

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

ROGERIO S. TAVARES,	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 13-521S
	:	
ENTERPRISE RENT-A-CAR COMPANY	:	
OF RHODE ISLAND,	:	
Defendant.	:	

**MEMORANDUM AND ORDER**

Before the Court for determination (28 U.S.C. § 636(b)(1)(A), DRI LR Cv 72(a)) are the following motions:

1. Rhode Island Hospital’s Motion to Quash And/Or For Protective Order. ECF No. 40.
2. Lifespan Physician Group, Inc., Department of Psychiatry’s (“Lifespan”) Motion to Quash And/Or Protective Order. ECF No. 41.
3. Plaintiff Rogerio S. Tavares’ Objections and Motion to Quash Defendant’s Deposition Subpoenas. ECF No. 42.

This is an employment discrimination case alleging violations of the Americans with Disabilities Act and Title VII of the Civil Rights Act. Plaintiff, who is proceeding *pro se*, claims that his former employer Enterprise Rent-A-Car Company of Rhode Island (“Enterprise”) discriminated and retaliated against him, and eventually fired him, based on his national origin, religion and disability. These Motions place at issue five subpoenas issued by Enterprise that seek employment records from Plaintiff’s current employer, FedEx Ground Package System, Inc. (“FedEx”), his prior employer, Brooks Pharmacy, Inc. (“Brooks Pharmacy”), as well as medical records from Rhode Island Hospital, Lifespan and Dr. Arianna Iannuccilli. Rhode Island Hospital and Lifespan have moved to quash based on the Confidentiality of Health Care

Information Act, R.I. Gen. Laws § 5-37.3-1, *et seq.* Plaintiff's motion is based, *inter alia*, on the overbreadth of the subpoenas, which he contend seek the production of documents that are not relevant to his claims and would result in the unnecessary and harmful disclosure of confidential information in violation of his right of privacy.

Because the determination of these motions depends on the scope of the claims that Plaintiff has placed in issue by the filing of the Amended Complaint,<sup>1</sup> which is somewhat confusing and imprecise, and mindful of Plaintiff's *pro se* status,<sup>2</sup> the Court engaged in a colloquy with Plaintiff at the June 24, 2014, hearing on the Motions to better understand his theory of the case. In response to questions, Plaintiff advised that, throughout his employment at Enterprise beginning in 2008, he suffered from a mental health condition that constitutes a disability and that, because of it, as well as his national origin and religion, Enterprise refused appropriate accommodations, harassed him and ultimately fired him, exacerbating his mental health, and causing ongoing injury. He also advised that he claims that he has been suffering and continues to suffer from ongoing and worsening physical conditions that were originally caused by incidents that were the fault of Enterprise; a workers compensation claim made against FedEx, his current employer, is related to injuries that he claims were caused by Enterprise. In addition, he contends that, based on his national origin, religion and disability, Enterprise refused to give him appropriate work assignments or promotions consistent with his educational background and prior management experience at Brooks Pharmacy. Finally, he intends to seek compensation for lost income as a result of his wrongful termination, a claim that will be

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<sup>1</sup> The Amended Complaint (ECF No. 4) is the current operative pleading. Plaintiff has tried to amend it several times but the Court has denied each attempt.

<sup>2</sup> Leniency for *pro se* litigants is appropriate. Pomales v. Celulares Telefonica, Inc., 342 F.3d 44, 50 n.4 (1st Cir. 2003); Shapiro v. Roger Williams Univ., C.A. No. 011-140-ML, 2012 WL 3581148, at \*7 (D.R.I. Aug. 17, 2012).

affected by the timing of his initiation of employment at FedEx and his total income package at FedEx.

Relevancy is also limited by the defenses – Enterprise represents that it will seek to present evidence that Plaintiff reacts unreasonably to workplace stress and innocuous behavior by others and that his claims about what happened to him at Enterprise are consistent with a pattern that will be revealed by discovery from both Brooks Pharmacy and FedEx regarding complaints he made while employed by each.

Focusing first on employment records, Plaintiff's description of his claim confirms that his experience, job performance and positions held during his past employment at Brooks Pharmacy are relevant so that both documents in his personnel file and documents related to his termination are pertinent; similarly, his resume and application to FedEx are relevant because they pertain to his claim of management experience not recognized by Enterprise as a result of discrimination. Also from FedEx, because Plaintiff's damage claim will be directly affected by his compensation, documents sufficient to show when he commenced working and the amount of his salary, wages and benefits at FedEx are relevant. In addition, Plaintiff acknowledged that part of his claim against Enterprise is related to the workers compensation claim he filed against FedEx, so that the request for FedEx's workers compensation file is appropriate. Finally, Enterprise's defense based on a pattern of complaints regarding his work environment makes relevant any documents reflecting such complaints at FedEx and Brooks Pharmacy. To the extent that the subpoenas to Brooks Pharmacy and FedEx reach more broadly, they are over broad and should be quashed.

Turning to Plaintiff's medical records, Plaintiff claims discrimination based in part on his mental health disability and claims damages arising from both mental harm and physical injury

suffered while working at Enterprise; he contends that his mental health issue was preexisting, was exacerbated by Enterprise and is ongoing, while the physical injury caused by Enterprise has also worsened and is ongoing. These claims directly place in issue his treatment at Lifespan, Rhode Island Hospital and with Dr. Iannuccilli. See Rankin v. Liberty Mut. Ins., 50 F.3d 1, at \*2 n.3 (1st Cir. 1995) (per curiam) (unpublished table decision) (allegation of continuing psychiatric disability places mental condition in controversy). Further, Plaintiff's claims arising from his mental health issues are far beyond a "garden variety" assertion of emotional distress arising from discrimination and retaliation; accordingly, any privilege he might have had is forfeit. Stark v. Hartt Transp. Sys., Inc., 2:12-CV-195-NT, 2013 WL 358266, at \*9 (D. Me. Jan. 28, 2013) (garden variety claims refer to what a healthy person would likely feel as a result of being victimized).

While Plaintiff's claims have placed his mental and physical health in issue and render them bulls-eye relevant, the subpoenas for medical records are overly broad because there is no time limitation; in light of Plaintiff's commencement of employment at Enterprise in 2008 and affixing a three-year buffer, I find that records from January 1, 2005, to the present should be produced. In addition, Plaintiff represents that the subpoenaed records may refer to his wife or daughter, who are not litigants in this case. Any such references should be redacted before the produced records may be used in this litigation.

A final point: in light of the sensitivity of the records covered by these subpoenas, a protective order to ensure that their confidentiality is protected is required. Since this Court has already entered such an order protecting similar documents produced in this case, I enter the same order to protect these records.

For the reasons stated at the hearing, Plaintiff's Objections and Motion to Quash (ECF No. 42), and Rhode Island and Lifespan's Motion to Quash and/or For Protective Order (ECF Nos. 40, 41) are granted in part and denied in part as follows.

1. Brooks Pharmacy subpoena – Plaintiff's Motion is granted in part and denied in part:
  - a. Plaintiff's Motion is denied with respect to document categories nos. 2 and 3 of Exhibit A to the subpoena in that Brooks Pharmacy shall produce "All documents relating to the termination of [Plaintiff]," and "All documents relating to the personnel file of [Plaintiff];" and in that production shall be for the period from January 1, 2003, to the present.
  - b. Plaintiff's Motion is granted in that the balance of the documents sought by the Brooks Pharmacy subpoena shall not be produced.
2. FedEx subpoena – Plaintiff's Motion is granted in part and denied in part:
  - a. Plaintiff's Motion is granted in part and denied in part with respect to document category no. 1 of Exhibit A to the subpoena, "All documents relating to the employment of [Plaintiff]," in that FedEx shall produce documents sufficient to show the start date of Plaintiff's employment and Plaintiff's total salary, wages, rate of pay, all employment benefits and any other compensation throughout his employment.
  - b. Plaintiff's Motion is denied for document category No. 2 of Exhibit A to the subpoena, "All documents relating any workers compensation claim made by [Plaintiff] against the deponent," in that FedEx shall produce the requested documents.
  - c. Plaintiff's Motion is granted in part and denied in part for document category No. 3 of Exhibit A to the subpoena, "All documents relating to the personnel file of [Plaintiff]," in that FedEx shall produce only: (1) all documents that reference any workplace complaint made by Plaintiff, including without limitation, any performance evaluations that contain any such references, (2) his resume, and (3) his application for employment.
3. The Rhode Island Hospital, Lifespan and Dr. Iannuccilli subpoenas – the Motions filed by Plaintiff, Lifespan and Rhode Island Hospital are granted in part and denied in part:
  - a. The documents specified in Exhibit A to each of the Rhode Island Hospital, Lifespan and Dr. Iannuccilli subpoenas shall be produced for the time period from January 1, 2005, to the present, but may be used in connection with this

litigation only after redaction of all references to mental health treatment of any persons other than Plaintiff.

- b. To redact references to mental health treatment of any persons other than Plaintiff, the parties shall employ the following procedure:
  - i. Rhode Island Hospital, Lifespan and Dr. Iannuccilli and shall produce an unredacted set of the medical records described in the above paragraph 3.a. to Pannone Lopes Devereaux & West LLC's ("Pannone Lopes") offices in Providence, Rhode Island.
  - ii. Defense counsel shall not inspect the medical records upon receipt.
  - iii. Defense counsel shall designate a paralegal employed at Pannone Lopes to safeguard the medical records. Until the review process specified in Paragraph 3.b.iv below is complete, the designated paralegal shall be the only person at Pannone Lopes permitted to inspect the records and the designated paralegal shall not provide any information regarding the contents of the records to either Defense counsel or to any representative of Enterprise.
  - iv. Defense counsel shall arrange for Plaintiff to review the unredacted set of medical records at Pannone Lopes' offices.
    1. For any portion Plaintiff thinks should be redacted because it references his wife, child, or any other third party patient, he shall mark that portion of the record with yellow highlighter, so that the text can still be read underneath the highlighting.
    2. The designated paralegal shall review the sections of the medical record highlighted by Plaintiff.
      - a. If the designated paralegal agrees with the proposed redaction, he or she shall redact the marked portion of the text with black ink so that it is completely covered.
      - b. If the designated paralegal disagrees with Plaintiff's proposed redaction, that portion of the record shall be segregated, placed in an envelope and submitted to the Court for *in camera* review.
      - c. The designated paralegal shall never report the substance of any of Plaintiff's final redactions to Defense counsel. To the extent that copies of any pages of records with redactions were made to facilitate this process, they shall either be fully redacted or destroyed.

4. The provisions of paragraph 2 of the Court's prior Confidentiality Order (ECF No. 32) shall apply to all documents (both employment and medical records) produced pursuant to this Order:
  - a. The records and information contained therein are for attorneys' eyes only and will not be disclosed to any other third persons, except for any experts retained by the parties.
  - b. Such records and information shall not be used for any purpose other than the subject litigation or proceedings.
  - c. Counsel and their experts shall destroy said records (including all copies made) at the end of said litigation or proceeding (or final appeals), unless otherwise ordered by the Court.

So ordered.

ENTER:

/s/ Patricia A. Sullivan  
PATRICIA A. SULLIVAN  
United States Magistrate Judge  
June 25, 2014