IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANNIE E. ARRINGTON	:	**CIVIL ACTION**
Plaintiff	:	
	:	**NO. 15-6750**
v.	:	
	:	
NATIONAL RAILROAD PASSENGER CORPORATION	:	
Defendant	:	

NITZA I. QUIÑONES ALEJANDRO, J. APRIL 5, 2017

MEMORANDUM OPINION

INTRODUCTION

Before this Court is a motion for summary judgment filed by Defendant National Railroad Passenger Corporation ("Defendant" or "Amtrak") pursuant to Federal Rule of Civil Procedure 56, which seeks the dismissal of the negligence and Americans with Disabilities Act ("ADA") claims asserted against it by Plaintiff Annie E. Arrington ("Plaintiff"). [ECF 26]. Plaintiff has opposed the motion. [ECF 27]. The issues presented in the motion for summary judgment have been fully briefed by the parties and are ripe for disposition. For the reasons stated herein, the motion for summary judgment is granted.

BACKGROUND

On December 22, 2015, Plaintiff filed a complaint against Defendant essentially averring that she suffered injuries while a passenger on an Amtrak train traveling between Philadelphia, Pennsylvania, and Rocky Mount, North Carolina. [ECF 1]. In her complaint, Plaintiff asserts that while moving from one handicap-designated seat to another at the direction of an Amtrak conductor, the train underwent a sudden jerk which caused her to fall in the aisle and sustain various injuries. Plaintiff contends that her fall and resultant injuries were caused by

Defendant's negligence and that Defendant's conduct violated the Americans with Disabilities Act, in that Plaintiff was discriminated against and/or denied services on account of her disability.

On November 16, 2016, Defendant filed the instant motion for summary judgment. As is required at the summary judgment stage, this Court will consider all relevant evidence and the reasonable facts and inferences drawn therefrom in the light most favorable to the non-moving party, here, Plaintiff. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255-56 (1986); *Todish v. Cigna Corp*., 206 F.3d 303, 305 (3d Cir. 2000). These facts are summarized as follows:[1]

> On February 28, 2014, Plaintiff was a passenger on an Amtrak train traveling from Philadelphia, Pennsylvania, to Rocky Mount, North Carolina. (Ex. B, 30:2-21; Def.'s Ex. A, Amtrak Ticket). At the time she purchased her ticket, Plaintiff identified herself as "mobility impaired," (Def.'s Ex. A, Amtrak Ticket), due to back and knee problems and the need for a cane to walk. (Ex. C, 39:1-7). According to Plaintiff, she "didn't need the cane continuously, only when [she] was having problems." (Ex. C, 14:6-8).
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> When boarding, Plaintiff was directed to a handicap-designated seat. (Ex. B, 43:13-18). Though a "red cap" carried her cooler and directed Plaintiff to her seat, Plaintiff was able to board the train without assistance. (Ex. B, 39:14-40:6). Plaintiff did not use or need her cane to walk to her seat. (Ex. B, 43:9-12).
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> At some point between Delaware and Baltimore, a conductor advised Plaintiff and others who were seated in the same handicapped section that because they would be disembarking at Rocky Mount, North Carolina, they were seated in the wrong car and would need to move to a different car. (Ex. B, 55:1-7; 56:11-15; 57:2-5). Plaintiff told the conductor that she could not walk

[1] Most of these facts are undisputed and/or admitted by Plaintiff. These facts were obtained from the parties' respective briefs, which rely primarily on Plaintiff's deposition testimony. A copy of the transcript of the deposition was attached to Defendant's motion as Exhibits B and C, and will be cited herein as follows: Plaintiff's May 19, 2016, June 6, 2016, and July 12, 2016 Deposition Transcripts (hereinafter, "Ex. B, Page: Line") and Plaintiff's October 20, 2014 Deposition Transcript (hereinafter, "Ex. C, Page: Line"). To the extent a fact is disputed, such dispute is noted and, if material, will be construed in Plaintiff's favor.

while the train was moving. (Ex. B, 57:16-19). The conductor responded by telling Plaintiff that she could remain in her seat until the train reached Baltimore. (Ex. B, 57:20-25; Ex. C, 18:1-2). According to the conductor, the train would stop for approximately five minutes. (Ex. B, 58:10-13; 61:23-62:3). While the train was still in motion, the conductor took Plaintiff's cooler to her new seat in another car, (Ex. B, 59:6-8), and the other passengers seated in the same handicapped section began to move to their new seat locations without assistance. (Ex. B, 59:9-60:3). Plaintiff remained seated and watched the other passengers walk toward the new seat location and exit the train car that Plaintiff then occupied. (Ex. B, 60:24-61:4). Plaintiff did not request any assistance from an Amtrak employee in changing seat locations, (Ex. B, 63:13-15), and declined the assistance offered by another passenger. (Ex. B, 64:25-65:8).

> Q. Immediately before the incident occurred, were you talking to anybody?
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> A. There was a young lady going to the bathroom.
>
> Q. Okay.
>
> A. She saw me get up to leave and asked if I needed help, and I told her no, but she said, well, I'll walk behind you anyway. So she was right in back of me when I fell. (Ex. B, 64:25-65:8).

Rather than waiting until the train came to a complete stop in Baltimore, as she was advised she could, Plaintiff got up from her seat as the train was slowing down and began to move to her new seat location in another train car. (Ex. B, 62:13-22; 63:19-20; 76:6-10). While Plaintiff was moving to her new seat, the train came to a stop and then "jerked," causing her to fall. (Ex. B, 64:10-24). Plaintiff described the jerk as "hard" and "long." (Ex. B, 96:10-19). She was unaware whether anyone else or any items on the train fell. (Ex. B, 96:20-97:13).

After lying on the floor for several minutes and then sitting in a nearby seat, Plaintiff "walked back through the coach to where I was going to be seated." (Ex. B, 74:10-75:1). She did not ask for or receive any assistance in moving to her new seat. (Ex. B, 75:8-14; 101:3-8). Her new seat was also in a handicap section of the train. (Ex. B, 105:24-25).

After the train reached Plaintiff's destination in North Carolina, Plaintiff walked down the aisle to the exit on her own without any assistance. (Ex. B, 111:14-20). She also walked unassisted to the baggage cart to pick up her checked luggage, and through the parking lot to her vehicle. (Ex. B, 112:12-20; 113:5-8). "Mrs. Arrington was able to drive herself home." (Pltf's Brief, at p. 10). On the day of the incident, Plaintiff did not report her fall to anybody. (Ex. B, 108:10-12).

About one week after the accident, Plaintiff sought treatment at the emergency room of the Halifax Memorial Hospital for pain in her left shoulder. (Ex. B, 130:8-131:7). Plaintiff drove herself in her truck to the emergency room. (Ex. B, 130:19-25). No one accompanied her to the hospital. (Ex. B, 131:1-2). Plaintiff was diagnosed with an injury to her right elbow and a herniated disc. (Pltf.'s Ex. 13 and 14).

Before her fall, Plaintiff claims to have had a very active daily routine. She testified as follows:

Q. Before this falldown in the Amtrak, what was your daily routine in North Carolina, what did you do?

A. I did everything I had for myself. I cooked. I went shopping. I did all my own shopping. For a long time I did my own grass, but then I got somebody to start cutting my grass because it got to be too much for me. I had almost three acres.

Q. When you cut it, you had a riding –

A. Oh, yes, yes. Couldn't cut that with a push mower. And I did everything, went to the hairdresser, anything had to be done I did it because my kids was here. (Ex. C, Dep. 28:8-22).

LEGAL STANDARD

Federal Rule of Civil Procedure ("Rule") 56 governs the summary judgment motion practice. Fed. R. Civ. P. 56. Specifically, this rule provides that summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* A fact is "material" if proof of its

existence or non-existence might affect the outcome of the litigation, and a dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986). Under Rule 56, the court must view the evidence in the light most favorable to the non-moving party. *Galena v. Leone*, 638 F.3d 186, 196 (3d Cir. 2011).

Rule 56(c) provides that the movant bears the initial burden of informing the court of the basis for the motion and identifying those portions of the record which the movant "believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). This burden can be met by showing that the nonmoving party has "fail[ed] to make a showing sufficient to establish the existence of an element essential to that party's case." *Id*. at 322.

After the moving party has met its initial burden, summary judgment is appropriate if the nonmoving party fails to rebut the moving party's claim by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials" that show a genuine issue of material fact or by "showing that the materials cited do not establish the absence or presence of a genuine dispute." *See* Rule 56(c)(1)(A-B). The nonmoving party must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp*., 475 U.S. 574, 586 (1986). The nonmoving party may not rely on bare assertions, conclusory allegations or suspicions, *Fireman's Ins. Co. of Newark v. DuFresne*, 676 F.2d 965, 969 (3d Cir. 1982), nor rest on the allegations in the pleadings. *Celotex*, 477 U.S. at 324. Rather, the nonmoving party must "go beyond the

pleadings" and either by affidavits, depositions, answers to interrogatories, or admissions on file, "designate 'specific facts showing that there is a genuine issue for trial.'" *Id.*

DISCUSSION

In her complaint, Plaintiff purports to assert claims under the ADA and for common law negligence. Both of these claims are premised on the alleged injuries she suffered when she walked toward a new seat location and the Amtrak train suddenly jerked causing her to fall. Defendant moves for summary judgment on Plaintiff's ADA claim on the grounds that Plaintiff has not presented sufficient evidence to sustain her summary judgment burden as to her status as disabled, or to show that Defendant discriminated against her on account of her disability. Defendant moves for summary judgment on Plaintiff's negligence claim on the basis that the claim is precluded as a matter of law under the so-called "jerk or jolt" doctrine, and because Plaintiff has otherwise failed to show that Defendant breached its duty of care, or that Plaintiff's injuries were caused by such breach. Each of these arguments is addressed below.

Plaintiff's ADA Claim

Though Plaintiff's complaint reads primarily as one asserting a claim for common law negligence based on Plaintiff's fall while a passenger on an Amtrak train, Plaintiff also purports to assert a claim under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12101, *et seq.* The complaint, however, provides very little substance underlying the ADA claim. Instead, it merely alleges that Defendant was negligent in its "[f]ailure to train, supervise and enforce its employees, workmen, servants and agents on passengers with disabilities pursuant to the Americans with Disabilities Act and to further provide passenger safety pursuant to 49 (sic) U.S.C. §12162 or 49 C.F.R. Part 37 to the Plaintiff." (Comp. ¶7(e)). In responding to Defendant's motion for summary judgment, Plaintiff cites to §§12131-12132, 12141-12150 and

12161-12165 of the ADA and characterizes her ADA claim as a denial of "reasonable access to handicapped and safe seating . . . ." (Pltf's Brief at pp. 17-18).

The ADA prohibits discrimination in, *inter alia*, public services and public transportation (Title II). Title II, the provision applicable here, provides that: "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. §12132. The parties agree that Amtrak is a "public entity" subject to Title II of the ADA. *See id.* at §12131(1)(C). In order to establish a *prima facie* case under the ADA, Plaintiff must present evidence sufficient to show that: (1) she was disabled; (2) she was excluded from participation in or denied the benefits of services, programs or activities provided by a public entity, or was otherwise discriminated against by the entity; and (3) that such discrimination was based on her disability. 42 U.S.C. §12132; *Dahl v. Johnston*, 598 F. App'x 818, 819-20 (3d Cir. 2015); *Johnson v. Amtrak*, 390 F. App'x 109, 113 (3d Cir. 2010); *Bowers v. Nat'l Collegiate Athletic Ass'n*, 475 F.3d 524, 553 n.32 (3d Cir. 2007); *Cornell Cos., Inc. v. Borough of New Morgan*, 512 F. Supp.2d 238, 262 (E.D. Pa. 2007). Here, Defendant moves for summary judgment on Plaintiff's ADA claim, arguing that Plaintiff has not presented sufficient evidence from which a reasonable juror could conclude that: (1) Plaintiff was "disabled" within the meaning of the ADA; (2) or that Plaintiff was discriminated against on account of her alleged disability.

Disability Determination

To sustain her burden, Plaintiff must first show that she is a disabled person within the meaning of the ADA. That is, she must demonstrate that she is an individual with either: (i) "a physical or mental impairment that substantially limits one or more major life activities;" (ii) "a

record of such an impairment;" or (iii) is "regarded as having such an impairment." 42 U.S.C. §12102(1). In her response, Plaintiff relies on only the first two definitions.

A physical impairment is "'[a]ny physiological disorder or condition . . . affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory; including speech organs; cardiovascular; reproductive; digestive, genito-urinary; hemic and lymphatic; skin; and endocrine.'" *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 194-95 (2002) (*superseded on other grounds* by the ADA Amendments Act of 2008, Pub. L. 110-325, 122 Stat. 353 (2008)). Under current regulations:

> An impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability within the meaning of this section.

