UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DEREK REIHART,	)	
	)	
Plaintiff,	)	Case No. 18-cv-4886
	)	
v.	)	Hon. Jorge L. Alonso
	)	
VILLAGE OF HANOVER PARK,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

After a seizure got in the way of his dream career as a firefighter, plaintiff Derek Reihart ("Reihart") filed against defendant Village of Hanover Park (the "Village") a complaint in which he alleged that defendant violated the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12111, et seq., by constructively discharging him from employment and by failing to provide a reasonable accommodation. Defendant moves for summary judgment. For the reasons set forth below, the Court grants defendant's motion for summary judgment.

I. BACKGROUND

The following facts are undisputed unless otherwise noted.[1]

Defendant Village operates the Village of Hanover Park Fire Department, which hired plaintiff Reihart as a part-time firefighter in 2008. When, in 2011, the Village promoted plaintiff

[1] Local Rule 56.1 outlines the requirements for the introduction of facts parties would like considered in connection with a motion for summary judgment. The Court enforces Local Rule 56.1 strictly. Where one party supports a fact with admissible evidence and the other party fails to controvert the fact with citation to admissible evidence, the Court deems the fact admitted. *See Curtis v. Costco Wholesale Corp.*, 807 F.3d 215, 218-19 (7th Cir. 2015); *Ammons v. Aramark Uniform Servs., Inc.*, 368 F.3d 809, 817-18 (7th Cir. 2004). This does not, however, absolve the party putting forth the fact of the duty to support the fact with admissible evidence. *See Keeton v. Morningstar, Inc.*, 667 F.3d 877, 880 (7th Cir. 2012).

to full-time firefighter/paramedic, Reihart achieved his life-long dream of becoming a firefighter. For that reason, it was particularly unfortunate when, in February 2015, Reihart suffered a seizure, which meant Reihart could not drive for six months.

Before becoming a part-time firefighter in 2008, plaintiff had obtained an associate's degree in fire science and an EMT-B certification. In order to become a full-time firefighter/paramedic, plaintiff obtained a paramedic license and passed physical and written examinations. He did not need to demonstrate his ability to drive before being promoted to full-time firefighter/paramedic in 2011. As a full-time firefighter/paramedic, plaintiff was considered an exceptional employee. He continued to pass his physical and written testing for the first several years of his employment.

The job as a firefighter/paramedic with the Village

The Village operates two fire stations, each of which is staffed by five full-time firefighter/paramedics during each 24-hour shift. Each group of five full-time firefighter/paramedics works one 24-hour period and then has two 24-hour periods off from work. The Village also employs part-time firefighters, who work the "power" shift, by acting as additional firefighting staff from 9:00 a.m. to 5:00 p.m. from Monday through Friday. Generally, two part-time firefighters work each power shift. During the day (typically in the months of March through August), firefighter/paramedics and part-time firefighters also spent some time, between emergencies, conducting fire-safety inspections for holders of business licenses.

The Village required firefighter/paramedics to be able to drive. The Village's job description for firefighter/paramedics lists a number of essential functions, including:

Responds to fire alarms and other emergency calls.

* * *

> Positions and climbs ladders to gain access to upper levels of buildings or assist individuals from burning structures.
>
> * * *
>
> Rescues victims from occupancies filled with heat, smoke, and toxic gases. Performs extrications by using a variety of extrication tools.
>
> * * *
>
> Drives and operates firefighting vehicles and equipment. Maintains vehicles, apparatus, quarters, buildings, equipment and grounds.

(Job Description at 1-2/Docket 36-4 at 1-2). Chief Haigh testified that driving was an essential function of the job of firefighter/paramedic. Although the relevant collective bargaining agreement does not describe the position's essential functions or state that loss of driving privileges is grounds for termination, the Union President, Brian Chmielak, testified, "If you can't drive, you can't work." [Docket 36-8 at 40]. He added, "the way we're configured, everybody has to be able to drive—everybody has the potential to drive." [Docket 36-8 at 40].

The Village's job description also lists required certifications and licenses, including that a firefighter/paramedic "[r]equires the ability to obtain a non CDL Class B vehicle operator's license within 12 months from the date of hire." The non CDL Class B vehicle license is necessary to drive some of the Village's firefighting vehicles. A driver's license is not necessary to operate the ladder in the ladder truck.

In responding to an emergency call, the Village often sent out two vehicles: an ambulance and a fire engine. Typically, two firefighters rode in the ambulance, with one driving. Typically, three firefighters rode in the fire engine, with one driving and one operating the ladder. Assistant Chief Zaccard testified that the stations housed about thirteen pieces of equipment, including fire engines, trucks, ambulances and hazmat vehicles, such that sometimes (depending on the nature of the emergency call) a piece of equipment was occupied by just one firefighter, the driver. Assistant Chief Zaccard testified that it was "quite frequent" to have "overlapping calls." [Docket 36-7 at 65]. Assistant Chief Zaccard testified that having a

firefighter who could not drive posed an unacceptable risk to public safety. He said, "there are just way too many scenarios that we run into, way too many emergencies where you don't have time to move people around or you just react and go, and it would be nearly impossible to try and have somebody that can't drive. There's just too many instances where that would be a hazard to the community." [Docket 36-7 at 59]. Plaintiff, for his part, testified that, as a firefighter/paramedic, he could be called upon to drive at any time during any shift but that he typically drove about 20% of the time.

Plaintiff's leave time

In December 2014, plaintiff injured his left wrist in an off-duty construction accident. The Village provided plaintiff leave time under the Family and Medical Leave Act. Plaintiff's leave began December 4, 2014. By the time plaintiff returned to work on February 11, 2015, he had exhausted his FMLA leave.

Three days after plaintiff's return to work, on February 14, 2015, plaintiff suffered a seizure while driving an automobile. (Fortunately, plaintiff's wife was a passenger and was able to steer the vehicle out of traffic.) Plaintiff's wife telephoned 911, and plaintiff was taken to Lutheran General Hospital, where plaintiff was prescribed anti-seizure medication and restricted from driving for six months. Plaintiff, who was scheduled to work the following day, telephoned his Battalion Chief to let him know that plaintiff had had a seizure and would not be at work the following day.

The Village placed plaintiff, who had exhausted his FMLA leave, on unpaid leave. On February 17, 2015, the Village asked Reihart to submit a "Duty Status Report," a form used by the Village to determine whether an employee could perform the essential functions of the job. The Village sent the form to Reihart's physician, along with a copy of the job description for

firefighter/paramedic. On February 18, 2015, Dr. Khipple, Reihart's family physician, filled out the form and submitted it to the Village. Dr. Khipple diagnosed Reihart with epilepsy and gave him a restriction of "NO DRIVING" through August 18, 2015.

At some point (the parties do not say when), several Village employees, including Chief Haigh, Battalion Chief Fors and firefighter (and Union President) Brian Chmielak consulted the National Fire Protection Association's Standard 1582, a guideline for physicians to assist them in determining whether a person is medically qualified to work as a firefighter. Standard 1582, which is not part of the Village's employee handbook or the relevant collective bargaining agreement, includes in a list of "essential" job tasks "[o]perating fire apparatus or other vehicles in emergency mode with emergency lights and sirens." (NFPA Standard 1582 at 5.1.1/Docket 36-17 at 58-59). The standard also states that to be "medically qualified," a firefighter must have, among other things, "[n]o seizures for 1 year off all anti-epileptic medications or 5 years seizure free on a stable medical regimen." (NFPA Standard 1582 at 6.17.1.1/Docket 36-17 at 63).

On February 23, 2015, plaintiff had an appointment with a neurologist, Dr. Janet Choi. Plaintiff told Dr. Choi that, in addition to his seizure on February 14, 2015, he had also suffered a seizure in December 2014, while he was on leave for his wrist injury.[2] Like Dr. Khipple, Dr. Choi restricted plaintiff from driving. In addition, Dr. Choi restricted plaintiff from climbing heights, using heavy machinery and engaging in activities that would put people surrounding him

[2] The Court notes that it overruled plaintiff's hearsay objection to the admission of statements plaintiff made to Dr. Choi. Fed.R.Evid. 803(4). In addition, defendant supported its assertions as to plaintiff's statements to Dr. Choi with Dr. Choi's deposition testimony. Fed.R.Evid. 801(d)(2).

in danger were he to have a seizure. Plaintiff told Dr. Choi he could no longer work as a firefighter due to his inability to drive.[3]

At some point (the parties do not say when), Chief Haigh scheduled for February 27, 2015 a meeting to discuss plaintiff's future with the Village, and Chief Haigh told plaintiff to attend. Wendy Bednarek ("Bednarek") (the Village's Human Resources Director), Assistant Chief Zaccard and Union President Chmielak also attended. (The parties dispute whether Battalion Chief Pikoa attended the meeting, but it is immaterial.) Before plaintiff and Union President Chmielak stepped into the meeting, Chmielek told plaintiff that he was out of FMLA leave and that there was a good chance he would be "let go." Despite the Union President's concern, the Village had not yet made a decision on plaintiff's future.

Plaintiff walked into the meeting dressed in a suit and with his resignation letter in his hand. Plaintiff placed the resignation letter face down on the table and did not tender it at the start of the meeting. Plaintiff was visibly emotional and nervous. Plaintiff stated that, based on medical advice he had received, he was no longer able to be a firefighter. Plaintiff put forth evidence (which defendant disputes) that Assistant Chief Zaccard told plaintiff he would have to resign or be fired. Plaintiff agreed and tendered his resignation letter. The Village allowed plaintiff to re-date the letter to March, so that he would receive an additional month of health insurance. Plaintiff expressed a desire to remain an employee of the Village. Bednarek asked if

[3] Plaintiff offered no evidence to dispute this fact. At his deposition, plaintiff answered, "Yes," to the question "Did you tell Dr. Choi that you felt that you could not continue at the Village of Hanover Park Fire Department because you could not drive?" [Docket 36-5 at 73]. After a recess, plaintiff testified that he could not recall conversations with Dr. Choi. He was asked, "So if Dr. Choi came in and said that you had conversations, then you wouldn't dispute that; it's just you don't have a recollection is what you're saying?" [Docket 36-5 at 76]. Plaintiff responded, "Correct. Correct." [Docket 36-5 at 76].

plaintiff was interested in any other open positions with the Village, but plaintiff said he was not interested. Plaintiff left the meeting in tears.

Later, Assistant Chief Zaccard sent plaintiff a list of positions available at the Village. Plaintiff testified that those positions were not what he wanted to do at that point.

On or about June 1, 2015, Chief Haigh drafted a letter which stated in relevant part:

> Please let this letter serve as an official recognition letter for Derek Reihart. . . . Derek was an exceptional employee who served the residents of this community with excellence, compassion and a desire to be the very best in everything he did.
>
> Unfortunately, due to a recently developed medical condition, Derek is prohibited from continuing a career as a Firefighter/Paramedic. . . . I would not hesitate to have Derek function in any position that does not require the high medical standards of a firefighter. Derek's forced resignation was a huge loss to our organization and community.
>
> I would highly recommend you consider Derek Reihart for employment and would be happy to answer any questions should you need additional information.

(Docket 36-17 at 41). Plaintiff did not have another seizure through the date of his deposition.

At some point (plaintiff did not put forth evidence as to when), the Village allowed at least one pregnant employee to perform office work during a trimester.

II. STANDARD ON A MOTION FOR SUMMARY JUDGMENT

Summary judgment shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). When considering a motion for summary judgment, the Court must construe the evidence and make all reasonable inferences in favor of the non-moving party. *Hutchison v. Fitzgerald Equip. Co., Inc.*, 910 F.3d 1016, 1021 (7th Cir. 2018). Summary judgment is appropriate when the non-moving party "fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." *Celotex v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). "A genuine issue

of material fact arises only if sufficient evidence favoring the nonmoving party exists to permit a jury to return a verdict for that party." *Brummett v. Sinclair Broadcast Group, Inc.*, 414 F.3d 686, 692 (7th Cir. 2005).

III. DISCUSSION

In plaintiff's complaint, he asserts that defendant violated the Americans with Disabilities Act by terminating his employment on the basis of his disability and by failing to provide a reasonable accommodation.

The ADA makes it unlawful to "discriminate against a qualified individual on the basis of disability in regard to . . . the . . . discharge of employees . . . and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). Included in the definition of discriminate is "not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability." 42 U.S.C. § 12112(b)(5)(A). Thus, based on the plain language of the statute, a plaintiff must, in order to establish either type of discrimination, establish he is a "qualified individual." *Sieberns v. Wal-Mart Stores, Inc.*, 125 F.3d 1019, 1022 (7th Cir. 1997) ("No matter the type of discrimination alleged—either disparate treatment or failure to provide a reasonable accommodation—a plaintiff must establish first that he was a 'qualified individual with a disability.'") (citations omitted); *see also Rodrigo v. Carle Foundation Hosp.*, 879 F.3d 236, 241 (7th Cir. 2018) ("[Defendant] is correct that [plaintiff's] claims for discrimination and failure to accommodate fail at the start because he cannot demonstrate that he is a 'qualified individual.'").

The ADA defines "qualified individual" as meaning "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). That statute goes on to say, "[f]or

purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job." 42 U.S.C. § 12111(8). Accordingly, this Court "presume[s] that an employer's understanding of the essential functions of the job is correct, unless the plaintiff offers sufficient evidence to the contrary." *Gratzl v. Office of Chief Judges*, 601 F.3d 674, 679 (7th Cir 2010); 42 U.S.C. § 12111(8). In addition to considering the employer's judgment and the written job description, a court also considers the amount of time employees spend performing the function, the consequences of not requiring the employee to perform the function and the actual experiences of persons holding (or who have held) the position. *Rodrigo*, 879 F.3d at 242.

In this case, it is undisputed that defendant's job description for plaintiff's position as firefighter-paramedic listed driving as an essential function. In addition, Chief Haigh testified that driving was an essential function, and even the Union President testified that "the way we're configured, everybody has to be able to drive." The reasons are fairly obvious: firefighter/paramedics are emergency responders, and the Village scheduled only five firefighter/paramedics per fire station from the hours of 5:00 p.m. to 9:00 a.m. True, plaintiff did not spend all of his time driving. Plaintiff testified that while he could be called upon to drive at any time, in actual practice, he drove only 20 percent of the time. In response to a typical emergency call, the Village sent two vehicles, an ambulance and a fire engine, which meant that a response to a typical call required only two drivers.

The Court however, must also consider the consequences of not having plaintiff drive. *See* 29 C.F.R. Pt. 1630, App. § 1630.2(n) ("The consequences of failing to require the employee

to perform the function may be another indicator of whether a particular function is essential. For example, although a firefighter may not regularly have to carry an unconscious adult out of a burning building, the consequences of failing to require the firefighter to be able to perform this function would be serious."). Here, the consequences of not having plaintiff drive would be serious, as Assistant Chief Zaccard testified. Assistant Chief Zaccard testified that it was "quite frequent" to receive overlapping calls and, with thirteen pieces of equipment (including fire engines, ambulances, trucks and hazmat vehicles), the driving firefighter might be the only firefighter on a vehicle. He testified that having a firefighter who could not drive would pose an unacceptable risk to public safety. Plaintiff has not identified anyone who was allowed to be a firefighter/paramedic without driving. Based on this evidence, a reasonable jury could not conclude that driving was not an essential function.

The upshot is that plaintiff was not a qualified individual with a disability, because it is undisputed he was restricted from driving, on account of having suffered a seizure. In addition, plaintiff was restricted from climbing, which defendant (unsurprisingly, given the nature of a firefighter's work) also lists as an essential function of plaintiff's job. Plaintiff put forth no evidence to suggest climbing ladders is not an essential function of the job of firefighter/paramedic. Plaintiff's claims under the ADA fail.

This case might be different if plaintiff were employed by a city with a large firefighting force or a force where firefighters were not actually required to drive. *See, e.g.*, *Rorrer v. City of Stow*, 743 F.3d 1025, 1042-43 (6th Cir. 2014) (question of fact as to whether driving was essential function of firefighter position where employer's job description said driving "may" be required, plaintiff put forth evidence that some firefighters never drove and a supervisor testified driving was not essential); *Eldredge v. City of St. Paul*, 809 F. Supp.2d 1011, 1031-32 (D. Minn.

2011) (dispute of fact as to whether driving was an essential function where defendant had 90 firefighters on duty each day and only ten needed to drive). This is not that case. Under the facts of this case, no reasonable juror could conclude that driving and climbing ladders were not essential functions of the job of firefighter. It is undisputed that plaintiff was restricted from performing those functions. An employer is not required to reassign essential functions to another person, because that is not a *reasonable* accommodation, as a matter of law. *Majors v. General Elec. Co.*, 714 F.3d 527, 535 (7th Cir. 2013) ("The accommodation [plaintiff] seeks—another person to perform the essential functions of the job she wants—is, as a matter of law, not reasonable[.]"). Nor is an employer required to "create a new job" to accommodate a disabled employee. *Gratzl*, 601 F.3d at 680 ("An employer need not create a new job or strip a current job of its principal duties to accommodate a disabled employee.").

Plaintiff does not argue that he should have been reassigned to a vacant position within the Village. In any case, the undisputed evidence is that the Human Resources Director asked plaintiff whether he was interested in one of the Village's vacant positions, and he was not. Likewise, Assistant Chief Zaccard sent plaintiff a list of vacant positions, but, as plaintiff testified, he was not interested in pursuing those positions at the time. Nor does plaintiff argue that he should have been granted a longer unpaid leave of absence. *See, e.g., Severson v. Heartland Woodcraft, Inc.*, 872 F.3d 476, 479 (7th Cir. 2017) ("An employee who needs long-term medical leave *cannot* work and thus is not a 'qualified individual' under the ADA.").

Defendant is entitled to judgment as as matter of law, and its motion for summary judgment is granted.

IV. CONCLUSION

For all of these reasons, the Court grants defendant's motion [33] for summary judgment. Civil case terminated.

SO ORDERED.

ENTERED: February 18, 2020

HON. JORGE ALONSO
United States District Judge