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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Jamel Walker,

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No. cv-07-1566-PHX-ROS

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Plaintiff,

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**ORDER**

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vs.

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United States Postal Service; John E.  
Potter, Postmaster General,

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Defendants.

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Before the Court is Defendant United States Postal Service’s Motion for Summary Judgment (Doc. 46) and Defendant Postal Service’s Motion for Summary Disposition (Doc. 48).

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The latter Motion is premised on the fact that Plaintiff failed to respond to Defendant’s Motion for Summary Judgment as required by LRCiv 56.1. LRCiv. 7.2(i) states that a party who fails to file a required responsive memorandum, unless given leave to do otherwise by the Court, may be deemed to have “consent[ed] to the denial or granting of the motion and the Court may dispose of the motion summarily.” However, the Ninth Circuit has explicitly forbidden district courts from summarily granting motions for summary judgment, regardless of the existence of such rules. Martinez v. Stanford, 323 F.3d 1178, 1182 (9th Cir. 2003). “[A] nonmoving party’s failure to comply with local rules does not excuse the moving party’s affirmative duty under Rule 56 to demonstrate its entitlement to

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1 judgment as a matter of law. Fed. R. Civ. P. 56.” Id. Accordingly, Defendant’s Motion will  
2 be considered on the merits. For the reasons stated herein, it will be granted and the suit  
3 dismissed.<sup>1</sup>

#### 4 BACKGROUND

5 Plaintiff Jamel Walker was hired by the United States Postal Service as a part-time  
6 flexible distribution clerk on February 28, 1998. At the time she was in the third trimester  
7 of pregnancy. She resigned four days after she began working and contacted an Equal  
8 Employment Opportunity (EEO) counselor, alleging that she was discriminated against and  
9 forced to resign by her supervisors because she ws a pregnant, African-American female.  
10 Plaintiff and the Postal Service entered into a settlement agreement, and she withdrew her  
11 complaint and was re-hired.

12 Before she completed her ninety-day probationary period, she was terminated,  
13 allegedly for absteneism. She filed a complaint with an EEO counselor alleging that she  
14 was actually terminated due to her race. Plaintiff again entered into a settlement agreement  
15 with the Postal Service, which agreed to re-hire Plaintiff as a part-time flexible distribution  
16 clerk at the General Mail Facility in Phoenix, Arizona, contingent upon successful  
17 completion of pre-employment requirements, which included a medical exam.

18 The medical examiner found Plaintiff, as a result of a car injury in November 1999,  
19 could not physically perform the job requirements, which included an ability to lift 70  
20 pounds, carry up to 44 pounds, and to grasp and sort mail. George Kintscher, Supervisor of  
21 the Postal Service’s Phoenix Employment Office, informed Plaintiff in writing that she was  
22 not physically able to perform the job. He invited her to submit alternative information about  
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24 <sup>1</sup> Plaintiff’s suit is against both the United States Postal service and Postmaster  
25 General John E. Potter in his official capacity. Only Defendant Postal Service has  
26 technically moved for summary judgment. However, because the claims against both  
27 Defendants are identical, as is the basis behind them, it is appropriate to grant summary  
28 judgment against both Defendants. See, e.g., Corales v. Bennett, 567 F.3d 554 (9th Cir.  
2009).

1 her physical abilities or to request accommodations. Plaintiff requested an extension of time  
2 to do so, but never submitted any additional information.

3 Plaintiff filed an EEO complaint arising out of these events, alleging she was found  
4 medically unsuitable for the distribution clerk position because racial and sexual  
5 discrimination, and discrimination based on her perceived disability, and in retaliation for  
6 her prior EEO activity. She is now before this Court on those claims.

### 7 STANDARD OF REVIEW

8 A court must grant summary judgment if the pleadings and supporting documents,  
9 viewed in the light most favorable to the non-moving party, "show that there is no genuine  
10 issue as to any material fact and that the moving party is entitled to a judgment as a matter  
11 of law." Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).  
12 Substantive law determines which facts are material, and "[o]nly disputes over facts that  
13 might affect the outcome of the suit under the governing law will properly preclude the entry  
14 of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In  
15 addition, the dispute must be genuine; that is, the evidence must be "such that a reasonable  
16 jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248.

17 "[A] party seeking summary judgment always bears the initial responsibility of  
18 informing the district court of the basis for its motion, and identifying those portions of the  
19 pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
20 affidavits, if any, which it believes demonstrate the absence of a genuine issue of material  
21 fact." Celotex, 477 U.S. at 323 (internal quotations and citations omitted). The party  
22 opposing summary judgment "may not rest upon the mere allegations or denials of [the  
23 party's] pleading, but . . . must set forth specific facts showing that there is a genuine issue  
24 for trial." Fed. R. Civ. P. 56(e); see Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,  
25 475 U.S. 574, 586-87 (1986). There is no issue for trial unless there is sufficient evidence  
26 favoring the non-moving party; "[i]f the evidence is merely colorable, or is not significantly  
27 probative, summary judgment may be granted." Anderson, 477 U.S. at 249-50 (citations  
28 omitted). However, "[c]redibility determinations, the weighing of the evidence, and the

1 drawing of legitimate inferences from the facts are jury functions, not those of a judge." Id.  
2 at 255. Therefore, "[t]he evidence of the non-movant is to be believed, and all justifiable  
3 inferences are to be drawn in his favor" at the summary judgment stage. Id.

#### 4 ANALYSIS

##### 5 A. Settlement Agreements

6 Defendant argues that Plaintiff is precluded from raising any issues that were resolved  
7 by settlement agreements. Settlement agreements reached at any stage of the EEO complaint  
8 process are binding on both parties. 29 C.F.R. § 1614.504(a). Accordingly, Defendant  
9 states, portions of Plaintiff's Complaint which address issues covered in her earlier settlement  
10 agreements are barred. This includes her claims that she was wrongfully terminated in  
11 March and November of 1998 and that the Postal Service discriminated against her by  
12 "forcing her to be rehired" and "not reinstating her original seniority date after Plaintiff  
13 settled claims for her wrongful terminations . . . ."

14 Defendant is correct. "A plaintiff who knowingly and voluntarily agrees to settle [her]  
15 claims is bound by [her] agreement." Folley v. Henderson, 175 F. Supp. 2d 1007, 1011 (S.D.  
16 Ohio 2001) (quoting Wyche v. Proctor & Gamble Co., 772 F. Supp. 982, 984 (S.D. Ohio  
17 1990)). Plaintiff has not come forth with any evidence stating that she did not settle freely  
18 or voluntarily, or that the settlement agreement is otherwise void. Therefore, only claims  
19 arising from Defendant's refusal to re-hire Plaintiff when she was found medically unsuitable  
20 for the distribution clerk position in 2001 are valid.

##### 21 B. Prima Facie Case of Discrimination Under Title VII

22 Defendant argues that Plaintiff has not established a prima facie case of  
23 discrimination. In a Title VII trial, the plaintiff "must carry the initial burden under the  
24 statute of establishing a prima facie case of racial discrimination." McDonnell Douglas  
25 Corp. v. Green, 411 U.S. 792, 802 (1973). This can be done by showing:

- 26 (1) she belongs to a protected class,
- 27 (2) she was performing according to her employer's legitimate expectations,
- 28 (3) she suffered an adverse employment action, and
- (4) other employees with qualifications similar to her own were treated more favorably.

1 Bergene v. Salt River Project Agric. Improvement & Power Dist., 272 F.3d 1136, 1140 (9th  
2 Cir. 2001) (citing Goodwin v. Hunt Wesson, Inc., 150 F.3d 1217, 1220 (9th Cir. 1998)).

3 Here, the Postal Service ostensibly terminated Plaintiff on the ground that she was  
4 medically incapable of meeting the position's requirements. It based this on a medical  
5 evaluation of Plaintiff, which it has provided. Def. Ex. G, Item. 6, Item. 9. The Medical  
6 Officer found Plaintiff's physical limitations on lifting and grasping were "not compatible  
7 with the strenuous and arduous activities required" for the position in question and that  
8 "postal employment would place [her] personal health and safety in jeopardy." Id. Plaintiff  
9 was then asked to provide "responsive medical information, or to request accommodation."  
10 Id. She requested additional time to do so, which was granted, but ultimately never provided  
11 the information in question.

12 Plaintiff has not made any demonstration that employees with similar qualifications  
13 were treated more favorably. She was terminated in accordance with seemingly neutral  
14 policy after failing to request reasonable accommodation, creating no genuine issue of  
15 material fact for trial. Accordingly, Plaintiff has not made out a prima facie case of  
16 discrimination under Title VII.

### 17 C. Americans with Disabilities Act and Rehabilitation Act

18 Defendant argues that the Americans with Disabilities Act ("ADA") does not apply  
19 to the United States Postal Service, part of the United States government. Defendant is  
20 correct. See 42 U.S.C. § 12111(5) ("The term 'employer' does not include the United States  
21 [or] a corporation wholly owned by the government of the United States."). As Defendant  
22 points out, Plaintiff was on notice that her complaint must be amended to be bring her claims  
23 under the Rehabilitation Act. 29 U.S.C. § 791(b); Joint Proposed Case Management Plan  
24 (Doc. 27). She did not do so.

25 However, given the liberality with which this Court is to construe *pro se* filings, it is  
26 appropriate to consider whether Plaintiff has demonstrated that a genuine issue of material  
27 fact exists as to a Rehabilitation Act claim. In order to prevail on such a claim, Plaintiff must  
28 demonstrate that she "suffers a physical or mental impairment that substantially limits [her]

1 ability to perform major life activities.” Linder v. Potter, 304 Fed. Appx. 570, 571 (9th Cir.  
2 2008) (citing Gribben v. United Parcel Serv., Inc., 528 F.3d 1166, 1169 (9th Cir. 2008).  
3 Here, the only disability that is alleged is those limitations on lifting and grasping found by  
4 Defendants’ medical examiner.

5 However, “major life activities”

6 refers to those activities that are of central importance to daily life. In order for  
7 performing manual tasks to fit into this category – a category that includes  
8 such basic abilities as walking, seeing, and hearing – the manual tasks in  
9 question must be central to daily life.

10 Toyoto Motor Mfg., Ky. v. Williams, 534 U.S. 184, 200 (2002). “When the major life  
11 activity under consideration is that of working, the statutory phrase ‘substantially limits’  
12 requires . . . that plaintiffs allege that they are unable to work in a broad class of jobs.”  
13 Sutton v. United Air Lines, Inc., 527 U.S. 471, 479 (1999). Focus on the plaintiff’s inability  
14 to perform manual tasks associated only with her job is inappropriate. Toyota Motor Mfg.,  
15 534 U.S. at 200. “Repetitive work with hands and arms extended at or above shoulder levels  
16 for extended periods of time . . . is not an important part of most people’s daily lives.” Id.  
17 Accordingly, that court “should not have considered [the party’s] inability to do such manual  
18 work in her specialized assembly line job as sufficient proof that she was substantially  
19 limited in performing manual tasks.” Id.

20 This case is little different. The specific limitations found by Plaintiff’s doctor are:

21 Limit repetitive grasping with left and right hands to 4 or 5 hours per day.  
22 Lifting from floor to knuckle of 30 lbs. on an occasional basis, 15 lbs. on a  
23 frequent basis, and 6 lbs. on a constant basis. Lifting from knuckle to shoulder  
24 of 30 lbs. occasionally, 15 lbs. on a frequent basis, and 6 lbs. on a constant  
25 basis. Overhead lifting to 30 lbs. occasionally, 15 lbs. frequently, and 6 lbs.  
26 constantly. Ability to carry 30 lbs. for 100 feet, and ability to push 60 lbs. and  
27 pull 70 lbs.

28 Def. Ex. G, Item 9.

Plaintiff has not provided any evidence that goes towards showing that these are the  
sort of broad-based limitations that could constitute disability, as defined above. Common  
sense concurs; it is a minority of jobs that require repetitive grasping and the constant lifting  
of heavy items.



1 administrative judge but did not comply until over a month after the deadline had passed and  
2 therefore requests damages.

3 Defendant argues that this regulation is not applicable to district court actions. They  
4 are correct; by its plain language, the provision allows for sanctions to be imposed *by an*  
5 *administrative judge* only. Further, nothing in the provision provides for the relief Plaintiff  
6 requests, which is broad damages for hardship and emotional distress. Finally, as Defendant  
7 points out, the error seems to be essentially harmless; Plaintiff received the documents in  
8 question more than a year before she filed her complaint in this Court. the purpose for which  
9 they were apparently necessary.


10 Finally, Plaintiff states in passing in her Complaint that she is pleading a claim under  
11 42 U.S.C. § 1985. However, she fails to spell out any grounds for relief on this cause of  
12 action or explain why her rights were violated in a manner prohibited by the statute.  
13 Accordingly, Defendant has demonstrated its entitlement to summary judgment against both  
14 it and John E. Potter. As such,

15 **IT IS ORDERED** Defendant's Motion for Summary Judgment (Doc. 46) is  
16 **GRANTED.**

17 **FURTHER ORDERED** this action is **DISMISSED WITH PREJUDICE** as to each  
18 Defendant.

19 DATED this 16th day of July, 2009.

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Roslyn O. Silver  
United States District Judge