

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WALTER TUVELL,
Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES, INC.
Defendant.

C.A. No. 13-CV-11292-DJC

**MOTION FOR SUMMARY JUDGMENT DEFENDANT INTERNATIONAL BUSINESS
MACHINES, INC.**

Defendant, International Business Machines, Inc. (“IBM”), hereby moves pursuant to Fed. R. Civ. P. 56 for summary judgment on all counts of the First Amended Complaint (“FAC”) in this action. As grounds for its Motion, IBM states that there are no material facts in dispute and that Plaintiff, Walter Tuvell, cannot state a claim as a matter of law. In particular, Plaintiff cannot state a claim for disability discrimination under either M.G.L. c. 151B or the Americans With Disabilities Act because Plaintiff was not a qualified handicapped individual, and in any event, IBM engaged in the interactive process with him and provided him with a reasonable accommodation. Moreover, there is no evidence that Plaintiff was subject to discrimination or retaliation on the basis of his alleged disability, race, gender, age, or “any combination thereof” during his tenure with IBM.

Accordingly, summary judgment should enter in IBM’s favor on all Counts of Plaintiff’s First Amended Complaint as a matter of law. In support hereof, IBM submits a Local Rule 56.1 Statement of Facts as to Which There is No Genuine Issue To Be Tried, a supporting Memorandum of Law, and the Affidavit of Joan Ackerstein.

Respectfully submitted,
INTERNATIONAL BUSINESS
MACHINES, INC.,

By its attorneys,

/s/ Joan Ackerstein
Joan Ackerstein (BBO No. 348220)
Matthew A. Porter (BBO No. 630625)
JACKSON LEWIS P.C.
75 Park Plaza, 4th Floor
Boston, MA 02116
(617) 367-0025
(617) 367-2155 fax
ackerstj@jacksonlewis.com
porterm@jacksonlewis.com

LOCAL RULE 7.1(A)(2) CERTIFICATION

IBM certifies that its counsel conferred with Plaintiff's counsel about this Motion on December 10, 2014, and Plaintiff's counsel indicated that Plaintiff intends to oppose the Motion.

/s/ Matthew A. Porter
Matthew A. Porter

CERTIFICATE OF SERVICE

This is to certify that on December 15, 2014, a copy of the foregoing document was served upon all parties of record via the ECF system.

/s/ Matthew A. Porter
Jackson Lewis P.C.