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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROOSEVELT CARE CENTERS,

Defendant.

Case No.

COMPLAINT

Plaintiff, the United States of America, brings this civil action against Defendant Roosevelt Care Centers (“RCC” or “Defendant”), and alleges as follows:

1. The United States brings this action to enforce Title I of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12111-12117 (“Title I”), and its implementing regulations at 29 C.F.R. pt. 1630, which incorporate, through 42 U.S.C. § 12117(a), the powers, remedies, and procedures set forth in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* Title I of the ADA prohibits employment discrimination based on disability.

2. RCC violated Title I of the ADA by terminating its employee the Complainant based on her disability.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under 42 U.S.C. §§ 12117(a) and 2000e-5(f); and 28 U.S.C. §§ 1331 and 1345.

4. This Court may grant declaratory relief and further necessary or proper relief pursuant to 28 U.S.C. §§ 2201 and 2202, and may grant equitable relief, monetary damages, and a civil penalty pursuant to 42 U.S.C. §§ 12117(a) and 2000e-5(g).

5. RCC is operated by the Middlesex County Improvement Authority, a state of New Jersey public corporate body, established pursuant to the laws of New Jersey.

6. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. § 1391 because Defendant is located in this district and all or a substantial part of the events or omissions giving rise to this action occurred in this district.

7. Defendant is a person within the meaning of 42 U.S.C. §§ 12111(7) and 2000e(a), and 29 C.F.R. § 1630.2(c); an employer within the meaning of 42 U.S.C. §§ 12111(5) and 2000e(b), and 29 C.F.R. § 1630.2(e); and a covered entity within the meaning of 42 U.S.C. § 12111(2) and 29 C.F.R. § 1630.2(b).

FACTUAL ALLEGATIONS

8. From 1998 until October 7, 2016, RCC employed the Complainant.

9. RCC is a nursing home that provides long-term, subacute, respite and hospice care. RCC is made up of two facilities located in Edison and Old Bridge, New Jersey.

10. Between 1998 and 2013, the Complainant worked in the laundry unit at RCC's Edison location. After the laundry unit closed at the Edison location, the Complainant moved to

the Old Bridge location and, from October 1, 2013 until RCC terminated her employment on October 7, 2016, worked as a dietary worker at the Old Bridge location.

11. Dietary workers primarily work in the kitchen preparing meals for RCC's residents. A dietary worker's responsibilities include assembling meals onto trays, which are then loaded onto carts and delivered to patients' rooms by porters. They also have responsibility for clearing trays after they are returned to the kitchen from the patients' rooms.

12. On or about April 4, 2016, the Complainant injured her right wrist and elbow while using a broken dishwasher in the kitchen at RCC.

13. A hand specialist, at Hand Surgery & Rehabilitation of North Jersey, P.C., diagnosed cartilage tear symptoms in the Complainant's right wrist and in the medial epicondylitis of her right elbow.

14. Due to this injury, the Complainant missed 56 days of work between April 4, 2016 and May 31, 2016, after which the hand specialist medically cleared her to return to work without restrictions.

15. On September 1, 2016, the Complainant reported pain in her right elbow again and in her right shoulder after having manually pushed and pulled dishes through a broken dishwasher.

16. On that day, she saw the hand specialist, who administered another steroid shot in her right elbow. The hand specialist diagnosed recurrent right medial epicondylitis, prescribed a gripping/lifting restriction of three pounds, and advised that the Complainant could perform light duty work.

17. RCC advised the Complainant that it could not accommodate the lifting restriction and that she could not return to work at that time.

18. On September 21, 2016, the Complainant again saw the hand specialist who noted that the Complainant was feeling much better, reported no pain during the examination, and had full range of motion in the elbow. The hand specialist diagnosed “improved lateral epicondylitis” and cleared the Complainant to return to work on September 26 with no restrictions.

19. Around this same time, First Management Care Option, which manages RCC’s workers’ compensation claims, directed that the Complainant have a functional capacity exam (“FCE”) on September 29, 2016. The FCE evaluates the patient’s ability to perform specific functions that relate to the patient’s job responsibilities.

20. The Complainant returned to work on September 26, 2016, but RCC’s human resources department told her that she could not return to work until she completed the FCE.

21. A third-party provider, Kinematic Consultants, Inc., conducted the Complainant’s FCE on September 29, 2016. The examiners based their assessment on the job description for a food service worker as provided in the Dictionary of Occupational Titles, a publication maintained by the U.S. Department of Labor. The FCE measured, *inter alia*, the Complainant’s range of motion and strength in various parts of the body and assessed her ability to perform various job-related functions, such as gripping, pulling, lifting, and pushing.

22. Based on her demonstrated performance at the FCE, the examiners concluded that the Complainant had a permanent maximum lifting capacity of 20 pounds. The examiners further found that she demonstrated ability for several dietary worker related functions, including wiping surfaces, assisting with building food trays, ensuring accuracy of food orders, distribution of buffet items, and reporting supply/maintenance issues.

23. The Complainant had a follow-up appointment with the hand specialist on October 5, 2016, to review the results of the FCE. The hand specialist again diagnosed her with “improved right medial epicondylitis” and documented his conclusion that she had reached maximum medical improvement. He cleared the Complainant to return to work with a permanent 20-pound restriction.

24. On October 7, 2016, The Complainant and her husband met with RCC’s human resources representative, Matthew Wiater, and administrative assistant Kimberly Strong.

25. At this meeting, RCC told the Complainant that RCC could not accommodate a permanent 20-pound lifting restriction for the dietary worker position.

26. RCC then terminated the Complainant because of her permanent lifting restriction.

27. RCC did not accommodate the Complainant’s 20-pound lifting restriction.

28. At all times relevant to this action, the Complainant was a person with a disability because she has a physical impairment, right medial epicondylitis (with accompanying chronic pain), that substantially limits one or more major life activities, including lifting. *See* 42 U.S.C. § 12102.

29. The Complainant was a qualified individual with a disability because she satisfied the requisite skill, experience, education and other job-related requirements of the dietary worker position she held with RCC and, with or without reasonable accommodation, could perform the essential functions of that position.

30. Defendant summarily terminated the Complainant’s employment due to her disability without engaging in any interactive process with her to determine whether she could

perform the essential functions of the dietary worker position with or without a reasonable accommodation.

31. On October 13, 2016, the Complainant filed a timely charge of discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) alleging that RCC discriminated against her by terminating her employment in violation of the ADA on the basis of disability.

32. Pursuant to 42 U.S.C. § 2000e-5, incorporated by reference in 42 U.S.C. § 12117(a), the EEOC investigated the Complainant’s charge and found reasonable cause to believe that Defendant discriminated against her on the basis of disability in violation of the ADA when it fired her because of her lifting restriction. After conciliation efforts failed, the EEOC referred the charge to the United States Department of Justice.

33. The United States, through the Department of Justice, investigated whether Defendant’s employment practices discriminated on the basis of disability and notified RCC of that investigation.

34. All conditions precedent to the filing of this action have been performed.

CAUSE OF ACTION

Violation of Title I of the Americans with Disabilities Act

35. The United States repeats and incorporates by reference the foregoing paragraphs.

36. Title I of the ADA, 42 U.S.C. §§ 12111–12117, and its implementing regulation, 29 C.F.R. Part 1630, prohibit covered entities, such as Defendant, from discriminating against qualified individuals on the basis of disability in regard to the discharge of employees and other

terms, conditions, and privileges of employment, including by failing to provide reasonable accommodations to qualified employees with disabilities.

37. The Complainant is a person with a disability because she has a physical impairment that substantially limits one or more major life activities. 42 U.S.C. § 12102; 29 C.F.R. § 1630.2(g)-(k).

38. During all relevant times, the Complainant was qualified for the RCC dietary worker position because she could perform the essential functions of the job with or without a reasonable accommodation. 42 U.S.C. § 12111(8); 29 C.F.R. § 1630.2(m).

39. Defendant failed to engage in an interactive process with the Complainant to determine whether it could reasonably accommodate her disability.

40. Defendant could have reasonably accommodated the Complainant's physical limitations.

41. By its acts and omissions, Defendant discriminated against the Complainant when it failed to make reasonable accommodations to her known disability and when it fired her on the basis of disability. *See, e.g.*, 42 U.S.C. §§ 12102, 12111, 12112; 29 C.F.R. §§ 1630.2, 1630.4, 1630.9.

42. As a result of Defendant's discrimination, the Complainant suffered and continues to suffer damages, including emotional distress.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court grant the following relief:

A. grant judgment in favor of the United States and declare that Defendant violated Title I of the ADA, 42 U.S.C. §§ 12111-12117, and its accompanying regulations;

B. enjoin Defendant and its agents, employees, successors and all persons in active concert or participation with it, from engaging in discriminatory employment policies practices, and procedures that violate Title I of the ADA;

C. require Defendant to modify its policies, practices, and procedures as necessary to bring its employment practices into compliance with Title I of the ADA and its implementing regulations;

D. order Defendant to train its supervisors and human resource staff regarding the requirements of Title I of the ADA;

E. award the Complainant:

(i) back pay with interest;

(ii) the value of any lost benefits with interest;

(iii) compensatory damages, including damages for emotional distress, for injuries

suffered as a result of Defendant's failure to comply with the requirements of

Title I of the ADA; and

F. order such other appropriate relief as the interests of justice may require in this action.

JURY DEMAND

The United States hereby demands a jury trial.

Dated: March 20, 2023

PHILIP R. SELLINGER
United States Attorney

By: */s Thandiwe Boylan*
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