

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
OCT 26 2006
[Signature]
CLERK

CHRISTOPHER A. ROLLER,

Plaintiff,

Vs.

GE MEDICAL SYSTEMS INFORMATION
TECHNOLOGIES, INC.,

Defendant.

Civ. 06-04098

**DEFENDANT'S STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Pursuant to the Local Rule 56.1(b) of the Local Rules of Practice of the United States District Court for the District of South Dakota, Defendant GE Medical Systems Information Technologies, Inc., ("GEMS IT") submits the following Statement of Undisputed Material Facts. Solely for the purposes of GEMS IT's Motion for Summary Judgment and consistent with the Court's obligation to consider the evidence in the light most favorable to the non-moving party, while some of the statements made by Plaintiff, Christopher Roller ("Roller") are, in fact, disputed, they are set forth below and will be considered as "undisputed" solely for purposes of the Motion for Summary Judgment.

I. SUBJECT MATTER JURISDICTION

1. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 (diversity jurisdiction with an amount in controversy of over \$75,000).

II. VENUE

2. Roller initially filed his Complaint in Minnesota state court. (Affidavit of Judith A. Williams-Killackey ("Williams Aff.") ¶ 5.)

3. GEMS IT removed the action to the U.S. District Court for the District of Minnesota pursuant to 28 U.S.C. § 1441. (Williams Aff. ¶ 5.)

4. Upon GEMS IT's motion, the District of Minnesota transferred this matter to the District of South Dakota, Southern Division pursuant to 28 U.S.C. § 1404(a). (Williams Aff. ¶ 6.)

5. This district is a proper venue for this action under 28 U.S.C. §§ 1391 and 1404(a). (Williams Aff. ¶ 6.)

III. GEMS IT AND ROLLER'S EMPLOYMENT

6. GEMS IT provides hospitals and healthcare systems with advanced solutions to improve their clinical performance. (Affidavit of Robert E. Moore ("Moore Aff.") ¶ 4.)

7. GEMS IT operates several facilities, including one in Sioux Falls, South Dakota. (Moore Aff. ¶ 4.)

8. Roller was hired on or about July 19, 1999 by Micro Medical Systems, Inc. in Sioux Falls, South Dakota. (Deposition of Christopher Roller, July 11, 2006 ("Roller Dep.") p. 61.)¹

9. Rich Adcock, part owner of Micro Medical and Micro Medical's Vice President of Research and Development, located Roller through a recruiter in Minnesota and made the decision to hire Roller. (Roller Dep. p. 36, Exhibit ("Ex.") 3; Affidavit of Richard Adcock ("Adcock Aff.") ¶¶ 2-3.)

10. GEMS IT acquired Micro Medical Systems, Inc. in September 2000, and Roller stayed on as a GEMS IT employee. (Adcock Aff. ¶ 8; Moore Aff. ¶ 5.)

¹ A true and correct copy of the Roller Deposition Transcript is attached to the Affidavit of Judith A. Williams-Killackey as Exhibit A.

11. While employed by GEMS IT, Roller worked as a Senior Engineer for the User Interface Group ; essentially, Roller was a software engineer for GEMS IT. (Roller Dep. pp. 38-40; Moore Aff. ¶ 6.)

12. In early 2000, Robert (“Bob”) Moore joined Micro Medical and became Roller's supervisor. (Roller Dep. p. 38; Moore Aff. ¶¶ 3, 9.)

13. Moore supervised Roller for the remainder of Roller’s employment with Micro Medical and GEMS IT. (Roller Dep. p. 38; Moore Aff. ¶¶ 3, 9.)

14. Roller admits that he was able to perform his job as a Senior Engineer while working at Micro Medical and GEMS IT. (Roller Dep. pp. 42-43.)

15. Shortly after Roller began his employment with Micro Medical in 1999, Adcock received reports that Roller was telling co-workers that he was “the chosen one” and that he was “gifted.” (Adcock Aff. ¶ 5.)

16. Roller also told several co-workers that he believed the CIA was after him because of his superior intellectual abilities and that he believed the movie “The Truman Show” was based on his life. (Roller Dep. pp. 61-65, Ex. 6; Adcock Aff. ¶ 7.)

17. After several employees complained that Roller’s stories made them uncomfortable, Kelly Drake, Micro Medical’s Vice President of Administration and Human Resources, and Adcock met with Roller. (Adcock Aff. ¶¶ 5-7, Ex. A.)

18. During the meeting with Drake and Adcock, Roller reported being in psychiatric treatment. (Roller Dep. p. 68; Adcock Aff. ¶ 7, Ex. A.)

19. Roller signed medical releases, and Drake sought information regarding Roller’s treatment. (Roller Dep. pp. 68-69; Adcock Aff. ¶ 8.)

20. When Drake and Adcock received Roller's medical records, they learned that Roller had been diagnosed with bipolar disorder. (Roller Dep. p. 68-70; Adcock Aff. ¶ 8, Ex. A.)

21. Because Roller had not been disruptive, violent or insubordinate at work, Drake and Adcock concluded Roller was not a threat to other employees. (Adcock Aff. ¶ 8, Ex. A.)

22. Drake and Adcock also did not believe that the condition prevented Roller from performing his job. (Adcock Aff. ¶ 8, Ex. A.)

23. Roller continued to work for GEMS IT following his conversation with Drake and Adcock. (Roller Dep. p. 247; Adcock Aff. ¶ 8.)

24. Roller never had any other conversation with Adcock or anyone else at Micro Medical or GEMS IT about his bipolar condition. (Roller Dep. p. 70; Adcock Aff. ¶ 8; Moore Aff. ¶ 27.)

25. Other than one conversation that Roller had with Moore regarding some drowsiness caused by his medication in January or February of 2002, Roller never had any conversations with managers at Micro Medical or GEMS IT that related to medication. (Roller Dep. p. 51, 125; Adcock Aff. ¶ 8; Moore Aff. ¶ 27.)

26. Roller also never spoke to anyone at Micro Medical or GEMS IT about his medication. (Roller Dep. p. 72.)

IV. EVENTS LEADING TO ROLLER'S DISCHARGE

27. Initially, Roller was highly regarded as a programmer and was considered to be someone who could raise the level of the Company. (Adcock Aff. ¶ 4.)

28. In his performance review for 2000, conducted by Moore, Roller received a performance code ranking of 2, the second highest ranking. (Roller Dep. Ex. 10; Moore Aff. ¶ 10-11.)

29. In the 2000 performance review, Roller was asked to make himself more approachable, but was praised for his wealth of knowledge and “strong architectural design talent.” (Id.)

30. After GEMS IT acquired Micro Medical in September 2000, Roller’s performance began to decline. (Adcock Aff. ¶ 13.)

31. In particular, by late 2001/early 2002, Adcock received reports from Roller’s software design team that Roller was not completing his design projects. (Adcock Aff. ¶ 14.)

32. Roller was simply no longer delivering services within the scope of his abilities, as demonstrated by his earlier work. (Adcock Aff. ¶ 14.)

33. On Roller’s second evaluation, Moore highlighted problems with Roller’s development as a programmer. (Moore Aff. ¶¶ 12-15, Ex. A.)

34. Moore felt most of the work Roller was doing could be done by a more junior engineer and that, because of his position as the most senior engineer on the user interface team, Roller should be contributing to projects in more significant ways. (Moore Aff. ¶¶ 12-15, Ex. A.)

35. In the second evaluation, Moore also noted that Roller seemed to have reached the “extent of his potential in his current role.” (Moore Aff. ¶¶ 12-15, Ex. A.)

36. Roller does not disagree with Moore’s assessment of his performance at the time of the second evaluation. (Roller Dep. p. 124.)

37. In addition to the issues with his performance, throughout his career Roller engaged in inappropriate behavior, which did not improve despite counseling from others. (Moore Aff. ¶¶ 16-25; Adcock Aff. ¶¶ 9-12.)

38. The first incident of inappropriate behavior occurred in September 1999, when Jennifer DeJong, one of Roller's female co-workers, complained that she was uncomfortable with several comments Roller had made to her. (Roller Dep. p. 74, Ex. 7; Adcock Aff. ¶ 9.)

39. DeJong stated that Roller had asked her if she was ever in his dreams, that Roller asked to smell the flowers on her shirt, and that Roller once asked her if she could "put his cucumber in his mouth" while eating a cucumber. (Roller Dep. pp. 75-76.)

40. Roller also asked DeJong to go out with him. (Roller Dep. p. 75; Adcock Aff. ¶ 10.)

41. Adcock and Drake met with Roller regarding DeJong's complaint. (Roller Dep. p. 76, Ex. 7; Adcock Aff. ¶ 10.)

42. Roller admits he signed a form at that time in which he stated he would keep his remarks in line with GEMS IT's professional environment. (Roller Dep. pp. 76-78, Ex. 7; Adcock Aff. ¶ 10, Exs. B & C.)

43. Adcock and Drake warned Roller that further inappropriate behavior could result in termination. (Roller Dep. p. 77, Ex. 7; Adcock Aff. ¶ 10.)

44. Throughout his tenure with GEMS IT, Roller admittedly had a flare for "jokes" that were not appropriate for the workplace. (Roller Dep. pp. 55-56, 74-75, 97-99, 162-63; Moore Aff. ¶ 16; Deposition of Robert Moore ("Moore Dep.") p. 10.)²

45. For example, shortly after GEMS IT acquired Micro Medical, Roller left half-empty beer cans and fake vomit in a co-worker's work area. (Roller Dep. p. 133; Moore Aff. ¶ 17.)

² A true and correct copy of the Moore Deposition transcript is attached to the Affidavit of Judith A. Williams-Killackey as Exhibit C.

46. In the summer of 2000, Roller left fake pieces of feces on the toilet rim in the men's room. (Roller Dep. pp. 133-34; Moore Aff. ¶ 18.)

47. Roller played a similar joke in February 2001, when he left fake feces on a urinal during a period of building renovation, resulting in a contractor filing an official complaint with Adcock. (Roller Dep. pp. 117-18, 134; Adcock Aff. ¶ 11; Moore Aff. ¶ 18.)

48. Adcock reprimanded Roller for these pranks. (Roller Dep. pp. 57, 120; Adcock Aff. ¶¶ 11-12, Ex. D.)

49. Roller also sent inappropriate e-mails to the Sioux Falls employees. (Roller Dep. p. 115; Moore Aff. ¶ 19.)

50. One such e-mail asked co-workers to go to Rollers website -- www.ivote.com -- to take a survey, which included questions such as, "What is Chris' favorite position?," "What is Chris' favorite orifice?," and "What does Chris call out when he climaxes?" (Roller Dep. Ex. 8; Moore Aff. ¶ 20, Ex. B.)

51. Roller also objected to GEMS IT's internet policies and sent an inappropriate e-mail to several co-workers challenging GEMS IT's internet policy and referencing the situation between President Clinton and Monica Lewinski. (Roller Dep. pp. 106-08, Ex. 9.)

52. In another February 2001 incident, Roller sent an e-mail to Bob Moore, Vice-President of Marketing for Cardiology stating, "Bob, thanks for the great links -- try this one -- www.kiddieporn.com." (Roller Dep. pp. 57, 113-17; Moore Aff. ¶ 22, Ex. D.)

53. Roller claimed he had misaddressed the e-mail and that the e-mail was actually intended for Bob Moore, Roller's supervisor at the Sioux Falls facility. (Roller Dep. Ex. 11; Moore Aff. ¶ 22.)

54. Roller knew that sending the kiddieporn e-mail was inappropriate at the time he sent it. (Roller Dep. p. 115.)

55. Roller was reprimanded for this incident and signed a statement of acknowledgment. (Id. p. 57.)

56. Roller also became angry with his co-workers on several occasions, causing some co-workers to be concerned about their personal safety. (Moore Aff. ¶¶ 23-25.)

57. During the summer of 2001, Roller had to be removed from the Sioux Falls facility following an intense altercation in which Roller yelled at Rodney Kindt, a co-worker. (Roller Dep. pp. 93-95, 134; Moore Aff. ¶ 23.)

58. Following that altercation, Roller was sent home for the rest of the day. (Roller Dep. p. 134; Moore Aff. ¶ 23.)

59. In October 2001, Roller also had an altercation with Bob Moore. (Roller Dep. p. 135; Moore Aff. ¶ 24.)

60. Moore was concerned for his personal safety following this exchange because Roller became so angry during the discussion. (Moore Aff. ¶ 24.)

61. Roller had another heated exchange with a co-worker, Kevin Impecoven, on or about February 15, 2002, and Impecoven expressed concerns about his family's safety following this exchange. (Roller Dep. pp. 130, 132; Adcock Aff. ¶ 15; Moore Aff. ¶ 25; Moore Dep. pp. 4-5.)

62. In addition, Impecoven reported shortly after the argument that Roller had tried to run him down while driving near the Sioux Falls facility entrance. (Roller Dep. p. 127; Adcock Aff. ¶ 15; Moore Aff. ¶ 26.)

63. Roller admitted that he merged close to Impecoven on the way to work and that Impecoven looked startled. (Roller Dep. p. 127.)

64. Roller understood how Impecoven could have thought that Roller was trying to hit Impecoven's car. (Roller Dep. pp. 127, 132.)

65. Because of Roller's ongoing performance concerns and because of his inappropriate workplace behavior, GEMS IT placed Roller on leave on or about February 18, 2002. (Roller Dep. p. 127; Adcock Aff. ¶ 15; Moore Aff. ¶ 26.)

66. Roller remained on leave until April 17, 2002, when Adcock offered Roller a Separation Agreement & Release ("Agreement"). (Roller Dep. pp. 128-30, Ex. 13; Adcock Aff. ¶ 16.)

67. Adcock decided to end Roller's employment because of both his declining performance and his inappropriate conduct, which had culminated in his attempting to physically harm Impecoven. (Adcock Aff. ¶¶ 16-17.)

68. After receiving the Agreement, Roller spoke with at least one lawyer regarding potential litigation against GEMS IT based on termination of his employment. (Roller Dep. pp. 149-50.)

69. Roller ultimately executed the Agreement on April 24, 2002. (Roller Dep. Ex. 13.)

70. Pursuant to the Agreement, Roller released GEMS IT from "each and every claim, action or right of any sort, known or unknown, arising on or before the effective date of the Agreement." (Roller Dep. Ex. 13.)

71. This release includes disability discrimination charges. (Roller Dep. Ex. 13.)

72. In exchange for Roller's termination and his release of all claims against GEMS IT, GEMS IT paid Roller his current salary at regular intervals through July 26, 2002. (Roller Dep. pp. 145-47, Ex. 13.)

73. GEMS IT also agreed to provide Roller with outplacement assistance until October 26, 2002. (Roller Dep. pp. 145-46, Ex. 13.)

74. Roller understood that by signing the release, he was potentially foreclosing himself from pursuing any legal actions against GEMS IT related to his employment. (Roller Dep. p. 151.)

75. Roller did not return any of the compensation he received pursuant to the Agreement when he initiated the present lawsuit. (Roller Dep. p. 147.)

76. Roller acknowledged that his workplace misconduct was uncommon at GEMS IT in Sioux Falls. (Roller Dep. p. 298.)

77. Roller points to only one individual who allegedly received more favorable treatment -- Jason Hopkins. (Roller Dep. pp. 298-99.)

78. Roller and Hopkins are not similarly situated -- Hopkins did not engage in the same workplace misconduct as Roller and did not have the same performance problems that Roller had during his employment with GEMS IT. (Moore Aff. ¶ 28.)

79. No other employees at GEMS IT had employment histories similar to Roller's history. (Adcock Aff. ¶ 19; Moore Aff. ¶ 29.)

V. POST-TERMINATION EVENTS AND ROLLER'S ALLEGED DISABILITY

80. Roller never filed a discrimination complaint with any administrative agency regarding his employment at, or separation from, GEMS IT. (Roller Dep. pp. 151-52.)

81. However, on or about June 8, 2005 -- some three years after his separation from GEMS IT -- Roller filed suit against GEMS IT in Minnesota state court, alleging "discrimination for mental illness, resulting in loss of job." (Williams Aff. ¶ 5.)

82. The Minnesota suit was the first complaint Roller had filed regarding his employment with GEMS IT. (Roller Dep. p. 151.)

83. The basis for Roller's complaint is his alleged bipolar disorder. (Roller Dep. pp. 170-71.)

84. Roller was first diagnosed as bipolar in April 1999. (Roller Dep. p. 171.)

85. Roller has been hospitalized because of his condition on five sporadic, short occasions: (1) a 72-hour stay in April 1999 (just after being diagnosed with bipolar disorder), (2) a second 72-hour stay in June 1999, (3) a 72-hour stay in August 2000, (4) a week in November 2002, and (5) a 72-hour hold in late October 2004. (Roller Dep. pp. 171-72, 178, 214-16, 220, 227-28; Roller's Response to GEMS IT's First Set of Requests for Admission & Second Set of Interrogatories, Ex. A.)³

86. Roller's bipolar condition does not limit him in his life's activities, although he less able to "joke around" while on his medication. (Roller Dep. p. 181.)

87. Whether on or off the medication, Roller is able to care for himself and able to perform manual tasks. (Roller Dep. p. 172.)

88. Roller's condition does not limit his ability to learn, think or work, although some medications his was on in the past made these activities take a little longer. (Roller Dep. pp. 185-87.)

³ A true and correct copy of Roller's Response to GEMS IT's First Set of Requests for Admission & Second Set of Interrogatories is attached to the Affidavit of Judith A. Williams-Killackey as Exhibit D.

89. On the current medication, Roller's abilities to learn, think or work are nearly at a normal pace. (Roller Dep. p. 187.)

90. Roller's bipolar disorder does not affect his ability to communicate. (Roller Dep. p. 188.)

91. Roller is able to bathe and groom himself, eat and sleep without difficulty. (Roller Dep. pp. 188-89.)

92. Roller's condition does not affect his ability to drive, run errands and do household chores, nor does it affect his ability to read. (Roller Dep. pp. 189-90.)

93. Roller also lives by himself, pays his own bills and manages his own medications. (Roller Dep. pp. 190, 228-29.)

94. Roller has represented himself in court on a number of matters, including the present lawsuit and his divorce, and no court has ever ruled that Roller is unable to understand his legal rights. (Roller Dep. pp. 226-30, 293-94.)

95. Roller has represented himself throughout this litigation, including responding to motions and discovery, filing his own motions, promulgating his own discovery and taking his own depositions. (Williams Aff. ¶ 7.)

96. Roller does not believe his bipolar condition limits him at all. (Roller Dep. p. 181.)

VI. ROLLER'S UNDERSTANDING OF HIS LEGAL RIGHTS

97. Roller regularly handles his own financial and legal matters. (Roller Dep. pp. 228-29.)

98. He represented himself in his divorce and in a restraining order proceeding, among other cases, and no judge has indicated any concern regarding Roller's ability to represent himself. (Roller Dep. pp. 226, 229-30, 293-94.)

99. Roller also represented himself in the sale of his home. (Roller Dep. p. 229.)

100. Roller has never been adjudicated insane by a court of law, nor has a court ever ruled that Roller is unable to understand his rights. (Roller Dep. pp. 226-29.)

Respectfully submitted this 26th day of October, 2006.



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