

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

BRUCE MARTIN,

Plaintiff,

v.

FRIENDSHIP RIDGE,

Defendant.

Case No.

COMPLAINT

Bruce Martin (“Plaintiff”), by and through his counsel Elizabeth L. Pollock-Avery, Esq. and Michael L. Kraemer, Esq. of Kraemer, Manes & Associates LLC, file this Complaint against Friendship Ridge (“Defendant”) alleging the following:

I. Nature of the Action

1. This is an action for declaratory, injunctive, and equitable relief, as well as monetary damages, to redress Defendant's unlawful employment practices against Plaintiff, including Defendant's unlawful discrimination against Plaintiff because of his disabilities in violation of the Americans with Disabilities Act, as amended, 42 U.S.C. §§12101 et seq. ("ADA") and the Pennsylvania Human Relations Act (“PHRA”).

II. Jurisdiction and Venue

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 1343 as this action involves federal questions regarding the violation of Plaintiff's rights protected by the ADA. The Court has supplemental jurisdiction over Plaintiff's related claims arising under the PHRA pursuant to 28 U.S.C. § 1367.

3. The events or omissions giving rise to the claims occurred in Western Pennsylvania, and therefore, this action is within the jurisdiction of the United States District Court for the Western District of Pennsylvania and the venue is proper pursuant to 28 U.S.C. § 1391(b).

III. The Parties

4. Plaintiff Bruce Martin is a resident and citizen of Pennsylvania.

5. Defendant Friendship Ridge is a company operating in Pennsylvania.

IV. Facts

6. All previous paragraphs are incorporated as though fully set forth herein.

7. Plaintiff was hired by Defendant on August 19, 1996, as an escort. In 2001, he was promoted to dietary aide.

8. Plaintiff suffers from diverticulosis, a gastrointestinal disorder that substantially limits the major life activities of walking, climbing, running, standing and sitting for long periods of time, and lifting.

9. Plaintiff also suffers back pain and high blood pressure.

10. Despite Plaintiff's limitations, he was able to fulfill the essential functions of his position, with the reasonable accommodation of occasional time off for medical care.

11. In the year prior to his termination, Plaintiff experienced an inflamed pancreas and an aneurysm in his stomach and was unaware of the cause. These issues led to a dramatic weight loss of over one hundred pounds in a year.

12. Plaintiff's supervisors would often approach him and his significant other, who also worked at Friendship Ridge, to ask if he was doing okay and what was going on.

13. Plaintiff was approved for around 470 hours of FMLA leave, which he exhausted around April 2012. Plaintiff used his sick days for any days he need to take off between April and July.

14. While Plaintiff was employed, Defendant had a policy that permitted employees to use "Emergency Holidays" for whatever reason they required the day off. This permitted the employee to take days off when they were ill. Employees were permitted to save the holidays.

15. Defendant also permitted employees to take their vacation days as sick days.

16. At the beginning of July 2012, Plaintiff had eight emergency holidays and two weeks of paid vacation saved.

17. On or around July 6, 2012, Plaintiff began to experience severe physical problems, including intense stomach pain and bleeding from the rectum.

18. Plaintiff went in to work on July 12, 2012, despite experiencing symptoms.

19. Plaintiff approached his supervisor, Angela Atkins, and informed her of his condition, the symptoms he was experiencing, and asked for an accommodation to seek medical treatment. He offered to use an emergency holiday if necessary.

20. Ms. Atkins contacted the main supervisor, Mary Kay Grippa, to discuss the situation. After that conversation, Ms. Atkins permitted Plaintiff to leave work.

21. Plaintiff went to the hospital, where he was diagnosed with diverticulitis.

22. On July 13, 2012, Plaintiff again attempted to go to work. While at work, he informed Ms. Atkins of his diagnosis. Ms. Atkins refused to take the medical excuse from the hospital, saying that he needed to get an excuse from his primary care physician.

23. July 13, 2012 was a Saturday. Plaintiff's primary care physician's office was not open on the weekends.

24. His symptoms again made it too difficult for him to work on the 13th, and he was again given permission from Ms. Atkins, after she had checked with Ms. Grippa, to leave work.

25. Again, on July 14, 2012, Plaintiff went in to work but was given permission to leave because of the severity of his symptoms.

26. On July 15, 2012, Plaintiff believed that his symptoms may have been subsiding, and he went in to work.

27. Another employee observed Plaintiff bent over a table, and approached a supervisor about the situation.

28. The supervisor, Jeanie Matrovich, and the employee went into another room. Shortly thereafter, the other employee exited the room and informed Plaintiff that Ms. Matrovich had spoken to Ms. Grippa and he had permission to leave.

29. On July 16, 2012, Plaintiff was contacted by Ms. Grippa, who informed him that he was suspended for one day without pay for leaving work without authorization.

30. On July 17, Plaintiff was contacted by Rick Darbit, an HR employee, and told that he was suspended indefinitely, pending further investigation.

31. On August 10, 2012, Plaintiff was notified by letter that he was terminated.

32. Although Plaintiff was a member of a union, the union refused to take any action to defend him.

33. Another employee of Friendship Ridge, Gina Holbrook, a white woman who had no record of a disability and no remaining sick days, was permitted to take four days off for an emergency holiday two weeks before Plaintiff's flare up and resulting absences.

Count I
Violation of the ADA- Discrimination Based on Disability

34. All previous paragraphs are incorporated as though fully set forth herein.

35. The ADA defines a disability as a "physical or mental condition that substantially limits a major life activity."

36. Plaintiff has a disability as defined under the ADA, in that his diverticulitis prevents him from being able to walk, run, climb, lift, or sit or stand for substantial periods of time.

37. Defendant was aware of Plaintiff's disability when he was terminated.

38. Defendant terminated Plaintiff because of his disability, in violation of the ADA.

39. Defendant has failed to make a good faith effort to accommodate Plaintiff's disability.

40. As a direct result of Defendant's conduct, Plaintiff suffered from humiliation and emotional distress.

Count II
Violation of the PHRA- Discrimination Based on Disability

41. All previous paragraphs are incorporated as though fully set forth herein.

42. The Pennsylvania Human Relations Act defines a disability as a "physical or mental impairment which substantially limits one or more of such person's major life activities."

43. Plaintiff has a disability as defined under the PHRA.

44. Defendant terminated Plaintiff because of his disability, in violation of the PHRA.

Request for Relief

WHEREFORE, Plaintiff respectfully requests for this Court to grant the following relief in excess of \$75,000:

- a. Award Plaintiff back pay, front pay, fringe benefits, prejudgment interest,
- b. Award Plaintiff compensatory damages for lost wages, benefits, interest, and other remuneration, and for humiliation and emotional distress as well as punitive damages.
- c. Award Plaintiff attorneys fees;
- d. Such equitable relief as may be appropriate under the circumstances; and
- e. Award such further relief as this Court deems necessary and proper.

JURY TRIAL DEMANDED.

Respectfully submitted,

Dated: February 28, 2014

/s/ Elizabeth L. Pollock-Avery
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