

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.*)
ANDREA WESTFALL,)
)
Complainant,)
)
v.)
)
I.C.E. SERVICES, INC.,)
)
Respondent.)
_____)

ASCHR No. J-13-123

ACCUSATION

Paula M. Haley, Executive Director of the Alaska State Commission for Human Rights, *ex rel.* Andrea Westfall, 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. Andrea Westfall applied for employment with Respondent as a lead cook in March 2013. Ms. Westfall was well qualified for the position, having worked as a chef and in professional kitchen management positions for more than twenty years.

3. In 1993, Ms. Westfall suffered an on-the-job injury when she slipped in a kitchen while carrying a heavy pot of water. The slip caused damage to her spine and Ms. Westfall has suffered from degenerative disk disease since her injury.

4. As a result of her impairment, Ms. Westfall suffers from chronic,

1 sometimes debilitating pain. Ms. Westfall takes medication to manage the pain. With
2 the medication Ms. Westfall is able to perform most normal daily tasks; without the
3 medication Ms. Westfall would be unable to perform a vast array of major life activities
4 because of the pain caused by her back impairment.
5

6 5. After she submitted her employment application to Respondent, Ms.
7 Westfall was Respondent's preferred candidate for the job. Before being offered a
8 position with Respondent, however, Ms. Westfall was required to attend an interview
9 with Respondent's human resources manager, Jane Miller, on or about March 20, 2013.
10

11 6. Prior to the interview with Ms. Miller, Ms. Westfall was contacted by
12 telephone by Sheilagh Menck, a human resources clerk employed by Respondent, who
13 questioned Ms. Westfall about her physical condition and about any prior injuries that
14 she may have had.
15

16 7. In response to these questions, Ms. Westfall told Ms. Menck during this
17 phone call about her prior work related injury in 1993 that resulted in long term
18 degenerative disk disease.
19

20 8. During the interview with Ms. Miller, Ms. Miller questioned Ms. Westfall
21 about her prior injury and about medications she was taking. Ms. Westfall informed Ms.
22 Miller that she was taking medication to manage the pain caused by her degenerative
23 disk disease.
24

25 9. Upon learning that Ms. Westfall was taking medications for her
26 impairment, Ms. Miller immediately terminated the interview and refused to consider
27
28

1 Ms. Westfall further for the lead cook position. Respondent refused to hire Ms. Westfall
2 for the lead cook position or for any other position.

3
4 10. Respondent has a practice of routinely screening applicants for
5 employment to learn of their physical limitations and whether they are taking
6 medication. Respondent's practice includes routinely having a clerical or administrative
7 employee call applicants by telephone before they are interviewed to solicit this
8 information.

9
10 11. Respondent also has a practice of routinely soliciting information from
11 applicants during job interviews relating to their physical or mental impairments and any
12 medications they may be taking.

13
14 12. Respondent also has a practice of requiring applicants for employment to
15 submit to physical examinations before tendering any job offers to such applicants.

16
17 13. Respondent also has a practice of screening out and refusing to hire
18 applicants for employment who reveal the existence of certain physical or mental
19 impairments and who reveal that they take certain medications.

20
21 14. Respondent also has a practice of refusing to consider providing
22 reasonable accommodations to persons with disabilities who may be applicants for
23 employment or employees.

24
25 **FIRST CAUSE OF ACTION**
26 **FAILURE TO HIRE BECAUSE OF DISABILITY**
27 **A VIOLATION OF AS 18.80.220(a)**

28 15. Paragraphs 1-14 above are realleged and incorporated herein.

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

16. Andrea Westfall has an impairment that substantially limits one or more of her major life activities and is a person with a disability as that term is defined in AS 18.80.300(14).

17. Ms. Westfall applied for the position of lead cook with Respondent.

18. Ms. Westfall was qualified for the position of lead cook, with or without a reasonable accommodation.

19. Despite the fact that Ms. Westfall was qualified to perform all of the functions of the lead cook job, Respondent refused to hire her for the sole reason that Ms. Westfall takes medication to control the pain caused by her impairment.

20. Respondent's refusal to hire Ms. Westfall constitutes a violation of AS 18.80.220(a).

21. Because of Respondent's refusal to hire Ms. Westfall, Ms. Westfall has suffered harm in the form of lost wages and benefits.

**SECOND CAUSE OF ACTION
DISCRIMINATION IN EMPLOYMENT BECAUSE OF DISABILITY
A SYSTEMIC VIOLATION OF AS 18.80.220(a)**

22. Paragraphs 1-14 above are realleged and incorporated herein.

23. Respondent subjected Andrea Westfall to disability-related questioning while Ms. Westfall was an applicant for employment and without first tendering to Ms. Westfall a bona fide offer of employment.

24. Respondent has a practice of routinely subjecting applicants for employment to disability-related questioning without first tendering to such applicants

1 screening out and refusing to hire applicants for employment who have certain physical or
2 mental impairments and who reveal that they take certain medications.

3
4 4. That the Commission issue an order declaring that Respondent I.C.E.
5 Services, Inc., has violated AS 18.80.220(a) by engaging in a systemic practice of refusing
6 to consider providing reasonable accommodations to employees with disabilities and
7 applicants for employment with disabilities.

8
9 5. That the Commission order Respondent to immediately refrain from and
10 abandon its practice or practices of inquiring of or seeking from any applicant for
11 employment information related to or potentially related to a disability.

12
13 6. That the Commission order Respondent to immediately refrain from and
14 abandon its practice or practices of refusing to hire persons with certain physical or
15 mental impairments or who reveal that they take certain medications.

16
17 7. That the Commission order Respondent to immediately refrain from and
18 abandon its practice or practices of refusing to consider providing reasonable
19 accommodations to employees with disabilities and applicants for employment with
20 disabilities.

21
22 8. That the Commission order Respondent to adopt and disseminate to all
23 employees a policy of nondiscrimination under the Alaska Human Rights Law, including
24 a policy for providing reasonable accommodations to employees and applicants for
25 employment.

26
27 9. That the Commission order Respondent to obtain, within thirty days of the
28

1 Commission's order and annually for two consecutive years thereafter, training conducted
2 by a neutral, third-party trainer, of at least eight hours in length, for its managers,
3 supervisors, and human resources personnel on the provisions of the Alaska Human Rights
4 Law that prohibit discrimination in employment, with an emphasis on an employer's
5 obligation not to discriminate against persons with disabilities and to provide reasonable
6 accommodations to persons with disabilities.
7
8

9 10. That the Commission order Respondent to obtain, within thirty days of the
10 Commission's order and annually for two consecutive years thereafter, training conducted
11 by a neutral, third-party trainer, of at least four hours in length, for its employees on the
12 provisions of the Alaska Human Rights Law that prohibit discrimination in employment,
13 with an emphasis on an employee's right to be free from discrimination based on disability
14 and on employees' rights to reasonable accommodations for disabilities.
15
16

17 11. That the Commission's order specify that the aforementioned policy,
18 trainers, and training curricula be subject to approval by the Executive Director.
19

20 12. That the Commission order Respondent to eliminate from Ms. Westfall's
21 personnel records all documents and entries relating to the facts and circumstances that led
22 to Ms. Westfall's filing of the above-captioned charge and any of the related events
23 occurring thereafter.
24

25 13. That the Commission order Respondent to refrain from penalizing Ms.
26 Westfall in any way in future considerations for employment and, if hired, for transfers,
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

promotions, or upgrading because Ms. Westfall complained about discrimination or because she filed a complaint with the Commission.

14. That the Commission order Respondent to refrain from advising or informing any other employer or potential employer of Ms. Westfall of the facts or circumstances involved in this case.

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

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

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

Dated this 2nd day of February 2015 at Anchorage, Alaska.

ALASKA STATE COMMISSION
FOR HUMAN RIGHTS

Signature redacted

Stephen Koteff
Human Rights Advocate
Alaska Bar No. 9407070