

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

BRANDI LYNN WEIGEL,

Petitioner,

v.

QUICKSILVER BROADCASTING,

Respondent.

ORDER

07-C-05-C

Petitioner Brandi Lynn Weigel seeks leave to proceed in forma pauperis in this proposed civil action for money damages, brought under Title I of the Americans with Disabilities Act. She has supported her request for pauper status with an affidavit of indigency from which I find that she qualifies for indigent status under 28 U.S.C. § 1915. Therefore, she may proceed in this action unless I determine that her complaint is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

Title I of the ADA prohibits employers from discriminating against “a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee

compensation, job training, and other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112(a). The act covers situations in which a disabled employee is treated differently because of her disability (disparate treatment) and those in which the employer fails to provide a reasonable accommodation to a disabled employee. 42 U.S.C. § 12112(b); Foster v. Arthur Andersen, LLP, 168 F.3d 1029, 1032 (7th Cir. 1999). In this case, petitioner contends that respondent subjected her to disparate treatment, failed to reasonably accommodate her disability and constructively discharged her. In particular, she alleges that she has multiple sclerosis and that her employer denied her requests for reasonable accommodations in her position as a marketing consultant for respondent, such as allowing her to work from home part-time so that she could more readily attend her medical appointments or placing her on salary instead of commissions. She appears to contend that because respondent failed to accommodate her in these ways, her ability to retain health insurance was severely threatened and she had no choice but to terminate her employment and seek out other work.

I conclude that petitioner’s claim is not frivolous or malicious, that she has not sued a defendant who is immune from relief and that, under liberal pleading standards, she has stated a claim under Title I of the ADA. She appears to be a “qualified individual with a disability,” see, e.g., Timmons v. General Motors Corp., 469 F.3d 1122 (7th Cir. 2006) (case under ADA involving plaintiff with multiple sclerosis); Kramer v. Banc of America Securities,

LLC, 355 F.3d 961 (7th Cir. 2004) (same). Although it is not clear whether respondent Quicksilver Broadcasting qualifies as an employer under the act, it may move to dismiss petitioner's claims against it if it can show that it is not engaged in an industry affecting commerce or that it has less than 15 employees working each of 20 or more calendar weeks in the current or preceding calendar year. 42 U.S.C. § 12111(5)(A).

ORDER

IT IS ORDERED that petitioner Brandi Lynn Weigel's motion for leave to proceed in forma pauperis is GRANTED. A copy of petitioner's complaint and a copy of this order are being forwarded to the United States Marshal for service on the defendant.

Entered this 9th day of January, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge