[Cite as *Weaver v. Ohio Dept. of Pub. Safety*, 2025-Ohio-2916.]

IN THE COURT OF CLAIMS OF OHIO

BRIAN WEAVER Plaintiff v. OHIO DEPARTMENT OF PUBLIC SAFETY Defendant	Case No. 2023-00573JD Judge Lisa L. Sadler Magistrate Gary Peterson DECISION

{¶1} On April 25, 2025, Defendant filed a Motion for Summary Judgment pursuant to Civ.R. 56(B). On May 23, 2025, Plaintiff filed a Response, and Defendant filed a reply on May 30, 2025. The motion is now before the Court for a non-oral hearing pursuant to Civ.R. 56 and L.C.C.R. 4. For the reasons set forth below, Defendant's Motion for Summary Judgment is GRANTED.

Standard of Review

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." *See also Gilbert v. Summit Cty*., 2004-Ohio-7108, ¶ 6, citing *Temple v. Wean United, Inc.,* 50 Ohio St.2d 317 (1977).

{¶4} "The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact." *Starner v. Onda*, 2023-Ohio-1955, ¶ 20 (10th Dist.), citing *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). "The moving party does not discharge this initial burden under Civ.R. 56 by simply making conclusory allegations." *Id.* "Rather, the moving party must affirmatively demonstrate by affidavit or other evidence allowed by Civ.R. 56(C) that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Id.* "Once the moving party discharges its initial burden, summary judgment is appropriate if the non-moving party does not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial." *Hinton v. Ohio Dept. of Youth Servs.*, 2022-Ohio-4783, ¶ 17 (10th Dist.), citing *Dresher* at 293; *Vahila v. Hall*, 77 Ohio St.3d 421, 430 (1997); Civ.R. 56(E).

Factual Background

{¶5} In May 2021, Plaintiff began working for Defendant, the Ohio Department of Public Safety (DPS), as an Information Technologist 1 Apprentice and was assigned IT help desk duties. (Amended Complaint, ¶ 5-6; Weaver Depo. 16:19-24; Weaver Affidavit, ¶ 3). "Plaintiff is deaf and was placed in his position through the Vocational Apprentice program with Opportunities for Ohioans with Disabilities [(OOD)]." (Amended Complaint, ¶ 7; Weaver Affidavit, ¶ 5). "Jobs obtained through this program are temporary, unclassified positions." (Amended Complaint, ¶ 8). Plaintiff's apprenticeship through OOD allowed for a limit of 1,000 hours of employment at $15 an hour, and no benefits. (Weaver Depo. 16:3-24). Plaintiff's job duties with DPS involved responding to DPS employee and IT help desk inquiries. (Weaver Depo. 20:17-22; Weaver Affidavit, ¶ 4). As a result, when Plaintiff initially interviewed for the position, he "notified Defendant that because of his hearing disability he would require a CapTel Captioned Telephone in order to use the telephone." (Amended Complaint, ¶ 10; Weaver Depo. 22:9-17; Weaver Affidavit, ¶ 6). A CapTel telephone provides typed responses of what people are saying on the telephone. (Weaver Depo. 113:4-7). The CapTel telephone was not immediately available, and Plaintiff performed his IT help desk duties by responding to inquires via

written Teams chats or written work orders. (Weaver Depo. 20:12-16). Occasionally, Plaintiff would meet in person onsite to fix an issue with a computer or software program. (Weaver Depo. 19:21-20:3). Defendant provided Plaintiff with a CapTel telephone on or about August 23, 2021. (Amended Complaint, ¶ 11; Weaver Depo. 115: 5-8; Weaver Affidavit, ¶ 8).

{¶6} Plaintiff states that, "[o]n August 30, 2021, Plaintiff responded to a help desk request from Col. Richard Fambro [(Fambro)], Superintendent of the Ohio State Highway Patrol" and that "during [Plaintiff's] discussion with [Fambro], Plaintiff mentioned concerns about potential cybersecurity flaws that *he had observed in his previous work with law enforcement* . . . ." (Amended Complaint, ¶ 17; emphasis added; Weaver Depo. 50:17-23; 53:23-54:6; Weaver Affidavit, ¶ 14). When Plaintiff observed these alleged issues during his previous employment with the City of Gahanna and Grove City, he reported them to the Ohio Attorney General's Office, the Ohio Ethics Group, and various other state agencies. (Weaver Depo. 50:17-55:4). Plaintiff states that Fambro thanked him for reporting his concerns, but Fambro did not provide him any directive on what to do and did not want to discuss the issue further with him. (Weaver Depo. 56:10-17).

{¶7} "On August 31, 2021, Plaintiff sent an email outlining his various concerns regarding cyber security to multiple ODPS recipients, including some of his supervisors, and several recipients at other Ohio agencies including the Ethics Commission, the Inspector General, the Attorney General, the Public Utilities Commission, and the Auditor's Office . . ." and other internal and external recipients. (Amended Complaint, ¶ 19-20; Weaver Depo. 57-62; Weaver Affidavit, ¶ 17). The allegations in the email recount Plaintiff's perceived wrongdoing that he became aware of while working for the City of Gahanna and Grove City, prior to his employment with Defendant, and essentially repeated concerns he previously raised with his former employers and third parties. (Weaver Depo. 54:14-55:5, 64:8-93:11). Plaintiff was terminated from his position on September 1, 2021, because he used his work email account without permission to send an email to multiple internal and external recipients regarding his concerns about cybersecurity that he became aware of at his previous employers. (Amended Complaint, ¶ 21; Weaver Depo. 96:9-97:17; McElfresh ¶ 5).

{¶8} Plaintiff commenced this action against Defendant asserting claims of wrongful termination in violation of public policy, termination on the basis of Plaintiff's disability in violation of R.C. 4112.02, and failure to accommodate Plaintiff's disability in violation of R.C. 4112.02. Plaintiff requests damages in an amount in excess of $25,000.

Law and Analysis

Wrongful Discharge in Violation of Public Policy

{¶9} Defendant asserts that Plaintiff's claim for wrongful discharge in violation of public policy fails because Plaintiff did not strictly comply with the requirements set forth in R.C. 4113.52.

{¶10} "'The traditional rule in Ohio is that a general or indefinite hiring is terminable at the will of either the employer or the employee, for any cause or no cause.'" *Thomson v. Boss Excavating & Grading, Inc.*, 2021-Ohio-3743, ¶ 9 (10th Dist.), quoting *Miracle v. Ohio Dept. of Veterans Servs.*, 2019-Ohio-3308, ¶ 11. "This general rule is 'commonly known as the employment-at-will doctrine, which was judicially created and thus may be judicially abolished.'" *Id.*, quoting *Sutton v. Tomco Machining, Inc.*, 2011-Ohio-2723, ¶ 7.

{¶11} "In 1990, the Supreme Court of Ohio first recognized an exception to this rule for wrongful discharge in violation of public policy, holding that '[p]ublic policy warrants an exception to the employment-at-will doctrine when an employee is discharged or disciplined for a reason which is prohibited by statute.'" *Thomson* at ¶ 9, quoting *Greeley v. Miami Valley Maintenance Contrs., Inc.*, 49 Ohio St.3d 228 (1990), paragraph one of the syllabus; *see Painter v. Graley*, 1994-Ohio-334 (1994), paragraph three of the syllabus (recognizing that sources of public policy other than statutes may provide the basis for a wrongful-discharge claim). "'The basis of this exception is that when the General Assembly enacts laws that are constitutional, the courts may not contravene the legislature's expression of public policy. . . . [T]he judicial doctrine of employment at will must yield when it contravenes the public policy as established by the General Assembly. '" *Id.*, citing *Sutton* at ¶ 8.

{¶12} In order to prevail on a claim for wrongful discharge in violation of public policy, a plaintiff must establish four elements:

> (1) that a clear public policy existed and was manifested either in a state or federal constitution, statute or administrative regulation or in the common law ("the clarity element"), (2) that dismissing employees under circumstances like those involved in the plaintiff's dismissal would jeopardize the public policy ("the jeopardy element"), (3) the plaintiff's dismissal was motivated by conduct related to the public policy ("the causation element"), and (4) the employer lacked an overriding legitimate business justification for the dismissal ("the overriding-justification element").

Id. at ¶ 10, citing *Miracle*, 2019-Ohio-3308, at ¶ 12. "The clarity and jeopardy elements present questions of law, whereas the causation and overriding-justification elements present factual questions and, as such, are determined by the finder of fact." *Id.*

{¶13} "As claims for wrongful discharge in violation of public policy are made under common law, it is the responsibility of the courts to 'determine when public-policy exceptions must be recognized and to set the boundaries of such exceptions.'" *Id.* at ¶ 11, citing *Sutton* at ¶ 8. "Since *Greeley*, the Supreme Court has examined claims for wrongful discharge in violation of public policy in a variety of contexts." *Id.*

{¶14} Here, Plaintiff bases his claim for wrongful termination in violation of public policy on the "Whistleblower Statute", R.C. 4113.52.

{¶15} R.C. 4113.52(A)(1)(f) states:

> If a person becomes aware in the course of the person's employment of a violation of any state or federal statute or any ordinance or regulation of a political subdivision that the person's employer has authority to correct, and the person reasonably believes that the violation is a criminal offense that is likely to cause an imminent risk of physical harm to persons or a hazard to public health or safety, a felony, or an improper solicitation for a contribution, the person orally shall notify the person's supervisor or other responsible officer of the person's employer of the violation and subsequently shall file with that supervisor or officer a written report that provides sufficient detail to identify and describe the violation. If the employer does not correct the violation or make a reasonable and good faith effort to correct the violation within twenty-four hours after the oral

> notification or the receipt of the report, whichever is earlier, the person may file a written report that provides sufficient detail to identify and describe the violation with the prosecuting authority of the county or municipal corporation where the violation occurred, with a peace officer, with the inspector general if the violation is within the inspector general's jurisdiction, with the auditor of state's fraud-reporting system under section 117.103 of the Revised Code if applicable, or with any other appropriate public official or agency that has regulatory authority over the employer and the industry, trade, or business in which the employer is engaged.

{¶16} R.C. 4113.52 requires oral notice, then a written follow-up with a written report that must provide sufficient detail to identify and describe the violation. *Pohmer v. JPMorgan Chase Bank, N.A*., 2015-Ohio-1229, ¶ 53-54 (10th Dist.). "The written report, as used in the whistleblower statute, is 'more than mere idle conversation' and 'means delivery of accumulated information to a proper authority with an expectation that such authority will act on the information set forth.'" *Id.*, citing *Blackburn v. Am. Dental Ctrs.*, 2011-Ohio-5971, ¶ 13 (10th Dist.).

{¶17} "However, if an employee fails to strictly comply with the whistleblower requirements of R.C. 4113.52, the employee cannot base a *Greeley* claim solely upon the public policy embodied in that statute." *Blackburn,* at ¶ 18, citing *Kulch v. Structural Fibers,* 78 Ohio St.3d 134, 153 (1997). "Rather, the employee must identify an independent source of public policy to support her claim." *Id.*; *see Thompson v. Gynecologic Oncology & Pelvic Surgery Assoc*., 2006-Ohio-6377, ¶ 50 (10th Dist.) ("[A] plaintiff may not bring a public policy tort claim based on the public policy embodied in a statute unless she either complies with the statute embodying the public policy or identifies an independent source of public policy supporting her claim."); *Lesko v. Riverside Methodist Hosp*., 2005-Ohio-3142, ¶ 34 (10th Dist.) ("[A]ppellant is entitled to bring a public policy tort claim regardless of whether she complied with R.C. 4113.52, as long as she can identify a source of public policy separate from the public policy embodied in R.C. 4113.52.").

{¶18} Failure to comply with the statutory requirements in R.C. 4113.52 is fatal to a *Greeley* claim. *Evans v. Phtg, Inc.*, 2002-Ohio-3381, ¶ 38 (11th Dist.); *see also*

Davidson v. Bp. Am., 125 Ohio App.3d 643, 650-51 (8th Dist. 1997), citing *Kulch,* 78 Ohio St.3d 134, 151-153 (1997) ("By imposing strict and detailed requirements on certain whistleblowers and restricting the statute's applicability to a narrow set of circumstances, the legislature clearly intended to encourage whistleblowing only to the extent that the employee complies with the dictates of R.C. 4113.52."). "'The obvious implication . . . is that an employee who fails to strictly comply with the requirements of R.C. 4113.52 cannot base a *Greeley* claim solely upon the public policy embodied in that statute." *Davidson* at 650*,* citing *Kulch* at 153.

{¶19} The undisputed evidence establishes that Plaintiff did not strictly comply with the statute's requirements in R.C. 4113.52. There is no dispute that Plaintiff became aware during his former employment with the City of Gahanna and Grove City of cybersecurity concerns and that he did not become aware of the alleged cybersecurity concerns during his employment with DPS as the statute requires. (Weaver Depo. 53:23-54:13). Rather, Plaintiff orally reported his concerns that he became aware of in his previous employment to Fambro. (Weaver Depo. 50:17-23, 53:23-54:6, 54:14-55:4). Rather than follow up in writing with his supervisor, as required by R.C. 4113.52, Plaintiff wrote a lengthy email full of allegations of wrongdoing that he became aware of with his previous employers and had previously reported. Although the statute requires the whistleblower allow a 24-hour period to correct the violation, the email was sent to multiple internal and external recipients the following morning, less than a day after he met with Fambro. (Weaver Depo., Exhibit A). Furthermore, the email is full of vague allegations of wrongdoing lacking in detail identifying and describing the problems. *Id*. Because Plaintiff did not strictly comply with the statute's requirements, he cannot prevail on a claim for wrongful termination in violation of public policy. As stated previously, failure to strictly comply with the statutory requirements in R.C. 4113.52 is fatal to a *Greeley* claim. *See Kulch* at 151-153 ("By imposing strict and detailed requirements on certain whistleblowers and restricting the statute's applicability to a narrow set of circumstances, the legislature clearly intended to encourage whistleblowing only to the extent that the employee complies with the dictates of R.C. 4113.52.").

{¶20} Plaintiff argues that posters around the office encourage employees to speak up when they observe a security issue. (Memorandum Contra, pg. 4; Weaver Affidavit,

¶ 12). However, to the extent that Plaintiff believes any policies or posters encouraging employees to report security concerns demonstrate a clear public policy upon which he may base a claim for wrongful discharge in violation of public policy, the Ohio Supreme Court has stated that the existence of a public policy may be "based on sources such as the Constitutions of Ohio and the United States, legislation, administrative rules and regulations, and the common law." *Painter v. Graley*, 70 Ohio St.3d 377, 384 (1994). Plaintiff cannot point to any such sources to demonstrate a clear public policy and thus cannot establish the clarity element of a claim for wrongful discharge in violation of public policy.

{¶21} Moreover, regarding the jeopardy element, there is no evidence in the record that discharging Plaintiff because he sent an email to internal and external recipients regarding observations that he became aware of during his previous employment with the City of Gahanna and Grove City would jeopardize the public policy in R.C. 4113.52. As stated previously, the email was vague, gleaned from prior employment, reported by Plaintiff to his previous employers, and there is no indication that DPS could resolve Plaintiff's concerns. Furthermore, as stated above, Plaintiff did not strictly comply with the requirements of the statute. *See Shingler v. Provider Servs. Holding L.L.C.*, 2018-Ohio-2740, ¶ 31 (8th Dist.) (regarding the jeopardy element, the court found that in a common-law tort claim for wrongful discharge based on an alleged public policy violation of R.C. 4113.52, the public policy is not jeopardized by the dismissal of the employee where the employee failed to comply with the statutory requirements for bringing a claim); *see also Carpenter v. Bishop Well Servs. Corp.*, 2009-Ohio-6443, ¶37-38 (5th Dist.)(recognizing that because the whistleblower statute provides for parallel civil remedies for retaliation discharge, a cause of action for wrongful discharge in violation of public policy fails to meet the jeopardy element). Thus, Plaintiff's claim likewise fails on the jeopardy element.

{¶22} Accordingly, Plaintiff's claim for wrongful termination in violation of public policy must fail.

Disability Discrimination—Termination on the Basis of Disability

{¶23} Defendant argues that Plaintiff's claim for termination on the basis of disability fails because Plaintiff cannot show he was terminated from his apprenticeship because of his disability.

{¶24} "A prima facie case of discriminatory discharge requires a plaintiff to show (1) he is disabled, (2) he was otherwise qualified for the position, with or without reasonable accommodation, (3) he suffered an adverse action, (4) the employer knew or had reason to know of his disability, and (5) he was replaced or the job remained open." *Hartman v. Ohio DOT*, 2016-Ohio-5208, ¶ 18 (10th Dist.), citing *Rosebrough v. Buckeye Valley High School*, 690 F.3d 427, 431 (6th Cir. 2012). As stated in *Hartman*, the elements of a prima facie case can vary based on the circumstances of the case. *See Demyanovich v. Cadon Plating & Coatings*, *L.L.C.*, 747 F.3d 419, 433 (6th Cir. 2014) (stating the elements as "(1) he is disabled, (2) he is otherwise qualified to perform the essential functions of a position, with or without accommodation, and (3) he suffered an adverse employment action because of his disability").

{¶25} "Once a plaintiff establishes a prima facie case of disability discrimination, 'the burden then shifts to the employer to set forth some legitimate, nondiscriminatory reason for the action taken.'" *Dalton v. Ohio Dept. of Rehab. & Corr.,* 2014-Ohio-2658, ¶ 27 (10th Dist.), quoting *Hood v. Diamond Prods., Inc.*, 74 Ohio St.3d 298, 302 (1996). "The defendant must then offer a legitimate explanation for its action. If the defendant satisfies this burden of production, the plaintiff must introduce evidence showing that the proffered explanation is pretextual. Under this scheme, the plaintiff retains the ultimate burden of persuasion at all times." *Monette v. Electronic Data Sys. Corp.*, 90 F.3d 1173, 1186-1187 (6th Cir. 1996).

{¶26} "[I]n order to show pretext [for discrimination], a plaintiff must show both that the reason was false, and that discrimination or retaliation was the real reason." *Ressler v. AG*, 2015-Ohio-777, ¶ 19 (10th Dist.), citing *Williams v. Akron*, 2005-Ohio-6268, ¶ 14; *see Goodyear v. Waco Holdings, Inc*., 2009-Ohio-619, ¶ 32 (8th Dist.) (concluding that mere conjecture that the employer's stated reason is a pretext for discrimination is an insufficient basis for the denial of a summary judgment motion made by the employer).

{¶27} Here, Defendant does not dispute that Plaintiff is disabled and able to perform his job duties with reasonable accommodations. Rather, Defendant argues that

it terminated Plaintiff's employment for legitimate, nondiscriminatory business reasons not based on Plaintiff's disability. The reason for Plaintiff's termination was instead Plaintiff's improper use of his DPS email account to send an inappropriate email to internal and external recipients in violation of DPS rules, demonstrating Plaintiff's poor judgment.

{¶28} There is no dispute that Plaintiff's job duties at DPS included responding to DPS employee IT help desk inquiries. (Weaver Depo. 20:17-22). There is also no dispute that, on August 31, 2021, Plaintiff sent an email from his official DPS account filled with dozens of unspecified allegations of wrongdoing regarding security risks that he learned about in his previous employment to the entire DPS IT department and several DPS employees as well as the Ohio Ethics Office, the Ohio Inspector General, the Ohio Auditor, the Public Utilities Commission of Ohio, the Ohio Attorney General's Office, DPS Homeland Security, and others. (Weaver Depo., Exhibit A).

{¶29} Defendant supported its Motion by submitting the affidavit of Krysten McElfresh (McElfresh), an employee of DPS as a Labor Relations Officer 2 in the Human Resources Department. (McElfresh Affidavit, ¶ 1). McElfresh avers, in relevant part, as follows:

> 5. DPS elected to terminate Mr. Weaver's apprenticeship prior to the completion of his allowed 1,000 hours of work because he sent an email on August 31, 2021 to multiple internal and external DPS customers for non-work related purposes while on state time, which DPS believed reflected poorly on DPS and violated DPS policy 501.05, Employee Standards of Conduct. A true and accurate copy of Policy 501.05, which was in effect during Mr. Weaver's employment is attached to this Affidavit as McElfresh A.
> 6. The August 31, 2021 email represented the most egregious violation of DPS policy and misuse of his DPS email account, but Mr. Weaver also been counseled earlier about using his DPS email account to go beyond his job duties and the need to address issues to his supervisor and not inappropriate recipients outside of his chain of command.
> 7. Specifically, Mr. Weaver was counseled on July 7, 2021 after he sent an email to a group of people asking why certain person's photo were not

included on the OrgPlus Table of Organization application. The inquiry was outside the scope of his job duties of providing help desk assistance to computer users, and Mr. Weaver was advised that he should reach out to his supervisor if he had a particular question regarding anything beyond his official duties providing IT assistance.

8. On August 10, 2021, Mr. Weaver and his supervisor met with the ADA coordinator regarding his sending emails and private/confidential information to others after he sent an email to multiple individuals that included another employee's medical information. At that time he was assigned to review DPS Policy 801.02 Accessing Confidential Personal Information (CPI).
9. Though Mr. Weaver was not disciplined for the earlier inappropriate email usage, those prior occurrences contributed to DPS' unease and concern about his judgment regarding the appropriate use of his official DPS email account. DPS felt that the August 31, 2021 email reflected poorly on DPS, violated the Employee Standards of Conduct, and showed that Mr. Weaver continued [to] misuse DPS resources.

{¶30} The DPS employment policy 501.05, XIV states that "[e]mployees shall only use government property, including but not limited to automobiles, supplies, equipment, computers, e-mail accounts, internet/intranet access, telephones, and facilities, for official purposes." (McElfresh Affidavit, Exhibit A).

{¶31} Plaintiff argues that Defendant failed to articulate a legitimate reason for Plaintiff's termination other than an unsupported allegation that the email is vastly inappropriate and that showed a lack of judgment. (Memorandum Contra, pg. 5). However, as stated above, Defendant submitted the affidavit of McElfresh and DPS policy regarding email use. McElfresh explained that DPS viewed Plaintiff's email as outside the scope of his job duties and reflecting poorly on DPS as well as a violation of the Employee Standards of Conduct. Furthermore, Plaintiff was previously given a warning after sending a July 7, 2021 email that was outside the scope of his job duties in violation of DPS policy and also received counseling regarding appropriate email use on August 10, 2021. Despite these prior warnings, Plaintiff sent another email on August 31, 2021,

that DPS deemed was in poor judgment, outside the scope of his job duties, and reflected poorly on DPS. (McElfresh Affidavit, Exhibit A). Accordingly, Defendant has met its initial burden and offered a legitimate, nondiscriminatory reason for Plaintiff's termination.

{¶32} Plaintiff, however, bears a reciprocal burden to point to evidence that the reason for his termination was false and that the real reason for his termination was his disability. *Ressler v. AG*, 2015-Ohio-777, ¶ 19 (10th Dist.), citing *Williams v. Akron*, 2005-Ohio-6268, ¶ 14. Plaintiff has done neither. There is no dispute that Plaintiff was eligible for the internship because of his disability and that Defendant was aware of his disability. There is no reasonable dispute that Plaintiff's employment was terminated because he sent an email that DPS believed to reflect poorly on DPS, reflected poorly on Plaintiff's judgment, violated the Employee Standards of Conduct, and showed Plaintiff's misuse of DPS resources.

{¶33} To the extent that Plaintiff argues DPS encouraged Plaintiff to speak up regarding cybersecurity issues, such an argument does not dispute that Plaintiff was terminated because he sent an email to internal and external DPS recipients and not because of his disability. Thus, Plaintiff failed to meet his reciprocal burden to put forth evidence demonstrating a genuine issue of material fact regarding pretext for unlawful disability discrimination. Accordingly, Defendant is entitled to judgment as a matter of law on Plaintiff's claim of disability discrimination in the termination of his apprenticeship.

Disability Discrimination—Failure to Accommodate

{¶34} Defendant argues that Plaintiff's claim that DPS failed to accommodate his disability fails because DPS did accommodate Plaintiff's disability.

{¶35} In Ohio, "federal case law interpreting Title VII of the Civil Rights Act of 1964, Section 2000(e) et seq., Title 42, U.S. Code, is generally applicable to cases involving alleged violations of R.C. Chapter 4112." *Plumbers & Steamfitters Joint Apprenticeship Commt. v. Ohio Civ. Rights Comm.*, 66 Ohio St.2d 192, 196 (1981). To establish a prima facie case of failure to accommodate an employee, Plaintiff must show that: (1) he is disabled within the meaning of the ADA; (2) he is otherwise qualified for the position, such that he can perform the essential functions of the job with or without a reasonable accommodation; (3) the employer knew or had reason to know of his disability; (4) the

employee requested an accommodation; and (5) the employer failed to provide a reasonable accommodation thereafter. *Coomer v. Opportunities for Ohioans with Disabilities*, 2022-Ohio-387 ¶ 17 (10th Dist.). "Because an employee must prove all three elements in order to establish a prima facie case of disability discrimination, the failure to establish any single element is fatal to a discrimination claim." *Taylor v. Ohio Dept. of Job & Family Servs.*, 2011-Ohio-6060, ¶ 20 (10th Dist.). "When an employee requests an accommodation, the employer's obligation to participate in the interactive process of seeking an accommodation is triggered." *Colfor Mfg. v. Ohio Civ. Rights Comm.*, 2017-Ohio-9402, ¶ 53 (7th Dist.).

{¶36} The reasonableness of a requested accommodation is generally a question of fact. *Keith v. County of Oakland*, 703 F.3d 918, 927 (6th Cir. 2013). Once an employee establishes a prima facie case, "the burden shifts to the defendant to show that accommodating the plaintiff would impose an undue hardship on the operation of its business." *Id*. at 923. "Courts have held that employers who take 'an active, good-faith role in the interactive process' [of accommodating a disability] are not liable under the ADA if their employee 'refuses to participate.'" *Smith v. Shelby Cty. Bd. of Edn.,* 2024 U.S. App. LEXIS 19388 *13 (6th Cir.), citing *EEOC v. Sears, Roebuck & Co.*, 417 F.3d 789, 806 (7th Cir. 2005).

{¶37} "[W]e will typically credit an employer with satisfying the 'good faith' requirement when the employer 'readily meets with the employee, discusses any reasonable accommodations, and suggests other possible positions for the plaintiff.'" *Id.* (internal citations omitted). Moreover, "'[i]f an employer takes that step and offers a reasonable counter accommodation, the employee cannot demand a different accommodation.'" *Id.* (internal citations omitted).

{¶38} "In assessing these claims, courts have considered the following factors: the length of the delay, the reasons for the delay, whether the employer has offered any alternative accommodations while evaluating a particular request, and whether the employer has acted in good faith." *Selenke v. Med. Imaging of Colorado*, 248 F.3d 1249, 1262-1263 (10th Cir. 2001); *see, e.g.*, *Krocka v. Riegler*, 958 F.Supp. 1333, 1342 (N.D.Ill. 1997) (holding that "an unreasonable delay in implementing a 'reasonable accommodation' can constitute a discriminatory act" and refusing to dismiss a claim that

an eight-month delay in assigning an employee to the desired shift constituted a failure to reasonably accommodate); *Powers v. Polygram Holding, Inc.*, 40 F.Supp.2d 195, 202 (S.D. N.Y. 1999) (granting employer's motion for summary judgment on employee's claim that a three-week delay in granting a request for reduced hours violated the ADA); *Weatherspoon v. Azar*, 380 F.Supp.3d 65 (D.D.C. 2019) (A six month delay in ADA accommodations is not unreasonable).

{¶39} The parties do not dispute that Plaintiff can establish the first four elements of a claim for failure to accommodate a disability; however, Defendant maintains that it reasonably accommodated Plaintiff's disability.

{¶40} Reasonable minds could only conclude that Plaintiff cannot establish that Defendant failed to accommodate his disability. The parties do not dispute that Plaintiff's job duties included responding to IT help desk inquiries, and, as a result, Plaintiff requested a CapTel telephone to aid in performing his job duties. (Weaver Depo. 113:1-8, 114:5-116:6). As stated previously, a CapTel telephone creates real-time transcription of telephone calls. *Id*. There is no dispute that Defendant agreed to provide Plaintiff a CapTel telephone, but one was not provided until August 23, 2021, although Plaintiff maintains that it did not function properly. (Weaver Depo. 41:4-8; 114:14-115:10). While Plaintiff awaited his CapTel telephone, Plaintiff performed his help desk duties without using a regular telephone by responding to help desk inquiries via written Teams chats or written work orders. (Weaver Depo. 20:12-16). A user would also sometimes call the help desk, and if the help desk was unable to answer a question, they would send the inquiry to Plaintiff and other onsite techs who would then meet the person onsite to fix the issue with the computer or software programs. (Weaver Depo. 19:21-20:3). Additionally, when DPS employees spoke with Plaintiff, many employees would either not wear face masks or use face masks with clear windows so Plaintiff could read their lips. (Weaver Depo. 23:22-24:6). Plaintiff was never disciplined for not responding to telephone calls to the IT help desk, nor did anyone ever say anything negative about him performing his help desk duties in person, on Teams, or via written correspondence. (Weaver Depo. 22:24-23:5, 23:17-21).

{¶41} Therefore, based upon the undisputed facts, reasonable minds could only conclude that Defendant reasonably accommodated Plaintiff's disability by agreeing to

provide a CapTel telephone as requested by Plaintiff and that, while Plaintiff was waiting for the CapTel telephone, he was not required to answer telephone calls and was able to perform his IT help desk duties by using Teams chat or written communication. To the extent Plaintiff needed to meet with someone in person, that person would remove their facemask or use a facemask with a window so that Plaintiff could read their lips. *See Terrell v. USAir*, 132 F.3d 621, 627 (11th Cir. 1998) (affirming grant of summary judgment to an employer on employee's claim that it violated the ADA by failing to provide her with a special keyboard for three months and reasoning that the plaintiff "had some access" to the keyboard during that time and "was not required to type when she had no access"); *Hartsfield v. Miami-Dade County*, 90 F.Supp.2d 1363, 1371-73 (S.D.Fla. 2000) (granting summary judgment on employee's claim that a ten-month delay in providing special equipment and training violated the ADA and holding that "where an accommodation is delayed an employer does not violate the ADA, as long as the employee receives some other accommodation or at least does not suffer adverse employment action"). Defendant met its initial burden by pointing to evidence that Plaintiff cannot establish a claim for failure to accommodate Plaintiff's disability. Plaintiff, however, failed to meet his reciprocal burden by pointing to evidence demonstrating a genuine issue of material fact. Accordingly, Plaintiff's claim that DPS failed to accommodate his disability during his apprenticeship fails.

Conclusion

{¶42} Based upon the foregoing, the Court concludes that there are no genuine issues of material fact, and that Defendant is entitled to judgment as a matter of law. Therefore, Defendant's Motion for Summary Judgment shall be GRANTED.

LISA L. SADLER
Judge

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BRIAN WEAVER Plaintiff v. OHIO DEPARTMENT OF PUBLIC SAFETY Defendant	Case No. 2023-00573JD Judge Lisa L. Sadler Magistrate Gary Peterson JUDGMENT ENTRY

IN THE COURT OF CLAIMS OF OHIO

{¶43} For the reasons set forth in the decision filed concurrently herewith, the Court concludes that there are no genuine issues of material fact and that Defendant is entitled to judgment as a matter of law. As a result, Defendant's motion for summary judgment is GRANTED and judgment is hereby rendered in favor of Defendant. All previously scheduled events are VACATED. Court costs are assessed against Plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

LISA L. SADLER
Judge

Filed July 7, 2025
Sent to S.C. Reporter 8/18/25