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BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, PAULA M.)
HALEY, EXECUTIVE DIRECTOR,)
ex rel. CHRISTOPHER R. MILLER,)

Complainant,

v.

ASCHR No. J-07-300

TOMMY L. KING,
d/b/a THE WELDING SHOP,

Respondent.

ACCUSATION

Complainant, Paula M. Haley, Executive Director of the Alaska State Commission for Human Rights, *ex rel.* Christopher R. Miller, hereby alleges the following against respondent Tommy L. King, d/b/a The Welding Shop (“The Welding Shop”).

1. Respondent Tommy L. King is, and has been for all times relevant to the claims herein, the sole proprietor of The Welding Shop, which is located at 2434 Steese Highway in Fairbanks, Alaska.

2. The Welding Shop employed John Birdwell as a shop foreman at the time the events alleged in paragraphs 5-10 of this Accusation occurred.

3. The Welding Shop hired Christopher R. Miller on July 5, 2006, and terminated his employment on October 1, 2007.

4. As a child, Mr. Miller suffered a head injury that resulted in a permanent

1 impairment of his speech and eyesight. Mr. Miller's speech impairment causes him to
2 have an obvious, abnormally slow speech pattern.

3
4 5. During Mr. Miller's employment with Respondent, Mr. King and Mr.
5 Birdwell subjected Mr. Miller to degrading comments and insulting treatment because of
6 his impairment that constitute harassment. On at least one occasion, Mr. King referred to
7 Mr. Miller as a "small child" in Mr. Miller's presence.

8
9 6. Mr. Birdwell's degrading comments and insulting treatment included that
10 he screamed obscenities at Mr. Miller and that he told Mr. Miller that he was "stupid," a
11 "moron," and a "retard." Mr. Birdwell often referred to Mr. Miller as a "small child" in
12 Mr. Miller's presence. Mr. Birdwell often prefaced his name calling with profanity.

13
14 7. The treatment described in paragraph 6 above occurred approximately
15 every working day, and often several times each working day, and usually in the
16 presence of other employees.

17
18 8. During Mr. Miller's tenure with The Welding Shop, Mr. Miller
19 complained on at least four separate occasions to Mr. King about Mr. Birdwell's
20 treatment of him. Despite his complaints, Mr. Birdwell's behavior did not change and the
21 harassing treatment continued.

22
23 9. On October 1, 2007, Mr. Birdwell again called Mr. Miller derogatory
24 names while assigning Mr. Miller a task. Mr. Miller responded by telling Mr. Birdwell to
25 use his real name and to stop calling him derogatory names.

26
27 10. On October 1, 2007, and immediately following the incident described in
28

1 paragraph 9 above, Mr. Miller again complained to Mr. King about Mr. Birdwell's
2 conduct. Immediately following Mr. Miller's complaint, Mr. King terminated Mr.
3 Miller's employment with The Welding Shop.
4

5 **FIRST CAUSE OF ACTION:**
6 **DISCRIMINATION BECAUSE OF DISABILITY,**
7 **A VIOLATION OF AS 18.80.220(a)(1)**

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

9 12. Christopher Miller has a physical or mental impairment as that term is
10 defined in AS 18.80.300(15).
11

12 13. Respondent treated Mr. Miller as having a disability, as that term is
13 defined in AS 18.80.300(14)(C), because of Mr. Miller's impairment.
14

15 14. Respondent's treatment of Mr. Miller was so severe and pervasive as to
16 alter the terms or conditions of Mr. Miller's employment and create a hostile work
17 environment.
18

19 15. Respondent's treatment of Mr. Miller, as described herein, violates AS
20 18.80.220(a).
21

22 **SECOND CAUSE OF ACTION:**
23 **RETALIATION FOR COMPLAINING ABOUT**
24 **DISCRIMINATION, A VIOLATION OF AS 18.80.220(a)(4)**

25 16. Paragraphs 1-10 above are realleged and incorporated herein.

26 17. On October 1, 2007, Christopher Miller complained to Respondent's
27 owner, Tommy King, about being discriminated against by John Birdwell, Respondent's
28 shop foreman.

ACCUSATION - Page 3 of 7

ASCHR, Paula M. Haley, Executive Director, ex rel. Christopher R. Miller v. Tommy L. King, d/b/a The Welding Shop, ASCHR No. J-07-300

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18. Mr. Miller's complaint to Mr. King constituted opposition to practices forbidden by AS 18.80.200.

19. Because Mr. Miller complained about discrimination, on October 1, 2007, Respondent terminated Mr. Miller's employment.

20. Respondent's termination of Mr. Miller's employment constitutes retaliation for opposing discrimination and is a violation of AS 18.80.220(a)(4).

21. Because of Respondent's violation of AS 18.80.220(a)(4), Complainant has suffered damages in the form of lost wages.

PRAYER FOR RELIEF

Wherefore the Executive Director asks for the following relief:

1. That the Commission issue an order declaring that Respondent violated AS 18.80.220(a)(1) by subjecting Christopher R. Miller to disability-based harassment and a hostile work environment.

2. That the Commission issue an order declaring that Respondent violated AS 18.80.220(a)(4) by terminating Mr. Miller's employment in retaliation for complaining about discrimination.

3. That the Commission order Respondent to adopt and disseminate a policy of nondiscrimination that incorporates the Alaska Human Rights Law and that includes, but is not limited to, a policy prohibiting retaliation and discrimination because of disability, and that Respondent submit the proposed policy to Commission staff for approval prior to dissemination.

1 4. That the Commission order Respondent to provide training to its owners,
2 managers, and supervisors in the laws prohibiting discrimination in employment. The
3 order should specify that the training be at least three hours in length and be conducted
4 in person by a trainer approved by the Commission.
5

6 5. That the Commission order Respondent to eliminate from Mr. Miller's
7 personnel records all documents and entries relating to the facts and circumstances that
8 led to Mr. Miller's filing of the above-captioned charge of discrimination and the related
9 events occurring thereafter.
10

11 6. That the Commission order Respondent to provide appropriate back pay,
12 plus interest, to Mr. Miller for the period beginning with the date of his discharge,
13 October 1, 2007, and ending with the date the Commission approves this agreement.
14

15 7. That the Commission order Respondent to reinstate Mr. Miller to his
16 former position, or, in the alternative, to award Mr. Miller front pay to the maximum
17 extent allowed by law. The reinstatement order should state that Mr. Miller will be
18 assigned seniority based on a date of hire of July 5, 2006, and will receive the appropriate
19 wages, insurance plans, and other benefits and privileges that would accrue to an
20 employee with such seniority.
21

22 8. That the Commission order Respondent to refrain from retaliating against
23 Mr. Miller in future considerations for employment and, after rehire, in transfers,
24 promotions, upgrading, or in any other employment benefit.
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Respectfully submitted this 15th day of April 2010.

ALASKA STATE COMMISSION
FOR HUMAN RIGHTS

By: _____ /s/

Lauri J Owen
Human Rights Attorney
Alaska Bar No. 0705032