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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Leo B. Marchetti,

Plaintiff

v.

Kinross Gold U.S.A., Inc.,

Defendant

2:15-cv-02095-JAD-VCF

**Order Granting Defendant's Motion  
for Summary Judgment**

[ECF No. 21]

Leo Marchetti applied to work as a security guard or technician at defendant Kinross's gold mine in rural Round Mountain, Nevada. Marchetti soon learned that he didn't get either job and that Kinross had awarded them to others. Marchetti believes he was passed up because he had a knee disability, so he brings this case against Kinross alleging a claim under the Americans with Disabilities Act ("ADA"). Kinross moves for summary judgment, arguing that when it denied Marchetti's online application it did not even know that he had a disability, much less discriminate against him because of it. And Marchetti's four-page opposition offers no evidence that he had a disability, that he was qualified for the positions he applied for at the mine, or that Kinross's proffered reasons for hiring others was pretext for discrimination. I therefore grant Kinross's motion.

**Background**

Kinross owns a working gold mine in Round Mountain, Nevada. Round Mountain is tucked away deep in the Nevada desert—a four-hour drive from either of the state's major cities, Reno and Las Vegas. Marchetti lives outside Las Vegas in Pahrump, Nevada, almost four hours from Kinross's mine.

Marchetti was not deterred by the distance, and in the winter of 2013, he applied online for several positions at Kinross. He wanted to work as a lab technician, a security guard, or a warehouse technician at the mine. But Kinross decided to hire other people for these positions. Marchetti

1 believed that he was passed up because of his disability, so he filed a charge of discrimination with  
2 the Nevada Equal Rights Commission in late 2014.<sup>1</sup>

3 Kinross offers evidence that it gave the jobs to others for good reasons that had nothing to do  
4 with Marchetti’s disabilities. The lab and warehouse jobs went to four people who lived in Round  
5 Mountain and either already worked for Kinross, or had spouses who did.<sup>2</sup> Kinross’s evidence  
6 shows that its hiring policies give preference to those who live in the area or have connections there  
7 because, understandably, the company has difficulty retaining employees in that remote locale.<sup>3</sup>  
8 Kinross eliminated the security-guard positions for budget reasons.<sup>4</sup>

9 Not only does Kinross deny that disability played a role in its decision to not hire Marchetti,  
10 Kinross offers evidence that it never reviewed his cover letter or met him—so when it made its  
11 hiring decisions, Kinross could not know that he had a disability, much less discriminate against him  
12 for it.<sup>5</sup>

13 As to whether Marchetti actually has a disability, in his cover letter to Kinross, he made sure  
14 to let the company know that he “[wa]s disabled)” and that, although he “walked with a cane,” he  
15 could do still do these jobs.<sup>6</sup> But Marchetti offers no other evidence that he has a disability, save an  
16 unauthenticated photocopy of a DMV handicap placard with his name on it.<sup>7</sup> Notably, Marchetti  
17 offers no proper affidavit or other evidence explaining the nature of his alleged disability.<sup>8</sup>

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19 <sup>1</sup> ECF No. 21-18.

20 <sup>2</sup> ECF Nos. 21-1 at ¶ 5; 21-3; 21-11.

21 <sup>3</sup> ECF No. 21-1 at ¶ 4.

22 <sup>4</sup> ECF Nos. 21-12.

23 <sup>5</sup> ECF No. 21-1 at ¶ 6–7.

24 <sup>6</sup> ECF No. 21-2.

25 <sup>7</sup> ECF No. 22-3.

26 <sup>8</sup> Marchetti’s affidavit consists of a single relevant sentence: he promises that “to the best of his  
27 knowledge and belief,” everything in his opposition is true. ECF No. 22-1. To the extent that  
28 Marchetti invites me to treat this affidavit as incorporating every factual statement made in his



1 shifts to the nonmoving party, who must “set forth specific facts showing that there is a genuine  
2 issue for trial.”<sup>17</sup> The nonmoving party “must do more than simply show that there is some  
3 metaphysical doubt as to the material facts”; the nonmoving party “must produce specific evidence,  
4 through affidavits or admissible discovery material, to show that” there is a sufficient evidentiary  
5 basis on which a reasonable fact finder could find in his favor.<sup>18</sup>

6 **B. Marchetti’s evidence does not create a triable issue for the jury on his disability claim.**

7 To establish an ADA claim based on discriminatory hiring, Marchetti must show (1) that he  
8 is disabled within the meaning of the ADA; (2) that he was qualified for the positions that he applied  
9 for; and (3) that he was discriminated against because of his disability.<sup>19</sup> To prove the discrimination  
10 prong, Marchetti must offer evidence “that gives rise to an inference of unlawful discrimination,  
11 either through the framework set forth in *McDonnell Douglas Corp. v. Green* or with direct or  
12 circumstantial evidence of discriminatory intent.”<sup>20</sup> Direct evidence is “evidence which, if believed,  
13 proves the fact [of discriminatory animus] without inference.”<sup>21</sup>

14 Alternatively, under the *McDonnell Douglas* analysis, the plaintiff must first establish a  
15 prima facie case of discrimination by showing that (1) he belongs to a protected class, (2) he applied  
16 and was qualified for a job for which the employer was seeking applicants, (3) despite his  
17 qualifications, he was rejected, and (4) after his rejection, the position remained open and the  
18 employer continued to seek applicants from persons of his qualifications.<sup>22</sup> Once the plaintiff  
19 establishes these prima facie elements, the burden shifts to the employer to show “some legitimate,  
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21 <sup>17</sup> *Anderson*, 477 U.S. at 256; *Celotex*, 477 U.S. at 323.

22 <sup>18</sup> *Bank of Am. v. Orr*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted); *Bhan v. NME*  
23 *Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991); *Anderson*, 477 U.S. at 248–49.

24 <sup>19</sup> *Smith v. Clark Cty. Sch. Dist.*, 727 F.3d 950, 955 (9th Cir. 2013) (citation omitted).

25 <sup>20</sup> *Vasquez v. Cty. of Los Angeles*, 349 F.3d 634, 640 (9th Cir. 2003), *as amended* Jan. 2, 2004  
26 (internal quotations omitted).

27 <sup>21</sup> *Id.*

28 <sup>22</sup> *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

1 nondiscriminatory reason for the employee’s rejection.”<sup>23</sup> If the employer does so, the presumption  
2 raised by the prima facie case is rebutted, and the burden shifts back to the plaintiff to prove that the  
3 employer’s asserted reasons for not hiring him are mere pretext.<sup>24</sup> “The ultimate burden of  
4 persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains  
5 at all times with the plaintiff.”<sup>25</sup>

6 Marchetti’s ADA claim is a nonstarter for several reasons, any of which would warrant  
7 summary judgment against him. First, he fails to make his prima facie showing. Marchetti has not  
8 established that he has a disability under the ADA. There is virtually no evidence that Marchetti had  
9 “(A) a physical or mental impairment that substantially limit[ed] one or more of [his] major life  
10 activities . . . ; (B) a record of such an impairment; or (C) being regarded as having such an  
11 impairment,” as the ADA requires.<sup>26</sup> Marchetti’s evidence on this point consists of an  
12 unauthenticated photocopy of a handicap placard with his name on it. Even if I were to consider  
13 this, it is dated April 2014—months after Kinross rejected him.<sup>27</sup> There is thus no evidence  
14 indicating that Marchetti had a disability when it mattered: the day he applied to Kinross in late  
15 2013.<sup>28</sup> Nor has Marchetti offered evidence that he was qualified for the positions that he applied  
16 for<sup>29</sup> or that the positions remained open and that Kinross continued seeking applicants like

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18 <sup>23</sup> *Id.*

19 <sup>24</sup> *Id.* at 804

20 <sup>25</sup> *Texas Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981).

21 <sup>26</sup> 42 USC § 12102(2).

22 <sup>27</sup> ECF No. 22-2.

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24 <sup>28</sup> Although Marchetti stated that he had a disability in the cover letter he sent Kinross, the  
25 undisputed evidence shows that Kinross did not see that letter prior to making its hiring decisions.  
26 ECF No. 1 at 3. And even if it had, this is too little evidence for a reasonably jury to find that  
27 Marchetti was perceived as having a disability.

28 <sup>29</sup> For example, the security-guard position required one year of security experience; Marchetti’s  
resume reveals that he had no security experience whatsoever. ECF No. 22-5 (noting that Marchetti  
has worked as an amateur radio teacher in Nye County, a massage therapist, and a jeweler—but not a  
security guard for longer than a year or as a mine technician). Similarly, Marchetti admitted in

1 Marchetti.<sup>30</sup> This is enough to warrant judgment against him.

2 Second, even if Marchetti had made his prima facie showing, he has not rebutted Kinross's  
3 nondiscriminatory reasons for offering the positions to other candidates. Kinross gave preference to  
4 people who lived near Round Mountain or had connections there; it gave preference to applicants  
5 who had worked for Kinross before or had family members at the company. Every person that  
6 Kinross hired met these criteria, except for Marchetti. And, as Kinross points out, Marchetti was not  
7 a good candidate for other reasons: he had not worked in any relevant field for more than a decade.<sup>31</sup>  
8 This is another ground for granting summary judgment against Marchetti.

9 **Conclusion**

10 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant's  
11 **motion for summary judgment [ECF No. 21] is GRANTED.** The Clerk of Court is instructed to  
12 enter judgment in favor of Kinross Gold U.S.A., Inc. and against Leo B. Marchetti and close this  
13 case.

14 Dated this 17<sup>th</sup> day of May, 2017.

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17 Jennifer A. Dorsey  
18 United States District Judge  
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25 deposition that he could not walk while carrying 50 pounds, and the lab and warehouse jobs required  
26 that he "repeatedly" lift these loads.

27 <sup>30</sup> Kinross offers undisputed evidence that it filled each of the positions that Marchetti applied for,  
28 save the security-guard position. And Kinross's undisputed evidence shows that it eliminated the  
security-positions, so they did not remain open.

<sup>31</sup> ECF No. 22-5.