

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

DAVID STEBBINS

PLAINTIFF

v.

Civil No. 10-3086

WAL-MART STORES, INC.

DEFENDANT

ORDER

Currently before the Court are Defendant's Motion for Summary Judgment and supporting documents (docs. 55-57), Plaintiff's Response (doc. 62) and Defendant's Reply (doc. 63). Also before the Court are Plaintiff's Motion for Summary Judgment and supporting documents (docs. 73-75) and Defendant's Response and supporting documents (docs. 77-79).

Defendant seeks summary judgment on Plaintiff's sole remaining claim pursuant to the Rehabilitation Act, 29 U.S.C. § 794, as there are no genuine issues of material fact that Defendant is not a covered entity under the Act.

In order for a corporation to be covered under the Act, Federal financial assistance must be extended to the corporation as a whole or to a corporation that is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation. 29 U.S.C. § 794(b)(3). Defendant is a retail company in the business of

selling products for profits, not to provide social services. (Doc. 55-1). Furthermore, Defendant does not receive Federal financial assistance as a whole. *Id.*

Plaintiff's response contends the declaration of Carol Johnston, Senior Vice President for Wal-Mart, filed in support of Defendant's Motion is inadmissible and that a genuine fact issue exists as to whether Defendant receives Federal financial assistance. However, Plaintiff offers no proof to rebut Ms. Johnston's affidavit, and failed to meet his burden. See *Young v. Gastro-Intestinal Ctr.*, 361 Ark. 209, ___ S.W.3d ___ (2005). .

After reviewing the pleadings and the evidence on file in the light most favorable to the nonmoving party as required, the court finds that there are no issues of fact which would preclude summary judgment. Therefore, Defendant's Motion is GRANTED and Plaintiff's sole remaining claim is DISMISSED WITH PREJUDICE. Plaintiff's Motion for Summary Judgment is DENIED. Plaintiff contends Defendant failed to respond to certain requests for admissions that, if admitted, would defeat Defendant's Motion for Summary Judgment (doc. 73). Plaintiff never filed a motion to compel and offers no proof these were ever served upon Defendant, and the Court, therefore, cannot deem them admitted.

IT IS SO ORDERED this 7th day of September 2011.

/s/ Robert T. Dawson
Honorable Robert T. Dawson
United States District Judge