

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JACQUELINE LEWIS,

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Plaintiff,

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v.

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CIVIL ACTION NO.
1:12-CV-4038-RWS

CITY OF UNION CITY, GA and
CHIEF OF POLICE CHARLES
ODOM in his official and
individual capacities,

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Defendants.

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ORDER

This case is before the Court for consideration of the Report and Recommendation (“R&R”) [84] of Magistrate Judge Janet F. King. Plaintiff filed Objections [86] to the R&R and thereafter, Defendants filed a Response to the Objections [88], and Plaintiff filed a Reply [89]. After reviewing the record and conducting a *de novo* review of all of the rulings to which Plaintiff filed objections, the Court enters the following Order. As supplemented or modified herein, the Court receives the R&R with approval and adopts it as the opinion and order of this Court.

In the R&R, Judge King recommends that Defendants' Motion for Summary Judgment [59] be granted as to all of Plaintiff's claims. The primary focus of Plaintiff's Objections to the recommendation in the R&R that Defendants be granted summary judgment as to Plaintiff's claims under the Americans With Disabilities Act, as amended by the Americans With Disabilities Amendments Act of 2008 ("ADAAA") is the conclusion that Plaintiff does not have a disability as defined by the ADAAA. Plaintiff asserts that the more liberal definition of disability in the ADAAA was not applied in the R&R. However, the undersigned agrees with the analysis in the R&R. The R&R included a finding that Plaintiff has an impairment but then correctly concluded that Plaintiff's impairment did not rise to the level of a disability under the ADAAA. The R&R includes a thoughtful and thorough analysis of the issue, and the Court adopts the findings and conclusions therein. The standards under the ADAAA were properly utilized in the R&R.

Plaintiff also objects to the conclusion in the R&R that Plaintiff was not a "qualified individual" because she could not perform the essential tasks of her job. Plaintiff's argument urges the Court to find that being trained and certified to carry certain weapons are not essential functions of Plaintiff's job. However,

as pointed out by Judge King, these requirements were part of a uniformly-implemented law enforcement policy requiring training and certification for OC spray and a taser. “As noted [in the R&R], the Court is required to give consideration to the employer’s judgment as to what functions of a job are essential. The employer’s judgment is especially important in cases where the employer is a law enforcement department and the functions at issue involve weapons and officer safety.” R&R [84] at 33-34 (internal citations omitted). The evidence in the case was uncontradicted that Plaintiff was unable to perform these essential functions of the job. Therefore, the conclusion that Plaintiff is not a “qualified individual” is a correct conclusion. Likewise, the evidence was uncontradicted that exposure to OC spray or tasers posed a danger to Plaintiff.

Finally, Plaintiff argues that even if the Court finds she could not perform the essential functions of a police detective without being exposed to OC spray or a taser, she could have performed the essential functions of an available position with an accommodation. First, Plaintiff failed to show that she could retain her position as a detective with an accommodation. Second, Plaintiff offered no evidence that an alternative position existed which she could perform

with accommodations. Plaintiff has the burden of producing evidence of an accommodation. Willis v. Conopco, Inc., 108 F.3d 286-87 (11th Cir. 1997).

In her Objections to the recommendation that summary judgment be granted to Defendants on Plaintiff's race and sex discrimination claims, Plaintiff challenges the standard applied in the R&R for comparators. Plaintiff asserts that the "nearly identical" standard was used rather than the "similarly situated" standard. After reviewing the evidence, the undersigned concludes that the proffered comparators do not qualify under either standard. A critical factual distinction between the comparators and Plaintiff is that Plaintiff could not be exposed to OC spray. OC spray exposure was not an issue for the alleged comparators. The spray was present throughout the police department as most, if not all, officers carry it. Thus, the danger of exposure for Plaintiff was quite high.


The job requirements that McClure and Heard were unable to meet involved their inability to pass certain physical agility tests. McClure subsequently was able to pass the test and return to work. Heard never returned to work. Unlike Plaintiff, neither of these alleged comparators had physical impairments which placed them at risk of harm by being in the building.

The facts in the case do not provide a “mosaic of circumstantial evidence” from which a jury could find a violation of Plaintiff’s rights under § 1981, § 1983, or Title VII. Therefore, the granting of summary judgment to Defendants is appropriate.

The issues raised by Plaintiff’s other objections are adequately addressed in the R&R and require no further discussion by the undersigned.

Based on the foregoing, the Court overrules the Objections and adopts the R&R as the Order of this Court. Accordingly, Defendants’ Motion for Summary Judgment [59] is **GRANTED** on all of Plaintiff’s claims.

SO ORDERED, this 17th day of March, 2015.



RICHARD W. STORY
United States District Judge