29 C.F.R. §1630.2(j)(1)(ii). Major life activities under the ADA include "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. §12102(2)(A); *see also* 45 C.F.R. §84.3(j)(2)(ii).

As evidence of her disability, Plaintiff points to her history of back problems and knee replacements as impairing her ability to walk such that she walked with the assistance of a cane. In her response to Defendant's motion for summary judgment, however, Plaintiff has offered no facts, evidence or substantive argument to demonstrate how any of her impairments "substantially limited" her ability to walk. Instead, Plaintiff, without offering support, states in conclusory fashion that she "had a physical or mental impairment that substantially limits one or more major life activities which was her ability to walk." (Pltf.'s Brief at p. 16). Plaintiff has

not provided any facts or evidence to show that her ability to walk was substantially limited by any purported impairment. For this reason alone, Plaintiff has failed to meet her summary judgment burden.

Notwithstanding, other undisputed evidence demonstrates that Plaintiff's ability to walk was not substantially limited. Though Plaintiff walked with the assistance of a cane, she was admittedly capable of traveling long distances from her home. For example, Plaintiff testified that she has made the very trip underlying her current claims on several occasions. According to Plaintiff, she made this same trip between North Carolina and Philadelphia two to three times a year. (Ex. B, 23:7-16). On each trip she managed to get herself to the train station, driving herself sixty-five miles from her home. (Ex. B, 10:20-24; 11:1-2). Thus, even with her alleged impairment, with use of a cane she has been able to walk various distances. Moreover, though Plaintiff carried a cane, she testified that on the day of the incident that she boarded the train and walked to her seat without assistance and without using her cane. (Ex. B, 39:14-40:6; 43:9-12). In fact, she testified that she only carried it "in case [she] needed it." (Ex. B, 43:12).

Plaintiff also testified that at the time of the incident, she was capable of doing "everything" herself. (Ex. C, 28:8-22). Specifically, she testified that:

> I did everything I had for myself. I cooked. I went shopping. I did all my own shopping. For a long time I did my own grass, but then I got somebody to start cutting my grass because it got to be too much for me. I had almost three acres.
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> ***
>
> And I did everything, went to the hairdresser, anything had to be done I did it because my kids was here. (Ex. C, 28:8-22).

In light of Plaintiff's own testimony, no reasonable factfinder could conclude that either Plaintiff's ability to walk or any other major life activity was substantially limited by any

impairment. As such, Plaintiff has not met her summary judgment burden as to her purported status as "disabled."[2]

Discrimination On Account of Plaintiff's Disability

Defendant next argues that Plaintiff has not met her summary judgment burden of providing evidence from which a reasonable juror could conclude that she was denied the benefits of public transportation services because of her disability. Notably, Plaintiff's response is completely silent as to Defendant's argument in this regard. Plaintiff's silence is sufficient basis for this Court to grant Defendant's motion for summary judgment.

Notwithstanding, the record is devoid of any evidence to support Plaintiff's allegation that she was denied benefits or services on account of her disability.[3] To the contrary, Plaintiff was provided the very accommodation that she requested and paid for; *i.e.*, a seat in the handicapped section and the use of an Amtrak "red cap" to assist with her luggage on the train. Plaintiff now contends that Defendant should have provided her additional assistance in moving from one handicapped seat to another. Plaintiff admittedly, however, never requested any such assistance. (Ex. B, 63:13-15).

The ADA does not require a common carrier, such as Amtrak, to provide its passengers assistance or accommodations that were never requested. *See Katzowitz v. Long Island R.R.*, 58 F. Supp.2d 34, 39 (E.D. N.Y. 1999) (holding that plaintiff had failed to substantiate his ADA claim where he failed to request the assistance of which he claimed he was deprived); *Adiutori v.*

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[2] Plaintiff's attempt to meet her burden by citing to her "significant medical history" also fails. Though the cited portion of the medical expert's report lists a number of possible medical impairments, the cited portion is completely silent as to how any of those impairments "substantially limited" any major life activity, including walking. As such, Plaintiff's passing reference to this report falls well short of meeting her summary judgment burden as to her purported status as "disabled."

[3] In this section, this Court assumes that Plaintiff has established that she meets the ADA definition of disabled.

