

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 PRENTISS B. DAVIS,

10 Plaintiff,

11 v.

12 THE BOEING COMPANY and AETNA  
13 LIFE INSURANCE COMPANY,

14 Defendants.

CASE NO. C11-1033-JCC

ORDER ON DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

15 This matter comes before the Court on Defendant The Boeing Company's motion for  
16 summary judgment (Dkt. No. 34) and Plaintiff Prentiss B. Davis' motion to deny Boeing's  
17 motion (Dkt. No. 46). Having thoroughly considered the parties' briefing and the relevant record,  
18 the Court finds oral argument unnecessary and hereby GRANTS in part and DENIES in part  
19 both parties' motions for the reasons explained herein.

20 **I. BACKGROUND**

21 Davis' complaint states claims against Boeing for disability discrimination and failure to  
22 reasonably accommodate his disability in violation of the Americans with Disability Act  
23 ("ADA"), 42 U.S.C. § 12112 *et seq.* (Dkt. No. 1-1.) He seeks reinstatement of his employment  
24 with back pay (including raises he would have gotten), "prior/accrued seniority,"  
25 "benefits/retirement options(s)," reinstatement of Boeing health insurance, reimbursement for  
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1 seven months of health insurance premiums Boeing allegedly required him to double-pay,  
2 relocation funds allegedly promised him, “Boeing FAA Certification,” and “compensation for  
3 loss of use of left hand while employed with Boeing.” (*Id.* at 1, 5–6 ¶¶ 11–12.)

4 Davis began working at Boeing’s Everett, Washington facility as a temporary contract  
5 engineer in August 2006. (*Id.* at 2 ¶ 4.) In January 2007, Boeing hired Davis as a full-time liaison  
6 engineer, level 4. (*Id.* at 2 ¶ 5.) In March 2007, Boeing transferred Davis to Charleston, South  
7 Carolina for an eighteen-month temporary assignment. (*Id.*)

8 Davis alleges that when Boeing hired him full-time, the company offered him a  
9 relocation package to move from Texas to Washington, and that Boeing never paid him any  
10 relocation funds. (*Id.* at 5 ¶¶ 11–12.)

11 Davis also alleges that in late 2006 and early 2007 Davis requested, and Boeing denied  
12 him, a designated handicapped parking space. (*Id.* at 2 ¶¶ 4–5.)

13 Davis alleges that he was subject to several instances of discriminatory treatment and was  
14 not reasonably accommodated while on his temporary assignment in Charleston. (*Id.* at 2–3 ¶ 5,  
15 3 ¶ 8, 4 ¶¶ 9–10.) In March 2008, Davis filed an internal complaint about this alleged  
16 mistreatment. (Dkt. No. 37 at 2 ¶ 4 & Ex. A.)

17 On May 15, 2008, Davis started a medical leave of absence. (Dkt. No. 1-1 at 4 ¶ 10.) The  
18 leave was extended in July 2008. (*Id.*) Davis returned to Washington and in August, September,  
19 and November 2008 the leave was extended again after doctors determined he was not able to  
20 return to work. (*Id.* at 4–5 ¶ 10.) Davis would remain on medical leave through November 17,  
21 2010. (*Id.* at 6 ¶ 13.)

22 On November 22, 2008, Davis severely injured his hand in an automobile accident. (*Id.* at  
23 5 ¶ 12.) Davis alleges that, “[i]mmediately after the accident, Boeing refused to acknowledge to  
24 the hospital(s) that [Davis] had Boeing Medical Insurance until [Davis] agreed to pay Boeing the  
25 entire Boeing monthly [health insurance premium] of approximately \$520/mo[nth] starting in  
26 December 2008 [and continuing for more than seven months] out of his own pocket.” (*Id.*) Davis

1 alleges that, as a Boeing employee, he was already covered by Boeing’s health insurance policy  
2 and so Boeing effectively double-charged him for health insurance before confirming his  
3 coverage to his treating hospitals. (*Id.* at 5–6 ¶ 12.) He alleges that Boeing has not reimbursed  
4 him for these seven-plus months of premium payments. (*Id.* at 6 ¶ 12.)

5 On February 11, 2009, Davis sent an email to info@eeoc.gov complaining about  
6 disability discrimination at Boeing. (*Id.* Ex. E at 20.) He complained about (1) Boeing’s failure  
7 to accommodate his need for a designated handicapped parking space, (2) his managers’ alleged  
8 discriminatory or unaccommodating treatment of him during his temporary assignment in  
9 Charleston, and (3) Boeing’s alleged failure to confirm health insurance coverage to Davis’  
10 treating hospitals until Davis effectively double-paid the premiums. (*Id.*)

11 Boeing’s leave of absence policy provided that “any combination of consecutive Medical  
12 leaves of absence . . . shall not exceed thirty (30) months in duration unless required by law.”  
13 (Dkt. No. 36 Ex. A at 10 ¶ 5.) On August 12, 2010, Boeing sent Davis a letter informing him that  
14 he would exhaust his thirty-month allotment on November 16, 2010, and that if he did not  
15 actively return to work before that date, his employment with Boeing would end. (Dkt. No. 35  
16 Ex. A at 5.) The letter informed Davis that if he was planning to return to work, he had to obtain  
17 a medical release to do so. (*Id.*) Boeing sent identical letters to Davis in September and October.  
18 (*Id.* Exs. B at 8, C at 11.) On August 18 and November 10, 2010, a doctor examined Davis and  
19 found that he could still not be released to work.<sup>1</sup> (Dkt. No. 1-1 at 6 ¶ 13; Dkt. No. 38 Ex. K at  
20 38.) Boeing terminated Davis’ employment on November 17, 2010. (Dkt. No. 1-1 at 6 ¶ 13.)  
21 Davis alleges that Boeing discharged him because he was disabled. (*Id.*)

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23  
24 <sup>1</sup> Davis alleges that a different doctor examined him on June 30, 2010 and issued Davis a  
25 conditional release to work effective August 27, 2010. (*Id.*) But the exhibit to which he cites is a  
26 conditional release to return to work on August 27, 2009, and only with respect to Davis’ hand  
injury. (Dkt. No. 1-1 Ex. L at 33.) The note further provides, “With regards to his back  
restrictions this should be addressed by his spine specialist.” (*Id.*) Davis has submitted no  
evidence that a spine specialist ever released him to return to work.

1 Davis' ADA claims against Boeing can thus be summarized as follows: (1)  
2 discriminatory denial of relocation funds, (2) discriminatory failure to accommodate Davis'  
3 request for a designated handicapped parking space; (3) discriminatory treatment or failure to  
4 accommodate at Boeing's Charleston facility in early 2008; (4) discriminatory double-charging  
5 of health insurance premiums; and (5) discriminatory discharge in November 2010.

6 Davis filed a charge with the Equal Employment Opportunity Commission ("EEOC") on  
7 or around January 11, 2011.<sup>2</sup> The "particulars" of the charge are as follows:

8 I started working for Boeing on January 24, 2007 as a Liaison Engineer IV and  
9 held that position until my termination on November 17, 2010.

10 Both my manager, Boeing Medical and Boeing Aetna were aware of my physical  
11 disabilities. When I was notified that I had to provide medical documentation to  
12 return to work in August, 2010, I asked my providers to provide Boeing Medical  
13 with the appropriate documentation. When one provider explained that I was still  
14 not fit for duty, Boeing disregarded the advice of my provider and terminated my  
15 employment.

16 I believe that I have been discriminated against because of my disabilities in  
17 violation of The Americans with Disabilities Act of 1990, as amended.

18 (Dkt. No. 37 Ex. L at 70.) The EEOC dismissed Davis' charge and issued him a right to sue.

19 (Dkt. No. 1-1 Ex. R at 49-50.)

## 20 **II. DISCUSSION**

### 21 **A. Summary Judgment Standard**

22 Summary judgment is appropriate where there is no genuine issue of material fact and the  
23 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party  
24 bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex*  
25 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has met this burden, the

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26 <sup>2</sup> The record does not show the date on which Davis filed his EEOC charge. The EEOC  
sent a notice of charge to Boeing dated January 21, 2011. (Dkt. No. 37 Ex. K at 66.) Davis  
therefore filed his charge, at the latest, on that date.

1 opposing party must show that there is a genuine issue of fact for trial. *Id.* at 331–33 & n.3. The  
2 Court resolves reasonable doubts as to the existence of material facts against the moving party  
3 and draws inferences in the light most favorable to the opposing party. *Addisu v. Fred Meyer,*  
4 *Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000).

## 5 **B. ADA Discrimination Claims**

### 6 **1. Jurisdiction**

7 The Court must first determine the scope of its jurisdiction over Davis’ claims. “[ADA]  
8 claimants generally establish federal court jurisdiction by first exhausting their EEOC  
9 administrative remedies.” *Sosa v. Hiraoka*, 920 F.2d 1451, 1456 (9th Cir. 1990); *see* 42 U.S.C.  
10 § 12117(a) (ADA provision incorporating Title VII’s enforcement procedures, 42 U.S.C.  
11 §2000e-5). “[T]he district court has jurisdiction over any charges of discrimination that are like  
12 or reasonably related to the allegations made before the EEOC, as well as charges that are within  
13 the scope of an EEOC investigation that reasonably could be expected to grow out of the  
14 allegations.” *Leong v. Potter*, 347 F.3d 1117, 1122 (9th Cir. 2003) (quotation marks omitted).  
15 The Court construes the charges liberally. *Sosa*, 920 F.2d at 1456. “[T]he inquiry into whether a  
16 claim has been sufficiently exhausted must focus on the factual allegations made in the charge  
17 itself, describing the discriminatory conduct about which a plaintiff is grieving. Only by  
18 engaging in such an inquiry will the actual focus of the administrative charge, and the scope of  
19 the claims exhausted, be revealed.” *Freeman v. Oakland Unified School Dist.*, 291 F.3d 632, 637  
20 (9th Cir. 2002) (citation omitted).

21 Here, Davis’ EEOC complaint clearly covers only Boeing’s termination of Davis in  
22 November 2010. The only wrong it alleges on the part of Boeing is “disregard[ing] the advice of  
23 [Davis’] provider and terminat[ing] [Davis’] employment.” (Dkt. No. 37 Ex. L at 70.) Indeed, in  
24 its notice of charge to Boeing, the EEOC stated that the earliest and latest dates of the alleged  
25 violation were August 18, 2010 and November 17, 2010, respectively. (*Id.* Ex. K at 66.) The  
26 EEOC investigation would not have encompassed the additional charges of disability

1 discrimination Davis makes in his complaint, *i.e.*, those based on Boeing’s alleged denial of a  
2 designated handicapped parking space, Davis’ alleged treatment by his managers while working  
3 in the Charleston facility, Boeing’s alleged double-charging of health insurance premiums, and  
4 Boeing’s alleged denial of promised relocation funds. Davis thus did not sufficiently exhaust  
5 those additional employment discrimination charges by filing his EEOC charge. *See, e.g.*,  
6 *Freeman*, 291 F.3d at 637 (teacher failed to exhaust where “[t]he factual allegations in  
7 Freeman’s EEOC charge refer only to discriminatory conduct in relation to a specific election”  
8 and “[n]othing in the language of the charge itself would have resulted in an EEOC investigation  
9 encompassing alleged discrimination in the context of teaching assignments, class size, and the  
10 handling of the dispute over the eight-period work day”); *Rodriguez v. Airborne Express*, 265  
11 F.3d 890, 897 (9th Cir. 2001) (“Rodriguez’s charge of ethnic discrimination was very specific,  
12 rendering it especially inappropriate to expand the civil action to include other claims.”); *Turner*  
13 *v. Dep’t of Educ.*, 855 F. Supp. 2d 1155, 1171 (D. Haw. 2012) (“Plaintiff’s allegations are based  
14 on discrete acts that do not suggest a claim for any actions involving Plaintiff prior to the field  
15 trip or that he was subject to a hostile work environment. Consequently, Plaintiff has not  
16 exhausted his claims with regard to a hostile working environment.”).

17         However, under *B.K.B. v. Maui Police Department*, 276 F.3d 1091 (9th Cir. 2002), a  
18 court may equitably excuse a plaintiff’s failure to exhaust administrative remedies where that  
19 failure was “due to agency negligence.” *Id.* at 1101–02. For example, “[i]f the [EEOC] charge  
20 itself is deficient in recording [the plaintiff’s] theory of the case due to the negligence of an  
21 agency representative who completes the charge form, then the plaintiff may present her pre-  
22 complaint questionnaire as evidence that her claim for relief [in the complaint filed in district  
23 court] was properly exhausted.” *Id.* at 1102. The question here is whether the Court should  
24 consider Davis’ February 11, 2009 email to info@eoc.gov, in which he complained about some  
25 of the instances of discriminatory treatment he brings up in his complaint, as evidence that he  
26 exhausted those claims before the EEOC. Boeing encourages the Court to ignore this email

1 because it was not “a formal charge with the EEOC” and “thus, [Davis] was never issued a  
2 notice of his right to sue regarding the allegations he made in the email.” (Dkt. No. 34 at 9 n.8.)  
3 But that begs the question whether the EEOC should have treated Davis’ email as a formal  
4 charge, investigated the charge, forwarded a copy to Boeing, and issued Davis a right to sue.  
5 True, Davis’ email did not meet the technical requirements for filing a charge with the EEOC.  
6 *See* 29 C.F.R. § 1601.8 (“[a] charge may be made in person or by *mail*”) (emphasis added); *Id.*  
7 § 1601.9 (“[a] charge shall be in writing and signed and shall be *verified*”) (emphasis added). But  
8 EEOC regulations provide that, notwithstanding the technical requirements for filing a charge,  
9 a charge is sufficient when the Commission receives from the person making the  
10 charge a written statement sufficiently precise to identify the parties, and to  
11 describe generally the action or practices complained of. A charge may be  
12 amended to cure technical defects or omissions, including failure to verify the  
13 charge, or to clarify and amplify allegations made therein. Such amendments and  
14 amendments alleging additional acts which constitute unlawful employment  
15 practices related to or growing out of the subject matter of the original charge will  
16 relate back to the date the charge was first received.  
17 *Id.* § 1601.12(b). For example, in *Edelman v. Lynchburg College*, 535 U.S. 106 (2002), the  
18 Supreme Court held that an employee “who faxed a letter to an EEOC field office . . . claiming  
19 ‘gender-based employment discrimination,’” which did not contain an “oath or affirmation,”  
20 counted as a “charge,” and that Title VII and the regulations thereunder “demands an oath only  
21 by the time the employer is obliged to respond to the charge, not at the time an employee files it  
22 with the EEOC.” *Id.* at 109, 113; *see id.* at 115 n.9 (“The general practice of EEOC staff  
23 members is to prepare a formal charge of discrimination for the complainant to review and to  
24 verify, once the allegations have been clarified.”). And in *Edelman*’s case, on remand, the Fourth  
25 Circuit held that the EEOC’s failure to assign the employee’s faxed letter an EEOC number and  
26 to forward a copy to his employer did not, as a matter of law, prevent the letter from being  
considered a “charge,” because “[t]he problems noted by the [employer] are not deficiencies in  
the charge; they are failures of the EEOC to carry out its responsibilities under Title VII.”

1 *Edelman v. Lynchburg Coll.*, 300 F.3d 400, 404 (4th Cir. 2002). “Once a valid charge has been  
2 filed, a simple failure by the EEOC to fulfill its statutory duties regarding the charge does not  
3 preclude a plaintiff’s Title VII claim.” *Id.*

4         It appears that such a failure occurred here—that the EEOC failed to follow the mandate  
5 of its own regulations. Davis has presented evidence (a copy of the email) that “the Commission  
6 receive[d]” his “written statement [that] . . . identif[ied] the parties, and . . . describe[d] generally  
7 the action or practices complained of.” 29 C.F.R. § 1601.12(b). That the EEOC did not act on  
8 that statement, assign Davis’ claim an EEOC number, and send notice to Boeing does not mean  
9 that Davis did not exhaust his administrative remedies with respect to the charges contained in  
10 the email. Here, “[a]lthough no explicit admission of agency negligence has been provided in the  
11 record, [the email evidence] suggests that any deficiency in [acting on Davis’ complaint and  
12 sending notice to Boeing] should be attributed to the agency itself rather than to Plaintiff, since  
13 the agency itself was on notice of Plaintiff’s [claims].” *B.K.B.*, 276 F.3d at 1102; *see, e.g.*,  
14 *Watson v. Gulf & W. Indus.*, 650 F.2d 990, 992–93 (9th Cir. 1981) (“Watson’s mailing of the  
15 charge and the EEOC’s failure to process the form properly are . . . not detrimental to Watson’s  
16 claim. The EEOC permits a claimant to mail an unnotarized form to the district office. Watson  
17 properly followed the EEOC’s procedure; the commission’s failure to act is not his  
18 responsibility.”). Davis is thus “entitled to a trial on the merits of his complaint insofar as it  
19 relates to . . . alleged discriminatory acts . . . included in his [February 11, 2009 email] to the  
20 EEOC” that are not barred by the applicable limitations period. *Id.* at 993.

21         In neither his EEOC charge nor his 2009 email did Davis mention Boeing’s alleged  
22 failure to pay him relocation funds. Nor is this allegation “like or reasonably related to the  
23 allegations made” in those communications, or “within the scope of an EEOC investigation that  
24 reasonably could be expected to grow out of the allegations” in those communications. *Leong*,  
25 347 F.3d at 1122. The Court thus does not have jurisdiction over Davis’ claim that Boeing  
26 discriminated against him on the basis of his disability by denying him relocation funds.



1 Summary judgment for Boeing on this claim is GRANTED.

2 **2. Statute of Limitations**

3 Discrimination claims under the ADA ordinarily must be filed with the EEOC within 180  
4 days of the date on which the alleged discriminatory practice occurred. 42 U.S.C. § 2000e-  
5 5(e)(1). However, if the claimant first “institute[s] proceedings” in a state with an agency that  
6 enforces its own discrimination laws—a so-called “deferral” state—then the period for filing the  
7 claim is extended to 300 days. *Id.* Boeing does not dispute that the applicable limitations period  
8 here is 300 days, counting backwards from the date of the charge. (Dkt. No. 34 at 13.)<sup>3</sup>

9 **a. February 11, 2009 Email**

10 The limitations period applicable to the charges contained in the February 11, 2009 email  
11 is thus April 17, 2008 through February 11, 2009. Davis’ claims about Boeing’s 2006 and 2007  
12 failure to accommodate his handicapped parking needs are thus untimely. So are his claims as to  
13 the discrimination he allegedly experienced in Charleston: All of those events took place in or  
14 before March 2008, when Davis filed an internal complaint about them with Boeing. (Dkt. No.  
15 37 at 2 ¶ 4 & Ex. A.) The Court thus GRANTS summary judgment for Boeing as to these claims.  
16 However, the limitations period does not bar Davis’ claim that Boeing discriminated against him  
17 on the basis of his disability when it required him to effectively double-pay health insurance  
18 premiums starting in late 2008.

19 **b. January 21, 2011 EEOC Complaint**

20 The limitations period applicable to Davis’ January 21, 2011 charge began on March 27,  
21 2010. All events occurring prior to that date are barred. The only event in Davis’ complaint  
22 occurring after that date, and respecting Boeing’s conduct (as opposed to Defendant Aetna Life  
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24 <sup>3</sup> Davis makes no argument that he is entitled to equitable tolling of the limitations  
25 period. Nor is it available. “Equitable tolling applies when the plaintiff is prevented from  
26 asserting a claim by wrongful conduct on the part of the defendant, or when extraordinary  
circumstances beyond the plaintiff’s control made it impossible to file a claim on time.” *Stoll v.*  
*Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999). No such circumstances exist here.

1 Insurance Company's), is Davis' November 2010 termination.

2 **3. Claim of Discriminatory Double-Charging of Health Insurance**  
3 **Premiums**

4 Davis alleges that Boeing discriminatorily double-charged him health insurance  
5 premiums in violation of the ADA. Boeing does not address this claim except to assert that, "[a]s  
6 this is an issue covered by the collective bargaining agreement, any alleged violation should have  
7 been resolved through the agreement's grievance and arbitration provision" and "[i]n any event,  
8 Boeing paid the required medical insurance premiums after it was notified of the mistake." (Dkt.  
9 No. 34 at 11 n.12.) Boeing does not cite to any part of the record establishing that "this is an  
10 issue covered by the collective bargaining agreement" and thus not eligible for pursuit as an  
11 ADA discrimination claim against Boeing, or that Boeing ever reimbursed Davis for the  
12 premiums it "mistake[nly]" required him to pay. *See* Fed. R. Civ. P. 56(c) ("A party asserting  
13 that a fact cannot be . . . genuinely disputed must support the assertion by . . . citing to particular  
14 parts of materials in the record, including . . . documents, . . . affidavits or declarations, . . . or  
15 other materials . . ."). There is a genuine issue of fact as to whether Boeing discriminatorily  
16 double-charged Davis, and whether Boeing ever reimbursed Davis for the several months of  
17 premiums he paid out of his own pocket. Summary judgment for Boeing on this claim is  
18 DENIED.

19 **4. Discriminatory Discharge Claim**

20 "In order to prevail on an employment termination claim under the ADA, a plaintiff must  
21 establish: (1) that he is a disabled person within the meaning of the ADA; (2) that he is qualified,  
22 that is, with or without reasonable accommodation (which he must describe), he is able to  
23 perform the essential functions of the job; and (3) that the employer terminated him because of  
24 his disability." *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996) (footnote omitted).  
25 If the plaintiff establishes his prima facie case of discrimination, the burden shifts to the  
26 defendant to show that its decision to end the plaintiff's employment was unrelated to the

1 plaintiff's disability. *Snead v. Metro. Prop. & Cas. Ins. Co.*, 237 F.3d 1080, 1093 (9th Cir. 2001).  
2 If the defendant proffers non-discriminatory reasons for its decision, the burden shifts back to the  
3 plaintiff to demonstrate that the employer's stated reason for the termination was a pretext for  
4 disability discrimination. *Id.*

5 Summary judgment for Boeing on Davis' discriminatory discharge claim is proper. Davis  
6 has presented no evidence of the second element—that he is capable of performing the essential  
7 functions of his position. To the contrary, he admits in his complaint that doctors have still not  
8 cleared him to return to work. Moreover, Boeing has presented a nondiscriminatory reason for  
9 Davis' termination: exhaustion of the thirty-month consecutive leave period. Davis has presented  
10 no evidence that Boeing's reason for terminating Davis was a pretext for disability  
11 discrimination. Davis contends that he was not on continuous leave since May 2008 because  
12 Aetna denied him short-term disability benefits in September 2008 and did not start paying him  
13 such benefits again until late 2009 after he injured his hand. (Dkt. No. 41 at 1 ¶ A.) But whether  
14 Aetna was paying Davis disability benefits has nothing to do with whether Davis was on a leave  
15 of absence. Davis has identified no evidence in the record that puts into dispute Boeing's  
16 evidence that Davis was on a continuous medical leave of absence from May 16, 2008 until the  
17 date Boeing terminated him thirty months later.

18 Summary judgment for Boeing is also proper if the Court interprets Davis' claim as a  
19 failure-to-accommodate claim. To establish a claim for failure to provide reasonable  
20 accommodation under the ADA, a plaintiff must show that "(1) he is disabled within the  
21 meaning of the ADA; (2) he is a qualified individual able to perform the essential functions of  
22 the job with reasonable accommodation; and (3) he suffered an adverse employment action  
23 because of his disability." *Allen v. Pac. Bell*, 348 F.3d 1113, 1114 (9th Cir. 2003). Here, the  
24 "reasonable accommodation" Davis alleges he was denied is *further* medical leave beyond the  
25 thirty months Boeing had already given him—while holding his job open. "[T]he ADA does not  
26 require an employee to show that a leave of absence is certain or even likely to be successful to

1 prove that it is a reasonable accommodation,” but it does require him to prove that it “could  
2 have plausibly enabled [him] to adequately perform his job . . . .” *Humphrey v. Mem’l Hosps.*  
3 *Ass’n*, 239 F.3d 1128, 1136 (9th Cir. 2001) (quoting *Kimbro v. Atl. Richfield Co.*, 889 F.2d 869,  
4 879 (9th Cir. 1989)); see *Dark v. Curry County*, 451 F.3d 1078, 1090 (9th Cir. 2006) (“recovery  
5 time of unspecified duration may not be a reasonable accommodation (primarily where the  
6 employee will not be able to return to his former position and cannot state when and under what  
7 conditions he could return to work at all”). Davis has submitted no evidence that extending his  
8 leave of absence while holding open his job “could have plausibly enabled [him] to adequately  
9 perform his job.” *Humphrey*, 239 F.3d at 1136 (quoting *Kimbro*, 889 F.2d at 879). To the  
10 contrary, as early as September 15, 2008, his doctor stated, “The patient is unable to work. The  
11 patient needs a closing independent medical exam. My evaluation of the patient is that he will be  
12 unable to go back to work at Boeing . . . .” (Dkt. No. 38 Ex. G at 23.) On December 22, 2008, his  
13 doctor wrote, “[Davis] needs to be on an L&I pension program due to the fact that he is unable to  
14 hold down any type of gainful employment due to his L&I injury.” (*Id.* Ex. H at 27.) On March  
15 10, 2010, his doctor wrote, “[Davis] needs to be on L&I Pension. Unable to hold down any  
16 gainful employment.” (*Id.* Ex. I at 29.) On August 18, 2010, an examining doctor wrote about  
17 Davis, “Unable to work, and need[s] to be on L&I pension.” (*Id.* Ex. J at 31.) On November 11,  
18 2010, his doctor again concluded that Davis was “unable to do any gainful employment.” (*Id.*  
19 Ex. K at 38.) The record also shows that Davis continued to be completely disabled after  
20 November 2010. (*Id.* Exs. L at 41, M at 43.) In fact, in April 2011, Davis’ doctor wrote, “I still  
21 feel he needs to be on a L&I pension program due to the fact that he is unable to hold down any  
22 type of gainful employment due to his L&I injury.” (*Id.* Ex. M at 43.) And in February 2011,  
23 Aetna “determined that [Davis is] unable to perform the material duties of any occupation for  
24 which [he] may qualify for [sic] by education, training, and/or experience” because he was  
25 “considered to be totally disabled.” (*Id.* Ex. N at 48.) There is no genuine issue of fact in the  
26 record as to whether extending Davis’ leave of absence beyond thirty months “could have

1 plausibly enabled [him] to adequately perform his job.” *Humphrey*, 239 F.3d at 1136 (quoting  
2 *Kimbro*, 889 F.2d at 879). Boeing’s failure to extend Davis’ medical leave of absence beyond  
3 thirty months, and to hold open his job indefinitely, did not constitute a failure to accommodate  
4 Davis’ disability in violation of the ADA. Summary judgment for Boeing on Davis’  
5 discriminatory discharge claim is GRANTED.

6 **C. Breach-of-Contract or -Promise Claims**

7 Liberally construed, Davis’ complaint states not only ADA discrimination claims but also  
8 two state-law breach-of-contract or breach-of-promise claims: that Boeing breached its contract  
9 or promise to pay Davis relocation benefits and to confirm to hospitals that Davis was covered  
10 under Boeing’s health insurance plan without requiring Davis to effectively double-pay  
11 premiums. Boeing does not identify these claims in Davis’ complaint or move for summary  
12 judgment on them. They remain.

13 **III. CONCLUSION**

14 For the foregoing reasons, Boeing’s motion for summary judgment (Dkt. No. 34) is  
15 GRANTED in part and DENIED in part, and Davis’ motion to deny Boeing’s motion for  
16 summary judgment (Dkt. No. 46) is DENIED in part and GRANTED in part. Summary  
17 judgment for Boeing on Davis’ claims that Boeing violated the ADA when it (1) failed to pay  
18 him promised relocation funds, (2) failed to grant him requested handicapped parking, (3)  
19 mistreated him during his time at the Charleston facility, and (4) terminated him is GRANTED;  
20 summary judgment for Boeing on Davis’ claim that Boeing violated the ADA when it double-  
21 charged him health insurance premiums is DENIED; and summary judgment for Boeing on  
22 Davis’ state-law claims that Boeing breached its contract or promise to pay Davis relocation  
23 funds and to cover Davis under its health insurance plan without requiring him to double-pay  
24 premiums is DENIED.

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4 DATED this 23rd day of October 2012.

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A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

John C. Coughenour  
UNITED STATES DISTRICT JUDGE

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