UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

DANIEL RIFFEY,	)	
	)	
Plaintiff,	)	Case No. 1:02CV00209
	)	
v.	)	**OPINION AND ORDER**
	)	
K-VA-T FOOD STORES, INC.,	)	By: James P. Jones
	)	United States District Judge
Defendant.	)	

Mark T. Hurt, Abingdon, Virginia, for Plaintiff; Howard B. Jackson, Wimberly, Lawson, Seale, Wright & Daves, PLLC, Knoxville, Tennessee, for Defendant.

In this action under the Americans with Disabilities Act, 42 U.S.C.A. §§ 12101-12213 (West 1995) ("ADA"), the plaintiff claims that his former employer K-VA-T Food Stores, Inc. ("K-VA-T") failed to provide him with reasonable accommodation for his disability. In its present Motion for Summary Judgment, K-VA-T contends that Riffey has not presented sufficient evidence that he is disabled within the meaning of the ADA or that if so, K-VA-T was aware of such disability.[1]

Summary judgment is appropriate when there is "no genuine issue of material fact," given the parties' burdens of proof at trial. *Anderson v. Liberty Lobby, Inc.*,

[1] K-VA-T also asserts that any claim by Riffey that he was discharged on account of his disability is additionally barred for substantive and procedural reasons, but Riffey disclaims any such cause of action.

477 U.S. 242, 248 (1986); *see* Fed. R. Civ. P. 56(c). In determining whether the moving party has shown that there is no genuine issue of material fact, a court must assess the factual evidence and all inferences to be drawn therefrom in the light most favorable to the non-moving party. *See Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985).

Riffey claims disability based on the fact that he was born without one arm. Under the ADA, a disability is only actionable if it meets the special statutory definition. While disputed by the defendant, I find from a careful review of the summary judgment record that there is a genuine issue of material fact for resolution at trial as to whether Riffey suffers from "a physical . . . impairment that substantially limits one or more of [his] major life activities." 42 U.S.C.A. § 12102(2)(A); *see Gillen v. Fallon Ambulance Serv., Inc.*, 283 F.3d 11, 21-22 (1st Cir. 2002) (holding that summary judgment inappropriate on issue of whether genetic amputee with only one complete arm was disabled under ADA).

In addition, I find from the current record that there is a triable issue as to whether K-VA-T had sufficient notice of this disability so as to obligate it under the law to provide reasonable accommodation. *See* 42 U.S.C.A. § 12112(b)(5)(A) (providing that employer must accommodate only "known" limitations).

For these reasons, it is **ORDERED** that the defendant's Motion for Summary Judgment [Doc. No. 11] is denied.

ENTER: September 3, 2003

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United States District Judge