IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DIANE M. CRAMLET,

Plaintiff,

v.

SUPREME COURT OF WISCONSIN, and A. JOHN VOELKER, in his official capacity as Director of State Courts,

Defendants.

OPINION AND ORDER

12-cv-290-wmc

Plaintiff Diane M. Cramlet, a stenographic court reporter in the Portage County circuit court, alleges that defendants the Supreme Court of Wisconsin and A. John Voelker, the Director of State Courts for the State of Wisconsin, violated Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq*., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, in failing to provide certain accommodations for her disability. Before the court is defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). (Dkt. #3.)[1]

Defendants posit the following three bases for dismissing parts of plaintiff's complaint: (1) the Eleventh Amendment bars plaintiff's ADA claims against both

[1] While this motion was pending, plaintiff filed an amended complaint (dkt. #10), which defendants answered (dkt. #11). While the amended complaint is now the operative pleading and defendants technically should have re-filed their motion to dismiss, the amended complaint still contains the alleged defects raised in defendants' motion to dismiss -- except for the alleged defect as to plaintiff's Rehabilitation Act claim against Voelker -- and, as explained below, a number of these alleged defects have merit. Therefore, the court considers defendants' motion in light of the allegations in the amended complaint.

defendants; (2) plaintiff's Rehabilitation Act claim against both defendants must be dismissed for failure to plead adequately that each defendant received federal financial assistance; and (3) plaintiff's request for punitive damages is not allowed under either the ADA or the Rehabilitation Act. The court will grant defendants' motion to dismiss plaintiff's ADA claim against the Supreme Court of Wisconsin, but will allow her to proceed with an ADA claim seeking injunctive relief against defendant Voelker. The court will deny defendant's motion to dismiss plaintiff's Rehabilitation Act claim as to both defendants. Finally, the court will grant defendants' motion to dismiss any claim for punitive damages.

ALLEGATIONS OF FACT[2]

A. The Parties

Plaintiff Diane Cramlet is employed as a Stenographic Court Reporter in Wisconsin Circuit Court in Portage County, Wisconsin. She has been employed in this general role since 1982. Cramlet's job duties consist of "attending various courtroom proceedings and recording an accurate record of the proceedings with the use of a stenographic device to create official and formal records, preparing transcripts and other formal court documents and correspondence." (Am. Compl. (dkt. #10) ¶ 12.)

Defendant Supreme Court of Wisconsin is a governmental agency and the highest state court in Wisconsin. Defendant A. John Voelker is currently, and was for all times

[2] For the purposes of defendants' motion, the court must accept all of plaintiff's well-pleaded factual allegations as true and draw all reasonable inferences in her favor. *Savory v. Lyons*, 469 F.3d 667, 670 (7th Cir. 2006).

relevant to the complaint, the Director of State Courts. Voelker serves in this role at the pleasure of the Wisconsin Supreme Court and has the authority and responsibility for the overall management of the state court system, including personnel function for all state court personnel. *See* Wis. Supreme Court R. 70.01(1), 70.02. Plaintiff brings this action against Voelker in his official capacity.

B. Cramlet's Disability

Beginning in February 2007, Cramlet began experiencing pain, swelling and decreased strength in her hands and fingers. Cramlet reported this condition on February 15, 2007, and completed an Employee's Workplace Injury/Illness Report on February 27, 2007, indicating that she was having difficulty typing at the pace the lawyers were speaking. From February 20 through August 22, 2007, Cramlet took medical leave as of right due to the pain in her right hand.

During her leave, Cramlet was diagnosed as suffering from bilateral thumb carpometacarpal joint osteoarthritis, along with osteoarthritis of the proximal interphalangeal and distal interphalangeal joints of the right index finger and distal interphalangeal joint of the left index finger. As a result of this condition, Cramlet alleges that she is "substantially limited in the major life activities of working and performing manual tasks and suffers in the operation of major bodily function[s] -- namely, functioning of her joints." (Am. Compl. (dkt. #10) ¶ 18.)

C. Employment Accommodations

Upon returning to work in August 2007, Cramlet requested an accommodation to allow her to maintain her job and perform essential functions of her job. Specifically, Cramlet requested the installation and use of electronic recording equipment as an emergency backup in case her hand or hands were too painful to type. On September 14, 2007, Voelker approved her request.

On October 1, 2007, Margaret Brady, the Human Resources Officer for the Director of State Courts, met with Cramlet and the judge to whom she was assigned to work, Judge Frederic W. Fleishauer, to discuss the use of digital audio recording ("DAR") equipment as an accommodation. The DAR equipment was installed in late November and early December 2007. At that time, Cramlet continued to be classified as an "Official Court Reporter," rather than as a "Digital Court Reporter." This is significant because Digital Court Reporters are paid less than Official Court Reporters. Cramlet was, however, required to maintain a log of the amount of time she spent using the DAR equipment.

D. Change in Classification and Subsequent Employment

On May 8, 2008, Brady notified Judge Fleishauer of a change in Cramlet's job classification status. Brady explained in an email,

> [s]ince [Cramlet] is serving in both of these classifications, she will be 'joint appointed' in the PTA Web Time/leave accounting system. She will need to report the hours she works as steno reporter and DCR [Digital Court Reporter] through the PTA Web system. [Cramlet's] pay will be changed to include two rates -- her current steno reporter rate

> and a DCR rate that reflects her years of service. For hours worked as DCR, she will be paid at a lower rate ($21.74) then her steno rate ($30.56).

(Am. Compl. (dkt. #10) ¶ 26.) On August 25, 2008, Voelker sent a letter to Cramlet notifying her of this change.

On December 18, 2008, Cramlet filed a charge with the Equal Employment Opportunity Commission. In January 2012, the DAR equipment was removed from the courtroom in which Cramlet was working. Cramlet also alleges that "[i]n response to Cramlet's protests about the removal of her accommodation, Defendant threatened to re-locate Cramlet to a [] County thirty (30) minutes [a]way and/or to other court rooms to perform 'other' work." (Am. Compl. (dkt. #10) ¶ 31.) The EEOC issued a notice of right to sue on February 2, 2012.

After the removal of the DAR equipment, Cramlet alleges that she "continued to perform work as a Stenographic Court Report, but when she needed an accommodation, Defendant had asked Cramlet to stop and interrupt the court proceeding and request that another Stenographic Court Reporter resume her job activities." (Am. Compl. (dkt. #10) ¶ 32.)

On Friday, April 20, 2012, Cramlet was laid off by defendant citing "expiration of personal appointee status." (Am Compl. (dkt. #10) ¶ 33.)

OPINION[3]

I. Eleventh Amendment Bar to ADA Claim

Defendants move to dismiss plaintiff's ADA claim against both defendants, arguing that the claim is barred by the Eleventh Amendment. Plaintiff acknowledges in her response brief, as she must, that the State of Wisconsin and arms or entities of that state are immune from suits seeking money damages under Title I of the ADA. *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001). The Eleventh Amendment protections also apply to state governmental officials sued in their official capacity. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 70-71 ("[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself." (internal citations omitted)); *see also Gabby v. Maier*, No. 04-C-0476, 2009 WL 2256262, at *15 n.7 (E.D. Wis. July 29, 2009) ("The ADA does allow for official capacity claims against individual defendants to the extent they are proxies for the state."); *Doe v. Bd. of Trustees of Univ. of Ill.*, 429 F. Supp. 2d 930, 940 (N.D. Ill. 2006) (applying the holding of *Garrett* to claims brought against state government individuals in their official capacity).

Nevertheless, plaintiff contends that her ADA claim should not be dismissed in its entirety, because she is also seeking injunctive relief against defendants and the Eleventh

[3] In her opposition, plaintiff unnecessarily spends a significant amount of her written submissions discussing pleading standards under Federal Rule of Civil Procedure 8 and relatively-recent Supreme Court cases. Defendants are not moving to dismiss pursuant to Rule 8; rather, defendants are raising legal challenges to plaintiff's claims pursuant to Rule 12(b)(6).

Amendment does not bar a claim for injunctive relief. On this point, the law is on plaintiff's side. As the Supreme Court explained in *Garrett*,

> Title I of the ADA still prescribes standards applicable to the States. Those standards can be enforced by the United States in actions for money damages, as well as by private individuals in actions for injunctive relief under *Ex parte Young,* 209 U.S. 123, (1908).

Garrett, 531 U.S. at 374 n.9.

While plaintiff acknowledges the holding of *Ex Parte Young* -- that the Eleventh Amendment does not bar suits against state officials for injunctive relief -- plaintiff still attempts to maintain a claim against a state entity. (*See* Plaintiff's Opp'n (dkt. #5) 6 ("Plaintiff is seeking injunctive relief from *both* Defendants under the ADA." (emphasis added)).) Finding no basis for allowing a claim for injunctive relief against the Supreme Court of Wisconsin, a state governmental entity, the court will dismiss plaintiff's ADA claim against that defendant.

As for plaintiff's ADA claim against defendant Voelker, defendants argue that plaintiff failed to plead a claim of injunctive relief with respect to her ADA claim; rather, plaintiff's only request for equitable relief was part of her Rehabilitation Act claim -- namely, a reasonable accommodation. (Defs.' Reply (dkt. #6) 4.) The court does not read plaintiff's complaint quite that way. Plaintiff alleges a violation of Title I of the ADA, and seeks in her prayer of relief, "[i]njunctive relief granting Plaintiff a reasonable accommodation to Plaintiff's disability." (Am. Compl. (dkt. #1) p.8.)

Therefore, the court will dismiss plaintiff's ADA claim against the Supreme Court of Wisconsin in its entirety and will dismiss any claim for money damages pursuant to

the ADA against defendant Voelker. Plaintiff may still proceed with a claim for injunctive relief against Voelker.[4]

II. Federal Finance Requirement under the Rehabilitation Act

To state a claim under § 504 of the Rehabilitation Act, a plaintiff must allege that she was "subjected to discrimination under [a] program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a); *see also Grzan v. Charter Hosp. of Nw. Ind.*, 104 F.3d 116, 119 (7th Cir. 1997) (listing the fourth element of such a claim as "the program or activity in question received federal financial assistance"). Defendants argue that plaintiff's Rehabilitation Act claim should be dismissed because (1) plaintiff failed to plead that Voelker received federal financial assistance; and (2) the Supreme Court of Wisconsin is not a "program or activity" that received federal financial assistance.

First, as to defendant Voelker, plaintiff concedes her initial pleading neglected to allege that he is the recipient of federal financial assistance, but argues that "upon information and belief it is believed part, if not all, of Defendant Voelker's compensation as serving as the Director of State Courts comes from Federal financial assistance as it has been admitted in other litigation involve[ing] the Office of the Director of State Courts that the office receives federal funding." (Pl.'s Opp'n (dkt. #5) 6.) In her amended complaint, plaintiff goes further, alleging that "Voelker is also a recipient of Federal

[4] Since Cramlet appears to no longer be an employee, injunctive relief may prove to be an empty victory, but neither party raises this issue in their motions and the court will not either.

financial assistance in his capacity as Director of State Courts." (Am. Compl. (dkt. #10) ¶ 40.)

Assuming plaintiff's complaint contained such an allegation, the fact that Voelker's salary may come in whole (or at least in part) from federal funding does not satisfy the requirement of a program or activity that receives federal funding. "The coverage of the Rehabilitation Act does not follow federal aid past the intended recipient to those who merely derive a benefit from the aid or receive compensation for services rendered pursuant to a contractual agreement." *Grzan*, 104 F.3d at 120 (internal citation and quotation marks omitted). In *Grzan*, the Seventh Circuit rejected the plaintiff's attempt to bring a claim against an employee of an entity which received federal funding solely on the basis of that federal funding passing to the employee in the form of his or her salary:

> Employees of the recipients of federal financial assistance are not in themselves the recipients of such assistance. Absent specific allegations to the contrary, we can only assume that as an employee who merely was paid a wage or salary, Greer was never in such a position and thus was never a recipient of federal funds.

Id.; *see also U.S. Dep't of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597, 605 (1986) ("Congress limited the scope of § 504 to those who actually 'receive' federal financial assistance because it sought to impose § 504 coverage as a form of contractual cost of the recipient's agreement to accept the federal funds.").

Given Voelker's position as Director of State Courts, he may well be a recipient -- in other words, in a position to accept or reject federal funding. The court will, therefore, deny plaintiff's motion to dismiss the Rehabilitation Act claim against Voelker as

currently pled. Defendant Voelker, however, is free to renew this argument in a motion for summary judgment if the facts are insufficient to demonstrate that Voelker receives federal funding in his official capacity.

Second, as for plaintiff's claim against the Supreme Court of Wisconsin, defendants contend that plaintiff's alleged discrimination does not concern any program or activity of the Supreme Court of Wisconsin; rather, plaintiff's complaint concerns discrimination at the circuit court level. In response, plaintiff argues that given the structure of the Wisconsin court system, defendant Supreme Court of Wisconsin denied her accommodation. "Under the organization of the Wisconsin court system and Wisconsin Statute § 751.02, the Wisconsin Supreme Court was Plaintiff's employer." (Pl.'s Opp'n (dkt. #5) 8.)

In light of the 1988 amendment to the Rehabilitation Act, which "defines program or activity to mean 'all the operations' of a department, agency, district, or other instrumentality of state or local government that receives or dispenses federal financial assistance," *Schroeder v. City of Chi.*, 927 F.2d 957, 962 (7th Cir. 1991), plaintiff's pleading as to defendant Supreme Court of Wisconsin is sufficient to meet this element of the Rehabilitation Act.[5]

[5] If plaintiff were attempting to hold the Supreme Court of Wisconsin liable under the Rehabilitation Act for federal funding to one circuit court, then defendant's motion might have more merit. "[T]he amendment was not . . . intended to sweep in the whole state or local government, so that if two little crannies (the personnel and medical departments) of one city agency (the fire department) discriminate, the entire city government is in jeopardy of losing its federal financial assistance." *Schroeder*, 927 F.2d at 962. That is not the case here.

Finally, defendants' argument that plaintiff has not proven the Supreme Court of Wisconsin receives federal funding is an issue for another day and another motion. *See Brewer v. Wis. Bd. of Bar Examiners*, 270 Fed. Appx. 418, 412, 2008 WL 687315, at *2 (7th Cir. Aug. 29, 2007) (unpublished) (affirming district court's grant of summary judgment to defendant, finding no evidence of a federally-funded program or activity). Her allegation -- coupled with a 2009 admission from defendants responding to an EEOC request that "[t]he Supreme Court does receive a few federal grants" -- is sufficient to allow plaintiff's Rehabilitation Act claim against defendant Supreme Court of Wisconsin to go forward.

III. Punitive Damages

Plaintiff fails to respond to defendants' motion to dismiss any claim of punitive damages, effectively conceding any claim to such damages, and for good reason. The law is clear that neither the ADA nor the Rehabilitation Act allows an award of punitive damages. *See Barnes v. Gorman*, 536 U.S. 181, 189 (2002). Accordingly, the court also will dismiss any claim for punitive damages.

ORDER

IT IS ORDERED that defendants' motion to dismiss (dkt. #3) is GRANTED IN PART AND DENIED IN PART as follows:

a) plaintiff's Title I of the ADA claim against defendant Supreme Court of Wisconsin is dismissed with prejudice;

b) plaintiff's claim for money damages pursuant to Title I of the ADA against defendant Voelker is dismissed with prejudice;

c) plaintiff's claim for punitive damages is dismissed; and

d) defendant's motion is denied in all other respects.

Entered this 29th day of May, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge