BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR
HUMAN RIGHTS, MARTI BUSCAGLIA,
EXECUTIVE DIRECTOR, ex rel.
STEVEN GOVATOS,

Complainant,

v.

ASRC ENERGY SERVICES ALASKA, INC.,

Respondent.

ASCHR No. J-15-165

ACCUSATION

Marti Buscaglia, Executive Director of the Alaska State Commission for Human Rights, ex rel. Steven Govatos, hereby alleges the following against Respondent ASRC Energy Services Alaska, Inc. (AES AK):

1. Steven Govatos was employed as a Well Maintenance Technician by CH2M Hill, Inc., (CH2M) to work at an oil production facility located at Milne Point on the North Slope of Alaska from March 2011 to March 2015.

2. In approximately 1995, Mr. Govatos was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), a brain disorder causing inattention and/or hyperactivity-impulsivity that interferes with functioning or development.

3. Mr. Govatos’s ADHD substantially limits, among other things, his ability to concentrate.

4. For periods of time prior to his employment with CH2M, and continuously
from March 2011 to March 2015, Mr. Govatos was prescribed Adderall to treat his ADHD.

5. While taking Adderall Mr. Govatos is able to concentrate normally and experiences no other ADHD symptoms.

6. Mr. Govatos took Adderall continuously during his employment with CH2M and successfully performed all of the duties of his position.

7. CH2M supplied workers for the Milne Point facility pursuant to a contract with Hilcorp, an oil and gas exploration company.

8. In March 2015, CH2M lost its contract with Hilcorp, and Hilcorp entered into a new contract with Respondent AES AK to provide personnel at Milne Point.

9. Upon entering into the contract with Hilcorp, Respondent hired Mr. Govatos, and all of the other CH2M employees who had been working at Milne Point, to continue to work at the site.

10. Respondent required Mr. Govatos to complete a “Post Offer General and Occupational History Questionnaire,” which asked, among other things, if Mr. Govatos was taking any medication, receiving treatment for a condition, or had been diagnosed with a condition that “may interfere with the safe and effective performance” of his duties.

11. Mr. Govatos answered “no” to these questions because he did not believe, based on his experience working the same job with CH2M, that his ADHD or the fact that he was taking Adderall interfered with the safe and effective performance of his job.
12. Respondent also required Mr. Govatos to submit to a urinalysis shortly after he was hired.

13. The urinalysis revealed the presence of medication in Mr. Govatos’s system, and Respondent asked Mr. Govatos to explain the positive result.

14. Mr. Govatos explained to Respondent that he was taking Adderall pursuant to a prescription from his doctor to treat his ADHD.

15. As a result of Mr. Govatos’s positive uranalysis result and his disclosure that he was taking Adderall, Respondent removed him from the Milne Point job site.

16. Respondent consulted Dr. Emil Vandermeer, who works for Beacon Occupational Health and Safety Services, about Mr. Govatos’s use of Adderall. Dr. Vandermeer advised Respondent not to allow Mr. Govatos to work while he was taking Adderall. Dr. Vandermeer also recommended that Mr. Govatos be subjected to a series of tests to diagnose his condition, and that Mr. Govatos change his medication to Strattera, one that Dr. Vandermeer would accept as safe in Mr. Govatos’s work environment.

17. Mr. Govatos’s treating physician, Dr. Royal Kiehl, wrote to Respondent and Dr. Vandermeer to explain that further testing for Mr. Govatos was not required because Mr. Govatos had been thoroughly evaluated over the course of twenty-years and his diagnosis was well-established by multiple treating physicians over that time.

18. Dr. Kiehl also stated that Mr. Govatos was fully able to perform his job effectively and safely while using Adderall, and that Adderall was the most effective
treatment for Mr. Govatos.

19. Despite Dr. Kiehl's statements, Respondent refused to allow Mr. Govatos to work while he was taking Adderall.

20. Mr. Govatos then agreed, against Dr. Kiehl's advice, to try using Strattera, the alternative medication suggested by Dr. Vandermeer, in order to keep his job.

21. Strattera was not effective at treating Mr. Govatos's ADHD symptoms, and while using Strattera Mr. Govatos was unable to perform the duties of his position.

22. Because Mr. Govatos was unable to work without taking Adderall, and because Respondent would not allow Mr. Govatos to work while he was taking Adderall, Respondent terminated Mr. Govatos's employment on May 22, 2015.

FIRST CAUSE OF ACTION
TERMINATION BECAUSE OF DISABILITY
FAILURE TO PROVIDE REASONABLE ACCOMMODATION
A VIOLATION OF AS 18.80.220(a)

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

24. Steven Govatos is a person with a disability as that term is defined in AS 18.80.300.

25. Mr. Govatos was employed by Respondent AES AK.

26. Mr. Govatos was qualified to perform all of the essential functions of his job with Respondent with an accommodation.

27. Respondent was aware that Mr. Govatos required a reasonable accommodation to perform his job.
28. Respondent refused to provide Mr. Govatos with the reasonable accommodation Mr. Govatos needed to perform his job.

29. Because Mr. Govatos was not qualified to work without the requested accommodation, Respondent terminated Mr. Govatos's employment.

30. Respondent's termination of Mr. Govatos's employment constitutes a violation of AS 18.80.220(a).

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 Steven Govatos because of disability by refusing to provide Mr. Govatos with a reasonable accommodation and by terminating Mr. Govatos’s employment.

2. That the Commission order Respondent to adopt and disseminate a policy of nondiscrimination under the Alaska Human Rights Law.

3. 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.

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

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

6. That the Commission order Respondent to refrain from penalizing Mr. Govatos in any way in future considerations for employment and, if rehired, for transfers, promotions, or upgrading because Mr. Govatos filed a complaint with the Commission.

7. That the Commission order Respondent to refrain from advising or informing any other employer or potential employer of Mr. Govatos of the facts or circumstances involved in this case.

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

9. That the Commission order Respondent to immediately reinstate Mr. Govatos to the position of Well Maintenance Technician from which he was terminated on May 22, 2015, with full benefits and seniority consistent with his original date of hire.

10. That the Commission order Respondent to pay front pay to Mr. Govatos until he is fully reinstated.
Dated this 31st day of March 2017 at Anchorage, Alaska.

ALASKA STATE COMMISSION
FOR HUMAN RIGHTS

Signature Redacted

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Stephen Koteff
Human Rights Advocate
Alaska Bar No. 9407070