

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

LYNN R. ZWYGART,

Plaintiff,

v.

**BOARD OF COUNTY COMMISSIONERS
OF JEFFERSON COUNTY,**

Defendant.

No. 06-2038-CM

MEMORANDUM AND ORDER

Plaintiff Lynn R. Zwygart brings this disability discrimination suit against defendant, Board of County Commissioners of Jefferson County. On November 27, 2006 defendant filed a motion for summary judgment (Doc. 21). The parties initially completed briefing on this motion on January 29, 2007. Plaintiff requested leave to file a surreply on February 23, 2007, which this court conditionally granted on May 3, 2007.

In the relevant filings, the parties debate whether plaintiff has established a prima facie case of disability discrimination. They agree that the necessary elements are: (1) plaintiff is a disabled person within the meaning of the Americans with Disabilities Act ("ADA"); (2) plaintiff is qualified to perform essential functions with or without reasonable accommodation; and (3) plaintiff suffered an adverse employment action because of his disability. They disagree on how plaintiff is able to establish the first element. Plaintiff argues that he is able to establish that he is a disabled person by either showing that he has a record of such impairment or is regarded as having an impairment. Defendant contends plaintiff is limited to arguing only that he is regarded as being impaired.

Relevant to this analysis is a recent Tenth Circuit opinion in a prior case between these parties. On April 24, 2007, the Tenth Circuit affirmed a lower court's granting of summary judgment for defendant. In so doing, the Tenth Circuit analyzed whether plaintiff could establish that he was disabled under the ADA.

The court believes that this holding will likely affect its analysis of the present motion. Consequently, the court orders the parties to provide additional briefing on the present motion that incorporates the April 24, 2007 Tenth Circuit opinion. Defendant shall provide its brief within two weeks of this order. Plaintiff shall provide its brief within two weeks of defendant's filing. Each brief shall be no longer than ten pages.

IT IS THEREFORE ORDERED that defendant shall provide a brief as described within two weeks of this order.

IT IS FURTHER ORDERED that plaintiff shall provide a brief as described within two weeks of defendant's filing.

IT IS FURTHER ORDERED that the trial date for this case is continued to this court's September 2007 trial docket.

Dated this 7th day of June 2007, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge