IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DEREK BOWLES,

Plaintiff,

v.

Case No. 2:20-cv-2172-MSN-jay
JURY DEMAND

MAPCO EXPRESS, INC.,

Defendant.

ORDER GRANTING DEFENDANT MAPCO EXPRESS INC.'S MOTION FOR SUMMARY JUDGMENT

Before the Court is Defendant Mapco Express Inc.'s Motion for Summary Judgment ("Motion") (ECF No. 15) filed April 9, 2021. In support of its Motion, Defendant has also filed a Memorandum (ECF No. 15-5) and a Statement of Undisputed Material Facts ("Defendant's SUMF") (ECF No. 16). Plaintiff filed his response in opposition on May 7, 2021. (ECF No. 17.) Plaintiff has also submitted a Statement of Undisputed Facts in support of his response ("Plaintiff's SUF") (ECF No. 17-1). Defendant filed its reply (ECF No. 19), along with a response to Plaintiff's SUF (ECF No. 18) on May 21, 2021. For the reasons set forth below, Defendant's Motion is **GRANTED**.

BACKGROUND

Plaintiff Derek Bowles sued his former employer, Defendant Mapco Express, Inc., alleging violations of the Americans with Disabilities Act of 1990 (the "ADA"), the Family and Medical Leave Act (the "FMLA"), and the Uniformed Services Employment and Reemployment Rights Act (the "USERRA"). (*See* ECF No. 1.) However, in response to Defendant's Motion, Plaintiff

conceded his claims under the FMLA and the USERRA, leaving only his claims under the ADA. (ECF No. 17 at PageID 211.)

As an initial matter, Defendant argues that Plaintiff's SUF was not properly submitted and should be stricken from the record. (ECF No. 18 at PageID 287.) Defendant argues that this District's Local Rules allow Plaintiff, as the nonmoving party, to submit a statement of additional *disputed* facts. (*Id.*) Defendant argues that Plaintiff's SUF contains facts that he contends are undisputed, with citations supporting the same, and therefore, Plaintiff's SUF should be stricken for failure to comply with the Local Rules. (*Id.*) This Court agrees.

The Local Rules provide that the nonmovant's response to a motion for summary judgment

> may contain a concise statement of any additional facts that the nonmovant contends are material and as to which the non-movant contends there exists a genuine issue to be tried. Each such *disputed* fact shall be set forth in a separate, numbered paragraph *with specific citations to the record supporting the contention that such fact is in dispute*.

Local Rule 56.1(b) (emphasis added). "District courts have broad discretion in interpreting, applying, and determining the requirements of their own local rules." *Pearce v. Chrysler Grp., L.L.C. Pension Plan*, 615 F. App'x 342, 349–50 (6th Cir. 2015) (citing *S.S. v. E. Ky. Univ.*, 532 F.3d 445, 451 (6th Cir. 2008)). "The district court does not have to accept every filing submitted by a party." *Ross, Brovins & Oehmke, P.C. v. Lexis Nexis Grp., a Div. of Reed Elsevier Grp., PLC*, 463 F.3d 478, 488 (6th Cir. 2006). A court acts within its discretion when it strikes a filing for, *inter alia*, untimeliness or a failure to comply with the local rules. *See Ordos City Hawtai Autobody Co., Ltd. v. Dimond Rigging Co., LLC*, 695 F. App'x 864, 870–72 (6th Cir. 2017) (affirming trial court's striking of response brief because of failure to comply with local rules); *Ross*, 463 F.3d at 488–89 (affirming trial court's striking of reply brief because party failed to request the necessary leave to file); *Jones v. Northcoast Behavioral Healthcare Sys.*, 84 F. App'x 597, 598–99 (6th Cir. 2003) (affirming trial court's striking of untimely memoranda of law).

Plaintiff's SUF contains 43 numbered paragraphs with citations to the record that support the veracity of the particular fact stated, while failing to cite anything in the record supporting the contention that such fact is in dispute. In addition to the noncompliance with the Local Rules, the facts set forth in paragraph 36 of Plaintiff's SUF are not supported by admissible evidence as they are based on hearsay. Further, the facts in paragraph 39 are based on a document that has not been properly authenticated pursuant to Fed. R. Evid. 901(a) and are therefore not supported by admissible evidence.

Accordingly, because Plaintiff's SUF fails to comply with the Local Rules and contains statements of fact based on inadmissible evidence, the Court disregards Plaintiff's SUF in its entirety. The facts as set forth herein are therefore taken from the Complaint, Defendant's SUMF, Plaintiff's response thereto, and related exhibits.

Defendant hired Plaintiff in 2017 as a Field Service Technician II. (ECF No. 17-3 at PageID 277.) The job description for a Field Service Technician II states in part that the employee is "regularly required to sit, hear, stand, lift, climb, twist, bend, kneel, speak and use hands to repair, install and maintain equipment." (*Id.* at PageID 278.) The job description further states that the employee "[m]ust be capable of working from a ladder and able to lift 50 lbs." (*Id.*)

As a Field Service Technician II, Plaintiff was responsible for a range of maintenance tasks at Defendant's stores, including plumbing, electrical, and structural maintenance repairs. (*Id.* at PageID 277.) Plaintiff performed tasks that required climbing a ladder and performing work while perched on a ladder, as well as lifting objects weighing up to 60 pounds. (*Id.*) Plaintiff was also responsible for working on fuel pumps, including replacing fuel pump motors weighing 50 pounds. (*Id.*) Depending on the position of the fuel pump, in order to replace it, Plaintiff would be required

to bend, kneel, crouch, and lie prone on the ground to unbolt the pump so that he could hook a strap to the motor, which was then used to pull the pump up. (*Id.* at PageID 278.)

One potential danger that Field Service Technicians face on the job is fuel leaks. In that event, it is crucial that the Field Service Technician be able to move quickly to shut off the fuel line and also get him or herself out of harm's way. (*Id.* at PageID 279.)

Prior to his employment with Defendant, Plaintiff was diagnosed with Compartment Syndrome, which causes periodic numbness in Plaintiff's leg that affects his balance and can cause him to fall. (*Id.*) Plaintiff does not know what triggers these episodes and he is unable to predict when they might suddenly impair his balance. (*Id.*) In early 2019, Plaintiff experienced a series of falls in the span of two months, which he attributed to his Compartment Syndrome. (*Id.*) In at least one of these episodes, Plaintiff blacked out and was unsure how long he was unconscious. (*Id.*)

Because of these episodes, Plaintiff requested a cane from his Veterans' Affairs ("VA") physician and received one on March 13, 2019. (*Id.* at PageID 280.) Shortly after Plaintiff received his cane, he told Maintenance Manager Ray Whitaker ("Mr. Whitaker") that he needed to use the cane for balance while working. (*Id.*) In response, Mr. Whitaker told Plaintiff that he needed to submit medical documentation explaining his need for the cane while working. (*Id.*) Mr. Whitaker also called Maintenance Director Laurie Crowe ("Ms. Crowe") and told her that he observed Plaintiff using a cane and was worried about Plaintiff's safety. (*Id.*)

Plaintiff obtained a letter from his VA physician, Dr. Douglas Farst, dated March 26, 2019, which was received by Nancy Harris ("Ms. Harris"), Defendant's Manager of Team Member Relations, on April 4, 2019. (ECF No. 15-1 at PageID 125; ECF No. 17-3 at PageID 280.) Doctor

Farst's letter stated, "It is medically indicated for [Plaintiff] to use [a] cane to assist with his chronic medical condition." (ECF No. 15-1 at PageID 125; ECF No. 17-3 at PageID 280–81.)

Ms. Harris spoke with Plaintiff the day after receiving the letter from Dr. Farst. (ECF No. 17-3 at PageID 281.) Ms. Harris alleges that she was concerned about Plaintiff's ability to perform his job safely given his unpredictable balance issues. (*Id.*) During Ms. Harris' conversation with Plaintiff, Plaintiff insisted he was able to perform his job duties with a cane. (*Id.*) Mr. Harris, however, believed she needed more information before Plaintiff could continue to work, and Plaintiff was placed on leave beginning April 5, 2019. (*Id.*; ECF No. 15-1 at PageID 139.)

Plaintiff and Ms. Harris spoke again by phone on April 16, 2019 and discussed the elements of Plaintiff's job description. (ECF No. 17-3 at PageID 281.) Plaintiff agreed to take a copy of his job description to his physician so that the physician could determine whether he was fit to perform the essential functions of the position. (*Id.* at PageID 282.)

On May 1, 2019, Plaintiff's attorney faxed another letter from Dr. Farst dated April 23, 2019. (*Id.*) The letter from Dr. Farst provided that "[Plaintiff] may return to work without any physical restriction related to his job requirements." (*Id.*; ECF No. 15-1 at PageID 130.) Even after this second letter from Dr. Farst, Ms. Harris believed she needed more information before Plaintiff could return to work. (ECF No. 17-3 at PageID 282.) As a result, Ms. Harris requested that Plaintiff provide clarifying information from his physician to explain the nature of Plaintiff's condition and his need for an accommodation, if any. (*Id.* at PageID 282–83.)

On July 12, 2019, Ms. Harris sent Plaintiff a letter stating, "[t]he medical documentation you have provided thus far is insufficient for [Defendant] to accurately assess your need for an accommodation." (ECF No. 15-1 at PageID 135.) The letter asked Plaintiff to have his physician do the following: (1) provide information describing the nature of Plaintiff's impairment; (2)

review the Field Service Technician II job description and identify any restrictions that Plaintiff may have in performing those duties; (3) confirm whether Plaintiff could perform the essential functions of the job safely; (4) identify any accommodations necessary to perform the essential functions of his job; and (5) identify the expected duration of any such accommodations. (*Id;* ECF No. 17-3 at PageID 283.)

Defendant alleges that Plaintiff did not provide any information in response to Ms. Harris' July 12, 2019 letter. (ECF No. 17-3 at PageID 283.) Plaintiff acknowledges that Dr. Farst declined to fill out and return the paperwork requested by Ms. Harris in her July 12, 2019 letter; however, he asserts that his counsel provided Defendant with Dr. Farst's reasoning in declining to fill out the paperwork sent by Ms. Harris. (*Id.*)

On September 3, 2019, Ms. Harris sent another letter to Plaintiff again requesting that Plaintiff's physician provide the information previously requested in Ms. Harris' letter dated July 12, 2019. (ECF No. 15-1 at PageID 139; ECF No. 17-3 at PageID 284.) Ms. Harris' letter stated that Plaintiff had until September 20, 2019 to provide the requested information to Defendant. (ECF No. 15-1 at PageID 139; ECF No. 17-3 at PageID 284.) The letter stated that if Defendant did not receive the information prior to that deadline, or Plaintiff did not contact Ms. Harris regarding an extension of the deadline, Defendant would assume Plaintiff did not wish to return to work and voluntarily resigned his position. (ECF No. 15-1 at PageID 139; ECF No. 17-3 at PageID 284.) Plaintiff, through his counsel, requested an extension through October 15, 2019. (ECF No. 17-3 at PageID 284.) However, Plaintiff did not provide the medical form by the extended deadline, nor did he request any further extension. (*Id.*)

On October 21, 2019, Ms. Harris sent a final letter, explaining that Plaintiff had failed to provide the requested information by the October 15, 2019 extended deadline. (*Id.*) Plaintiff did not contact Ms. Harris in response to this letter, and his employment was terminated. (*Id.*)

STANDARD OF REVIEW

Federal Rule of Civil Procedure 56 permits a party to move for summary judgment — and the Court to grant summary judgment — "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party asserting the presence or absence of genuine issues of material facts must support its position either by "citing to particular parts of materials in the record," including depositions, documents, affidavits or declarations, stipulations, or other materials, or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). In ruling on a motion for summary judgment, the Court must view the facts contained in the record and all inferences that can be drawn from those facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Nat'l Satellite Sports, Inc. v. Eliadis, Inc.*, 253 F.3d 900, 907 (6th Cir. 2001). The Court cannot weigh the evidence, judge the credibility of witnesses, or determine the truth of any matter in dispute. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

The moving party bears the initial burden of demonstrating that no genuine issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The moving party may discharge this burden either by producing evidence that demonstrates the absence of a genuine issue of material fact or simply "by 'showing' — that is, pointing out to the district court — that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. Where the

movant has satisfied this burden, the nonmoving party cannot "rest upon its . . . pleadings, but rather must set forth specific facts showing that there is a genuine issue for trial." *Moldowan v. City of Warren*, 578 F.3d 351, 374 (6th Cir. 2009) (citing *Matsushita*, 475 U.S. at 586; Fed. R. Civ. P. 56). The nonmoving party must present sufficient probative evidence supporting its claim that disputes over material facts remain and must be resolved by a judge or jury at trial. *Anderson*, 477 U.S. at 248–49 (citing *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253 (1968)); *see also White v. Wyndham Vacation Ownership, Inc.*, 617 F.3d 472, 475–76 (6th Cir. 2010). A mere scintilla of evidence is not enough; there must be evidence from which a jury could reasonably find in favor of the nonmoving party. *Anderson*, 477 U.S. at 252; *Moldowan*, 578 F.3d at 374.

The Court's role is limited to determining whether there is a genuine dispute about a material fact, that is, if the evidence in the case "is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. Such a determination requires that the Court "view the evidence presented through the prism of the substantive evidentiary burden" applicable to the case. *Id.* at 254. Thus, if the plaintiff must ultimately prove its case at trial by a preponderance of the evidence, on a motion for summary judgment the Court must determine whether a jury could reasonably find that the plaintiff's factual contentions are true by a preponderance of the evidence. *See id.* at 252–53.

Finally, if the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the movant is entitled to summary judgment. *Celotex*, 477 U.S. at 323. The Court must construe Rule 56 with due regard not only for the rights of those "asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury," but also for the rights of those "opposing such claims and

defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis." *Id.* at 327.

DISCUSSION

The ADA states, "[n]o covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). Although not entirely clear from the Complaint, it appears Plaintiff pursues two theories of discrimination under the ADA: first, that he was terminated because of his disability; and second, that Defendant failed to offer him the reasonable accommodation he requested.[1] (*See* ECF No. 1 at PageID 4–5.) The Court addresses each theory in turn below.

A. Discrimination Claim

In the absence of direct evidence of discrimination, the burden shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), is used to evaluate workplace discrimination claims. *Thompson v. Fresh Products, LLC*, 985 F.3d 509, 522 (6th Cir. 2021). Under this framework, the plaintiff must first establish a prima facie case of discrimination, which

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[1] Plaintiff's Complaint also alleges that Defendant's conduct "constitutes wrongful termination in violation of the laws and public policy of the State of Tennessee" and a "violation of the Common Law." (ECF No. 1 at PageID 5.) In its Memo, Defendant specifically references and notes that the Tennessee Disability Act ("TDA"), Tenn. Code Ann. § 8-50-103, and ADA are generally analogous with respect to their prohibition on discrimination, but that the TDA does not require employers offer a reasonable accommodation. Plaintiff's response does not raise any arguments specific to the TDA, or any other Tennessee law, but instead limits his arguments to the ADA. Because Plaintiff has chosen to limit himself to arguments under the ADA, the Court will not include any separate analysis of potential TDA-related issues or other claims under Tennessee law. Additionally, as to any TDA claims, such claims are analyzed under the same principles as those utilized for the ADA. *See Cardenas-Meade v. Pfizer, Inc.*, 510 F. App'x 367, 369 n.2 (6th Cir. 2013).

requires him to show that: "(1) he is a member of a protected group, (2) he was subject to an adverse employment decision, (3) he was qualified for the position, and (4) he was replaced by a person outside of the protected class." *Id.* (quoting *Carter v. Univ. of Toledo*, 349 F.3d 269, 273 (6th Cir. 2003)).

Once the plaintiff establishes a prima facie case of discrimination, the burden shifts to the employer to provide a legitimate, non-discriminatory reason for the adverse action. *Id.* (citing *Cooley v. Carmike Cinemas, Inc.*, 25 F.3d 1325, 1329 (6th Cir. 1994)). If the employer meets its burden, the burden shifts back to the plaintiff to establish that the proffered reason was merely pretext for unlawful discrimination. *Id.* To establish pretext, a plaintiff may show that the defendant's reason "(1) has no basis in fact, (2) did not actually motivate the defendant's challenged conduct, or (3) was insufficient to warrant the challenged conduct." *Id.* (quoting *Carter*, 349 F.3d at 274).

At issue here is the third element of Plaintiff's prima facie case—whether he was qualified for the position. An individual is qualified for a position under the ADA if he or she can perform the essential functions of the position, with or without an accommodation. 42 U.S.C. § 12111(8); 29 C.F.R. § 1630.2(m). However, an individual is not qualified for a position "if he or she poses a 'direct threat' to the health or safety of others which cannot be eliminated by a reasonable accommodation." *Michael v. City of Troy Police Dept.*, 808 F.3d 304, 307 (6th Cir. 2015) (quoting *Mauro v. Borgess Med. Ctr.*, 137 F.3d 398, 402 (6th Cir. 1998)); 42 U.S.C. § 12111(3).

"To determine whether an individual poses a direct threat, an employer must undertake 'an individualized assessment of the individual's present ability to safely perform the essential functions of the job.'" *Siewertsen v. Worthington Indus., Inc.*, 783 F. App'x 563, 572 (6th Cir. 2019) (quoting 29 C.F.R. § 1630.2(r)). When determining if a direct threat exists, factors to be

considered include: "(1) [t]he duration of the risk; (2) [t]he nature and severity of the potential harm; (3) [t]he likelihood that the potential harm will occur; and (4) [t]he imminence of the potential harm." 29 C.F.R. § 1630.2(r). "Whether an employer properly determined that a person poses a direct threat, for purposes of the ADA, depends on 'the objective reasonableness of [the employer's] actions.'" *Michael*, 808 F.3d at 307 (quoting *Bragdon v. Abbott*, 524 U.S. 624, 650 (1998)). "An employer's determination that a person cannot safely perform his job functions is objectively reasonable when the employer relies upon a medical opinion that is itself objectively reasonable." *Id.* (citing *Holiday v. City of Chattanooga*, 206 F.3d 637, 645–46 (6th Cir. 2000) and *Darnell v. Thermafiber, Inc.*, 417 F.3d 657, 660 (7th Cir. 2005)).

Viewing the facts in the record and all inferences therefrom in the light most favorable to Plaintiff, this Court finds that Plaintiff has failed to produce sufficient probative evidence to satisfy the third element of his prima facie case. Plaintiff has submitted two conclusory, and arguably contradictory, one sentence letters from his physician, Dr. Farst. Defendant insists the letters support his claim, particularly the second letter, because he alleges that Dr. Farst drafted the second letter after a therapeutical simulation of Plaintiff's job duties. (ECF No. 17 at PageID 207.) However, nothing in Dr. Farst's letter references such simulation, and the simulation is not part of the record in this matter. Thus, this Court concludes that the record evidence herein is not sufficient to allow a jury to reasonably conclude that Plaintiff has satisfied the third element of his prima facie case.

The third element of Plaintiff's prima facie case is further undermined because he has not presented evidence from which a jury could reasonably find that he does not pose a "direct threat" to the health or safety of others. The circumstances here are a bit unusual in that Defendant never made a final decision as to whether Plaintiff could safely perform the functions of a Field Service

Technician II. Rather, Defendant was still attempting to obtain the information necessary to make this determination when Plaintiff ceased responding to its inquiries. Although arguably not directly applicable because no decision had been made, the "objective reasonableness" standard used to evaluate an employer's determination that a person poses a direct threat is helpful in evaluating Defendant's actions.

It is undisputed that due to his Compartment Syndrome, Plaintiff suffers periodic numbness in his leg that affects his balance and can cause him to fall. It is also undisputed that Plaintiff is unable to predict when these episodes might occur, and that on at least one occasion, Plaintiff blacked out during one of these episodes. And it is undisputed that Plaintiff's job required him to perform tasks where he had to climb a ladder and perform work while perched on a ladder. Given these facts, Defendant's concern about whether Plaintiff could safely perform his job was objectively reasonable.

Further, Defendant's request for more information regarding Plaintiff's condition and his ability to safely perform his job functions was objectively reasonable. Defendant was required to make an "individualized assessment" regarding Plaintiff's ability to safely perform the essential functions of his job. To do so, Defendant had to rely on a medical opinion that was itself objectively reasonable. Nothing in the letters from Dr. Farst indicates that he wrote the letters upon an individualized assessment of Plaintiff's medical condition and its effect on his ability to safely perform his job requirements. If Defendant had presented similar letters to substantiate a determination that Plaintiff in fact posed a direct threat, Defendant's reliance on such letters would not have been objectively reasonable. *See Holiday*, 206 F.3d at 646. So, too, it seems to this Court, that the inverse is true: a decision by Defendant that Plaintiff did not pose a direct threat

based on Dr. Farst's perfunctory letters would not have been objectively reasonable in these circumstances.

Accordingly, because Plaintiff has failed to present sufficient probative evidence to support a prima facie case of discrimination, Defendant is entitled to summary judgment on this claim.

B. Failure to Accommodate Claim

An employer's failure to grant a reasonable accommodation to a disabled employee falls under the ADA's definition of discrimination. *Kleiber v. Honda of Am. Mfg., Inc.*, 485 F.3d 862, 868 (6th Cir. 2007) (quoting 42 U.S.C. § 12112(b)(5)(A)). Unlike a disability discrimination claim premised on wrongful termination "because of disability," the *McDonnell Douglas* burden-shifting framework does not apply to a failure to accommodate theory. *Kleiber*, 485 F.3d at 868 (explaining that "claims premised upon an employer's failure to offer a reasonable accommodation necessarily involve direct evidence (the failure to accommodate) of discrimination" and "consequently are suitable for analysis under the direct-evidence framework"); *see also Brumley v. United Parcel Serv., Inc.*, 909 F.3d 834, 839 (6th Cir. 2018) ("But ADA discrimination 'claims premised upon an employer's failure to offer a reasonable accommodation necessarily involve direct evidence (the failure to accommodate) of discrimination'; the familiar *McDonnell-Douglas* burden-shifting framework . . . therefore does not apply.") (quoting *Kleiber*, 485 F.3d at 868–69).

To establish a prima facie case of an employer's failure to accommodate, Plaintiff must prove that (1) he is disabled, (2) he is otherwise qualified for the position, with or without reasonable accommodation, (3) his employer knew or had reason to know about his disability, (4) he requested an accommodation, and (5) the employer failed to provide the necessary accommodation. *Melange v. City of Ctr. Line*, 482 F. App'x 81, 84 (6th Cir. 2012). A plaintiff must also propose a reasonable accommodation to succeed. *Walsh v. United Parcel Serv.*, 201 F.3d

718, 725–26 (6th Cir. 2000) ("The burden of establishing that the proposed accommodation is reasonable remains with the plaintiff, regardless of whether plaintiff has direct or indirect evidence in support of his or her ADA claim.").

When an employer receives a request for an accommodation, "the employee and employer must engage in 'an informal, interactive process' to negotiate an accommodation that allows the disabled employee to work despite his limitations." *Tchankpa v. Ascena Retail Grp., Inc.*, 951 F.3d 805, 812 (6th Cir. 2020) (citing *Banks v. Bosch Rexroth Corp.*, 610 F. App'x 519, 529 (6th Cir. 2015)); 29 C.F.R. § 1630.0(o)(3). In the Sixth Circuit, the informal, interactive process is mandatory. *Lafata v. Church of Christ Home for the Aged*, 325 F. App'x 416, 422 (6th Cir. 2009) (citing *Nance v. Goodyear Tire & Rubber Co.*, 527 F.3d 539, 556 (6th Cir. 2008)); *Kleiber*, 485 F.3d at 871. "When a party obstructs the process or otherwise fails to participate in good faith, 'courts should attempt to isolate the cause of the breakdown and then assign responsibility.'" *Kleiber*, 485 F.3d at 871 (quoting *Bultemeyer v. Fort Wayne Cmty. Sch.*, 100 F.3d 1281, 1285 (7th Cir. 1996)). If the employer fails to participate in good faith, it faces liability under the ADA if a reasonable accommodation would have been possible. *Lafata*, 325 F. App'x at 422.

When evaluating a request for accommodation, the employer must consider "(1) the particular job involved, its purpose, and its essential functions; (2) the employee's limitations and how those limitations can be overcome; (3) the effectiveness an accommodation would have in enabling the individual to perform the job; and (4) the preference of the employee." *Tchankpa*, 951 F.3d at 812 (quoting *Keever v. City of Middletown*, 145 F.3d 809, 812 (6th Cir. 1998)). During this informal interactive process, an employer may require documentation supporting an employee's requested accommodation. *Id.* (citing *Kennedy v. Superior Printing Co.*, 215 F.3d

650, 656 (6th Cir. 2000)). And "an employee's failure to provide requested medical documentation supporting an accommodation precludes a failure to accommodate claim." *Id.*

Here, the record shows that Defendant attempted to engage in the informal, interactive process with Plaintiff. The process began when Plaintiff first informed Mr. Whitaker that he needed to use a cane for balance while working. As allowed by the ADA, Defendant requested that Plaintiff provide medical documentation to support his request to use a cane. In response, Plaintiff submitted a letter from his physician, Dr. Farst, that stated only, "It is medically indicated for [Plaintiff] to use [a] cane to assist with his chronic medical condition." (ECF No. 15-1 at PageID 125; ECF No. 17-3 at PageID 280–81.) This letter from Dr. Farst makes no mention of any specific limitations on Plaintiff, how a cane would help Plaintiff overcome those limitations, or Plaintiff's ability to safely perform his job responsibilities with the aid of a cane. Defendant believed it needed more information to assess Plaintiff's request to use a cane, so Defendant continued to try to engage in the interactive process with Plaintiff by asking him to take a copy of his job description to his physician so that Plaintiff's physician could determine whether Plaintiff was fit to perform the essential functions of the Field Service Technician II position.

Plaintiff then submitted another letter from Dr. Farst that stated, "[Plaintiff] may return to work without any physical restriction related to his job requirements." (ECF No. 17-3 at PageID 281; ECF No. 15-1 at PageID 130.) Noticeably absent in this second letter from Dr. Farst is any mention of a cane. Given that this second letter from Dr. Farst suffered from the same (and perhaps additional) deficiencies as the first letter, Defendant continued to try to engage in the interactive process by sending Plaintiff a letter that contained specific questions for Dr. Farst to answer, and even provided blank lines underneath the questions where a response could be given. Plaintiff

never returned this paperwork to Defendant, or provided any other documentation to Defendant, despite being given three months to do so.

In sum, the record shows that Defendant gave Plaintiff several chances to obtain and provide Defendant with appropriate medical documentation. Defendant never indicated that it would deny Plaintiff's request to work with a cane, but it merely wished to assess whether Plaintiff could perform his essential job functions, with or without a cane, and whether allowing Plaintiff to work with a cane was safe for Plaintiff and those around him. Defendant attempted to engage in the informal interactive process with Plaintiff regarding his request to use a cane, but this process broke down when Plaintiff failed to provide requested medical documentation.

Plaintiff also argues in his response that Defendant is liable for a failure to accommodate because Defendant did not engage in "job restructuring" as a form of reasonable accommodation. However, Plaintiff has not cited anything in the record satisfying the fourth element of his prima facie case—that *he* requested job restructuring as an accommodation. *Melange*, 482 F. App'x at 84; *see also Lockard v. General Motors Corp.*, 52 F. App'x 782, 786 (6th Cir. 2002) (finding district court correctly concluded that summary judgment was appropriate on failure to accommodate claim because plaintiff failed to present evidence that she requested an accommodation); *Jakubowski v. Christ Hosp., Inc.*, 627 F.3d 195, 202 (6th Cir. 2010) ("[T]he employee is saddled with the burden of proposing an accommodation and proving that it is reasonable.").

Accordingly, Defendant is entitled to summary judgment on Plaintiff's failure to accommodate claim.

CONCLUSION

For the reasons set forth above, Defendant Mapco Express Inc.'s Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED, this 2nd day of July 2021.

s/ Mark S. Norris
MARK S. NORRIS
UNITED STATES DISTRICT JUDGE