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

KAREN P. DREWRY,

Plaintiff,

v.

ROBERT WILKIE,

Defendant.

OPINION AND ORDER

20-cv-217-wmc

Plaintiff Karen P. Drewry, a former employee of Coatesville Veterans Affairs Medical Center, claims that her former employer, the Department of Veterans Affairs ("VA"), failed to accommodate her significant psychiatric disabilities and discriminated against her because of those disabilities when it fired her, all in violation of federal law. Since Drewry is proceeding without prepayment of the filing fee, her complaint must be screened to determine whether any portion is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). For the reasons that follow, the court will allow plaintiff to proceed under the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq*., on her failure to accommodate and discriminatory termination claims against defendant in his official capacity as the Secretary of the VA.[1]

[1] The head of the federal agency Drewry accuses of having discriminated against her is the proper defendant for claims of employment discrimination under the Rehabilitation Act. *Hamm v. Runyon*, 51 F.3d 721, 722 n.1 (7th Cir. 1995). When Drewry filed her complaint, Robert Wilkie was the Secretary of the VA, but has since been replaced by Secretary Denis R. McDonough. Accordingly, under Federal Rule of Civil Procedure 25(d), the court will substitute McDonough for Wilkie and direct the clerk's office to amend the caption accordingly.

ALLEGATIONS OF FACT[2]

Drewry suffers from post-traumatic stress disorder ("PTSD") and major depressive disorder stemming from her military service during the Gulf War. From February 2011 until January 2013, Drewry worked at the Coatesville Veterans Affairs Medical Center as a vocational rehabilitation specialist. She alleges that her former employer refused to make reasonable accommodations for her PTSD and depression, then wrongfully terminated her employment altogether on January 23, 2013. As a result, Drewry lost wages, could not find another job, and was at some point hospitalized and homeless. Moreover, she felt humiliated and her relationships with family and friends suffered.

Drewry filed a complaint with the Equal Opportunity Employment Commission ("EEOC") in 2013. The EEOC's Office of Federal Operations issued a decision on April 4, 2018, which Drewry appealed on June 2, 2018. That appeal was dismissed on December 11, 2020, and Drewry filed her complaint in this lawsuit on March 10, 2020, naming Wilkie as the sole defendant. Drewry requests: an "increase in monetary damages"; "backpay and forward pay"; that her appeal "be accepted late based on equitable tolling"; that her employee record be "cleared of all negative disciplinary actions"; and that "the individual responsible for this injustice" be retrained, disciplined and possibly removed from her position. (Dkt. #1 at 4.)

[2] In addressing any *pro se* litigant's complaint, the court reads the allegations generously, resolving ambiguities and drawing reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

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Reading plaintiff's allegations generously, the court understands plaintiff to be alleging that her former employer, discriminated against her because she suffers from PTSD and depression. Specifically, plaintiff alleges that the VA: (1) terminated her from the Coatesville Veterans Affairs Medical Center because of her psychiatric disabilities; and (2) failed to provide her with reasonable accommodations for those disabilities while she was still working there.

Plaintiff does not reference any statutory or constitutional basis for her suit, though it appears that her disability discrimination claims would arise under Section 501 of the Rehabilitation Act.[3] *See Brown v. Potter*, 67 F. App'x 368, 370 (7th Cir. Jun. 2, 2003) (assuming that a postal service employee's disability discrimination claim was brought under the Rehabilitation Act when the employee failed to cite statutory authority for claim). "Section 501 of the Act, which is the sole remedy for federal employees claiming disability discrimination, . . . requires federal agencies to accommodate disabled employees and prohibits discrimination based on disability." *Mannie v. Potter*, 394 F.3d 977, 982 (7th Cir. 2005) (citing *McGuinness v. United States Postal Serv.*, 744 F.2d 1318, 1321 (7th Cir. 1984)). Section 501also incorporates the remedies, procedures and rights of Title VII of the Civil Rights Act of 1964. *Id.*; *see also* 29 U.S.C. § 794a(a)(1). Courts assess disability discrimination claims brought by federal employees under the Rehabilitation Act by

[3] If plaintiff disagrees with how the court has construed her claims or with their presumed statutory basis, she can amend her complaint to clarify how she actually wishes to proceed. Otherwise, both the court and defendant will construe her claim under the applicable provisions of the Rehabilitation Act.

applying the standards and caselaw applicable to the Americans with Disabilities Act. 29 U.S.C. § 791(f); *see also Scheerer v. Potter*, 443 F.3d 916, 918-19 (7th Cir. 2006).

I. Discriminatory Termination

As noted, plaintiff alleges she was unlawfully terminated after her employer failed to accommodate her significant psychiatric disabilities. To prevail on this claim, plaintiff will have to establish with evidence that: (1) she is disabled within the meaning of the statute; (2) she is otherwise qualified for her position; and (3) she was fired because of her disability. *See, e.g.*, *Scheerer,* 443 F.3d at 919 (noting the "similarity between the prima facie requirements under Rehabilitation Act and the Americans with Disabilities Act"); *see also Sizemore v. Potter*, No. 05 C 4028, 2007 WL 178303, at *2 (N.D. Ill. Jan. 16, 2007) (analyzing a Section 501 claim).

At the complaint stage, however, plaintiff is not required to plead legal theories, let alone to plead facts that correspond to elements of a particular claim. *Chapman v. Yellow Cab Coop.*, 875 F.3d 846, 848 (7th Cir. 2017). As the Seventh Circuit recently instructed, "[i]n this type of case, a plaintiff need plead only the type of discrimination, when it occurred, and by whom." *Stumm v. Wilkie*, 796 F. App'x 292, 295 (7th Cir. 2019) (a plaintiff alleging age discrimination was not required to allege his age, the age of the individuals hired instead of the plaintiff, or that said individuals were at least ten years younger than the plaintiff); *see also Tamayo v. Blagoyevich*, 526 F.3d 1074, 1084 (7th Cir. 2008) ("in order to prevent dismissal under Rule 12(b)(6), a complaint alleging sex discrimination need only aver that the employer instituted a (specified) adverse employment action against the plaintiff on the basis of her sex.").

Here, plaintiff alleges that she suffers from two serious psychiatric disorders, worked at the Coatesville VA medical center from February 2011 until she was "wrongfully terminated" on January 23, 2013, has pursued discrimination charges and an appeal with the EEOC, and endured multiple hardships "as a result of the discrimination." (Dkt. #1 at 2-3.) To be sure, ambiguities remain regarding what specifically occurred while plaintiff was working at Coatesville, including who was actually involved and the alleged actions of those individuals, which will shed light on whether the VA is liable. But for now, under the lenient pleading standard for a *pro se* litigant, *Haines,* 404 U.S. at 521, the court will infer that plaintiff's psychiatric conditions qualify as disabilities under the Rehabilitation Act, and plaintiff was qualified to perform the essential functions of her job as a vocational rehabilitation specialist with or without reasonable accommodation. Further, because plaintiff is contending that her employer fired her in January 2013 based on her disabilities, plaintiff has done "all that is required at this stage." *Nortridge v. Columbia Health Facilities-Park Regency, LLC*, No. 19 C 50253, 2020 WL 1904092, at *3 (N.D. Ill. Apr. 18, 2020) (consistent with Seventh Circuit's decision in *Stumm,* plaintiff may proceed on an age discrimination claim having "alleged an adverse employment action—a drug test and interrogation—and . . . that Columbia Health took this action based on [plaintiff's] age"); *see also Tamayo,* 526 F.3d at 1085 (noting that "[i]n these types of cases, the complaint merely needs to give the defendant sufficient notice to enable him to begin to investigate and prepare a defense").

II. Failure to Accommodate

To succeed on a failure to accommodate claim under the Rehabilitation Act, in

addition to being a qualified individual with a disability, plaintiff must show that the employer knew of her disability but failed to make a reasonable accommodation. *Bellino v. Peters*, 530 F.3d 543, 549 (7th Cir. 2008). In addition to the allegations noted above, plaintiff contends here that while working at Coatesville from February 2011 until her termination, "her rights were violated when she was denied reasonable accommodations for her" PTSD and clinical depression. (Dkt. #1 at 2.) Again, there are ambiguities regarding what occurred and who was involved that fact-finding will almost certainly resolve. However, as noted, plaintiff is not required to prove her claim at this stage. *See Chapman*, 875 F.3d at 848 (observing that "the Federal Rules of Civil Procedure have required plaintiffs to plead *claims* rather than facts corresponding to the elements of a legal theory"). Rather, plaintiff is contending that her employer knew she was disabled yet failed to reasonably accommodate her disability, and the court will infer from these allegations that plaintiff was qualified to perform her job. Because plaintiff's allegations are sufficient, she can also proceed on this claim. *Cf. King v. Northwest Community Hosp.*, No. 09 C 5903, 2010 WL 1418581, at *5 (N.D. Ill. Apr. 7, 2010) (plaintiff was not required at the complaint stage to "provide specific details concerning the accommodations that would have been reasonable for her job" or "facts concerning [plaintiff's] efforts to request accommodations" to proceed on a failure to accommodate claim under the ADA).

ORDER

IT IS ORDERED that:

1) Denis R. McDonough is substituted for Robert Wilkie.

2) Plaintiff Karen P. Drewry is GRANTED leave to proceed on failure to accommodate and discriminatory termination claims under the Rehabilitation Act against defendant McDonough in his official capacity as the Secretary of the Department of Veterans' Affairs.

3) The clerk's office will prepare summons and the U.S. Marshal Service shall effect service upon defendant.

4) For the time being, plaintiff must send defendant a copy of every paper or document she files with the court. Once plaintiff has learned what lawyer will be representing defendant, she should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that she has sent a copy to defendant or to defendant's lawyer.

5) Plaintiff should keep a copy of all documents for her own files. If plaintiff does not have access to a photocopy machine, she may send out identical handwritten or typed copies of her documents.

6) If plaintiff moves while this case is pending, it is her obligation to inform the court of her new address. If she fails to do this and defendant or the court are unable to locate her, her case may be dismissed for failure to prosecute.

Entered this 16th day of September, 2021.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge