

November 20, 2015

To be served by Certified Mail on the following parties:

Serina St. John
131 West High Street
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Main Street Diner
Attn: Nancy McCormack
475 East Main Street
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Nancy McCormack
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And to be personally served on the following attorney of record:

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FILE DATED

OCT 01 2015

INDIANA STATE
CIVIL RIGHTS COMMISSION

STATE OF INDIANA
INDIANA CIVIL RIGHTS COMMISSION

SERINA ST. JOHN,

Complainant,

vs.

NANCY'S MAIN STREET DINER,

Respondent.

) Docket No.: EMha13101577

) EEOC No.: 24F-2014-00093

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") conducted a hearing on June 5, 2015. Complainant, Serina St. John, appeared at the hearing and testified on her own behalf. Fred S. Bremer, ICRC Staff Counsel, represented Ms. St. John, in the public interest. Sebrina Johns testified at the hearing on Ms. St. John's behalf. Respondent, Nancy McCormack, appeared at the hearing and testified on behalf of Nancy's Main Street Diner.

On July 6, 2015, the parties submitted suggested proposed decisions for the ALJ's consideration. Having carefully considered the testimony presented at the hearing and the submitted suggested proposed decisions, the ALJ finds in favor of the Complainant and proposes the ICRC enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Serina St. John is an adult female who, at all material times, resided in the State of Indiana.
2. Nancy McCormack was the sole owner of Nancy's Main Street Diner, LLC ("Nancy's") located at 475 East Main Street, Hagerstown, IN. Nancy's was a small mom-and-pop style restaurant specializing in homemade foods and desserts. The restaurant employed eight individuals.

3. Ms. McCormack hired Ms. St. John in mid-October 2013 as a cook. Ms. St. John earned \$8.00 per hour and worked roughly 30 hours per week. Ms. St. John worked a total of ten days before Ms. McCormack terminated Ms. St. John's employment.
4. Ms. McCormack terminated Ms. St. John because Ms. McCormack believed Ms. St. John had Hepatitis C. Ms. McCormack heard from Vernon Roberts, the owner of another local establishment, that Ms. St. John had the condition. Mr. Roberts told Ms. McCormack that customers told him about Ms. St. John's condition and did not understand why Ms. McCormack would continue to employ Ms. St. John.
5. After learning about Ms. St. John's alleged condition, Ms. McCormack confronted Ms. St. John at Ms. St. John's home one evening. Ms. St. John denied having Hepatitis C and offered to provide medical documentation showing that she did not have such condition. Ms. McCormack declined the offer and explained that she could no longer employ Ms. St. John because of customers' word of mouth would impact the restaurant.
6. Ms. St. John does not currently have or has ever had Hepatitis C.
7. Prior to terminating Ms. St. John, Ms. McCormack employed Sandy Masters. She was an individual who had Hepatitis C while employed by Nancy's. Ms. McCormack did not terminate Ms. Masters because her condition was in remission during her employment.
8. In October 2014, Nancy's business ultimately slowed down. On January 23, 2015, Nancy's closed its doors for good.
9. Ms. St. John has been unable to secure employment since her separation from Nancy's. As a remedy, Ms. St. John requests back pay from the date of termination until January 23, 2015, when Nancy's closed.
10. Any Conclusion of Law that should have been 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 the complainant's complaint in this cause.
2. Ms. St. John and Nancy's are each a "person" as that term is defined in the Indiana Civil Rights Law, IC 22-9, et seq. ("the ICRL"). IC 22-9-1-3(a).
3. Nancy's is an "employer," as defined by the ICRL. IC 22-9-1-3(h) and (i).

4. The term “discriminatory practice” is defined as “the exclusion of a person from equal opportunities because of ... disability.” Ind. Code § 22-9-1-1(l)(1). “Every discriminatory practice relating to ... employment ... shall be considered unlawful unless it is specifically exempted by this chapter.” Ind. Code § 22-9-1-3(l).
5. Cases decided under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec 2000e *et seq.* (“Title VII”) are entitled to great weight in construing the intent of the ICRL. *Indiana Civil Rights Comm’n v. Culver Educational Foundation*, 535 N.E.2d 112 (Ind. 1989).
6. The Americans with Disabilities Act as Amended (“ADAAA”) makes it unlawful to “discriminate against a qualified individual with a disability (or regarded as having one) because of that disability. 42 U.S.C. § 12112(a). The ICRL makes it unlawful for an employer to discriminate against an employee on the basis of disability.
7. Complainant has two routes available to establish intentional discrimination. The first route is through direct evidence. In the absence of direct evidence, the second route is the indirect method proof set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). In either case, the Complainant has the ultimate burden to prove the Respondent intentionally discriminated against the Complainant. In this case, Ms. St. John has direct evidence of Nancy’s terminating her position due to a perceived disability.
8. Nancy’s regarded Ms. St. John as having a disability – Hepatitis C. “An individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.” *Brooks v. Kirby Risk Corp.*, 2009 U.S. Dist. LEXIS 86420 (N.D. Ind. Sept. 21, 2009).
9. Ms. St. John sufficiently proved that Nancy’s terminated her employment due to a perceived disability. As such, Ms. St. John is entitled to relief as specified by the ICRL.
10. If the ICRC finds that a person has committed an unlawful discriminatory practice, it shall issue an order requiring the person to cease and desist from that practice and to take further affirmative action as will effectuate the purposes of the ICRL. Such an order may include restoring Complainant's losses incurred as a result of the discriminatory treatment. Ind. Code § 22-9-1-6(k)(A).

11. Damages in the form of backpay are calculated from the date of discharge to the date of the decision. *Filter Specialists, Inc. v. Brooks*, 906 N.E.2d 835, 850 (Ind. 2009)
12. In this case, the losses include back pay from the date of termination, October 17, 2013 until the date of the decision at the rate of \$8.00 per hour at 30 hours per week. However, since Nancy's went out of business on January 23, 2015, the ALJ will suspend Ms. St. John's back pay, as she would have been unemployed at that time due to the closure. Ms. St. John is entitled to sixty-six weeks of back pay totaling fifteen thousand, eight hundred forty dollars (\$15,840.00).
13. Ms. St. John requests interests on the back pay and cites Ind. Code 24-4.6-1-101 as a basis. It provides:

Except as otherwise provided by statute, interest on judgments for money whenever rendered shall be from the date of the return of the verdict or finding of the court until satisfaction at:

- (1) the rate agreed upon in the original contract sued upon, which shall not exceed an annual rate of eight percent (8%) even though a higher rate of interest may properly have been charged according to the contract prior to judgment; or
- (2) an annual rate of eight percent (8%) if there was no contract by the parties.

Damages to be paid as a result of discriminatory practices relating to employment shall be limited to lost wages, salaries, commissions, or fringe benefits." Ind. Code § 22-9-1-12.1(c)(8). *Filter Specialists, Inc.* at 850 (Ind. 2009). Ms. St. John is not entitled to interest on the judgment.

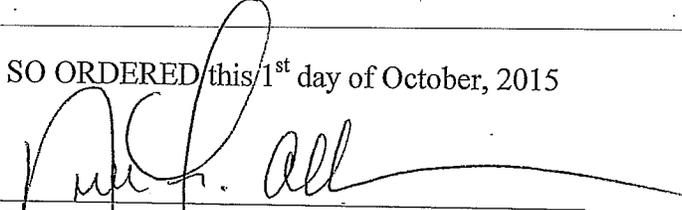
14. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis of each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
15. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

1. Nancy's shall cease and desist from excluding persons from equal employment opportunities on the basis of disability.

2. Nancy's shall deliver to the ICRC a check, made payable to St. John, in the amount of fifteen thousand, eight hundred forty dollars (\$15,840.00) within thirty (30) days of the effective date of this Order.
3. 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 IC 4-21.5-3-31(a), stayed by the ICRC pursuant to IC 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

SO ORDERED this 1st day of October, 2015



Hon. Noell F. Allen
Administrative Law Judge
Indiana Civil Rights Commission

Served by Certified Mail on the following:

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