

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, PAULA M. HALEY,)
EXECUTIVE DIRECTOR, *ex rel.*)
MAKAEN SERR,)
Complainant,)
v.)
I.C.E. SRVICES, INC,)
Respondent.)

ASCHR No. J-11-331

ACCUSATION

Paula M. Haley, Executive Director of the Alaska State Commission for Human Rights, *ex rel.* Makaen Serr, hereby alleges the following against Respondent I.C.E. Services, Inc.:

1. Respondent I.C.E. Services, Inc., is an Alaska corporation that provides catering, hotel, and other facility support services in and around Deadhorse and Prudhoe Bay, Alaska.

2. Makaen Serr was hired by Respondent as a housekeeper on June 27, 2011. At the time she was hired, Ms. Serr was required to complete a health questionnaire in which she revealed to Respondent that she had broken her right leg in 2006 and had two surgeries to correct the problem. Respondent also required Ms. Serr to undergo a pre-employment physical examination and a "functional capacity evaluation." As a result of the examination and evaluation Ms. Serr was determined to be qualified to perform her job with no restrictions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Ms. Serr transferred to a dishwasher position with Respondent in early October 2011. Ms. Serr was thought of highly by her supervisors and her performance exceeded all of Respondent’s expectations for her position.

4. On October 28, 2011, while working as a dishwasher at Respondent’s Prudhoe Bay facility, Ms. Serr developed a rash on her arms and sought medical care at the facility. While she was receiving treatment for the rash, Ms. Serr mentioned that her feet had swollen because she had been wearing the wrong shoes.

5. Respondent sent Ms. Serr back to Anchorage to obtain the proper footwear. Respondent also required that Ms. Serr obtain a medical release before she could return to Prudhoe Bay.

6. Ms. Serr was seen at Orthopedic Physicians in Anchorage and was provided with a full release to work with no restrictions that same day.

7. Ms. Serr returned to work with proper footwear and successfully completed her rotation, working until November 7, 2011.

8. After her shift was completed on November 7, 2011, Ms. Serr met with Jane Miller, Respondent’s Director of Administration. Ms. Miller terminated Ms. Serr’s employment during the meeting. Ms. Miller indicated to Ms. Serr that despite Ms. Serr’s full work release, she did not think Ms. Serr could successfully perform her job because of her prior injury.

9. Ms. Serr asked Respondent to reconsider its decision, and asked to return to her housekeeping position if she would not be allowed to work as a dishwasher.

1 Respondent refused to return Ms. Serr to her housekeeping position because it believed
2 Ms. Serr could not successfully perform the housekeeping job because of her prior
3 injuries.
4

5 **FIRST CAUSE OF ACTION**
6 **TERMINATION BECAUSE OF DISABILITY**
7 **A VIOLATION OF AS 18.80.220(a)**

8 10. Paragraphs 1-9 above are realleged and incorporated herein.

9 11. Makaen Serr was qualified to perform all of the functions of her position
10 with Respondent I.C.E. Services, Inc.

11 12. Despite the fact that Ms. Serr was qualified to perform all of the functions
12 of her job, Respondent did not believe that Ms. Serr could safely perform those duties.
13

14 13. Because Respondent did not believe that Ms. Serr could safely perform the
15 duties of her position, it terminated Ms. Serr's employment.
16

17 14. Respondent treated Ms. Serr as a person with a disability when it
18 terminated Ms. Serr's employment.

19 15. Respondent's termination of Ms. Serr's employment constitutes a violation
20 of AS 18.80.220(a).
21

22 16. Because of Respondent's termination of Ms. Serr's employment, Ms. Serr
23 has suffered harm in the form of lost wages and benefits.
24

25 **PRAYER FOR RELIEF**

26 Wherefore the Executive Director asks for the following relief:
27
28

- 1 1. That the Commission issue an order declaring that Respondent I.C.E.
2 Services, Inc., violated AS 18.80.220(a) by terminating Makaen Serr's employment because
3 of disability.
4
- 5 2. That the Commission order Respondent to adopt and disseminate a policy
6 of nondiscrimination under the Alaska Human Rights Law.
7
- 8 3. That the Commission order Respondent to obtain training conducted by a
9 neutral, third-party trainer, of at least six hours in length for its managers, supervisors, and
10 human resources personnel on the provisions of the Alaska Human Rights Law that prohibit
11 discrimination in employment, with an emphasis on the prohibition against discrimination
12 based on disability.
13
- 14 4. That the Commission order Respondent to eliminate from Ms. Serr's
15 personnel records all documents and entries relating to the facts and circumstances that led
16 to Ms. Serr's filing of the above-captioned charge and any of the related events occurring
17 thereafter.
18
- 19 5. That the Commission order Respondent to refrain from penalizing Ms. Serr in
20 any way in future considerations for employment and, if rehired, for transfers, promotions,
21 or upgrading because Ms. Serr complained about discrimination or because she filed a
22 complaint with the Commission.
23
- 24 6. That the Commission order Respondent to refrain from advising or informing
25 any other employer or potential employer of Ms. Serr of the facts or circumstances involved
26 in this case.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. That the Commission order Respondent to pay back wages, including any lost benefits, to Ms. Serr plus interest at the applicable legal rate, the exact amount of which will be proven at hearing.

8. That the Commission order Respondent to immediately reinstate Ms. Serr, with the appropriate wages and benefits, to the position that Ms. Serr would have occupied at the time of the Commission's order had her employment not been terminated.

9. That the Commission order Respondent to pay front pay, including benefits, to Ms. Serr, from the date of the Commission's order to the date Respondent reinstates Ms. Serr, the exact amount of which will be proven at hearing.

Dated this 22nd day of September 2014 at Anchorage, Alaska.

ALASKA STATE COMMISSION
FOR HUMAN RIGHTS
Signature Redacted

Stephen Koteff
Human Rights Advocate
Alaska Bar No. 9407070