



MITCHELL E. DANIELS, JR., *Governor*

JAMAL L. SMITH, *Executive Director*

ICRC No.: EMse11100664
[REDACTED]

[REDACTED],
Complainant,

vs.

GREENWOOD MEADOWS,
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 has occurred. 910 IAC 1-3-2(b)

On October 12, 2011, [REDACTED] (“Complainant”) filed a complaint with the Commission against Greenwood Meadows (“Respondent”) charging sex (pregnancy) discrimination in violation of [REDACTED] the Indiana Civil Rights Law (IC 22-9, et seq.) Accordingly, the Indiana Civil Rights Commission has jurisdiction over the parties and the subject matter.

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 terminated due to her pregnancy. 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) a nexus exists between the adverse employment action and Complainant’s pregnancy.

It is evident that Complainant falls within a protected class by virtue of her pregnancy and it is undisputed that she suffered an adverse action when she was terminated on October 7, 2011. The only remaining questions are whether Complainant was meeting Respondent’s expectations or, if not, whether there is a causal connection between the termination and her pregnancy.

The investigative record shows that Respondent terminated Complainant for alleged “blatant disregard of safety or resident care” during her employment as a Certified Nursing Assistant. Respondent contends that Complainant left feces near a resident, and failed to clean the area. However, the available evidence suggests that Respondent’s reason for her termination is unworthy of credence and may amount to pretext for unlawful discrimination based on her pregnancy. The evidence shows that Complainant informed Respondent of her pregnancy approximately two weeks before her termination. The evidence shows that two other, non-



pregnant employees (a Certified Nursing Assistant and Charge Nurse) were working with this patient in the same room and shared responsibility for the patient. While Respondent claims that it did discipline the Charge Nurse who was responsible for checking this room, there is no documentation to support this claim. The other Certified Nursing Assistant stated in her testimony that she did not recall whether she or Complainant was assigned to the patient in question. Moreover, Respondent has not submitted any evidence to show that it ever conducted an investigation to determine whether or not Complainant was ultimately responsible for the alleged neglect. The available evidence shows that Respondent did not discipline the other non-pregnant Certified Nursing Assistant who was also responsible for this patient. While Respondent has terminated other employees for a variety of policy violations, it claims that there were no Certified Nursing Assistants that have ever been disciplined or terminated for any policy violation other than Complainant. Based upon the above-findings, probable cause exists to believe that an unlawful discriminatory practice may have occurred.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. IC 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, or the Commission's Administrative Law Judge will hear this matter. IC 22-9-1-16, 910 IAC 1-3-6

August 23, 2012

Date

Joshua S. Brewster, Esq.,
Deputy Director
Indiana Civil Rights Commission