

**Superior Court of California  
County of Los Angeles**

Jerome Hill,

Plaintiff,

vs.

Superior Pool Products, LLC,  
et al.,

Defendants.

Case No. **BC578526**

[Tentative] Ruling

Hearing Date: **August 5, 2016**  
Department 49, Judge Deirdre Hill

**Defendant's Motion for Summary Judgment or Summary Adjudication**

Moving Party: Defendant, Superior Pool Products, LLC  
Responding Party: Plaintiff, Jerome Hill

Ruling: The Defendant's motion for summary judgment is GRANTED for the reasons stated below.

The court considered the moving, opposition, and reply papers.

This is an employment case alleging discrimination on the basis of a disability. The complaint alleges the following causes of action:

- 1) Wrongful Discrimination and Constructive Termination Based on Disability;
- 2) Failure to Accommodate and Engage in the Good Faith Interactive Process; and
- 3) Failure to Prevent Discrimination.

Plaintiff alleges that he was discriminated against on the basis of disability – hypertension – and that he was constructively discharged on February 12, 2014. Defendant disputes these assertions and claim that Plaintiff was only reprimanded because he was caught smoking cigarettes in his truck in violation of safety rules and regulations.

Defendant seeks summary judgment or summary adjudication as to all of the claims asserted in the complaint. Defendant argues that Plaintiff was not constructively terminated his position because he was only warned once about smoking his truck. Defendant states that this isolated incident is insufficient to constitute a constructive discharge under California law. In addition, Defendant also argues that Plaintiff admitted, on a signed form under penalty of perjury, that he did not have a disability due to hypertension. This form was allegedly required as part of Plaintiff's application process to renew his commercial driver's license. Defendant argues that because no adverse employment action was taken against Plaintiff and because he admitted to not having a disability on his medical evaluation form, summary judgment should be granted in Defendant's favor.

Plaintiff submits an incredibly brief opposition to the motion and only presents a single declaration by the Plaintiff in opposition to the Defendant's motion. Plaintiff argues that he was constructively terminated because Defendant was attempting to permanently assign him to a truck driver role – a position that Plaintiff allegedly told Defendant on several occasions over the course of several years – that he was unfit to perform given his hypertension. Nevertheless, Plaintiff asserts that Defendant's employee told him that he could either work the truck driver position or leave the company. Finally, Plaintiff claims that his failure to mark his hypertension on the medical form was inadvertent and that his disability was well-known by Defendant.

The reply largely reiterates the arguments made in support of the motion and stresses that Plaintiff should not be able to create triable issues of fact based on his self-serving declaration.

### Analysis

A motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. CCP § 437c(c). The court must consider all of the evidence in the moving papers, except the objectionable evidence, and all inferences reasonably deduced from the evidence. But summary judgment shall not be granted based on inferences if contradicted by other inferences or evidence raising a triable issue as to any material fact. *Id.* Under summary judgment law, the moving party has the burden of showing that there is no issue requiring a trial as to any fact that is necessary under the pleadings. CCP § 437c(p). The motion must be supported by admissible evidence. Once the moving party has met this burden, the opposing party cannot rest upon the mere allegations of the pleadings but must present admissible evidence showing that there is a genuine issue for trial. *See Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 844. "In ruling on the motion, the court must consider all of the evidence and all of the inferences reasonably drawn therefrom...and must view such evidence...in the light most favorable to the opposing party." *See Id.* at 844-845.

A motion for summary judgment, or for summary adjudication, must be supported by evidence, which “establishes the right to the entry of judgment as a matter of law.” See *Regents of University of California v. Superior Court* (1996) 41 Cal. App. 4th 1040, 1044. In order to obtain summary judgment, “all that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action.” See *Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal. 4th at 853; see also *Mitchell v. United National Ins. Co.* (2005) 127 Cal. App. 4th 457. The Court in *Aguilar* explained that the moving party bears two burdens. First, in satisfying the burden of persuasion, the moving party must show that “there is no triable issue of material fact and that he is entitled to judgment as a matter of law.” See *Id.*, at 850. “There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” See *Id.* Second, the burden of production “entails only the presentation of ‘evidence.’” See *Id.* “[If the moving party] carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact.” See *Id.* Until the moving party meets this evidentiary burden, the responding party has no burden to present evidence showing a triable issue of fact. See *Hagen v. Hickenbottom* (1995) 41 Cal.App.4th 168, 178; see also *Hawkins v. Wilton* (2006) 144 Cal. App. 4th 936, 940, *citing Duckett v. Pistoresi Ambulance Service, Inc.* (1993) 19 Cal.App.4th 1525, 1533 (the *Hawkins* Court quoted *Duckett* saying that “[w]here the evidence presented by defendant does not support judgment in his favor, the motion must be denied without looking at the opposing evidence, if any, submitted by plaintiff”).

On a disability discrimination claim, the prima facie case requires the plaintiff to show “he or she (1) suffered from a disability, or was regarded as suffering from a disability; (2) could perform the essential duties of the job with or without reasonable accommodations, and (3) was subjected to an adverse employment action because of the disability or perceived disability.” *Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 159–60, *as modified on denial of reh'g* (May 12, 2011).

Here, Defendant presents evidence that on January 17, 2014, Plaintiff signed a Medical Examination Report for Commercial Driver Fitness Determination, where it prompted Plaintiff to identify if he had any issues with High Blood Pressure. Cardwell Decl., Ex. B. Plaintiff checked the box marked “No” as to the High Blood Pressure question and then signed the document under penalty of perjury. *Id.* The court does note, however, that on page 4 of the Report, in a section to be completed by Plaintiff’s healthcare professional, a box is checked “Meets standards, but periodic evaluation required due to what appears to be the letters “HTP.” *Id.* at 4. That section was completed by a Physician’s Assistant, Ms. Bianco of U.S. Healthworks in Chatsworth, CA. *Id.*

Plaintiff, for his part, fails to produce any evidence beyond his own self-serving declaration that he did in fact have hypertension-related disability issues. Although Plaintiff references in his declaration, and his complaint, that Defendant was well aware

of Plaintiff's disability through communications by Plaintiff's healthcare practitioner, Plaintiff fails to provide any supporting evidence of these actions. A party resisting summary judgment cannot solely rely on a self-serving declaration that contradicts prior sworn testimony to create a triable issue of fact. *Archdale v. American Intern. Specialty Lines Ins. Co.* (2007) 154 Cal.App.4th 449, 473. Indeed, while this court believes that relevant discovery concerning Plaintiff's medical records pertaining to his hypertension exist given the notation by Ms. Bianco, Plaintiff has not produced any evidence to create a triable issue.

Therefore, for this reason alone, the court GRANTS the Defendant's summary judgment motion as to all of the causes of action alleged in the complaint.

Nevertheless, turning to the issue of adverse employment action, the court also finds that Plaintiff has failed to submit evidence to create a triable issue of material fact as to his discharge. Defendant provides evidence, in the form of an internal "Personnel Action Request Form," that on February 12, 2014, Plaintiff "resigned" from his position. Caldwell Decl., Ex. C. The form provides that two witnesses were present when Plaintiff voluntarily resigned – Carlos Sorto and Fred Cardenas. *Id.* Defendant also provides a declaration from Carlos Sorto, which explains the events leading up to Plaintiff's alleged resignation. Sorto Decl. ¶¶ 9-10. Defendant also provides alleged pictures that were being smoked by the Plaintiff. *Id.*, Exs. B & C. Again, Plaintiff only provided his own self-serving declaration that contests these facts. Plaintiff claims that in 2012, he took a four-month disability leave due to his hypertension and that his doctor informed him that he could no longer drive trucks on a permanent basis. Hill Decl. ¶ 2. Plaintiff states that he was transferred to a Sales Associate position for approximately one and half years, before allegedly being told by Carlos Sorto on February 12, 2014 that he would be permanently assigned to a truck driving role again.

As Defendant cites in their reply, Plaintiff cannot now raise issues for the first time that were not included in the complaint. Specifically, Plaintiff did not allege in his complaint the series of events now included in his declaration relating to Sorto permanently assigning him to a driver position, after having been accommodated with a Sales Associate position. *Hutton v. Fidelity National Title Co.* (2013) 213 Cal. App. 4th 486, 499. Given the absence of any extrinsic evidence and the lack of specificity of the allegations in the complaint, the court finds that Plaintiff has not created a triable issue of material fact as to whether he was constructively terminated.

The court, therefore, GRANTS the Defendant's motion.

Date: August 5, 2016

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Judge Deirdre Hill