

ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

NORTH OAKLAND MEDICAL CENTER)

Defendant.)

JUDGE : Gadola, Paul V.
DECK : S. Division Civil Deck
DATE : 08/26/2005 @ 12:34:23
CASE NUMBER : 4:05CV40272
CMP EEOC V. NORTH OAKLAND
MEDICAL CENTER, SI, TAM

COMPLAINT AND JURY
TRIAL DEMAND

MAGISTRATE JUDGE DONALD A. SCHEER

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to make whole Barbara Poland ("Poland"). The Equal Employment Opportunity Commission ("Commission") alleges that North Oakland Medical Center (North Oakland), Defendant, refused to allow Poland to return to work following a medical leave of absence because of her disability.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporate by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000c-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, as amended, 42 U.S.C. § 1981a.

2. The employment practices hereafter alleged to be unlawful were committed in the

Eastern District of Michigan.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission (the "Commission"), is an agency of the United States of America charged with the administration, interpretation, and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) and Section 503(c) of the ADA, 42 U.S.C. § 12117(a) and § 12203(c), which incorporate by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, the Defendant (the "Employer"), has been doing business in the State of Michigan, and has continuously had at least (15) employees.

5. At all relevant times the Defendant Employer has continuously been engaged in an industry affecting commerce within the meaning of Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. § 2000e(g) and (h).

6. At all relevant times, the Defendant Employer has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

STATEMENT OF CLAIMS

7. More than thirty (30) days prior to the institution of this lawsuit, Poland filed a charge with the Commission alleging violations of Title I of the ADA by the Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Beginning on or about January 4, 2004, the Defendant Employer engaged in unlawful employment practices in violation of Section 102(a) of the ADA, 42 U.S.C. § 12112(a). These practices include Defendant's refusal to allow Poland to return to work following a medical leave

of absence for medical treatment, imposing unnecessary restrictions on Poland, and terminating Poland's employment because of her disability. Poland is a qualified individual who was and is able, with or without a reasonable accommodation, to perform the essential functions of her job.

9. The effect of the above-mentioned, unlawful employment practices have been to deprive Poland of equal employment opportunities and otherwise adversely affect her status as an employee because of her disability.

10. The above-mentioned, unlawful employment practices were intentional.

11. The above-mentioned, unlawful employment practices caused Poland emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

12. The above-mentioned, unlawful employment practices were done with malice or with reckless indifference to the federally protected rights of Poland.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining the Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with it from engaging in any unlawful employment practice which discriminates on the basis of disability;

B. Order the Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices;

C. Order the Defendant Employer to make whole Poland by providing her with appropriate lost earnings and benefits, with prejudgement interest, in amounts to be proven at trial, and other affirmative relief necessary to eradicate the effects of its unlawful

employment practices including, but not limited to, reinstating Poland to the position from which she was terminated with pay and benefits equal to that which she would have attained had she not been terminated;

D. Order Defendant to provide mandatory training regarding the American with Disabilities Act and its prohibition against disability discrimination to all management and non-management employees;

E. Order the Defendant to pay Poland compensatory damages;

F. Order the Defendant to pay Poland punitive damages;

G. Order the Defendant to pay Poland nominal damages;

H. Grant the Commission its costs in this action; and

I. Grant such further relief as the Court deems necessary and proper.

JURY TRIAL DEMAND

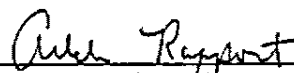
The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

ERIC S. DREIBAND
General Counsel

JAMES LEE
Deputy General Counsel

Dated: 8/25/04


ADELE RAPPORT (P44833)
Regional Attorney

ROBERT K. DAWKINS (P38289)
Supervisory Trial Attorney

TRINA R. MENGESHA (P59458)
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
DETROIT DISTRICT OFFICE
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 865
Detroit, MI 48226
(313) 226-4620

ORIGINAL

JS 44 11/99

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE: OAKLAND

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

(b) County of Residence of First Listed

(C) Attorney's (Firm Name, Address, and Telephone Number)

Trina Mengesha (P59458)), Equal Employment
Opportunity Commission, 477 Michigan Avenue, Room
865, Detroit, MI 48226 (313) 226-4620

DEFENDANTS

NORTH OAKLAND MEDICAL CENTER

County of Residence of First Listed OAKLAND

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item 111)

III. CITIZENS

(For Diversil

Citizen of T

Citizen of

Citizen of
Foreign Country

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IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment and Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault Libel And Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury	PERSONAL INJURY ☐ 362 Personal Injury-Med. Malpractice ☐ 365 Personal InVry - Product Liability ☐ 368 Asbestos Personal Injury Product Liability	LABOR ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21: 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other	☐ 400 State Reapportionment ☐ 410 Banks and Banking ☐ 430 Banks and Banking ☐ 450 Commerce/ICC ☐ 460 Deportation ☐ 470 Racketeer Influenced & Corrupt Organizations ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes ☐ 990 Other Statutory Actions
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence ☐ Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition	PROPERTY RIGHTS ☐ 423 Withdrawal 28 USC 157 ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark	
			SOCIAL SECURITY ☐ 861 HIA (1395f) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g))	
			FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS-Third Party 26 USC 7609	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multi district Litigation
☐ 7 Appeal to District Judge from Magistrate

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

\$ DEMAND

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) INSTRUCTIONS:**

IF ANY

JUDGE

DOCKET
NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

8/26/05

Trina Mengesha / PH

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
