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BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, MARTI BUSCAGLIA,)
EXECUTIVE DIRECTOR, *ex rel.*)
DANNY JOE BURNHAM,)

Complainant,)

v.)

ASCHR No. J-15-081

BEACON OCCUPATIONAL HEALTH AND)
SAFETY SERVICES,)

Respondent.)

and)

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, MARTI BUSCAGLIA,)
EXECUTIVE DIRECTOR, *ex rel.*)
DANNY JOE BURNHAM,)

Complainant,)

v.)

ASCHR No. J-15-082

PRICE GREGORY INTERNATIONAL,)

Respondent.)

RECEIVED
HUMAN RIGHTS COMMISSION
JUL 25 2018
COMMISSION SECRETARY

ACCUSATION

Marti Buscaglia, Executive Director of the Alaska State Commission for Human
Rights, *ex rel.* Danny Joe Burnham, hereby alleges the following against Respondents
Beacon Occupational Health and Safety Services and Price Gregory International:

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1. Respondent Beacon Occupational Health and Safety Services (“Beacon”) is an occupational safety and health services provider with offices in various towns in Alaska.

2. Respondent Price Gregory International (“Price”) is a provider of infrastructure services with an emphasis on pipeline construction, and has offices in both the United States and Canada.

3. Danny Joe Burnham is an individual who has worked as a crane operator for over thirty years with no terminations from work for performance issues, nor any noted safety violations.

4. Mr. Burnham suffered a severe injury in 2001 resulting in his having no movement or severely restricted movement in both ankles and his right knee, as well as bilateral hip flexion contractures and an inability to stand on either leg for more than one second.

5. Since his injury, the International Union of Operating Engineers, Local 302 reports that Mr. Burnham has worked for at least thirteen different employers, has never been terminated for any adverse reasons, and has consistently performed his duties in a safe, professional manner that has resulted in multiple employers specifically requesting him for their projects.

6. Mr. Burnham is a person with a disability as that term is defined by AS 18.80.300(14).

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7. On February 27, 2015, Mr. Burnham’s union hall dispatched him for a potential crane operation job for Respondent Price. Mr. Burnham was sent by Respondent Price to Respondent Beacon for a mandatory “fit for duty” examination.

8. The “fit for duty” examination included testing Mr. Burnham’s ability to kneel, crawl, squat, lift, and climb stairs in rapid succession while maintaining a specified heart rate; all activities that have little or nothing to do with safely operating a crane.

9. On March 4, 2015, Respondent Beacon notified Respondent Price that Mr. Burnham had not passed the “fit for duty” examination and was deemed unable to safely operate a crane.

10. Respondent Price did not hire Mr. Burnham for the prospective project.

11. Mr. Burnham was subsequently hired as a crane operator by a different company that also required a “fit for duty” examination.

**FIRST CAUSE OF ACTION – DISCRIMINATION BECAUSE OF
DISABILITY
A VIOLATION OF AS 18.80.220(a)**

12. Paragraphs 1 through 11 above are re-alleged and incorporated herein.

13. At the time he was contacted by his union about a prospective crane operation job with Respondent Price on February 27, 2015, Mr. Burnham had worked for over thirty years as a trusted, safe, and competent crane operator without incident; he was qualified to continue to do so.

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14. Respondent Price treated Mr. Burnham as a person with a disability when it refused to hire him for a crane operation job due to his failure to pass a “fit for duty” examination that included exercises that bore little to no nexus to the position of crane operator.

15. By treating him as a person with a disability, Respondent Price violated AS 18.80.220(a).

16. Because of Respondent’s treatment of Mr. Burnham as a person with an impairment that substantially limits a major life activity, he suffered harm in the form of lost wages and benefits.

**SECOND CAUSE OF ACTION – AIDING, ABETTING OR COERCING
A VIOLATION OF AS 18.80.260**

17. Paragraphs 1 to 11 above are re-alleged and incorporated herein.

18. Respondent Price treated Mr. Burnham as a person with a disability when it refused to offer him the crane operator position after he failed to pass Respondent Beacon’s “fit for duty” exam that included crawling, stepping up very high steps, squatting, and other tests that had little to no correlation with the duties of a crane operator position.

19. Respondent Price’s failure to hire Mr. Burnham constitutes a violation of AS 18.80.220(a).

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20. By administering a “fit for duty” exam that had little to no relevance to the actual job requirements of a crane operator, Respondent Beacon’s actions constitute a violation of AS 18.80.260 by aiding and abetting Respondent Price in the commission of a violation of AS 18.80.220(a).

21. Because of Respondent Beacon’s actions, Mr. Burnham 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 Price violated AS 18.80.220 by refusing to hire Mr. Burnham for a crane operator position due to his disability, or, alternatively, treated Mr. Burnham as a person with a disability by refusing to hire him for a crane operator position.

2. That the Commission issue and order declaring that by administering a “fit for duty” exam that had little to no relevance to the actual job requirement of a crane operator, Respondent Beacon violated AS 18.80.260 by aiding and abetting Respondent Price in the commission of a violation of AS 18.80.220(a).

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

1 4. That the Commission order Respondents to obtain in-person training of at
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3 least two hours in length for its managers, supervisors, and employees on the provisions of
4 the Alaska Human Rights Law that prohibit discrimination in employment, with an
5 emphasis on disability-based discrimination and the aiding and abetting of the commission
6 of said discrimination. Such an order is to specify that the trainer and training curriculum
7 be approved by Commission staff prior to the training being conducted.

9 5. That the Commission order Respondents to eliminate from Mr. Burnham's
10 personnel records all documents and entries relating to the facts and circumstances that led
11 to Mr. Burnham's filing of the above-captioned charge of discrimination and any of the
12 related events occurring thereafter.

14 6. That the Commission order Respondents to refrain from penalizing Mr.
15 Burnham in any way in future considerations for employment and, if rehired, for transfers,
16 promotions, or upgrading because Mr. Burnham complained about discrimination or
17 because he filed a complaint with the Commission.

19 7. That the Commission order Respondents to refrain from advising or
20 informing any other employer or potential employer of Mr. Burnham of the facts or
21 circumstances involved in this case.

23 8. That the Commission order Respondents to pay back wages, including any
24 lost benefits, to Mr. Burnham, plus interest at the applicable legal rate, the exact amount of
25 which will be proven at hearing.
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ACCUSATION—Page 6

ASCHR, Marti Buscaglia, Executive Director, ex rel. Danny Joe Burnham v. Beacon Occupational Health and Safety Services and Price Gregory International, ASCHR Nos. J-15-081 and J-15-082

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9. That the Commission order Respondents to pay the statutory maximum amount of front pay, including benefits, to Mr. Burnham, the exact amount of which will be proven at hearing.

Dated this 25th day of July 2018 at Anchorage, Alaska.

ALASKA STATE COMMISSION
FOR HUMAN RIGHTS

Signature Redacted

By: _____

Danika Swanson
Human Rights Attorney
Alaska Bar No. 0508067