

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10030
Summary Calendar

CHARLES GILL,

Plaintiff-Appellant,

VERSUS

CITY OF ARLINGTON,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(4:93-CV-469-A)

(June 29, 1994)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

Charles Gill, a former firefighter for the city of Arlington, appeals a summary judgment in his 42 U.S.C. § 1983 suit alleging violations of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12100-12213. Finding no error, we affirm.

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Gill worked as a firefighter for the City of Arlington when, in July 1991, he developed a blood disorder. Upon his physician's request, he was placed on light duty assignment in February 1992. He was placed in the resource management office of the fire department, where he assisted the staff with uniforms and equipment.

Gill's eligibility for light duty status expired on September 2, 1992, and he began utilizing paid sick leave and vacation time to avoid returning to firefighting duties. In October and November 1992, the city's human resource department arranged for Gill to interview for vacant positions as a building maintenance worker and an inspector in the fire marshal's office. Gill rejected both positions, as they involved pay and benefit reductions. On March 31, 1993, the city offered Gill a job as a code enforcement inspector, which he accepted.

Gill brought suit against the city for lost sick and vacation benefits from September 2, 1992, through March 31, 1993. He contended that he was disabled within the meaning of the ADA and therefore should not have had to exhaust his benefits. The city moved for summary judgment, which was granted.

II.

Gill contends that summary judgment was improper because he submitted affidavits creating a genuine issue of material fact. We review a grant of summary judgment de novo. Hanks v. Transconti-

mental Gas Pipe Line Corp., 953 F.2d 996, 997 (5th Cir. 1992). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). After a proper motion for summary judgment is made, the non-movant must set forth specific facts showing that there is a genuine issue for trial. Hanks, 953 F.2d at 997.

We begin our determination by consulting the applicable substantive law to determine what facts and issues are material. King v. Chide, 974 F.2d 653, 655-56 (5th Cir. 1992). We then review the evidence relating to those issues, viewing the facts and inferences in the light most favorable to the non-movant. Id. If the non-movant sets forth specific facts in support of allegations essential to his claim, a genuine issue is presented. Celotex, 477 U.S. at 327.

To pursue a claim under the ADA, Gill was required to show that he was disabled within the meaning of 42 U.S.C. § 12102(2), which defines disability as "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." Gill failed to adduce

summary judgment evidence that he fell under the regulation's definition of disabled. The term "major life activities" is defined as "functions, such as caring for one's self [sic], performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1613.702(c).

Gill's injury does not limit his major life activities. His condition requires that he take medication that causes weakness in the lower extremities. This loss of strength does not amount to a disability under the ADA. Moreover, Gill presented no evidence of a record of impairment or having been regarded as impaired. The district court correctly concluded that Gill failed to adduce summary judgment evidence that would demonstrate a disability. See Chandler v. City of Dallas, 2 F.3d 1385, 1392 (5th Cir. 1993) (holding that an impairment affecting a narrow range of jobs is not substantially limiting and does not affect a major life activity), cert. denied, 114 S. Ct. 1386 (1994).

AFFIRMED.