



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

ICRC No.: EMha15040220

EEOC No.: [REDACTED]

[REDACTED],
Complainant,

v.

LOWE'S HOME CENTERS, LLC,
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 April 1, 2015, [REDACTED] ("Complainant") filed a Complaint with the Commission against Lowe's Home Centers LLC, ("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:

The issue presented to the Commission is whether Complainant was denied a reasonable accommodation and required to use as well as exhaust her medical leave because of her disability. In order to prevail, Complainant must prove that: (1) she has a disability as defined under the law; (2) Respondent knew or should have known of Complainant's need for a reasonable accommodation; (3) an accommodation exists that would permit Complainant to perform the essential functions of her job; and (4) Respondent unreasonably delayed or denied Complainant's request for a reasonable accommodation. It is evident that Complainant has a disability as defined under the law and that Respondent was aware of the impairment and need for a reasonable accommodation. Moreover, evidence shows that an accommodation exists that would permit Complainant to perform the essential functions of her job. However, Respondent failed to engage in the interactive dialogue process with Complainant resulting in the unreasonable denial of her request.

By way of background, Respondent hired Complainant as a customer service associate in April of 2013. At all times relevant to the Complaint, Complainant along with other customer service representatives were required to work rotating schedules that varied throughout the week. Evidence shows that in March 2015, Complainant brought a doctor's statement to Respondent's HR manager requesting that she be assigned a regular work schedule consisting of morning or mid-shifts to assist with her medical



condition. Respondent's HR manager admits that she told Complainant that she was unable to accommodate the request for a set schedule but rather, Complainant could use intermittent FMLA to cover evenings that she was scheduled to close. Ultimately, Complainant asserts that she has exhausted her FMLA benefits and lost wages associated with the need to use unpaid FMLA to cover the hours she could not work.

Despite Complainant's assertions, there is insufficient evidence to support their claim. Rather, no evidence has been submitted by Respondent or uncovered during the course of the investigation to show that Respondent attempted to engage in the interactive dialogue process with Complainant. While Respondent alleges that their third-party carrier left Complainant a voicemail after the denial requesting whether she needed an accommodation, this occurred after the initial denial had already occurred. Moreover, Complainant asserts that two employees were permitted to work regular schedules, one of which because of child-care related needs. As no evidence has been provided or uncovered to show that Respondent attempted to ascertain an accommodation that would have prevented Complainant from exhausting her FML leave or to lose wages, 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

December 11, 2015

Date

Akia A. Haynes

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission