

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2084CV 1382

JONATHAN ADAMS

vs.

MASSACHUSETTS GENERAL HOSPITAL and GIULIANA R. ARCOVIO

DECISION AND ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

In this lawsuit, the plaintiff, Jonathan Adams (“Adams” or “plaintiff”) asserts various claims against former employer, Massachusetts General Hospital (“MGH”) and a former direct supervisor at MGH, Giuliana R. Arcovio (“Arcovio”) arising out of the plaintiff’s termination of employment as a Radiology Technical Manager at MGH on January 3, 2020. Adams alleges that the defendants engaged in discrimination based upon disabilities (anxiety and depression) and gender identity, and retaliation based upon Adams’ protected activity in requesting FMLA leave and alleging discrimination. Specifically, the plaintiff brought four claims against the defendants; Count I-Disability Discrimination (M.G.L. c. 151B), Count II-Gender Identity Discrimination (M.G.L. c. 151B), Count III-Retaliation (M.G.L. c. 151B), and Count IV-Interference with Rights (M.G.L. c. 151B). The case is before this court on the defendants’ motion for summary judgment. The court heard extensive oral argument from the parties on July 13, 2022. After full and thorough review of the pleadings of the parties, the consolidated statement of material facts with the plaintiff’s responses, the joint exhibits submitted, and in full consideration of the arguments made by counsel, for the reasons stated below, the motion is **DENIED**.

DISCUSSION

I. Standard of Review

Summary judgment is granted where there are no genuine issues of material fact and where the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); *Cassesso v. Commissioner of Corr.*, 390 Mass. 419, 422 (1983); *Community Nat'l Bank v. Dawes*, 369 Mass. 550, 553 (1976). The moving party bears the burden of affirmatively demonstrating the absence of a triable issue, and that the summary judgment record entitles the moving party to judgment as a matter of law. *Flesner v. Technical Commc'ns Corp.*, 410 Mass. 805, 808-809 (1991); *Pederson v. Time, Inc.*, 404 Mass. 14, 16-17 (1989); see *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716 (1991). The court considers the evidence presented in the light most favorable to the nonmoving party. Mass. R. Civ. P. 56(c); *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991); *Parent v. Stone & Webster Eng'g Corp.*, 408 Mass. 108, 113 (1990); *Flynn v. Boston*, 59 Mass. App. Ct. 490, 491 (2003). The nonmoving party, however, cannot rest on his pleadings and mere assertions of disputed facts to defeat the motion for summary judgment. *LaLonde v. Eissner*, 405 Mass. 207, 209 (1989). “[B]are assertions and conclusions . . . are not enough to withstand a well-pleaded motion for summary judgment.” *Polaroid Corp. v. Rollins Env'tl. Servs., Inc.*, 416 Mass. 684, 696 (1993).

II. Analysis

The defendants move for summary judgment arguing that even accepting the facts in the light most favorable to the plaintiff, the plaintiff still fails to establish a *prima facie* case for any of the four claims in this action. In essence, the defendants suggest that if all of the testimony and evidence elicited from persons other than the plaintiff is fully credited, than those facts cannot establish or support the elements required for the plaintiff's claims. In opposition, the

plaintiff essentially presents a credibility attack on much of the evidence, particularly the testimony of Arcovio. To support the assertion that key aspects of Arcovio's or other's testimony is not credible, the plaintiff points to the timing of events leading to the termination, the alleged lack of compliance with certain MGH disciplinary protocol, and certain inconsistencies in statements of the defendants, such as those contained in the initial response to the MCAD complaint.

As a preliminary consideration of the defendants' motion, the court is mindful that summary judgment is generally disfavored in employment discrimination cases. *See Sullivan v. Liberty Mutual Ins. Co.*, 444 Mass. 34, 38 (2008) ("In cases involving claims of employment discrimination, a defendant employer faces a heavy burden if it seeks to obtain summary judgment; summary judgment is disfavored in discrimination cases based on disparate treatment..."). This is because "employees rarely can produce direct evidence of discriminatory animus and causation." *Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.*, 474 Mass. 382, 397 (2016). *See Sullivan*, 444 Mass. at 38 (finding "the employer's state of mind...is elusive and rarely established by other than circumstantial evidence."). In the majority of such cases, it is up to "the jury to weigh the credibility of conflicting explanations of the adverse decision." *Id.* Furthermore, where intent or motivation of the parties is in dispute, summary judgment is similarly disfavored. *See Madden v. Estin*, 28 Mass. App. Ct. 392, 395 (1990) ("When intent is at the core of the controversy, summary judgment seldom lies.")

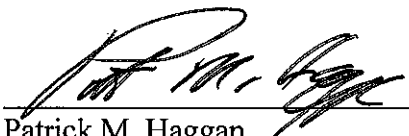
Ultimately, a review of the pleadings and exhibits suggest there are a number of disputed issues of material fact, including, but not limited to: (1) Whether or not anyone at MGH, other than defendant Arcovio and medical staff and/or Occupational Health staff who conducted or facilitated the independent medical examination ("IME"), knew of the plaintiff's physiological

abnormality relative to testicles and/or gender identity issues/concerns; (2) Whether or not Arcovio or anyone else conveyed such information as contained within the IME report to the participants of the October 3, 2019 meeting regarding accommodations for the plaintiff outlined in the IME, or whether or not this information was brought up or discussed at the December 5, 2019 conference call meeting where the decision was made to terminate the plaintiff; (3) Whether or not Arcovio ever made comments (generally or in the presence of others) referencing the plaintiff not having “any balls”; (4) Whether or not the plaintiff had exhibited a demonstrated inability to work effectively after being cleared to return to work in October 2019; (5) Whether or not the position offered to the plaintiff in early 2019 as a Quality Assurance Manager was a promotion, lateral transfer, or an attempted adverse employment action by the defendants; (6) Whether or not Arcovio meaningfully participated in the decision to terminate the plaintiff; (7) Whether or not there were sufficient permissible grounds to terminate the plaintiff; and (8) Whether or not the decision to terminate was based in any way on discriminatory purposes/intent related to disability and gender identity, and/or in retaliation for the plaintiff’s protected acts in claiming discrimination in May 2019, or in requesting further FMLA leave in December 2019.

Therefore, in consideration the evidence in the light most favorable to the plaintiff, there are disputed issues of material fact and therefore summary judgment is not warranted.

ORDER

For the foregoing reasons, the defendant’s motion to for summary judgment is **DENIED**.


Patrick M. Haggan
Justice of the Superior Court

DATE: July 15, 2022