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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Charity Mitchell,

10 Plaintiff,

11 v.

12 American Airlines, Inc.

13 Defendants.

No. 17-CV-2470-PHX-DGC

ORDER

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15 Pro se Plaintiff Charity Mitchell has filed a Third Amended Complaint against
16 Defendant American Airlines, Inc. alleging a violation of the Americans with Disabilities
17 Act (“ADA”) and breach of contract. Doc. 41. Defendant has filed a motion to dismiss
18 for failure to state a claim. Doc. 45. The motion is fully briefed. Docs. 47, 48. For the
19 reasons that follow, the motion will be granted in part and denied in part.¹

20 **I. Background.**

21 Plaintiff, who suffers from a physical impairment that requires her to use a
22 “colostomy apparatus” and “medicines,” began working for Defendant as a customer
23 service employee in Phoenix, Arizona in November 2010. Doc. 41 ¶¶ 1-3. In order to

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25 ¹ Defendant contends that the amended complaint improperly names “American
26 Airlines/USairways” as the defendant, and requests that American Airlines, Inc. be
27 substituted as the sole defendant. Doc. 45 at 1-2. Although Plaintiff was employed
28 exclusively with US Airways throughout her employment, US Airways ceased to exist in
2015 when it merged with American Airlines. *Id.* The Court will dismiss “American
Airlines/USairways” and substitute American Airlines, Inc. as the proper defendant. *See*
Fed. R. Civ. P. 21.

1 get to her work station, Plaintiff was required to pass through TSA security screening. *Id.*
2 ¶¶ 1-2. Plaintiff's impairment required that a female TSA agent be available to search
3 her personal items and under her clothing. *Id.* ¶ 3. But because a female TSA agent was
4 not always readily available, Plaintiff was late to her work station on several occasions.
5 *Id.* ¶¶ 2-3. Plaintiff alleges she was harassed and disciplined for being late. *Id.* ¶¶ 3-5.

6 In January 2011, Plaintiff met with her supervisor, Steve Olson, regarding her
7 impairment and trouble getting through TSA security. *Id.* ¶ 4. During the meeting, Mr.
8 Olson informed Plaintiff that it was just a matter of time before she would no longer be
9 employed with the company and that perhaps she did not fit in at the Phoenix station. *Id.*
10 In March 2011, Plaintiff discussed the difficulties she was experiencing with a human
11 resources representative. *Id.* ¶ 9. Mr. Olson responded that Plaintiff should consider
12 alternatives to her employment. *Id.* Plaintiff was ultimately terminated. Plaintiff alleges
13 that these encounters and comments, and her termination, were a direct result of her
14 impairment and associated personal needs while working. *Id.* ¶ 5; Doc. 47 at 2.

15 **II. Legal Standard.**

16 A successful motion to dismiss under Rule 12(b)(6) must show either that the
17 complaint lacks a cognizable legal theory or fails to allege facts sufficient to support its
18 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A
19 complaint that sets forth a cognizable legal theory will survive a motion to dismiss as
20 long as it contains "sufficient factual matter, accepted as true, to 'state a claim to relief
21 that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl.*
22 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim has facial plausibility when "the
23 plaintiff pleads factual content that allows the court to draw the reasonable inference that
24 the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing
25 *Twombly*, 550 U.S. at 556). "The plausibility standard is not akin to a 'probability
26 requirement,' but it asks for more than a sheer possibility that a defendant has acted
27 unlawfully." *Id.*

1 When a plaintiff is proceeding pro se, factual allegations, “however inartfully
2 pleaded,” are held “to less stringent standards than formal pleadings drafted by lawyers.”
3 *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The rule of liberal construction of pleadings
4 is “particularly important in civil rights cases.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261
5 (9th Cir. 1992).

6 **III. ADA Discrimination Claim.**

7 Construing Plaintiff’s pleadings liberally, the Court understands Plaintiff to be
8 raising a claim of disability discrimination under Title I of the ADA. 42 U.S.C.
9 §§ 12112, *et seq.* ADA discrimination claims are analyzed under the *McDonnell*
10 *Douglas* burden-shifting framework, which requires an employee to carry the initial
11 burden of establishing a prima facie case of discrimination. *See Raytheon Co. v.*
12 *Hernandez*, 540 U.S. 44 (2003). If the employee meets this burden, the burden shifts to
13 the employer to articulate “a legitimate nondiscriminatory reason” for the employee’s
14 discharge. *Id.* at 50. To establish a prima facie case, Plaintiff must show that: (1) she is
15 disabled within the meaning of the ADA; (2) she is otherwise qualified, meaning with or
16 without reasonable accommodation she is able to perform the essential functions of her
17 job; and (3) she suffered an adverse employment action because of her disability.
18 *Samper v. Providence St. Vincent Med. Ctr.*, 675 F.3d 1233, 1237 (9th Cir. 2012); 42
19 U.S.C. §§ 12112(a), (b)(5)(A).

20 **A. Disabled Within the Meaning of the Act.**

21 The ADA defines a “disability” as “a physical or mental impairment that
22 substantially limits one or more major life activities of such individual; a record of such
23 an impairment; or being regarded as having such an impairment.” 42 U.S.C. § 12102(1).
24 According to the ADA Amendments Act of 2008 (“ADAAA”), the definition of
25 disability is “construed in favor of broad coverage” of individuals asserting claims under
26 the Act. *Id.* § 12102(4)(A); *Rohr v. Salt River Project Agric. Improvement & Power*
27 *Dist.*, 555 F.3d 850, 853 (9th Cir. 2009). Further, the ADAAA implementing regulations
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1 provide that the “question of whether an individual meets the definition of disability
2 under [the ADA] should not demand extensive analysis.” 29 C.F.R. § 1630.1(c)(4).

3 Defendant argues that Plaintiff failed to assert that she suffers from a disability
4 because she has not alleged that her colostomy apparatus and related medications
5 substantially limit a major life activity. Doc. 45 at 5. But the ADA expressly lists the
6 operation of the “digestive” and “bowel” systems as major bodily functions that qualify
7 as major life activities. 42 U.S.C. § 12102(2)(A)-(B). Plaintiff’s allegation that she must
8 use an apparatus to eliminate waste through a surgical opening in her abdomen
9 reasonably alleges that she has an impairment that substantially limits a major life
10 activity. As one court relevantly explained:

11 [I]t is apparent that Plaintiff’s colostomy severely limits the operation of his
12 bowel and digestive functions – portions of these systems were removed
13 from his body and he now eliminates waste through an opening in his
14 abdomen. That it takes Plaintiff “a few minutes longer than the average
15 person” to use the restroom is not dispositive of whether Plaintiff is
16 disabled. If that were the case, a wheelchair user that needed just a few
inches more space than the average person to pass through a doorway
would not be considered disabled.

17 *Pilling v. Bay Area Rapid Transit*, 881 F. Supp. 2d 1152, 1159 n.8 (N.D. Cal. 2012); *see*
18 *also Hodge v. Henry Cty. Med. Ctr.*, 341 F. Supp. 2d 968, 974 (W.D. Tenn. 2003)
19 (finding enough evidence to create a jury question as to whether plaintiff was disabled
20 where she had part of her intestinal tract removed and had a colostomy apparatus).
21 Plaintiff has adequately alleged that she is disabled under the ADA, and her complaint
22 will not be dismissed on this basis.

23 **B. Qualified Individual.**

24 The ADA defines “qualified individuals” as those “who, with or without
25 reasonable accommodation, can perform the essential functions of the employment
26 position that such individual holds.” 42 U.S.C. § 12111(8). Defendant does not dispute
27 that Plaintiff has sufficiently alleged this element. Plaintiff was employed in her position
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1 for at least eight years and alleges that her “colostomy and supplies . . . did not interfere
2 with [her] ability to speak type and walk while working.” Doc. 47 at 2. She further
3 alleges that she was a good employee who received several awards for her performance.
4 Doc. 41 ¶ 12. Plaintiff has plausibly alleged that she is a qualified individual under the
5 ADA.

6 **C. Termination Because of Disability.**

7 Plaintiff bears the burden of demonstrating that she was discriminated against
8 “because of” her disability. *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 994 (9th
9 Cir. 2007). Plaintiff must establish that Defendant’s adverse employment decision was
10 motivated, “even in part, by animus based on [her] disability or request for an
11 accommodation – a motivating factor standard.” *Dark v. Curry Cty.*, 451 F.3d 1078,
12 1085 (9th Cir. 2006) (quoting *Head v. Glacier Nw. Inc.*, 413 F.3d 1053, 1065 (9th
13 Cir. 2005)).

14 Defendant argues that Plaintiff has not alleged sufficient facts to show that she
15 was terminated because of her disability. Doc. 45 at 8. Plaintiff alleges that her
16 colostomy apparatus delayed her passage through security, and that Defendant did not
17 provide an alternative route for her to arrive at her station on time. Doc. 41 ¶¶ 1-2. She
18 alleges that she explained her disability to her supervisor, Mr. Olson, and he responded
19 that “Phoenix was not a fit for [her], [she] would do better to transfer out, [and] it is just a
20 matter of time before [she is] no longer employed with USAirways.” Doc. 47 at 2;
21 Doc. 41 ¶¶ 3-4. Plaintiff asserts these comments were “a direct result of [her] apparatus
22 and personal needs while working the gates.” Doc 47 at 2. Plaintiff also alleges that she
23 was terminated in part for conduct resulting from her disability. Doc. 41 ¶¶ 2-5. Plaintiff
24 notes that she was disciplined for being late to her work station because a female TSA
25 agent could not always be located when she passed through screening. *Id.*

26 It is well established in the Ninth Circuit that “conduct resulting from a disability
27 is considered to be part of the disability, rather than a separate basis for termination.” *See*
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1 *Humphrey v. Mem'l Hosps. Ass'n*, 239 F.3d 1128, 1139-40 (9th Cir. 2001). This applies
2 to limitations in getting to and from work. See *Livingston v. Fred Meyer Stores, Inc.*, 388
3 F. App'x 738, 740 (9th Cir. 2010); see also *Humphrey*, 239 F.3d at 1135 (holding that
4 employer had an obligation to accommodate employee's inability to get to work on time
5 or at all due to obsessive-compulsive disorder). Plaintiff's allegations give rise to a
6 reasonable inference that her disability was a motivating factor in her termination.

7 Plaintiff has adequately pled the three elements of a prima facie ADA
8 discrimination claim. Defendant's motion, which is limited to arguing that Plaintiff
9 cannot prove these elements, will be denied.²

10 **IV. Breach of Contract Claim.**

11 Plaintiff also appears to assert a state law claim for breach of contract. Plaintiff
12 contends that Defendant failed to comply with the collective-bargaining agreement
13 ("CBA") provisions regarding employee discipline and termination. Doc. 41 ¶ 6.
14 Defendant argues that Plaintiff's claim is preempted by the Railway Labor Act ("RLA").
15 Doc. 45 at 10. The Court agrees.

16 The RLA, which applies to the airline industry, establishes "a mandatory arbitral
17 mechanism to handle disputes 'growing out of grievances or out of the interpretation or
18 application of agreements concerning rates of pay, rules, or working conditions.'" *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 248 (1994) (quoting 45 U.S.C. § 153(i)).
19 To determine whether RLA preemption applies, courts must inquire into the source of the
20 right asserted by the plaintiff. *Cramer v. Consol. Freightways, Inc.*, 255 F.3d 683, 691
21 (9th Cir. 2001); *Espinal v. Nw. Airlines*, 90 F.3d 1452, 1456 (9th Cir. 1996). When the
22 plaintiff's right is dependent on interpretation or application of a collective bargaining
23 agreement, the claim is preempted. *Hawaiian Airlines*, 512 U.S. at 256. But when the
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27 ² Defendant argues that Plaintiff has failed to state a claim for retaliation, but cites
28 only to her second amendment complaint. Doc. 48 at 4-5. Plaintiff's third amended
complaint does not assert a claim for retaliation. Doc. 41. The Court therefore will not
address this part of Defendant's argument.

1 right asserted exists independently of such an agreement – when it can be resolved
2 without interpreting the agreement – the claim is not preempted. *Id.*

3 Plaintiff’s breach of contract claim is, by her own admission, rooted in the CBA.
4 Plaintiff alleges that her employment was governed by the CBA and that any disputes
5 regarding discipline and termination fall under the agreement. Doc. 41 ¶ 6. Thus,
6 Plaintiff’s breach of contract claim is preempted by the RLA. *See Espinal*, 90 F.3d
7 at 1459 (holding that the plaintiff’s breach of contract claim was preempted by the RLA
8 and that his “only contractual remedies lie in the grievance procedures set forth under the
9 CBA”).

10 **IT IS ORDERED:**

- 11 1. American Airlines, Inc. is substituted as the sole Defendant in place of
12 “American Airlines/USairways.”
- 13 2. Defendant’s motion to dismiss (Doc. 45) is granted in part and denied in
14 part. The motion is **granted** as to Plaintiff’s breach of contract claim and
15 **denied** as to Plaintiff’s claim for termination in violation of the ADA.

16 Dated this 8th day of January, 2018.

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21 David G. Campbell
22 United States District Judge
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