

MAR 23 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCES E. MOLARIUS,

Plaintiff - Appellant,

v.

NORTHWEST NEVADA TELCO, INC.;
NEVADA TELCOM SERVICES, INC.,

Defendants - Appellees.

No. 07-17131

D.C. No. CV-05-0383-LRH/VPC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Argued and Submitted March 13, 2009
San Francisco, California

Before: McKEOWN and IKUTA, Circuit Judges, and SELNA,** District Judge.

Molarius appeals from the district court's grant of summary judgment in favor of the defendants in her suit for relief under the Americans With Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.* Because Molarius's accommodation claim

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable James V. Selna, United States District Judge for the Central District of California, sitting by designation.

is time-barred, and Molarius has failed to show that the legitimate justifications proffered by her employer for her termination were pretextual, we affirm the district court's ruling.

Under 42 U.S.C. § 2000e-5(e), the limitations period for filing an ADA claim is 300 days. This provision “precludes recovery for discrete acts of discrimination or retaliation that occur outside the statutory time period.” *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 105 (2002). Here, Molarius concedes that the “last time [she] asked about using the [orthopedic] chair was in March or April of 2002.” Because Molarius did not file her charge of discrimination within 300 days of the last time she requested use of the chair, Molarius's accommodation claim is time-barred.

The defendants contend that Molarius failed to exhaust her administrative remedies because her charge of retaliation for asking for accommodation cannot be read to encompass her allegations of retaliation for meeting with NERC personnel. We are required to read Molarius's charge of discrimination “with utmost liberality.” *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1100 (9th Cir. 2002). Under a liberal reading of her charge, we conclude that Molarius narrowly satisfied the exhaustion requirement.

The defendants succeeded in establishing a legitimate justification for Molarius's termination by presenting evidence that, among other things, Molarius was terminated for insubordination and for refusing to follow corporate policy. Because Molarius failed to present evidence that could rebut these legitimate justifications, her retaliation claim fails at the third stage of the *McDonnell Douglas* analysis. *See Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008).

AFFIRMED