UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

WILFRED GUY,	)	
	)	CIVIL ACTION
Plaintiff,	)	
v.	)	No. 18-223-BAJ-RLB
	)	
JAMES LEBLANC, *et al*.,	)	
	)	
Defendants.	)	

REPLY IN SUPPORT OF PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Wilfred Guy has moved for partial summary judgment on his claims under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. For the reasons described herein, Plaintiff respectfully requests that this Court grant his motion.

A. Plaintiff's motion should be granted regarding sports, because Defendants can point to no individualized assessment at the time of their denial of accommodation.

In 2012, Mr. Guy received a "no sports" duty status. In March 2017, he made an ADA accommodation request to be allowed to play sports. Ex. 19-7 at 4. In July 2017 that request was denied. *Id.* at 5; R. Doc. 25-4 at ¶ 18. In May 2019 – two years after the accommodation denial – Dr. Lavespere testified in a deposition that he thought it was too dangerous for Mr. Guy to play any contact sports.[1]

The DOC now contends that the Dr. Lavespere's 2019 deposition testimony counts as the "individualized assessment" required by the ADA. R. Doc. 25-3 at 4. But this is entirely *post hoc* reasoning, because it comes two years *after* the denial of Mr. Guy's request for accommodation.[2]

[1] R. Doc. 19-4

[2] Nor was Dr. Lavespere's testimony in any way an individualized determination. Dr. Lavespere conceded at deposition that "I won't make an adjustment for sports." R. Doc. 19-4 at 69. And the ADA coordinator confirmed that a doctor "by policy" cannot modify a no-sports duty status. R. Doc. 19-4 at 18.

The ADA does not allow for this kind *post hoc* reasoning. As the Fifth Circuit has held, an "assessment not reached in an individualized manner is not an assessment that we can credit." *Rodriguez v. Conagra Grocery Products Co.*, 436 F.3d 468, 476 (5th Cir., 2006); *see also Brenneman v. Medcentral Health Sys.*, 366 F.3d 412, 416 n.2 (6th Cir. 2004) ("Thus while this *post hoc* ground for Plaintiff's termination may be relevant to the calculation of any damages, it is irrelevant to the determination of whether defendant improperly terminated plaintiff under the ADA.")

Thus, the question here is whether Defendants' 2017 denial of Mr. Guy's request for accommodation was based on an individual assessment at the time. Defendants provide no evidence for that whatsoever. That is because there is no such evidence: Angola's ADA coordinator did not consult with Dr. Lavespere at the time of the accommodation denial,[3] and admitted that that nothing in the ARP denial packet "explains how sports, hobby craft or rodeo would be dangerous for Mr. Wilfred Guy." R. Doc. 19-4 at 41.[4]

Defendants also point out that Plaintiff did not want to work in the field or around machinery because of his disability. Defendants therefore ask that Plaintiff's legal claims be disregarded because these "are the *exact* concerns . . . [as] in regard to the 'no sports' restriction." R. Doc. 25-3 at 5 (emphasis in original).

This is dramatically false. As Defendants concede, field work at Angola involves "swinging a swing blade," "lawnmowers," and "tractors." R. Doc. 25-3 at 5. Field workers are also subject to being shot by guards on horseback if they do not comply with verbal commands.[5]

[3] R. Doc. 19-4 at 74 ("Q. Do you have any reason to believe that you did discuss Mr. Wilfred Guy with the ADA coordinator? A. I haven't.")

[4] "Q. In fact, could you look through the entire remainder of the packet, and let me know if you see anything that explains how sports, hobby craft or rodeo would be dangerous for Mr. Wilfred Guy? A. (Witness complies). No."

[5] *Hacker v. Cain*, 14-cv-00063, R. Doc. 148-1 at 3-4 (Nov. 6, 2015) ("Field lines are guarded by two guards who carry shotguns and sit on a horse. The gun line – the line between each gun guard – was a line that prisoners could not cross. I worked in fear that I would cross the gun line

By contrast, sports at Angola include softball, flag football, and pickleball – a "paddle sport created for all ages and skill level"[6] using a ball "similar to a wiffle ball, but slightly smaller." The concerns associated with fieldwork – swinging blades and shotguns – are not the "exact" same concerns as a wiffle ball game.

In fact, Defendants' arguments *strengthen* Plaintiff's claims. Defendants are arguing that if it was too dangerous for Plaintiff to do fieldwork, then he shouldn't be allowed to play sports either. That is exactly the kind of blanket, non-individualized decision that the ADA forbids. *See* 28 C.F.R. §35.130 (public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.)

B. Plaintiff's motion should be granted regarding hobbycraft because a policy only has to "tend" to exclude persons with disabilities to violate the ADA – it does not have to be a categorical exclusion.

With regard to hobbycraft, Defendants concede that they have a policy saying that inmates cannot participate in hobbycraft if they have a duty status resulting from medical care. R. Doc. 25-4 (Undisputed Facts) at ¶ 5.

Defendants argue, however, that this policy is not a "categorical" exclusion for inmates with disabilities. R. Doc. 25-3 at 7. They explain that another policy gives some discretion to the medical director to make exceptions, and the medical director testified that he sometimes grants requests for exceptions to a no-hobbycraft duty status. *Id*.

That is no defense at all. Under the ADA, an exclusion does not have to be *categorical* to be *illegal*. A policy is illegal if it merely "tends" to screen out an individual with a disability from any service. 28 C.F.R. § 35.130(b)(8). Defendants do not attempt to dispute that their policy tends to screen out individuals with disabilities.

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by accident. . . .When that happens, the protocol is for a guard to fire a warning shot in the air. The next time, the one after the warning shot, would be aimed at the prisoner.")

[6] https://www.usapa.org/what-is-pickleball/ (last accessed 2019/6/17).

Defendants also claim that Plaintiff is currently on a waiting list for the hobbyshop. R. Doc. 25-3 at 7. But among Defendants' own material facts is the statement that Plaintiff's duty status "as written, prevents Plaintiff from participation in hobbycraft activities." R. Doc. 19-2 at ¶ 9. Thus, it may be true that Plaintiff is on a waiting list for hobbycraft. But there is no indication he will get *off* that list without court intervention.

C. Plaintiff's motion should be granted regarding to the periods in which he was denied a paid job.

Louisiana law requires that the DOC provide employment opportunities for inmates. R.S. 15:832(A). At Angola, inmates are paid for the work they do. R. Doc. 19-4 at 130. But Mr. Guy received no pay whatsoever for several months-long periods, even though the parties agree that he "is capable of doing some of the paid jobs at Angola." R. Doc. 21-11 at RFA Nos. 10-13.

The parties agree why Mr. Guy received no pay for these periods. Due to the "classification decisions of the Department," Mr. Guy was assigned to housing which "automatically resulted in a field line job assignment." R. Doc. 25-3 at 8. But Mr. Guy had an "out of field" duty status due to his hearing impairment. R. Doc. 19-2 at No. 7. Therefore, Mr. Guy was "unable to work" the field line job assignment because of the duty status. R. Doc. 25-3 at 8. As Plaintiff described it, each day he would "go out by the gate and show my duty status, and then they [would] turn me around." R. Doc. 21-16 at 62:5 to 62:6. He would go back to the dorm, and was required to do janitorial work without pay. *Id.* at Page 62:8 to 62:22.

The question is whether this violates the ADA. Defendants argue that because "the classification of inmates is a matter left to the broad general discretion of prison officials." R. Doc. 25-3 at 19. But this is a total *non-sequitur*. It is certainly true that prisons have broad discretion to assign jobs to inmates; but it is also true that the ADA and RA bar the exercise of that discretion in a way that discriminates on the basis of disability.

And here, we have a prototypical example of disability discrimination. The parties agree that Mr. Guy was put in a working cellblock side-by-side with non-disabled inmates. Each day, the non-disabled inmates would go out and work, and be paid for it. But Mr. Guy could *not* go out and work and be paid for it, solely because he had a duty status for his hearing impairment. *See, e.g., Miraglia v. Bd. of Supervisors of Louisiana State Museum*, 901 F.3d 565, 574 (5th Cir. 2018) (illegal to deny a person the benefits of a government activity by reason of their disability).

Plaintiff's motion should be granted.

D. Plaintiff's motion should be granted because he has discovered an Angola policy that caps pay for a class of disabled inmates at 4 cents per hour.

Defendants have a policy that caps the pay at 4 cents per hour for disabled inmates with "Limited Duty" statuses. R. Doc. 21-6 at 2, 4; R. Doc. 21-5 at 4. By contrast, non-disabled inmates can be paid up to a dollar per hour. R. Doc. 21-6 at 4, 5. Plaintiff's motion for summary judgment points out that this policy is discriminatory on its face.

Defendants make no argument whatsoever that their policy complies with the ADA. *See* R. Doc. 25-3 at 10-11. Nor could they: the policy violates the ADA on its face. *See* 28 CFR § 35.130(b)(8) (prohibiting criteria that prevent any class of persons with disabilities from "equally enjoying any service, program, or activity.")

Defendants make two arguments why they should not be held liable for this policy. First, they point out that Plaintiff's Complaint does not mention the pay-cap policy. R. Doc. 25-3 at 10. They are correct. This discriminatory policy was discovered during the course of this lawsuit, and Plaintiff will request leave to amend his complaint to include the newly-discovered policy.

Second, Defendants argue that the discriminatory policy did not apply to Mr. Guy, by pointing out that the pay cap does not apply to "Regular Duty with restrictions or those with a temporary Limited Duty status" (R. Doc. 21-6 at 3). They concede that on October 31, 2016, Wilfred Guy was assigned a "limited duty" status (R. Doc. 25-3 at 11; R. Doc. 21-8), but they

suggest that perhaps Mr. Guy's limited duty status was "temporary" because the next year he was "regular duty with restrictions." (R. Doc. 25-3 at 11).

But when Angola duty statuses are temporary, they say so. *See, e.g.*, Ex. A ("Temporary Duty Status: no duty no yard no sports x 2 days"). Nothing in Wilfred Guy's assignment in 2016 said anything about the status being temporary. Nor was there anything temporary about the nature of Mr. Guy's disability – he has permanent neurological hearing loss. Accordingly, the better reading is that the duty assignment was exactly what it said – a "limited duty" assignment, without temporal limitation, that was subsequently changed to "regular duty with restrictions." Thus, the pay-cap policy applied to Plaintiff, and his motion should be granted.

E. Plaintiff's motion should be granted with regard to the intentional discrimination element of his damages claim.

Defendants make two arguments why their failure to pay Plaintiff at all for long periods of time was not intentional discrimination. (They agree that the intentional discrimination analysis only applies to Mr. Guy's claim for damages, not declaratory or injunctive relief.)

First, they blame Plaintiff himself for his lack of paid work,[7] arguing that "the record reflects that Plaintiff had an opportunity to request a job change, but did not do so." R. Doc. 25-3 at 12. But this is the *opposite* of what the record reflects. DOC's representative testified that "because of where he is housed . . . **he does not have the opportunity to request a new job.**" R. Doc. 19-4 at 149 (emphasis added); *see also id.* at 170-171 (if he had filled out a job change form "he would be given it back because of the fact of where he's housed, his job comes along with that housing.")

Second, Defendants argue that there was no intentional discrimination because Plaintiff was provided with a paid job at the mattress factory two months after filing his ARP. R. Doc. 25-

[7] Defendants argue that Plaintiff's job assignment was his own fault, even though in a separate section of their brief they argue that "the classification of inmates is a matter left to the broad general discretion of prison officials." R. Doc. 25-3 at 9.

3 at 13. This argument does not get Defendants off the hook for two reasons. First, Defendants contend in their brief that the "significant lapses in Plaintiff's pay were due to his disciplinary sentences and classification decisions of the Department." R. Doc. 25-3 at 8 (emphasis added). Thus, Defendants have conceded that the pay lapses were due to Defendants' intentional decision making, not any accident on their part.

And second, Defendants admit the real reason why Mr. Guy was given a paying job in May 2017 – and it is not because they recognized that his ARP had merit and decided to end their discrimination. As they explain: "in May 2017, LSP staff requested Plaintiff for a janitorial position in the mattress factory due to staffing being below quota." R. Doc. 25-3 at 9.

For those reasons, Plaintiff's motion should be granted.

CONCLUSION

For the reasons herein, Mr. Guy's motion for partial summary judgment should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2019, a copy of the Plaintiffs' *Reply in Support of Motion for Partial Summary Judgment* was transmitted to counsel for defendants, James "Gary" Evans, by operation of ECF.

/s/William Most
William Most