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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.*)
DORETTA WHEELER,)

Complainant,)

v.)

ASCHR No. J-12-018

STATE OF ALASKA, DEPARTMENT OF)
HEALTH AND SOCIAL SERVICES,)
DIVISION OF ALASKA PIONEER HOMES,)

Respondent.)

ACCUSATION

Paula M. Haley, Executive Director of the Alaska State Commission for Human Rights, *ex rel.* Doretta Wheeler, hereby alleges the following against the State of Alaska, Department of Health and Social Services, Division of Alaska Pioneer Homes:

1. The Division of Alaska Pioneer Homes (“the Division”) is an agency of the State of Alaska that employs approximately 650 people to provide residential services and assisted living to Alaskan seniors.

2. The Division operates residential facilities for seniors in Anchorage, Fairbanks, Juneau, Ketchikan, and Sitka known as Pioneer Homes. The Division also operates a residential facility in Palmer known as the Alaska Veterans and Pioneers Home (hereinafter “the Palmer Pioneer Home”). The Palmer Pioneer Home has over 100 employees.

3. Doretta Wheeler was employed by the Division to work at the Palmer

1 Pioneer Home as a certified nurse aide (“CNA”) for eighteen years, from November
2 1993 to December 2011. As a CNA, Ms. Wheeler’s job duties included caring for
3
4 Palmer Pioneer Home residents by assisting them with personal hygiene and exercising,
5 administering medication and measuring vital signs, and providing comfort to residents
6 and reporting observations of residents to the nursing staff.
7

8 4. In December 2010, Ms. Wheeler underwent surgery to replace her left hip
9 with a prosthesis.

10 5. In August 2011, Ms. Wheeler injured her left hip. As a result of her
11 injury, Ms. Wheeler was placed on Family Medical Leave.
12

13 6. On September 16, 2011, Ms. Wheeler’s doctor determined that her injury
14 left her unable to squat, kneel, or flex her hip more than ninety degrees, and that she
15 could not lift more than 50 pounds. Ms. Wheeler’s doctor indicated that these
16 restrictions were permanent.
17

18 7. On October 26, 2011, Respondent indicated to Ms. Wheeler that it would
19 seek to reassign her to another position as part of its obligation to provide her with a
20 reasonable accommodation.
21

22 8. Respondent indicated in its October 26, 2011, letter that it would first seek
23 to reassign Ms. Wheeler to a vacant position in her current job classification for which
24 she was qualified within the Department of Health and Social Services (“the
25 Department”).
26

27 9. Respondent further indicated in its October 26, 2011, letter that, if no
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1 positions in Ms. Wheeler's current job classification were identified in the Department,
2 it would seek a vacancy in her current salary range or in an equivalent salary range in the
3 Department.
4

5 10. Respondent also stated in its October 26, 2011, letter that if, after all of the
6 Department-wide searches had been concluded and no job for Ms. Wheeler was found, it
7 would conduct a twenty-two working day job search statewide.
8

9 11. To assist it in its search, Respondent asked Ms. Wheeler to complete a
10 written "Reassignment Applicant Profile."
11

12 12. On November 11, 2011, Ms. Wheeler submitted her Reassignment
13 Applicant Profile to Respondent.
14

15 13. On November 14, 2011, Ms. Wheeler informed Respondent that she had
16 injured her hip again and would be having surgery the next day, on November 15, 2011.
17

18 14. Ms. Wheeler also informed Respondent that although her reinjury and
19 resulting surgery would make her temporarily unable to work she expected to be fully
20 recovered in a very short period of time.
21

22 15. Respondent did not wait to learn the outcome of Ms. Wheeler's surgery.
23 Respondent did not wait to learn whether Ms. Wheeler's surgery would make her
24 qualified for her CNA position or any other position with the State of Alaska. Instead,
25 Respondent immediately halted its search for available positions for Ms. Wheeler and
26 terminated her employment on the same day it heard from Ms. Wheeler, November 14,
27 2011.
28

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1 16. Ms. Wheeler underwent surgery to repair her prosthetic hip on November
2 15, 2011.

3
4 17. As the result of her surgery, Ms. Wheeler was fully recovered and was
5 released to work without any restrictions at all on November 23, 2011, only nine days
6 after her employment was terminated.

7
8 18. After obtaining her full work release, Ms. Wheeler sought re-employment
9 as a CNA at the Palmer Pioneer Home.

10 19. Ms. Wheeler applied for several open CNA positions. For one such
11 position, she submitted an application on December 15, 2011.

12
13 20. Ms. Wheeler was interviewed by Palmer Pioneer Home staff as a result of
14 her application.

15
16 21. At the time of her interview, Ms. Wheeler was fifty-eight years old and
17 had worked as a CNA for the Palmer Pioneer Home for eighteen years.

18 22. Respondent did not hire Ms. Wheeler for the position she applied for on
19 December 15, 2011, or for any other open CNA position for which she applied.

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21 23. Respondent filled the position for which Ms. Wheeler applied in
22 December 2011 with an applicant who was twenty-five years old and who had less than
23 two years of experience as a CNA.
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**FIRST CAUSE OF ACTION
DISCRIMINATION BECAUSE OF DISABILITY
FAILURE TO PROVIDE REASONABLE ACCOMMODATION
A VIOLATION OF AS 18.80.220(a)**

24. Paragraphs 1-23 above are realleged and incorporated herein.

25. Doretta Wheeler was qualified to perform all of the functions of her position with Respondent with an accommodation.

26. Ms. Wheeler requested a reasonable accommodation to perform her position, and it was otherwise obvious to Respondent that Ms. Wheeler needed an accommodation to perform her job.

27. Respondent failed to provide a reasonable accommodation to Ms. Wheeler and instead terminated her employment.

28. Respondent's failure to provide Ms. Wheeler with a reasonable accommodation and Respondent's termination of Ms. Wheeler's employment constitute a violation of AS 18.80.220(a).

29. As a result of Respondent's violation of AS 18.80.220(a), Ms. Wheeler has suffered harm in the form of lost wages and benefits.

**SECOND CAUSE OF ACTION
FAILURE TO HIRE BECAUSE OF AGE
A VIOLATION OF AS 18.80.220(a)**

30. Paragraphs 1-23 above are realleged and incorporated herein.

31. In December 2011 Doretta Wheeler applied for a position with Respondent as a certified nurse aide.

32. Ms. Wheeler was qualified for the position for which she applied.

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33. Respondent rejected Ms. Wheeler for the position.

34. Instead of hiring Ms. Wheeler, Respondent hired an applicant who is substantially younger than Ms. Wheeler and who is less qualified than Ms. Wheeler.

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

36. Because of Respondent's violation of AS 18.80.220(a), Ms. Wheeler has suffered harm in the form of lost wages and benefits.

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) by discriminating against Doretta Wheeler because of disability by refusing to provide Ms. Wheeler with a reasonable accommodation.
2. That the Commission issue an order declaring that Respondent violated AS 18.80.220(a) by refusing to hire Ms. Wheeler because of her age.
3. That the Commission order Respondent to adopt and disseminate a policy of nondiscrimination under the Alaska Human Rights Law.
4. That the Commission order Respondent to obtain training of at least six hours in length for its managers and supervisors on the provisions of the Alaska Human Rights Law that prohibit discrimination in employment, with an emphasis on the prohibition against age discrimination and against discrimination based on disability and the requirement to provide reasonable accommodations to persons with disabilities.

1 5. That the Commission order Respondent to obtain training of at least three
2 hours in length for its employees on the provisions of the Alaska Human Rights Law that
3 prohibit discrimination in employment.
4

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

10 7. That the Commission order Respondent to refrain from penalizing Ms.
11 Wheeler in any way in future considerations for employment and, if rehired, for transfers,
12 promotions, or upgrading because Ms. Wheeler filed a complaint with the Commission.
13

14 8. That the Commission order Respondent to refrain from advising or
15 informing any other employer or potential employer of Ms. Wheeler of the facts or
16 circumstances involved in this case.
17

18 9. That the Commission order Respondent to pay back wages, including any
19 lost benefits, to Ms. Wheeler plus interest at the applicable legal rate, the exact amount
20 of which will be proven at hearing.
21

22 10. That the Commission order Respondent to immediately reinstate Ms.
23 Wheeler to the position of certified nurse aide from which she was terminated on
24 November 14, 2011, with full benefits and seniority consistent with her original date of
25 hire in November 1993.
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11. That the Commission order Respondent to pay front pay to Ms. Wheeler until she is fully reinstated.

Dated this 25th day of April 2014 at Anchorage, Alaska.

ALASKA STATE COMMISSION
FOR HUMAN RIGHTS

signature redacted

Stephen Koteff
Human Rights Advocate
Alaska Bar No. 9407070