



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMha13111627

[REDACTED],
Complainant,

v.

B & K AUTOMOTIVE d/b/a NAPA,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission”), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On November 18, 2013 [REDACTED] (“Complainant”) filed a Complaint with the Commission against B & K Automotive d/b/a NAPA (“Respondent”) alleging discrimination on the basis of disability in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) [REDACTED]

[REDACTED] Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint. An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

There are two issues pending before the Commission. The first is whether Respondent denied Complainant’s request for a reasonable accommodation. In order to prevail, Complainant must show that 1) she has a disability as defined under the applicable laws; (2) Respondent knew or should have known about Complainant’s disability; (3) she made a written or oral request for a reasonable accommodation; and (4) Respondent unreasonably delayed or denied Complainant’s request for a reasonable accommodation. It is evident that Complainant has a disability under the applicable laws. Moreover, there is sufficient evidence to believe that Respondent knew or should have known about Complainant’s disability. Further, while Complainant made a request for an accommodation, Respondent denied the request.

By way of background, Respondent hired Complainant as a part-time delivery driver on or about July 29, 2013 at a rate of \$7.00/hour. Shortly thereafter, on or about August 16, 2013, Respondent promoted Complainant to the position of full-time Counter Sales Trainee and gave her a raise. At the time of Complainant’s termination, Complainant made \$13.00/ hour.



At the time of Complainant's hire, Respondent admits that it had no employee handbook or a formalized attendance and absenteeism policy. Further, Respondent admits that it never provided Complainant with such a handbook. While Respondent asserts it has an unwritten 90-day probationary policy regarding performance expectations, no evidence has been provided or uncovered to substantiate the policy and witness testimony contends that Respondent was "flexible" with respect to issues of attendance and absenteeism.

During the course of Complainant's tenure with Respondent, evidence shows that Complainant informed Respondent of her disability on numerous occasions. Respondent's president, Mr. Hamm, admits that Complainant discussed her medical condition during Complainant's initial interview. Specifically, Mr. Hamm admits that Complainant talked "about an illness," expressed that she had to "keep going to the doctor" for tests, and provided medical documentation substantiating her illness. Moreover, Mr. Hamm admits that he asked Complainant whether her condition was contagious and several witnesses confirm that Complainant openly discussed her disability in the workplace. Further, Complainant asserts and Mr. Hamm admits that Complainant requested that she would need some time off to attend doctor's appointments during the initial interview. Nonetheless, Respondent terminated Complainant on or about October 8, 2013 for excessive absenteeism related to her doctor's appointments.

Despite Respondent's assertions, there is sufficient evidence to show that a discriminatory practice occurred as alleged. Specifically, Respondent admits that he was aware of Complainant's medical condition and need to attend doctor's appointments. Further, Mr. Hamm admits that Complainant was terminated for missing "too much work" despite knowledge that Complainant's absences were related to her need to attend doctor's appointments. As such and based upon the aforementioned, probable cause exists to believe that a discriminatory practice occurred as alleged.

Similarly, the second issue presented before the Commission is whether Complainant was terminated because of her disability. In order to prevail, Complainant must show that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; (3) she was meeting Respondent's legitimate business expectations; and (4) similarly-situated employees without impairments were treated more favorably under similar circumstances.

Again, it is evident that Complainant has an impairment that limits one or more major life activities and that she suffered an adverse employment action when Respondent terminated her employment on or about October 8, 2013. Further, there is ample evidence that Complainant was meeting Respondent's legitimate business expectations and that similarly-situated employees without impairment were treated more favorably under similar circumstances.

As stated above, Respondent hired Complainant as a part-time employee on or about July 29, 2013 at a rate of \$7.00/hour and promoted Complainant to full time status with a raise by August 16, 2013. Respondent admits that it had no employee handbook or definitive

attendance policy during Complainant's tenure with Respondent. Moreover, Respondent admits that it did not require its employees to provide medical documentation after taking time off for medical issues. While Respondent alleges that it "informally warned" Complainant about her absenteeism, Respondent admits that it never formally disciplined Complainant for this behavior. Moreover, witness testimony substantiates that Complainant met Respondent's legitimate business expectations and Complainant continued to receive raises during her tenure with Respondent.

On or about October 8, 2013, Complainant attempted to provide medical documentation to Mr. Hamm regarding her condition; however, Mr. Hamm refused to accept the paperwork. Specifically, Complainant asserts she sent a text requesting a fax number for Respondent in order to tender the medical documentation as well as information regarding Respondent's FMLA policy. Nonetheless, Respondent replied "I'm sorry but we have decided to terminate your employment with us[.] You simply have missed too much work. It is nothing personal. I like you and I hope your problems end soon. Again I'm sorry."

Despite Respondent's assertions, there is evidence to show that Respondent violated the laws as alleged. Despite Respondent's allegations that Complainant missed 11 regular work days and left early on three occasions, Respondent admits that it had no attendance policy at the time of Complainant's employment and that it never issued written warnings to Complainant regarding her absenteeism. Moreover, no evidence has been provided or uncovered to show that Complainant was aware that her job was in jeopardy because of her absenteeism. While Respondent asserts that no other employees had poor attendance, witness testimony contradicts this assertion. Rather, witnesses assert that other employees were absent on several occasions without issue and that one employee was late the majority of his tenure with Respondent. Simply stated, there is a nexus between Complainant's disability and her termination; as such and based upon the aforementioned, probable cause exists to believe that a discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

October 30, 2014

Date

Akia A. Haynes

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission