

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA

Athena Miller

Plaintiff,

v.

Select Medical Corporation

Defendant.

Case No.

JURY TRIAL DEMANDED

**COMPLAINT**

Athena Miller (“Plaintiff”), by her counsel, Elizabeth L. Pollock-Avery Esq. and David Manes, Esq. of Kraemer Manes & Associates, LLC, file this Complaint against Select Medical Corporation (“Defendant”), alleging the following:

**I. Nature of the Action**

1. Plaintiff seeks equitable relief as well as monetary damages to redress Defendant’s unlawful discrimination against Plaintiff because of her 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. Plaintiff is a resident and citizen of Pennsylvania, carried out her duties for Defendant 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 Athena Miller is a resident and citizen of Pennsylvania.

5. Defendant Select Medical Corporation is believed to be a business entity authorized to conduct business in the Commonwealth of Pennsylvania.

### **IV. Facts**

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

7. At all times relevant until her termination on June 5, 2013 Plaintiff was an employee in good standing at Select Medical Corporation.

8. At all times relevant, Plaintiff suffered from one or more disabilities, including post-concussive symptoms resulting from a severe concussion Plaintiff experienced in February 2013.

9. On February 22, 2013 Plaintiff's treating physician recommended that Plaintiff not return to work until she had completed a follow-up evaluation in one month.

10. Plaintiff's treating physician partially cleared Plaintiff's return to work for the first time on March 22, 2013, and suggested reasonable accommodations that would be required.

11. The accommodations recommended in this evaluation included part time work of no more than twenty hours per week and four hours per day, light duty work activity, frequent breaks as needed as well as restrictions on heights, heavy lifting, computer usage and patient contact.

12. Plaintiff promptly notified Defendant and attempted to begin accommodation discussions, but Defendant refused to discuss any accommodations.

13. Defendant told Plaintiff that she could only return to work once she had been cleared to work full time without restrictions.

14. On May 10, 2013 Plaintiff's treating physician again partially cleared Plaintiff's return to work and recommended reasonable accommodations.

15. The accommodations recommended in the treating physician's May 10, 2013 evaluation included part time work of no more than twenty hours per week and four hours per day, light duty work activity as well as restrictions on heights, heavy lifting, computer usage, driving and patient contact.

16. Plaintiff promptly notified Defendant but was again told that she could only return to work once she had been cleared to work full time without restrictions.

17. As before, Defendant refused to discuss any accommodation.

18. By June 5, 2013 Plaintiff's FMLA leave and personal leave was exhausted.

19. Defendant terminated Plaintiff's employment on June 5, 2013.

20. Plaintiff was not fully cleared to return to work until November 27, 2013.

21. Although Plaintiff was cleared to return to work in November 2013, Plaintiff still experiences post-concussive symptoms, including headaches, eye strain, and other eye problems that are brought on by physical activity and prolonged reading.

**Count I**  
**Violation of the ADA- Discrimination based on Disability**

22. The above paragraphs are incorporated herein as if set forth again in full.

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

24. At all times relevant, Plaintiff had a disability as defined under the ADA because persistent conditions resulting from a severe concussion substantially limited major life activities including performing manual tasks and working.

25. Defendant was aware of Plaintiff's disability when she was terminated.

26. Defendant terminated Plaintiff because of her disability, in violation of the ADA.

**Count II**  
**Violation of the PHRA- Discrimination Based on Disability**

27. The above paragraphs are incorporated herein as if set forth again in full.

28. 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."

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

30. Defendant terminated Plaintiff because of her disability, in violation of the PHRA.

**Count III**  
**Violation of the ADA- Failure to Accommodate**

31. The above paragraphs are incorporated herein as if set forth again in full.

32. Defendant failed to make a good faith effort to accommodate Plaintiff's disability in violation of the ADA.

**Count IV**  
**Violation of the PHRA- Failure to Accommodate**

33. The above paragraphs are incorporated herein as if set forth again in full.

34. Defendant failed to make a good faith effort to accommodate Plaintiff's disability in violation of the PHRA.

**Request for Relief**

WHEREFORE, Plaintiffs respectfully request for this Court to grant the following relief to Plaintiff:

- a. Award Plaintiff back pay, front pay, fringe benefits, prejudgment interest;
- b. Award Plaintiff compensatory damages for lost wages, benefits, interest and other remuneration 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: May 27, 2014

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