

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0841-21

URIEL GUZMAN,

Plaintiff-Appellant,

v.

M. TEIXEIRA INTERNATIONAL,
INC. and ROGERIO TEIXEIRA,

Defendants-Respondents.

APPROVED FOR PUBLICATION

June 7, 2023

APPELLATE DIVISION

Argued January 24, 2023 – Decided June 7, 2023

Before Judges Messano, Rose, and Gummer.

On appeal from the Superior Court of New Jersey,
Law Division, Passaic County, Docket No. L-3750-20.

Deborah L. Mains argued the cause for appellant
(Costello & Mains, LLC, attorneys; Deborah L.
Mains, on the brief).

Walter F. Kawalec, III, argued the cause for
respondents (Marshall Dennehey Warner Coleman &
Goggin, attorneys; Leonard C. Leicht and Walter F.
Kawalec, III, on the brief).

The opinion of the court was delivered by

GUMMER, J.A.D.

Plaintiff Uriel Guzman contends his employer wrongfully terminated him based on a perceived disability in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50. The disability allegedly perceived by defendants was that plaintiff was "suffering from COVID-19." Plaintiff appeals an October 12, 2021 order dismissing his complaint with prejudice pursuant to Rule 4:6-2(e). Agreeing with the motion judge that plaintiff failed to state a claim under the LAD for discrimination based on a perceived disability, we affirm.

I.

Because this appeal comes to us on a Rule 4:6-2(e) motion to dismiss, we accept the facts alleged in the complaint as true, granting plaintiff "every reasonable inference of fact." Major v. Maguire, 224 N.J. 1, 26 (2016) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). Thus, we begin with a summary of the facts plaintiff pleaded in the initial and amended complaints he filed against his former employer, M. Teixeira International, Inc., and its chief executive officer, Rogerio Teixeira.

Plaintiff began his employment with the company as a machine operator in January 2018. The company temporarily closed down due to the COVID-19 pandemic but reopened. Plaintiff returned to work in June 2020.

On or about July 23, 2020, plaintiff reported to work but felt ill; specifically, he felt "cold, clammy, and weak." He told Teixeira about "his condition." Teixeira asked plaintiff if he could stay until the end of the day. Plaintiff agreed to stay. Teixeira called plaintiff at home that night and told him he was not permitted to return to work until he underwent a COVID-19 test.

The next day, plaintiff went to a free clinic where he obtained a COVID-19 test. While waiting for the results, plaintiff remained in contact with Teixeira, told him he was feeling better, and offered to return to work, maintaining social distance from others. Before plaintiff received his test results, Teixeira terminated his employment on July 29, 2020.

Plaintiff filed a complaint on December 3, 2020. Alleging defendants had "perceived [him] as suffering from COVID-19," plaintiff claimed defendants were liable "for perception of disability discrimination in violation of the LAD." In addition to compensatory and punitive damages, plaintiff sought equitable relief, including reinstatement to his position.

Defendants moved to dismiss the complaint pursuant to Rule 4:6-2(e), arguing plaintiff had failed to plead a cause of action for discrimination based on a perceived disability under the LAD. Defendants contended that being "cold, clammy, and weak" did not give rise to a perceived-disability claim.

After hearing argument, the motion judge granted the motion and dismissed the complaint without prejudice in a May 13, 2021 order. The judge concluded "COVID-19 is a disease but it is not a disability within the definition of the LAD."

Plaintiff filed an amended complaint on May 27, 2021. In the amended complaint, plaintiff included new general allegations about COVID-19, including that it "can result in prolonged illness" He also asserted for the first time that in terminating him, Teixeira stated, "I would give you two week[s] notice but since you had symptoms and can't offer a negative COVID-19 test result, we cannot have you come in to work." Defendants moved to dismiss the amended complaint. After hearing argument, the motion judge granted the application, ruling as follows:

[I]n order for there to be a perception of disability there has to be a disability, and I have ruled, and frankly, I think I am right, that every disease is not a disability.

. . . .

And as I see it, in the midst of this pandemic, there were complaints that [plaintiff] felt clammy and sick [H]e didn't know . . . he had COVID-19, but he had some symptoms. So, what the employer did was said you've got to go and get a test. . . . [I]t's got to fall within the [LAD], and these facts just don't. They don't. They don't fill up the box. They don't set forth the grounds for a perception of a disability; . . . I am satisfied that every disease, however serious it can be

for some people, . . . does not become a disability as that is defined in the [LAD].

On October 12, 2021, the judge issued an order dismissing the amended complaint with prejudice.

Appealing the Rule 4:6-2(e) dismissal of his case, plaintiff argues the judge erred in failing to recognize COVID-19 as a disability under the LAD and in failing to find plaintiff had set forth sufficient facts to support a claim his employer terminated him because it perceived he was "suffering from COVID-19." In response, defendants argue the judge correctly dismissed the case because plaintiff's flu-like symptoms and possible COVID-19 do not constitute a disability under the LAD.

II.

Rule 4:6-2(e) provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted" This Rule tests "the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart, 116 N.J. at 746. To defeat a Rule 4:6-2(e) motion, a plaintiff does not have to prove his or her case but only need establish the complaint contains "allegations which, if proven, would constitute a valid cause of action." Kieffer v. High Point Ins. Co., 422 N.J. Super. 38, 43 (App. Div. 2011) (quoting Leon v. Rite Aid Corp., 340 N.J. Super. 462, 472 (App. Div. 2001)).

We review de novo a dismissal of a complaint for failure to state a claim under Rule 4:6-2(e), applying the same standard that governed the motion judge. MTK Food Servs., Inc. v. Sirius Am. Ins. Co., 455 N.J. Super 307, 311 (App. Div. 2018). "At this preliminary stage of the litigation[,]" we are "not concerned with the ability of plaintiffs to prove the allegation contained in the complaint." Printing Mart, 116 N.J. at 746. However, we will affirm the dismissal of a "complaint if it has failed to articulate a legal basis entitling plaintiff to relief." Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).

Discrimination based on an employee's disability, or perceived disability, is illegal under the LAD. N.J.S.A. 10:5-4; Victor v. State, 203 N.J. 383, 410 (2010) (the LAD includes one "who is perceived as having a disability" within the class protected under the statute). An employee perceived to have a disability is protected under the LAD to the same extent as someone who is disabled. Grande v. Saint Clare's Health Sys., 230 N.J. 1, 18 (2017). "LAD claims based upon a perceived disability still require 'a perceived characteristic that, if genuine, would qualify a person for the protections of the LAD.'" Dickson v. Cmty. Bus Lines, Inc., 458 N.J. Super. 522, 532 (App. Div. 2019) (quoting Cowher v. Carson & Roberts, 425 N.J. Super. 285, 296 (App. Div. 2012)).

The threshold inquiry in a disability-discrimination case is whether the plaintiff was a member of a protected class. Victor, 203 N.J. at 409. To establish that element in a case of perceived disability discrimination under the LAD, a plaintiff must show he or she "qualifies as an individual . . . who is perceived as having a disability, as that has been defined by statute." Id. at 410; see also Wild v. Carriage Funeral Holdings, Inc., 458 N.J. Super. 416, 429 (App. Div. 2019) (to meet the first element of a prima facie case of perceived disability discrimination under the LAD, a plaintiff must allege "the employer's perception that the employee was disabled"), aff'd but criticized on other grounds, 241 N.J. 285 (2020).

The LAD defines "disability" as a

physical or sensory disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness or speech impairment, or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological, or developmental disability, including autism spectrum disorders, resulting from anatomical, psychological, physiological, or neurological conditions which prevents the typical exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory

diagnostic techniques. Disability shall also mean AIDS or HIV infection.^[1]

[N.J.S.A. 10:5-5(q).]

"Pursuant to N.J.S.A. 10:5-5(q), there are two specific categories of handicap: physical and non-physical. The physical and non-physical clauses of the statute are distinct from each other and provide separate ways of proving [disability]." Viscik v. Fowler Equip. Co., 173 N.J. 1, 15 (2002); see also Delvecchio v. Township of Bridgewater, 224 N.J. 559, 574 (2016). The non-physical disability standard, which pertains to people suffering from "any mental, psychological or developmental disability," Viscik, 173 N.J. at 16, is not at issue in this case. For a physical disability claim under the LAD, a plaintiff must show he or she is: "(1) suffering from physical disability, infirmity, malformation or disfigurement (2) which is caused by bodily injury,

¹ HIV (human immunodeficiency virus) is a virus that can lead to AIDS (acquired immunodeficiency syndrome). See Centers for Disease Control and Prevention, <https://www.cdc.gov/hiv/basics/whatishiv.html> (last visited May 30, 2023). Effective 1992, the Legislature amended N.J.S.A. 10:5-5(q) to include the provision: "Handicapped shall also mean suffering from AIDS or HIV infection." See L. 1991, c. 493, § 1. Effective 2004, the Legislature amended N.J.S.A. 10:5-5(q) to replace the word "handicapped" with "disability" and the last sentence to provide "Disability shall also mean AIDS or HIV infection." See L. 2003, c. 180, § 6. The Legislature has not amended N.J.S.A. 10:5-5(q) to include expressly COVID-19 or the virus that causes it while it has enacted or amended other laws to address the COVID-19 pandemic. See, e.g., L. 2020, c. 84 (adding provisions regarding COVID-19 to the Workers' Compensation Act, N.J.S.A. 34:15-1 to -147).

birth defect or illness including epilepsy." Id. at 15 (citing N.J.S.A. 10:5-5(q)); see, e.g., Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 593 (1988) (finding that under the LAD, an alcoholic may suffer from a "mental [or] psychological . . . disability" or a "physical disability [or] infirmity . . . which is caused by illness") (quoting N.J.S.A. 10:5-5(q)).

Not every illness will constitute a disability under the LAD. Indeed, plaintiff concedes "not ever[y] person who contracts COVID-19 will meet the definition of '[disabled]' set forth in the LAD." We recognize the term "disability" in the LAD "is not restricted to 'severe' or 'immutable' disabilities," Viscik, 173 N.J. at 16 (quoting the Americans with Disabilities Act (ADA), 42 U.S.C. § 12102(1)(A)), or to "[disabling] condition[s that] result in substantial limitation of a major life activity," Tynan v. Vicinage 13 of the Superior Ct., 351 N.J. Super. 385, 398 (App. Div. 2002), and that courts "adhere to a broad interpretation of the [LAD] as it applies to the physically [disabled]," Andersen v. Exxon Co., 89 N.J. 483, 496 (1982). We, however, are equally cognizant of the Supreme Court's directive that the LAD "must be sensibly and practically applied . . . [and] construed 'fairly and justly with due regard to the interests of all parties.'" Ibid. (quoting N.J.S.A. 10:5-27). Applying these standards, we agree with the motion judge's conclusion that plaintiff failed to plead a viable cause of action under the LAD.

Even assuming defendants believed plaintiff had COVID-19, the facts plaintiff alleged in his pleadings are not sufficient to establish a prima facie case under the LAD that he was terminated because his employer perceived he had a disability. On July 23, 2020, plaintiff felt ill in that he felt "cold, clammy, and weak." He was able to report to work and stay until the end of the day. The next day, plaintiff was able to go to a free clinic to obtain a COVID-19 test. Plaintiff did not allege he had gone to a hospital or a doctor's office or that he had otherwise sought medical attention or treatment. Some unspecified time before he was terminated, plaintiff reported to Teixeira he "was feeling better." In fact, he was feeling well enough that he felt able to and offered to return to work. He was terminated after he had reported to Teixeira his condition had improved and he was feeling well enough to work. Those facts as pleaded by plaintiff are not sufficient to show he "qualifies as an individual with a disability, or who is perceived as having a disability, as that has been defined by statute." Victor, 203 N.J. at 410.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION