

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
JAMES M. PEERLESS
:
Plaintiff, :
:
-v- :
:
VERIZON COMMUNICATIONS INC., :
Defendant.:
:
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11-CV-2139 (KBF)

ORDER

KATHERINE B. FORREST, District Judge:

Defendant's motion for summary judgment is DENIED. There are material questions of fact with respect to each of defendant's bases for dismissal:

1. There is a disputed question of fact as to whether Verizon had notice of plaintiff's disability prior to April 2009.

2. There is a disputed question of fact as to whether plaintiff was qualified for his position in so far as whether climbing was an "essential" job function. The Second Circuit has held that this question is highly fact-intensive.

3. There is a disputed question of fact regarding whether if defendant had notice, the alterations in job function plaintiff sought were reasonable accommodations, given the issues surrounding how others may have performed the same or similar jobs.

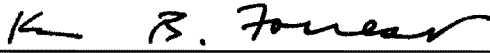
4. There is a disputed question of fact regarding whether placing plaintiff in a room with limited tasks to perform and without engaging in an "interactive process" constituted reasonable accommodation.

5. There is a disputed question of fact regarding whether the work assignment plaintiff received (in the room with limited tasks) was retaliatory.

Accordingly, this matter will proceed to trial. The parties shall file their joint pretrial order, as already scheduled, on September 10, 2012. (Docket No. 41.) The parties shall appear for a final pretrial conference (in addition to the status conference already set for September 6, 2012 at 1:30 p.m.) on September 27, 2012 at 1:00 p.m. A one-week trial is scheduled for October 9, 2012.

The Clerk of Court is directed to close the motion at Docket Number 25.

Dated: New York, New York
August 10, 2012


KATHERINE B. FORREST
United States District Judge