

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

Elaine N. Toland,

Plaintiff,

v.

Case No. 05-2409-JWL

**John E. Potter, Postmaster General,
United States Postal Service,**

Defendant.

MEMORANDUM & ORDER

Plaintiff filed suit against her employer, the United States Postal Service, alleging gender discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and disability discrimination in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (ADA).

Defendant moves to dismiss plaintiff's claim for punitive damages (doc. 22), arguing that such damages are not available against this defendant. In response, plaintiff expressly "agrees with Defendant's arguments" and asks the court to dismiss her claim for punitive damages. The court, then, grants defendant's motion as unopposed and dismisses plaintiff's claim for punitive damages.

Defendant also moves to dismiss Count III of plaintiff's complaint (doc. 24), her disability discrimination claim, arguing that this defendant is not subject to suit under the ADA and, in any event, plaintiff has failed to exhaust her administrative remedies with respect to this claim. In response, plaintiff expressly asks the court to dismiss her disability discrimination claim. She

further requests leave to amend her complaint in a related case filed in this court, *Toland v. Potter*, 06-2068, to include a disability discrimination claim pursuant to the Rehabilitation Act. The court addresses this request by separate order entered in that case on this same day. For purposes of this case, the court grants defendant's motion as unopposed and dismisses plaintiff's disability discrimination claim.

IT IS THEREFORE ORDERED BY THE COURT THAT defendant's motion to dismiss plaintiff's claim for punitive damages (doc. #22) is **granted** and defendant's motion to dismiss Count III of plaintiff's complaint (doc. #24) is **granted**.

IT IS SO ORDERED.

Dated this **3rd day of August, 2006**, at Kansas City, Kansas.

s/John W. Lungstrum

John W. Lungstrum

United States District Judge