

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ELAINE F. SHOWE

v.

MARYLAND DEPT. OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

:
:
: CIVIL NO. CCB-08-2955
:
:
: ...o0o...

MEMORANDUM

Plaintiff Elaine Showe brings four claims against the defendant Maryland Department of Public Safety and Correctional Services (“DPSCS”) related to her discharge from employment on May 3, 2006, after 20 years with DPSCS and after significant absences and limitations relating to knee surgery. The DPSCS has filed a motion to dismiss, which will be granted in part.

Showe’s first claim is brought under Title I of the ADA, 42 U.S.C. §§ 12101-12213 (2000). This claim is barred by Eleventh Amendment immunity. *See Trustees v. Garrett*, 531 U.S. 356, 374 (2001); *Prince-Garrison v. Maryland Dep’t of Health & Mental Hygiene*, 526 F. Supp. 2d 550, 556 (D. Md. 2007).

Showe also brings two claims under Article 49B of the Annotated Code of Maryland (one for disability discrimination and one for gender discrimination). As none of the acts complained of occurred after October 1, 2007, she has no private right of action under the Maryland statute.

Finally, Showe alleges gender discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, claiming that similarly situated male employees “were not required to submit to a physical examination concerning their ability to perform essential job functions.” (Cplt. ¶ 25). This in itself is not an adverse action. Plaintiff may mean to imply,

however, that the examination resulted in her discharge and that similarly situated male employees were not required to have an examination and therefore were not discharged despite their inability to perform essential job functions. If so, she may be able to state a claim for gender discrimination under Title VII.

Accordingly, she will be given an opportunity to seek leave to amend her complaint, if she can do so consistent with Fed. R. Civ. P. 11.

A separate Order follows.

February 5, 2009

Date

/s/

Catherine C. Blake

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ELAINE F. SHOWE

v.

MARYLAND DEPT. OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

:
:
: CIVIL NO. CCB-08-2955
:
:
:
...o0o...

ORDER

For the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that:

1. the defendant's motion to dismiss (docket entry no. 5) is **Granted** as to Counts I, II and IV with prejudice;
2. the defendant's motion to dismiss is **Granted** as to Count III without prejudice; and
3. the plaintiff may seek leave to amend her complaint to state a claim for gender discrimination under Title VII within 21 days of this Order.

February 5, 2009

Date

/s/

Catherine C. Blake

United States District Judge