

AUG 28 2015

INDIANA STATE  
CIVIL RIGHTS COMMISSION

**STATE OF INDIANA  
INDIANA CIVIL RIGHTS COMMISSION**

ANTONIO GALVAN,

Complainant,

vs.

ALLIANCE EMS/TRANSPORT LOVING CARE, INC.,

Respondent.

ICRC No.: EMha14010034

EEOC No.: 24F-2014-00314

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

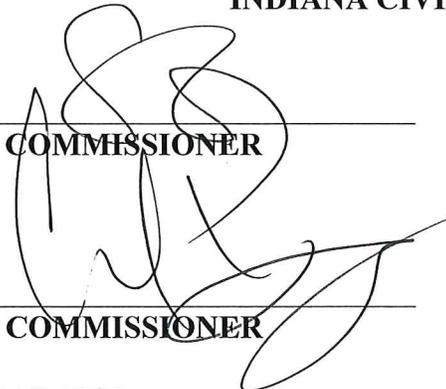
On August 10, 2015, Hon. Noell F. Allen Administrative Law Judge (“ALJ”) for the Indiana Civil Rights Commission (“ICRC”) entered her Proposed Findings of Fact, Conclusions of Law, And Order (“the proposed decision”).

No objections have been filed to the ICRC’s adoption of the proposed decision.

Having carefully considered the foregoing and being duly advised in the premises, the ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

Any party aggrieved by the ICRC’s decision may seek judicial review with the Indiana Court of Appeals within thirty days following the date of notification of such decision.

**INDIANA CIVIL RIGHTS COMMISSION**

  
\_\_\_\_\_  
COMMISSIONER  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER  
  
\_\_\_\_\_  
COMMISSIONER

**August 28, 2015**

Served by Certified Mail on the following:

Antonio Galvan  
567 South 500 East  
Knox, IN 46534  
Certified Mail #: 9214 8901 0661 5400 0065 1558 88

Alliance EMS/ Transport Loving Care, Inc.  
Attn: Mr. Michael Wilson, CEO  
917 North U.S. 35  
Winamac, IN 46996  
Certified Mail #: 9214 8901 0661 5400 0065 1559 49

and to be personally served on the following attorney of record:

Michael C. Healy, Esq.; Staff Counsel  
Indiana Civil Rights Commission

AUG 10 2015

INDIANA STATE  
CIVIL RIGHTS COMMISSIONSTATE OF INDIANA  
INDIANA CIVIL RIGHTS COMMISSION

ANTONIO GALVAN,

Complainant,

vs.

ALLIANCE EMS/TRANSPORT LOVING CARE, INC.,

Respondent.

ICRC No.: EMha14010034

EEOC No.: 24F-2014-00314

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

The undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") conducted a hearing on damages on July 8, 2015. Complainant, Antonio Galvan, participated in the hearing by telephone. Michael C. Healy, ICRC Staff Counsel, appeared, in person, in the public interest on behalf of Complainant. Respondent, Alliance EMS/Transportation Loving Care, Inc. ("Respondent or Alliance"), did not appear, by counsel or otherwise. On July 9, 2015, Complainant filed his Suggested Proposed Findings of Fact, Conclusions of Law, and Order.

Having carefully considered the foregoing and being duly advised in the premises, the ALJ finds in favor of the Complainant and proposes that the ICRC enter the following as findings of facts and conclusions of law and order.

**FINDINGS OF FACT**

1. Galvan is an adult disabled man who has resided, at all material times, in the State of Indiana.
2. Alliance has been, at all material times, an employer doing business in the State of Indiana.
3. Alliance hired Galvan as the EMS Education Coordinator and Shift Paramedic. Galvan earned \$15.00 per hour and worked 40 hours per week, earning \$600 per week. However, during the course of Galvan's employment, Galvan contracted hydrocephalus, commonly

- referred to as water on the brain. Because of this condition, Galvan could no longer perform duties as a shift paramedic. Beginning in February 2013, Galvan only worked 24 hours per week and earned \$15.00 per hour, \$360 per week.
4. On January 3, 2014, Alliance laid off Galvan. Galvan claims he was discriminated against based on his disability because he believed Alliance laid him off “due to the new healthcare act”; prior to the layoff, Alliance hired someone in his position and demoted Galvan; and “Respondent’s reason for terminating [Galvan] was pretext to discriminate against [Galvan] on the basis of [his] disability”.
  5. Nineteen weeks later, Galvan returned to his position on or about May 15, 2014. Upon returning, Galvan worked exclusively as the EMS Education Coordinator.
  6. In August 2014, Alliance closed its doors, discontinued providing services, and laid off all employees including Galvan.
  7. During Galvan’s layoff, he looked for employment with other entities such as Pulaski EMS and other similar entities. Galvan sought employment, unsuccessfully, as an EMS or CPR instructor.
  8. Galvan seeks all available remedies for a violation of Title I of the Americans with Disabilities Act, As Amended (ADAAA), and the Indiana Civil Rights Law.
  9. The Respondent is currently defaulted due to the following:
    - a. On January 29, 2015, the ALJ properly served upon all parties the Notice of Initial Pre-Hearing Conference to be held on Monday, March 2, 2015 at 10:00 A.M., Eastern Standard Time, by conference telephone call to be initiated by the ALJ.
    - b. The ALJ called the pre-hearing conference on March 2, 2015 at 10:00 A.M. Michael Healy, ICRC Staff Counsel, appeared on behalf of Mr. Galvan. No one appeared on behalf of Alliance. As such, the ALJ rescheduled the pre-hearing conference.
    - c. The ALJ properly served upon all parties the Order Rescheduling Initial Pre-Hearing Conference to be held on Monday, March 16, 2015 at 10:00 A.M., Eastern Standard Time, by conference telephone call to be initiated by the ALJ.
    - d. The ALJ called the pre-hearing conference on March 16, 2015 at 10:00 A.M. Mr. Healy appeared. Michael Wilson, Owner of Alliance, appeared. Mr. Wilson is

- not an attorney and could not represent Alliance at the pre-hearing conference. Mr. Wilson also expressed his desire to attempt to resolve the complaint of discrimination through formal mediation. As such, the ALJ rescheduled the pre-hearing conference for April 16, 2015 at 3:30 P.M. The ALJ also reminded Mr. Wilson of Alliance's need to have legal representation at proceedings.
- e. Neither Mr. Healy nor the assigned mediator has heard from Mr. Wilson or any other representative of Alliance to schedule the mediation.
  - f. On April 16, 2015, no one appeared on the Respondent's behalf for the pre-hearing conference.
  - g. The ALJ advised the parties in the Notice of Initial Pre-Hearing Conference, **"CORPORATIONS [] must be represented by counsel pursuant to Indiana law. ... A party who fails to attend or participate in a Pre-Hearing Conference, Hearing, or other later stage of the proceeding may be held in default or the matter may be dismissed."** (Emphasis in original).
  - h. On May 20, 2015, the ALJ entered and served her NOTICE OF PROPOSED DEFAULT ORDER ("Proposed Order"). The Proposed Order advised Alliance that it could file a written motion requesting that the proposed default order not be imposed and stating the grounds upon which it relied within seven (7) days after service of the Proposed Order. The Proposed Order also advised that if no such motion was filed, the ALJ MUST enter the proposed default order under IC 4-21.5-3-24(c).
  - i. Alliance did not file a written motion requesting that the proposed default order not be imposed.
10. Default is appropriate under IC 4-21.5-3-24(a)(2).
  11. Default is also appropriate under 910 IAC 1-6-1.
  12. The facts alleged in Galvan's complaint of discrimination and sword testimony at the hearing are deemed admitted, and no evidence is to be considered on the issue of liability.
  13. Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

### CONCLUSIONS OF LAW

1. The Indiana Civil Rights Commission has jurisdiction to entertain and adjudicate Galvan's complaint in this cause.
2. Galvan and Alliance are each a "person" as that term is defined in section 3(a) of the Indiana Civil Rights Law, IC 22-9-1-1 et. seq. ("the ICRL"). IC 22-9-1-3(a).
3. Respondent is an "employer." IC 22-9-1-3(h),(i).
4. IC 22-9-1-6 provides, in material part as follows:

Sec. 6. The commission shall have the following powers and duties:

(k)(1) To state its findings of fact after a hearing and, if the commission finds a person has engaged in an unlawful discriminatory practice, to cause to be served on this person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring the person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to the power:

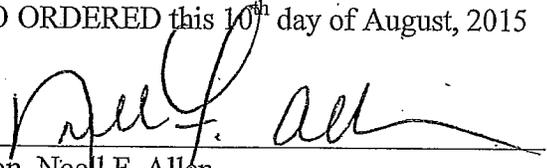
to restore complainant's losses incurred as a result of discriminatory treatment, as the commission may deem necessary to assure justice, however, this specific provision when supplied to orders pertaining in employment shall include only wages, salary, or commissions;

5. By operation of law, Alliance engaged in an unlawful discriminatory practice when it laid off Galvan because of his disability.
6. Galvan has proven out of pocket losses that were the proximate result of the proven unlawful discriminatory practice.
7. Galvan is entitled to receive lost wages (\$360.00 per week for 19 weeks) because of the unlawful discriminatory practice that totals \$6,840.00.
8. Administrative review of this proposed decision may be obtained by parties who are not in default by the filing of a writing specifying with reasonable particularity each basis for each objection within fifteen (15) days of after service of this proposed decision. IC 4-21.5-3-29(d).
9. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

### **ORDER**

1. Alliance shall cease and desist from terminating its qualified employees based on disability.
2. Alliance shall deliver to ICRC as escrow agent a check made payable to Antonio Galvan for Six Thousand Eight Hundred Forty Dollars (\$6,840.).
3. All of Alliance's management personnel shall attend, and successfully complete, a professionally developed training seminar, approved in advance by the ICRC Executive Director, addressing the recognition, prevention and remedying of discrimination in employment. Alliance shall obtain the Executive Director's approval no later than ninety (90) days after the effective date of this Order and shall have completed the seminar no later than 180 days after the effective date of this Order. Proof of completion shall be filed with the ICRC.
4. Alliance shall post and maintain, on bulletin boards normally used to disseminate customer information, a bold print statement of policy on equal employment opportunity and non-discrimination.
5. Alliance shall notify, in writing, all staff members of the policies enumerated in paragraph 4 of this Order.
6. Alliance shall report, in writing, to the ICRC when the undertakings outlined above have been accomplished. The report will describe the manner in which the undertakings were carried out, and include copies of the documents required under this Order. This report shall be submitted not later than January 9, 2016.
7. This Order shall take effect immediately after it is approved and signed by a majority of the members of the ICRC, unless it is modified by the ICRC pursuant to 4-21.5-3-31(a), stayed by the ICRC pursuant to 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

SO ORDERED this 10<sup>th</sup> day of August, 2015

  
\_\_\_\_\_  
Hon. Noel F. Allen  
Administrative Law Judge  
Indiana Civil Rights Commission

Served by Certified Mail on the following:

Antonio Galvan  
567 South 500 East  
Knox, IN 46534

Certified Mail #: 9214 8901 0661 5400 0063 8201 39

Alliance EMS/ Transport Loving Care, Inc.

Attn: Mr. Michael Wilson, CEO

917 North U.S. 35

Winamac, IN 46996

Certified Mail #: 9214 8901 0661 5400 0063 8202 83

and to be personally served on the following attorney of record:

Michael C. Healy, Esq.; Staff Counsel  
Indiana Civil Rights Commission