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Case No. 23-3994

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 14, 2024
KELLY L. STEPHENS, Clerk

KELLI WILSON,

Plaintiff-Appellant,

v.

OHIO DEPARTMENT OF MENTAL HEALTH & ADDICTION SERVICES,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

O P I N I O N

Before: GRIFFIN, NALBANDIAN, and BLOOMEKATZ, Circuit Judges.

NALBANDIAN, Circuit Judge. Kelli Wilson worked for the Ohio Department of Mental Health and Addiction Services as an external auditor until it terminated her for violating its time and attendance policies. She sued, accusing the Department of disability discrimination based on wrongful termination and failure to accommodate. The district court granted summary judgment to the Department because Wilson's failure-to-accommodate claim was time barred and because Wilson voluntarily withdrew from the interactive process to request accommodation. Wilson now appeals, claiming that the Department's alleged failure to accommodate was a continuing violation and that the Department had obstructed the interactive process in bad faith. We AFFIRM.

I.

Kelli Wilson worked as an external auditor for the Ohio Department of Mental Health and Addiction Services from 2013 until 2018, where she monitored other public entities' use of

Department funds. She suffers from a combination of psychiatric disorders including depression, ADHD-C, general anxiety, and Obsessive-Compulsive Personality Disorder (OCPD). And the symptoms of these conditions exacerbate one another. From time to time, her conditions will flare up, rendering Wilson "temporarily incapacitated," R. 47-1, Amann Decl., p. 2, PageID 2256, and unable to perform "daily life activities" like "showering often enough" or "unloading the dishes," R. 39, Wilson Dep., p. 70, PageID 992.

Wilson's job with the Department required her to "conduct[] site-visits of structured programs," while "work[ing] cooperatively with members of audit teams & customers." R. 39-1, Wilson Dep. Exs., p. 5, PageID 1185. This meant travel every other month in teams of two to conduct audits at county mental-health boards throughout the state continuously for a week at a time. Otherwise, auditors like Wilson work in the main office in teams of four.

Around May 2016, Wilson applied for and received intermittent leave for her flare-ups under the Family and Medical Leave Act (FMLA). Every week or two, she was allowed to take one day of intermittent FMLA leave. A few months later, she was approved to take two to four days off every two to eight weeks.

Around this time, Wilson was caught claiming to have worked on two days she actually took off—a fireable offense. Rather than terminate her on the spot, the Department formed a last-chance agreement with Wilson; she promised to "[s]trictly adhere to the agency's time and attendance policies" and acknowledged that "any violation of policies or work rules *will* result in termination of employment." *Id.* at 6–7, PageID 1186–87 (emphasis added).

Then in February 2017, HR Bureau Chief Anne Thomson informed Wilson that she had used 445.9 hours of FMLA leave since May 2016 and was on pace to exhaust her 480-hour annual allotment before she would become re-eligible. Thomson advised Wilson that she could apply for

short-term disability until then. Wilson did just that and then exhausted her 2,080 hours of short-term disability—the maximum for a lifetime—by September 2018, barely 18 months later.

In March 2018, Wilson requested an ADA accommodation for her flare-ups and was directed to Maisha Jones, the Department's "Reasonable Accommodation coordinator." R. 39-2, Wilson Dep. Exs., p. 17, PageID 1274. When Wilson reached out, Jones replied with reasonable-accommodation paperwork and instructions on how to complete it. Wilson saw that Thomson was on the review committee and, believing Thomson was involved in denying past health-related requests, was concerned about potential bias, but she was never assured that Thomson would recuse herself, so Wilson did not return the paperwork Jones had provided. Wilson had decided against "[g]oing through that route." R. 39, p. 209, PageID 1131.

Then on July 11, 2018, Wilson called in sick, falsely claiming that she had enough sick leave to cover the absence. That unexcused absence violated her last-chance agreement, and triggered a Department investigation. The Labor Relations Officer in charge of the investigation met with Wilson on October 3, 2018, and requested a written statement to explain the unexcused absence, but Wilson never provided one.

On November 5, 2018, the Department held a pre-disciplinary hearing and invited Wilson, who did not attend but sent union representation in her place. The Department sent Wilson a termination letter effective December 3, 2018. She received this letter by email on December 4.

On December 3, 2020, Wilson sued the Department, alleging (1) disability discrimination based on wrongful termination under state and federal law, (2) failure to accommodate under state and federal law, and (3) retaliation under state and federal law. But Wilson abandoned the retaliation claims in response to the Department's motion for summary judgment.

The district court granted summary judgment to the Department. It found that the federal failure-to-accommodate claim was time-barred and that the discrimination claims failed because "[i]t was Wilson herself who caused a breakdown in the interactive process." R. 58, SJ Order, pp. 19, 22, PageID 2626, 2629. The court then declined to exercise supplemental jurisdiction over Wilson's Ohio failure-to-accommodate claim. Wilson timely appealed.

II.

We review grants of summary judgment de novo, affirming if all the evidence viewed in the light most favorable to the non-moving party shows no genuine issue of material fact. *Kleiber v. Honda of Am. Mfg., Inc.*, 485 F.3d 862, 868 (6th Cir. 2007). We review decisions "to exercise, or not to exercise, supplemental jurisdiction" for abuse of discretion. *Campanella v. Com. Exch. Bank*, 137 F.3d 885, 892 (6th Cir. 1998). And even though the federal claims in this case concern the Rehabilitation Act instead of the ADA, the statutes use substantially similar standards, so ADA caselaw is instructive. 29 U.S.C. § 794(d); *McPherson v. Mich. High Sch. Athletic Ass'n*, 119 F.3d 453, 459–60 (6th Cir. 1997); *Andrews v. Ohio*, 104 F.3d 803, 807 (6th Cir. 1997).

A.

To establish her prima facie case under the Rehabilitation Act, Wilson must make five primary showings: that she is (1) disabled and (2) otherwise qualified for her job, "with or without reasonable accommodation," that she (3) "suffered an adverse employment action," and that (4) her "employer knew or had reason to know" about her disability before (5) replacing her with "a nondisabled person" or leaving her position open. *Bledsoe v. Tenn. Valley Auth. Bd. of Dirs.*, 42 F.4th 568, 578 (6th Cir. 2022) (quoting *Jones v. Potter*, 488 F.3d 397, 404 (6th Cir. 2007)). The Rehabilitation Act requires different showings depending on whether the defendant is a federal employer or merely received federal funding. *See id.* at 578–80. The Department is a *state*

employer that received federal funding, so Wilson must also show that she was fired "solely by reason of her . . . disability."[1] 29 U.S.C. § 794(a); *Bledsoe*, 42 F.4th at 578–80. And here, Wilson failed to create an issue of fact that she was fired *solely* by reason of her disability.

She "may use either direct or indirect evidence" to prove this causation. *Bledsoe*, 42 F.4th at 580 (citing *Jones*, 488 F.3d at 409). In this case, Wilson's discrimination claim boils down to the Department's alleged failure to accommodate her disability, which we consider direct evidence of discrimination. *Hostettler v. Coll. of Wooster*, 895 F.3d 844, 853 (6th Cir. 2018). In essence, she claims that the Department fired her for absences that would not have occurred if she had received her requested accommodations, so she was therefore "terminated solely because of her disability." Reply Br. at 19.

This means Wilson's disability-discrimination claim is based on an underlying claim that the Department failed to accommodate her, which itself requires Wilson to create a genuine issue of material fact as to these five factors: (1) "she was disabled"; (2) "she was otherwise qualified for her position, with or without reasonable accommodation"; (3) the Department "knew or had reason to know about her disability"; (4) "she requested an accommodation"; and (5) the Department "failed to provide the necessary accommodation." *Kirilenko-Ison v. Bd. of Educ.*, 974 F.3d 652, 669 (6th Cir. 2020). And it is Wilson who "is saddled with the burden of proposing an accommodation and proving that it is reasonable." *Jakubowski v. Christ Hosp., Inc.*, 627 F.3d 195, 202 (6th Cir. 2010).

But even if Wilson satisfied the first four factors, the Department would not fail to provide the necessary accommodation merely by declining to provide one automatically at Wilson's

[1] Although the standards for Rehabilitation Act violations tread largely the same ground as the ADA, 29 U.S.C. § 794(d), this causation test is different because its ADA analogue applies only "but-for" causation rather than the "sole-cause" standard here, *Bledsoe*, 42 F.4th at 579.

request. Instead, Wilson's request for accommodation would mark the beginning of an "interactive process" to "identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations" that "requires communication and good-faith exploration of possible accommodations." *Kleiber*, 485 F.3d at 871 (first quoting 29 C.F.R. § 1630.2(o)(3); and then quoting *Barnett v. U.S. Air, Inc.*, 228 F.3d 1105, 1114 (9th Cir. 2000) (en banc)).[2]

Before the Department must accommodate, Wilson needs to first provide "a proper diagnosis of her disability and requested specific accommodation." *Kirilenko-Ison*, 974 F.3d at 670 (brackets omitted). If she instead "voluntarily withdraws from the interactive process based on [the Department's] request for verification, [she] fails to show that the [Department] denied her requests for accommodations." *Id.* And if Wilson fails "to provide requested medical documentation *supporting an accommodation*," that "precludes a failure to accommodate claim." *Tchankpa v. Ascena Retail Grp.*, 951 F.3d 805, 812 (6th Cir. 2020) (emphasis added).

Here, when Wilson requested an ADA accommodation, the Department's ADA coordinator asked her to fill out paperwork to describe her requested accommodation and to show physician support for it. But Wilson refused. She claims that her FMLA and short-term disability forms should suffice because they were "signed by her physician" and "precisely describ[e] the nature of her disability." Reply Br. at 15–16 (citing R. 39-1, pp. 14–77, PageID 1194–1257; R. 39-2, pp. 1–21, PageID 1258–78).

[2] The Department also argues (1) that Wilson was not "otherwise qualified" for her position and (2) that she never identified a "reasonable" accommodation. Appellee Br. at 13, 21. If shown, either deficiency would entitle the Department to summary judgment. But the district court did not resolve these issues, so we focus our analysis instead on the equally dispositive issue of Wilson's participation in the interactive process.

These documents, however, only support the FMLA leave and short-term disability leave Wilson already received and exhausted, showing no physician support for the *ADA* accommodations she requested: "reasonable accommodation within [the] area of work schedule, flexibility, and teleworking." R. 39-2, p. 23, PageID 1280. This deficiency is not some "bureaucratic technicalit[y]," Reply Br. at 16, or a bad-faith refusal by the Department "to participate in the interactive process," Appellant Br. at 21. It is a critical failure by Wilson to carry her burden of providing the Department "with medical documentation supporting [her] accommodation[s'] necessity," *Tchankpa*, 951 F.3d at 813. And this failure amounts to a voluntary withdrawal that precludes her claim that the Department failed to accommodate her. *Id.* at 812; *Kirilenko-Ison*, 974 F.3d at 670.

Wilson, however, maintains that it was nonetheless the *Department* that obstructed the process in bad faith by not recusing Thomson from the review committee after Wilson had accused her of bias. But Thomson would have been only one member on a six-person Reasonable Accommodation Review Committee that would have reviewed Wilson's accommodation request, and it was Jones—not Thomson—who would've taken the lead. And, even then, if Wilson had come away dissatisfied with the Committee's decision, the Department offered a formal appeal process. Wilson, however, took part in none of this, having instead decided against "[g]oing through that route." R. 39, p. 209, PageID 1131.

The Department did not cause a breakdown in the interactive process by establishing a process that Wilson simply did not like. *See McDonald v. UAW-GM Ctr. for Hum. Res.*, 738 F. App'x 848, 855 (6th Cir. 2018) ("We also have previously noted that an employee who quits before the accommodation request's resolution is at fault for any breakdown in the interactive process, not the employer." (citing *Gleed v. AT&T Mobility Servs., LLC*, 613 F. App'x 535, 539 (6th Cir.

2015))). So the Department did not fail to accommodate Wilson, and Wilson has thus failed to create a genuine issue of material fact for her claim that she was fired solely by reason of her disability. The Department was entitled to summary judgment on Wilson's disability-discrimination claims.[3]

B.

This leaves Wilson's failure-to-accommodate claims. Because the Rehabilitation Act has no statute of limitations, "[t]his court has applied Ohio's two-year statute of limitations governing personal injury actions to Ohio cases arising under . . . the Rehabilitation Act." *Endres v. Ne. Ohio Med. Univ.*, 938 F.3d 281, 292 (6th Cir. 2019) (citing *Bishop v. Child.'s Ctr. for Developmental Enrichment*, 618 F.3d 533, 536 (6th Cir. 2010)). And, under federal law, the limitations period begins "when the plaintiff knows or has reason to know of the injury which is the basis of h[er] action." *Id.* (citation omitted). Wilson filed her complaint on December 3, 2020, so she can recover for claims that accrued on or after December 3, 2018.

Of the at least thirteen times Wilson requested an accommodation, the final one occurred about two months earlier, "[o]n or about October 12, 2018." R. 39-2, pp. 51–52, PageID 1308–09. And she "was denied every single time." R. 39, pp. 166–67, PageID 1088–89. She knew the Department was not accommodating her before she was terminated on December 3, 2018, so everything in her failure-to-accommodate claim occurred outside the limitations period.

Wilson, however, tries to get around this shortcoming by asserting a "continuous violation." This doctrine is an exception to the normal statute of limitations that applies when prior discriminatory activity "*continues into the present*, as opposed to prior discriminatory activity

[3] Ohio applies federal standards to disability-discrimination claims under state law, *see Columbus Civ. Serv. Comm'n v. McGlone*, 697 N.E.2d 204, 206–07 (Ohio 1998), so we affirm Wilson's state-law disability-discrimination claim for the same reasons we affirm the federal claim.

whose effects continue into the present," or where there is a demonstrable *policy* of discrimination. *Bell v. Ohio State Univ.*, 351 F.3d 240, 247 (6th Cir. 2003) (emphasis added) (citing *Tolbert v. Ohio Dep't of Transp.*, 172 F.3d 934, 940 (6th Cir. 1999)). Wilson claims only the former.

But even if, as Wilson alleges, "the consequences of each additional denial are overlapping and cumulative," Reply Br. at 20, no *activity* persisted up to or past her termination date. At that point, she already knew of her injury. So the alleged failures to accommodate occurred outside the limitations period, and Wilson's federal failure-to-accommodate claim is time-barred.

C.

Having found Wilson's federal failure-to-accommodate claim time-barred, the district court declined to exercise supplemental jurisdiction over its state-law counterpart. Decisions to (or not to) exercise supplemental jurisdiction "depend[] on 'judicial economy, convenience, fairness, and comity.'" *Musson Theatrical, Inc. v. Fed. Express Corp.*, 89 F.3d 1244, 1254 (6th Cir. 1996) (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988)). Because we agree that Wilson's federal failure-to-accommodate claim was time-barred, we hold that it was not an abuse of discretion for the district court to decline to assume supplemental jurisdiction over its counterpart under Ohio law. *Experimental Holdings, Inc. v. Farris*, 503 F.3d 514, 521 (6th Cir. 2007) ("Generally, once a federal court has dismissed a plaintiff's federal law claim, it should not reach state law claims.").

III.

For the reasons set forth above, we AFFIRM the district court's decisions.