity to make reasonable accommodation to such individual's physical or mental impairments.
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> (c) A covered entity shall not be excused from the requirements of this part because of any failure to receive technical assistance authorized by section 507 of the ADA, including any failure in the development or dissemination of any technical assistance manual authorized by that Act.
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> (d) An individual with a disability is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that

> rejection, perform the essential functions of the position, the individual will not be considered qualified.
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> (e) A covered entity is required, absent undue hardship, to provide a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the "actual disability" prong (§ 1630.2(g)(l)(i)), or "record of" prong (§ 1630.2(g)(l)(ii)), but is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the "regarded as" prong (§ 1630.2(g)(l)(iii)).

Here, Defendant contends among other things that, despite repeated requests, Plaintiff failed to identify or inform it of the limitations caused by his disability on [sic] his ability to perform the essential job functions of his position. Specifically, in correspondence dated January 6, 2010, July 8, 2010, June 13, 2011, and September 26, 2011, Defendant requested information from Plaintiff regarding: (1) how and to what extent, Plaintiff's mental and/or physical condition(s) may limit his ability to perform the essential functions of his job; (2) an explanation of the specific functions Plaintiff is unable to perform, the anticipated duration of any such limitation, and the corresponding medical documentation; (3) a specific diagnosis and treatment plan; and (4) whether the treatment plan would require Plaintiff's absence from work. The missives exchanged between the parties reveal that Plaintiff requested a meeting with Defendant to discuss the nine (9) accommodations desired and the demand for monetary and punitive compensation. However, neither the missives nor the report of Plaintiff's licensed clinical social worker, Dr. John Muggivan, contain the requested limitations on Plaintiff's ability to perform the essential functions of his job as requested by his employer. Additionally, this Court notes that despite Plaintiff's representation to the contrary, Plaintiff's medical records were not attached to any of the letters or Dr. Muggivan's report provided to the Court in Opposition to Defendant's Motion for Summary Judgment.

It is well settled that it is the responsibility of the individual with the disability to inform the employer that an accommodation is needed. *Taylor v. Principal*

Financial Group, Inc., 93 F.3d 155, 165 (5th Cir. 1996). Particularly, where the disability, resulting limitations and necessary reasonable accommodations are *not* open, obvious, and apparent to the employer - as is often the case when nebulous mental disabilities are involved – the initial burden rests on the employee or his health-care provider to *specifically identify the disability and resulting limitations and to suggest the reasonable accommodations*. *Id.* (Emphasis in original). It is only as a result of "such a request" that the employer is obligated by law to engage in an "interactive process," which is a meaningful dialogue with the employee to find the best means of accommodating that disability. *Picard v. St. Tammany Parish Hosp*., 10-30719 (5 Cir. 4/28/2011); 423 Fed. Appx. 467, 470; citing *EEOC v. Chevron Phillips Chemical Co., LP*, 570 F.3d 606, 621 (5th Cir. 6/5/2009). In other words, if an employee satisfies his burden "to specifically identify the disability and resulting limitations, and to suggest the reasonable accommodations," then and only then is an employer obligated by law to engage in an interactive process. *Picard v. St. Tammany Parish Hosp*., 10-30719 (5th Cir. 4/28/2011); 423 Fed. Appx. 467, 470. Further, "when the need for an accommodation is not obvious, an employer, before providing a reasonable accommodation, may require that the individual with a disability provide documentation of the need for accommodation." *Taylor v. Principal Financial Group, Inc*., 93 F.3d 155,165 (5th Cir. 1996) at ftnt 9.

In further opposition, Plaintiff argues, among other things, that Defendant knew of his condition because it is "open and obvious" and could be detected through casual observation by his colleagues who are clinical psychologists. This court finds that Plaintiff's position is speculative at best. Plaintiff submits no competent summary judgment evidence that Defendant had actual or constructive knowledge, or was otherwise informed of the substantial physical or mental *limitations* caused by his alleged impairment. Therefore, this Court finds that Plaintiff failed to adduce any summary judgment evidence: (1) showing that he informed Defendant of the limitations on his ability to perform the essential functions of his job as a result of his alleged disability or (2) that would allow a reasonable trier of fact to find that Defendant knew of any limitations arising out of Plaintiff's alleged impairment. Consequently, Plaintiff's failure to satisfy the prerequisites precludes the satisfaction of the "disabled" element of his claims,

> precludes activation of Defendant's obligation to engage in the interactive process or alternatively, constitutes Plaintiff's failure to participate in the interactive process in good faith. In either case, Plaintiff's failure to do so is fatal to his disability-based discrimination, failure to accommodate and harassment/hostile work environment claims. In light of the foregoing, this Court pretermits ruling on the reasonableness of Plaintiff's requested accommodation.

Dr. LaHoste testified in his deposition that his first tenure track position was at UNO in 1998 as an associate professor in the Department of Psychology, a position he still holds today. He testified that he received tenure in 1999 and that he has never applied to become a full professor. Dr. LaHoste testified that he had a major depressive disorder and was first diagnosed in 1990, while living in California but that he didn't remember the doctor's name who had diagnosed him. When asked for more specifics relating to his depression, Dr. LaHoste stated that "what has sent me into a deep depression is the way that I have been treated at UNO." Dr. LaHoste also testified that he believed the former chancellor, Tim Ryan, was trying to "starve" him out because "[h]e had fired many people with – many tenured professors under the exigency program and I knew of his desire to eliminate the graduate program in biopsychology, which would have had a major influence on my career because it would have meant that I would not be able to have graduate students who honestly do much of the nuts and bolts of the research." Dr. LaHoste testified that he was never diagnosed by a medical doctor with PTSD. [3]

Dr. LaHoste testified that he has been given six new course preparations in the last seven years but that he thinks he has been asked to do so "because other

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[3] Post-traumatic stress disorder

people, new hires in the biopsychology program simply are not qualified to teach them." He further stated, "[u]nfortunately, I have a very broad knowledge base and I'm a great teacher so, you know, your successes get turned around and punish you." Even though Dr. LaHoste testified that "the university is still holding over my head the possibility that they will increase my teaching load from two courses a semester to three, 50 percent increase," he agreed with the statement that "not only is that not occurring, but, in fact, you're quite happy with your teaching assignment."

When asked how his major depression affects his ability to churn out papers, Dr. LaHoste testified that he believed that he could publish more papers "if I were given a reduced teaching load, that would give me more time. If I simply were not discriminated against for my illness, that would make me less depressed. If I had administrative help in terms of answering the hundreds of e-mails I get all the time requiring a response to some department or bureaucratic stuff." After further questioning, Dr. LaHoste gave the following examples of discrimination due to his disability: assigning him new course loads, the failure to promote him despite his seniority and his major contributions to the field of research, failure to give him pay raises, and that his illness prevents him from publishing the number of papers that his peers publish. However, Dr. LaHoste testified that since 2009, he has consistently been teaching two courses a semester, and that both his evaluation and student evaluations have been superior for each of those semesters.

Additional evidence in the record indicates that on December 23, 2009, Mr. Lawrence [Plaintiff's attorney] requested a meeting with Ms. Adams, [University Counsel], and Ms. Amy King, [the Associate Dean], to discuss Dr. LaHoste's alleged need for accommodations. Attached to the meeting request was a copy of a

report from Dr. LaHoste's therapist, John Muggivan, as well as a listing of nine accommodations requested, and a demand for monetary and punitive compensations. Specifically, the accommodations requested stated:

> (1) Dr. LaHoste's teaching load should be no more than 2 three-hour courses per 3 semesters. This is equivalent to his teaching load when he held the Villere Chair.
>
> This would greatly reduce the stress, workload and therefore depression of the Plaintiff.
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> (2) Dr. LaHoste shall be assigned no new course preparations as of the date of disclosure of his illness, Summer, 2008, nor the course PSYC 2300, which was intended to be a one-time occurrence, a verbal agreement which the department reneged on. A list of the broad portfolio of acceptable course assignments is provided in Appendix.
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> As all faculty know, it takes much more time to prepare for a course for which one has never taught. For example, every new lecture must be created from scratch. This would greatly reduce the stress, workload and therefore depression of the plaintiff.
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> (3) A publication multiplication factor of 2 will be used when counting Dr. LaHoste's publications for review. The existence of this factor should not be disclosed to anyone but the Chair and may not be considered in evaluating his scholarly productivity.
>
> This will help to counteract the highly prejudicial act of merely counting new journals as a means of productivity, and thereby reduce the humiliation of the plaintiff at having not been promoted in 13 years.
>
> (4) Research productivity should be judged based on the average ranking of three factors (h-index, number of citations, and number of citations per article) compared to the rest of the faculty (as calculated in Appendix F, Science Citation Index). Promotions and raises will be based on these rankings compared to others in the department. No faculty member with a lower ranking shall receive a higher position nor shall receive a higher salary.

(5) Dr. LaHoste should be appointed to a named full professorship (preferably, The Richard D. Olson Professor of Biopsychology), which appointment should be made without vote due to the possible bias of the full professors. The appointment shall be approved by all higher administrative individuals whose approval is required, (e.g., Dean of the College of Sciences, Provost, Chancellor/Acting-Chancellor or President).

6. Dr. LaHoste's nine-month salary should be equal to the average nine-month salary of all departmental full Professors, or faculty of higher ranking, (e.g., Research Professor, University Research Professor, Boyd Professor) or $94,000 per nine months, whichever is higher.

7. Dr. LaHoste should receive a full-time laboratory research technician of his choosing, with a beginning salary of $48,000 per twelve-months.

8. Dr. LaHoste shall receive administrative help (e.g., preparation and completion of forms and other material required by the University or the Department of Psychology) of approximately 2 hours per week, to be provided by administrative assistant Cynthia Landry.

9. The Americans with Disabilities Act (1990) and its implications to their professions shall be taught by the faculty to all psychology graduate students as a requirement for the granting of the degree of Doctor of Philosophy.

None of these accommodations shall be rescinded by the University because of financial difficulties of the University, increased university-wide teaching requirements, the granting of exigency powers of any kind to the Chancellor or President, or for any reason.

MONETARY & PUNITIVE COMPENSATIONS

(1) Dr. LaHoste shall be awarded financial compensation consisting of the difference of his actual salary and the salary he would have received as Villere Chair for the academic years 2006-2007 until the present.

(2) Compensation for mental anguish, pain and suffering, loss of quality of life and shortening of life span: $1,000,000.

(3) Payment of lawyers' fees (for contingency fees, added on top of settlement).

(4) Payment of expert witness fees.

On January 6, 2010, Ms. Adams responded to Mr. Lawrence, requesting information from Dr. LaHoste's physicians and health care providers that would assist in the discussion of whether, and what, accommodations may be necessary to assist Dr. LaHoste in performing the essential functions of his job. In particular, it was requested that the additional information show how, and to what extent, Dr. LaHoste's mental and/or physical conditions may limit his ability to perform the essential functions of his job. Specifically, Ms. Adams noted that Mr. Muggivan's report indicated that Dr. LaHoste suffered from anxiety, depression, PTSD, and cardiovascular disease, but that documentation from Dr. LaHoste's physician regarding these conditions was necessary.

On April 26, 2010 and June 21, 2010, Mr. Lawrence again corresponded with Ms. Adams requesting a meeting and referencing again Mr. Muggivan's report only. On July 8, 2010, Ronald P. Boudreaux, UNO's Director of the Office of Human Resource Management (HR), responded to Mr. Lawrence's correspondence, by writing to Dr. LaHoste and again requesting that Dr. LaHoste's "physicians provide a narrative with a specific diagnosis and treatment plan, including the type and length of treatment required." Specifically, Mr. Boudreaux requested information regarding whether Dr. LaHoste's treatment would "require your absence from work and/or whether your condition places any limitations on your ability to perform the essential functions of his position" and, if so, an explanation of the specific functions which Dr. LaHoste alleged that he was unable

to perform as well as the anticipated duration of any such limitations. Dr. LaHoste was asked to respond directly to Mr. Boudreaux no later than July 22, 2010.

On July 18, 2010, Mr. Lawrence advised Ms. Adams that he was moving forward with Dr. LaHoste's EEOC complaint and stated that Dr. LaHoste’s initial letter was accompanied by a detailed report from Mr. Muggivan, and that other medical records were forwarded upon request.

On June 13, 2011, Ms. Adams’ letter to Mr. Lawrence stated that she received the lawsuit filed on behalf of Dr. LaHoste and that she stated on several occasions, both verbally and in writing, that representatives of UNO's HR Department were more than willing to discuss Dr. LaHoste's request for accommodations. However, Ms. Adams reiterated that Dr. LaHoste needed to provide medical documentation to assess any limitations on his ability to perform the essential functions of his position.

On September 26, 2011, Jonette Aughenbaugh, the new Director of UNO’s Department of Human Resource Management, acknowledged receiving Dr. LaHoste's August 9, 2011 ADA accommodation request form and an attached "Accommodations Requested" addendum. Ms. Aughenbaugh noted that meetings had been scheduled with Dr. LaHoste and his attorney on September 9, 2011, September 16, 2011, and September 19, 2011 to discuss UNO's reasonable accommodation process, but that Dr. LaHoste's attorney cancelled the meetings on September 9, 2011 and September 16, 2011. Ms. Aughenbaugh also noted that the scheduled September 19, 2011 meeting ended abruptly before a discussion could occur. In the correspondence of September 26, 2011, Dr. LaHoste was again asked to provide documentation from each of his physicians providing a narrative with a

specific diagnosis and treatment plan, including the type and length of treatment required as it relates to his ability to perform the essential functions of his position.

After reviewing the record, we agree with the trial court that Dr. LaHoste failed to provide sufficient documentation from his physicians providing a specific diagnosis and treatment plan, an explanation of the specific functions which he was unable to perform, the anticipated duration of such limitations, and a description of how the requested accommodations would enable him to perform his job. The report by Mr. Muggivan, a clinical social worker, stated that Dr. LaHoste suffers from: (1) a post-traumatic stress disorder "with an onset date of the year 2006," stating that additional information would be supplied later; and (2) cardiovascular disease, also stating that additional information would be supplied later. However, Dr. LaHoste failed to provide the additional medical documentation information necessary to provide the specific diagnosis and treatment plan, including the type and length of treatment required as it relates to his ability to perform the essential functions of his position. Thus, we find, as the trial court properly found, that the correspondence between the parties revealed that Dr. LaHoste requested meetings with Defendant to discuss the accommodations he desired, as well as the demand for monetary and punitive compensation, but that Dr. LaHoste failed to provide Defendant with the requested limitations regarding his ability to perform the essential functions of his job.

Further, after reviewing the evidence in the record, especially Dr. LaHoste's deposition, we find no merit in Dr. LaHoste's retaliation claim. Again, we agree with the trial judge's reasons for judgment regarding the retaliation claim, and find it worth restating, as follows:

Now turning to Plaintiff's retaliation claim under the ADA, Plaintiff contends in his Opposition and Second Amended Complaint that Defendant retaliated against him tor filing his EEOC Complaint and the instant lawsuit in 2011 by (1) increasing his teaching load by 50%, from teaching two courses per semester to three; (2) intending to decrease his productivity in terms of research and grants in order to use that low production as justification tor further adverse employment actions; and (3) intending to close the animal care facility critical to Plaintiffs research, which would "end his research career." To show an unlawful retaliation, a plaintiff must prove a prima facie case by a preponderance of the evidence that: (1) he engaged in an activity protected by the ADA; (2) an adverse employment action occurred; and (3) a causal connection exists between the protected activity and the adverse employment action. *Seaman v. CSPB, Inc*., 179 F.3d 297,301 (5th Cir.1999).

An adverse employment action is defined as a significant change in employment status, such as hiring, firing, failing to promote, demotions, reassignment with significantly different responsibilities, a decision causing a significant change in benefits...[or] a reduction in pay and opportunities." *Brooks v. S. Univ. & Agr. & Mech. Coll*, 2003-0231 (La.App. 4 Cir. 7/14/04, 48); 877 So.2d 1194, 1221 citing *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761, 118 S.Ct. 2257,2268, 141 L.Ed.2d 633 (1998). The causal connection element may be established by showing very close timing between the protected activity and the adverse employment action. *Swanson V. Gen. Servs. Admin*., 110 F.3d 1180,1188 (5th Cir.1997).

Once the plaintiff has established a prima facie case of retaliation, the burden shifts to the defendant to articulate a legitimate, non-retaliatory reason for the adverse employment action. If the defendant introduces evidence, which, if true, would permit the conclusion that the adverse action was non-discriminatory, the plaintiff/employee assumes the burden of establishing that the reason or reasons given were a pretext for retaliation. To satisfy this burden, the plaintiff must show that "but for" the protected activity, the adverse employment action would not have occurred. *Brooks v. S. Univ. & Agr. &Mech. Coll*., 2003-0231 (La.App. 4 Cir. 7/14/04); 877 So.2d 1194, 1221.

> A review of the record shows that Plaintiff clearly was engaged in a protected activity when he filed the EEOC complaint and instant lawsuit in 2011 against Defendant. Nevertheless, Plaintiff testified during his deposition in 2013 that none of the alleged *anticipated* adverse employment actions had actually occurred and other alleged retaliatory acts occurred *prior* to the 2011 protected activity. (Footnote omitted) Moreover, Plaintiff continues to work as a Professor in the Psychology Department at the University of New Orleans and, according to his last evaluation, his performance level and publication numbers were within the adequate range for the Department and his student evaluations were superior. (Footnote omitted) Accordingly, this Court finds that Plaintiff has failed to produce any competent summary judgment evidence sufficient to establish the adverse employment action and causal connection elements of his retaliation claim.

Dr. LaHoste testified in his deposition that he started feeling he was in a hostile environment in the spring semester of 2006, following Hurricane Katrina. Specifically, he testified that the hostile environment had to do with his being removed in June 2006, as the Villere Chair, an endowed chair that came with an endowment to be used for research, to which he had been appointed in 2003. Dr. LaHoste testified that he believed the committee chose not to reappoint him to the Villere Chair because his numbers of publications were too low. When asked if the same method of counting the number of publications was used for everyone [professors], he responded that "[i]t is used for everyone, but because of my disability, I am not able to produce as many publications as my peers." Dr. LaHoste further testified regarding the Villere Chair as follows:

> Dr. LaHoste: I asked him [Dean King] if he had someone else in mind to take my position, and he seemed very uninformed except about the fact that I was being sacked. He said, 'Oh no. I haven't even thought about that.'
>
> And I said, 'Well, you know this is really going to affect my two postdoctoral fellows because their salary

> comes off of the endowment and they're not going to have a job. I need to know if the money was cut off on July the 1st or if we can at least have until the beginning of the fall semester.'
>
> * * *
>
> [H]e said, 'You know, these endowed chairs are more trouble than they're worth.' And ultimately due to things that I was not privy to, the endowed chair is gone. UNO no longer has that. I don't know how they got rid of it, if it was taken away from the Villere family or if it was their intention to get rid of it….
>
> * * *
>
> I was the last [Villere Chair], which is another of the suspicious things that I think surrounded the event of that.

When asked if Dr. LaHoste could point to an incident that he considered retaliation that was due to his filing a claim with EEOC on December 5, 2011, he stated that he "believed…retaliation stems back from the exigency powers granted the chancellor in 2005." When questioned further regarding the specific acts of retaliation or discrimination, Dr. LaHoste testified:

> I believe that the increase in new course assignments is a matter of – is a retaliatory measure because that's not status quo even knowing that I had depression. That's increasing the work after I filed for the EEOC complaint. And now it's hard to separate which retaliation is due to the EEOC complaint and which is due to my filing of a lawsuit….The once dean of the college of sciences,…, who is now vice president for research and sponsored programs, has intended to increase my teaching load from two courses per semester to three. Secondly, he has indicated to my chair that he would wish to close the animal care facility, which is essential for my research. I work on mouse models of the genetics of neuropsychiatric disorders. This would be the end of my career. And one time even it was expressed to me just because I couldn't find some inventory that belonged to a previous professor.

However, Dr. LaHoste, once again, testified that *none* of these events have actually occurred.

Accordingly, after a thorough review of the evidence, we too find that Dr. LaHoste's deposition testimony was clear that none of the alleged anticipated adverse employment actions had actually occurred, and that his deposition testimony merely focused on acts that had occurred years prior to the 2011 filing of the EEOC complaint.

For these reasons, we find that the trial court correctly found that Dr. LaHoste failed to satisfy his burden of proof to show that he informed Defendant of the limitations on his ability to perform the essential functions of his job as a result of his depression or (2) that would allow a reasonable trier of fact to find that Defendant knew of any limitations arising out of Dr. LaHoste's alleged impairment. We further agree with the trial court's finding that Dr. LaHoste failed to produce any competent summary judgment evidence sufficient to establish the adverse employment action and causal connection elements of his retaliation claim. For these reasons, we find that the trial court correctly granted summary judgment in favor of defendant, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College.

AFFIRMED