Sky Harbor Int'l Airport, 880 F. Supp. 696, 703 (D. Ariz. 1995), *aff'd*, 103 F.3d 137 (9th Cir. 1996) ("The ADA . . . does not require that assistance be automatically given to persons like the plaintiff; it requires only that appropriate assistance be given on an as requested and on an as needed basis."). In fact, Plaintiff refused the very assistance she now contends Defendant should have provided when offered by a fellow passenger. (Ex. B, 64:25-65:8). In light of these undisputed facts, Plaintiff has not met her summary judgment burden of presenting evidence from which a reasonable factfinder could find that she was deprived of any benefits or services on account of her disability.

Plaintiff's Negligence Claim

Plaintiff has also asserted a state law negligence claim premised on injuries she alleges were caused by Defendant's failure to assist her when she moved from one seat to another. Plaintiff essentially contends that Defendant breached its duty of care to Plaintiff when it told her that she needed to move to a seat located in a different train car, and failed to assist her in moving, despite knowing that she had some degree of walking impairment. Defendant moves for summary judgment on this claim on the basis that it fails as a matter of law under the so-called "jerk or jolt" doctrine and, further, that Plaintiff failed to meet her summary judgment burden of demonstrating a breach of Defendant's duty of care.

To establish a claim for negligence, Plaintiff must present evidence sufficient to show that Defendant owed her a duty of care, Defendant breached that duty, and that the breach of care caused an injury. *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993). "Negligence is the absence of ordinary care that a reasonably prudent person would exercise in the same or similar circumstances." *Martin v. Evans*, 711 A.2d 458, 461 (Pa. 1998). It is well

established in Pennsylvania[4] that common carriers, such as Amtrak, owe the "highest degree of care" to their passengers. *Connolly v. Philadelphia Transp. Co.*, 216 A.2d 60, 62 (Pa. 1966). "Although the carrier is not an insurer of its passengers' safety, the carrier must exercise the highest standard of care that is reasonably practicable." *LeGrand v. Lincoln Lines, Inc.*, 384 A.2d 955, 956 (Pa. Super. Ct. 1978).

Defendant argues that Plaintiff's negligence claim fails as a matter of law on the existing factual record under the so-called "jerk or jolt" doctrine. The Pennsylvania Supreme Court summarized the essence of the "jerk or jolt" doctrine as follows:

> It is well established by a long line of decisions that testimony indicating that a moving trolley car jerked suddenly or violently is not sufficient, of itself, to establish negligence in its operation. There must be a showing of additional facts and circumstances from which it clearly appears that the movement of the car was so unusual and extraordinary as to be beyond a passenger's reasonable anticipation, and nothing short of evidence that the allegedly unusual movement had an extraordinary disturbing effect upon other passengers, or evidence of an accident, the manner of the occurrence of which or the effect of which, upon the injured person inherently establishes the unusual character of the jolt or jerk, will suffice.

Connolly, 216 A.2d at 62. "[W]here the negligence charged is an unusual or extraordinary jump or jerk of a [common carrier], the burden is upon the plaintiff to prove the extraordinary character of the jump or jerk in order to make out a case." *Sanson v. Philadelphia Rapid Transit Co.*, 86 A. 1069, 1070 (Pa. 1913); *see also Meussner v. Port Authority of Allegheny Cnty.*, 745

[4] In their respective filings, both parties rely upon Pennsylvania law with respect to Plaintiff's negligence claim, even though Plaintiff's fall and resultant injury occurred in Maryland. Though neither party provides any choice or conflict of law analysis, this Court's review of the negligence law of the two relevant states reveals that it is virtually the same. In particular, the law with respect to the duty owed Plaintiff as a passenger on a common carrier is the same in both Pennsylvania, where Plaintiff boarded the train, and in Maryland, where Plaintiff's injury occurred. *Compare Washington Metro. Area Transit Auth.*, 979 A.2d 194, 196 (Md. Ct. Spec. App. 2009) *with Connolly*, 216 A.2d at 62. Therefore, because no actual conflict exists, this Court can apply Pennsylvania law here. *See Berg Chilling Sys., Inc. v. Hull Corp.*, 435 F.3d 455, 462 (3d Cir. 2006).

A.2d 719, 721 (Pa. Commw. Ct. 2000) (citing *Sanson*). Under this doctrine, there are two ways that a plaintiff can show that the common carrier's jerk or stop was so unusual and extraordinary for the issue to go to a jury*; to wit*: by showing that: (1) "the stop had an "extraordinarily disturbing effect upon other passengers;" or, alternatively, (2) that "the manner of the occurrence of an accident or the effect of which upon the plaintiff inherently establishes the unusual character of the jolt or jerk." *Meussner,* 745 A.2d at 721. Defendant argues that Plaintiff has failed to present evidence under either of these two theories from which a reasonable juror could find that Amtrak's jerk or jolt was "unusual or extraordinary." This Court agrees.

