

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA**

PATRICIA BARLEY,

Civil Action

Plaintiff,

No.

v.

OPTION CARE ENTERPRISES, INC.

Defendant.

JURY TRIAL DEMANDED

CIVIL COMPLAINT

Plaintiff, Patricia Barley, by undersigned counsel files this Civil Complaint and alleges the following:

I. Jurisdiction

1. The jurisdiction of this Court is invoked pursuant to Section 107 of the Americans with Disabilities Act, 42 U.S.C. §12117(a), incorporating by reference Section 706 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5; the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §626(c)(1); 28 U.S.C. § 1331 and 1343(a)(4) and this Court’s supplemental jurisdiction pursuant to 28 U.S.C. §1367.

2. Plaintiff has satisfied all the procedural and administrative requirements set forth in the Americans with Disabilities Act and the Age Discrimination in Employment Act in that:

- a. Plaintiff filed a timely written charge of disability and age discrimination with the Equal Opportunity Employment Commission (“EEOC”) on November 24, 2021. This charge was also cross filed with the Pennsylvania Human Relations Commission;
- b. Plaintiff received a Notice of Right to Sue from the EEOC dated September 22, 2022; and
- c. This action was filed with this Court within 90 days of receipt of that Notice;
- d. More than one year has lapsed since the date Plaintiff filed her PHRC

complaint.

II. The Parties

3. Plaintiff, Patricia Barley (“Barley”), is an adult individual who resides at 140 Hieber Avenue, Pittsburgh, Allegheny County, PA 15229.

4. Defendant, Option Care Enterprises, Inc. (“Option Care”) is a corporation with a place of business at 540 Seco Road, Suite A, Monroeville, Allegheny County, PA 15146.

5. Defendant is a covered entity within the meaning of the ADA, 42 U.S.C. §12111(2) and (5)(A) because it is an employer engaged in industry affecting commerce and has more than 15 persons employed for each working day in each of 20 or more calendar weeks in the current and/or preceding year.

III. Factual Background

6. Barley was hired by Defendant on February 1, 2010, as a registered nurse. Barley is 70 years old.

7. Barley was one of the oldest employees in her position, with most nurses significantly younger than Barley.

8. Barley suffers from severe migraines, which are aggravated whenever she uses the computer.

9. Her condition began 21 years ago, but significantly worsened when Barley began using the new Nurse Point System that was initiated by the Defendant in 2017.

10. The severity of Barley’s condition coupled with this new system has caused her to become extremely sick to the point where at times she has vomited in patient homes.

11. In 2020, Barley’s doctor recommended that she stop using computers and the new system and instead fax her notes to the supervisor.

12. Barley had been efficiently faxing her notes and documents to the supervisor for the past 11 years and it had never been an issue.

13. When Barley first received this recommendation from her doctor, Option Care permitted the accommodation and allowed Barley to fax her notes.

14. In August 2021, Barley's new supervisor, Trisha Jones, had an issue with Barley's accommodation and would often make comments that the documents were illegible and demand that they be resent, despite this not being an issue in years prior.

15. Further, Jones alleged that faxing these notes presented a possible HIPAA violation, even though this method of note taking was permitted by the Defendant for over 11 years.

16. Jones would also blame Barley for sending late notes; however, Barley had sent her notes on time, but another supervisor had failed to inform Jones that they had received the notes

17. Barley reported Jones' behavior to Jones' supervisor, Eric Donley, on September 16, 2021.

18. During the September 16, 2021 meeting with Donley, Barley was terminated for not being able to use the Nurse Point system, despite having valid and previously approved accommodation.

19. Barley's clients were then assigned to significantly younger nurses.

Count I:
Americans with Disabilities Act: Discrimination and Failure to Accommodate

20. Plaintiff incorporates by reference the allegations in paragraphs 1 through 19 as if fully restated herein.

21. As described above, Barley is disabled within the meaning of the ADA, because she has severe migraines that cause her to become incapacitated and very ill; Defendant perceived

her as having such impairments; and she has a record of such impairments.

22. Plaintiff was qualified for the registered nurse position and could perform all essential functions of the position with or without reasonable accommodations. Thus, Plaintiff was a qualified individual with a disability under 42 U.S.C. § 12111(8).

23. Defendant removed Barley from her position as a registered nurse, in violation of 42 U.S.C. § 12112(a).

24. Defendant also suggested that it would no longer make reasonable accommodations for Barley's known disabilities in violation of 42 U.S.C. § 12112(b)(5)(A)-(B).

25. Defendant's violation of the Americans with Disabilities Act was intentional and done with reckless disregard of Barley's federally protected right to be free of discrimination on the basis of her disabilities.

26. As a direct and proximate result of Defendant's removal of Barley from the registered nurse position, as well as Defendant's failure to accommodate her disabilities, Barley has suffered and continues to suffer damages, including, but not limited to:

- a. Lost wages and benefits;
- b. Emotional distress, anxiety, humiliation, and inconvenience;
- c. Costs and expenses of litigation; and
- d. Attorney's fees.

WHEREFORE, Patricia Barley demands judgment against Defendant for its violation of the Americans with Disabilities Act as follows:

- a. That the Court enter a Judgment Order declaring Defendant's actions to be unlawful and in violation of the ADA;

- b. Back pay and benefits from September 16, 2021, until the time of trial, with interest;
- c. That Defendant be ordered to reinstate Plaintiff into the position she held on September 16, 2021, and provide her with accumulated seniority, fringe benefits, and all other associated rights or front pay;
- d. Compensatory damages for her emotional distress, anxiety, humiliation and inconvenience;
- e. Punitive damages for Defendant's reckless disregard of Plaintiff's federally protected rights;
- f. Reasonable attorney's fees and costs and expenses of litigation; and
- g. Such other legal and equitable relief as the Court deems just and proper.

Count II:
Americans with Disabilities Act: Retaliation

27. Plaintiff incorporates by reference the allegations in paragraphs 1 through 26 as if fully restated herein.

28. As described above, Plaintiff is disabled within the meaning of the ADA; Defendant perceived her as having such an impairment; and she has a record of such an impairment.

29. Defendant removed Barley from her position in retaliation for requesting a reasonable accommodation under the ADA, in violation of 42 U.S.C. § 12203(a).

30. Further, Defendant's removal of Barley was undertaken with malice or reckless indifference to her federally protected right not to be retaliated against for requesting a reasonable accommodation.

31. As a direct and proximate result of the Defendant's removal of Barley from her position, she has suffered and continues to suffer damages, including, but not limited to:

- a. Lost wages and benefits;

- b. Emotional distress, anxiety, humiliation and inconvenience;
- c. Costs and expenses of litigation; and
- d. Attorney's fees.

WHEREFORE, Patricia Barley demands judgment against Defendant for its violation of the Americans with Disabilities Act as follows:

- a. That the Court enter a Judgment Order declaring Defendant's actions to be unlawful and in violation of the ADA;
- b. Back pay and benefits from September 16, 2021, until the time of trial, with interest;
- c. That Defendant be ordered to reinstate Plaintiff into the position she held on September 16, 2021, and provide her with accumulated seniority, fringe benefits, and all other associated rights or front pay;
- d. Compensatory damages for her emotional distress, anxiety, humiliation and inconvenience;
- e. Punitive damages for Defendant's reckless disregard of Plaintiff's federally protected rights;
- f. Reasonable attorney's fees and costs and expenses of litigation; and
- g. Such other legal and equitable relief as the Court deems just and proper.

Count III:
Age Discrimination in Employment Act

32. Plaintiff incorporates by reference the allegations in paragraphs 1 through 31 as if fully restated herein.

33. Defendant fired Barley because of her age, in violation of the Age Discrimination in Employment Act, 29 U.S.C. §623(a)(1).

34. But for Barley's age, Defendant would not have fired her.

35. Defendant's violation of the ADEA was willful.

WHEREFORE, Patricia Barley demands judgment against Defendant for Defendant's violation of the Age Discrimination in Employment Act as follows Plaintiff demands judgment as follows:

- a. That Defendant be ordered to reinstate Plaintiff into the position she occupied prior to Defendant's discriminatory actions, together with all benefits incident thereto, including, but not limited to wages, benefits, training, and seniority;
- b. That Defendant be required to compensate Plaintiff for the full value of wages, she would have received had it not been for Defendant's illegal treatment of Plaintiff, with interest until the date Plaintiff is offered employment into a position substantially equivalent to the one which Plaintiff occupied on September 16, 2021;
- c. That Defendant be required to provide Plaintiff with front pay in the event reinstatement is not feasible;
- d. That Defendant be required to compensate Plaintiff for lost benefits;
- e. That a final judgment in favor of Plaintiff and against Defendant be entered for liquidated damages in an amount equal to the amount of wages due and owing Plaintiff as provided by 29 U.S.C. §§626(b) and 216(b);
- f. That Defendant be enjoined from discriminating against Plaintiff in any manner that violates the ADEA;
- g. That Plaintiff be awarded against Defendant the costs and expenses of this litigation and a reasonable attorney fee; and
- h. That Plaintiff be granted such further legal and equitable relief as the Court may deem just and proper.

Count IV
PHRA

36. Plaintiff incorporates by reference the allegations in paragraphs 1 through 35 as if fully restated herein.

37. Defendant's firing of Barley violated the PHRA, 43 Pa. Conns. Stat. Ann. §955(a) et seq.

38. As a direct result of Defendant's violation of the PHRA, Barley has lost wages and other economic benefits of her employment with Defendant, in addition to suffering extreme emotional distress, depression, inconvenience and humiliation.

WHEREFORE, Patricia Barley requests the following:

- a. That the Court enter a judgment declaring Defendant's actions to be unlawful and in violation of the Pennsylvania Human Relations Act;
- b. That Defendant be ordered to instate Plaintiff and provide her accumulated seniority, fringe benefits and all other rights;
- c. That Defendant be required to compensate Plaintiff for the full value of wages she would have received had it not been for Defendant's illegal treatment of Plaintiff, with interest from the date of discrimination, in addition to reimbursement for lost pension, social security, experience, training opportunities and other benefits;
- d. That the Court award Plaintiff compensatory damages as a result of Defendant's violations of the Pennsylvania Human Relations Act;
- e. That Defendant be enjoined from discriminating against Plaintiff in any manner that violates the Pennsylvania Human Relations Act;
- f. That Plaintiff be awarded against Defendant the costs and expenses of this litigation and a reasonable attorney fee; and
- g. That the Court grant Barley additional relief as may be just and proper.

Respectfully submitted,

Edgar Snyder & Associates

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