In her response to Defendant's motion, Plaintiff has offered no evidence whatsoever to show that the sudden jerk or stop of her train was sufficiently unusual or extraordinary to allow the issue to go to a jury. Plaintiff offers no evidence that other passengers experienced an "extraordinarily disturbing effect." To the contrary, Plaintiff testified that she did not see anyone else on the train or even any items on the train fall when she did. (Ex. B, 96:20-97:13). Plaintiff also makes no attempt to meet her burden through the second available evidentiary path. The mere fact that Plaintiff fell to the floor from a standing position when the train suddenly jerked is insufficient alone to meet the unusual or extraordinary requirement of the "jerk or jolt" doctrine. Pennsylvania courts have repeatedly held that to show that a fall was "so violent and unusual as to permit the jury to predicate on it alone a finding that the jerk was unusual or extraordinary requires more than losing one's balance while standing or walking in [a common carrier]." *Jackson v. Port Auth. of Allegheny Cty.*, 17 A.3d 966, 970 (Pa. Commw. Ct. 2010); *see also, Hill v. West Penn Rys. Co.,* 16 A.2d 527 (Pa. 1940); *Smith v. Pittsburgh Rys. Co.,* 171 A. 879, 880 (Pa. 1934); *Meussner*, 745 A.2d at 723-24; *Harrison v. Megabus Northeast, LLC,* 2013 WL 5567588, at *2 (E.D. Pa. Oct. 9, 2013). As in those cases, Plaintiff presented evidence that she

fell while standing and allegedly injured her elbow and back. Such a fall and injury, however, are common when one loses his/her balance while standing on a train or bus and an ordinary or moderate jerk occurs. Accordingly, such a fall and injury, as occurred here, are alone insufficient to meet the requisite unusual or extraordinary standard to overcome the "jerk or jolt" doctrine.

In her response, Plaintiff argues that Defendant's jerk or jolt argument does not apply to this matter because Amtrak owed Plaintiff a heightened degree of care because of her known physical disability, relying upon *LeGrand v. Lincoln Lines, Inc.*, 384 A.2d 955 (Pa. Super. Ct. 1978). While neither *LeGrand* nor any other case on which Plaintiff relies expressly holds that the "jerk or jolt" doctrine does not apply when the passenger has a known disability, *LeGrand* does hold that a common carrier, like Amtrak, owes a heightened duty of care to a passenger when that carrier knows that the passenger is "affected by either a physical or mental disability which increased the hazards of travel . . . ." *Id.* at 956.

Assuming *arguendo* that the "jerk or jolt" doctrine does not foreclose Plaintiff's negligence claim here, even with a heightened duty of care owed by Defendant, Plaintiff's claim still fails on the existing record because Plaintiff has not presented evidence from which a reasonable juror could find that Defendant breached its duty of care to Plaintiff or that her injury was proximately caused by such breach. As set forth above, though Plaintiff was told that she needed to change seats, it is undisputed that she was also told that she could wait until the train stopped in Baltimore before she moved to her new seat location. (Ex. B, 57:20-25; Ex. A, 18:1-2). Notwithstanding having been advised of this waiting option, Plaintiff got up from her seat, while the train was still moving, and began moving towards the train car containing her new seat. (Ex. B, 62:13-22; 63:19-20; 76:6-10). She did not request any assistance from any of

Defendant's personnel. (Ex. B, 63:13-15). In fact, Plaintiff admittedly rejected the very assistance she now claims she was owed by Defendant when it was offered to her by a fellow passenger. (Ex. B, 64:25-65:8). In light of this undisputed evidence, no reasonable factfinder could find that Defendant either breached its duty of care to Plaintiff and/or that such breach caused Plaintiff's injuries. As such, Plaintiff's negligence claim fails as a matter of law, and Defendant is entitled to summary judgment.

CONCLUSION

Based upon the foregoing reasons, Defendant's motion for summary judgment is granted. An Order consistent with this Memorandum Opinion follows.

NITZA I. QUIÑONES ALEJANDRO, U.S.D.C. J.