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Equal Employment Opportunity Commission, Plaintiff, v. Select Specialty Hospital - Macomb County, Defendant.

Judge Kerry L. Morgan

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**Equal Employment Opportunity Commission, Plaintiff, v. Select Specialty Hospital
- Macomb County, Defendant.**

Keywords

Equal Employment Opportunity Commission, Select Specialty Hospital - Macomb County, 03-73671,
Consent decree / Settlement, Disparate Treatment, Termination, Other physical impairment disability,
Disability - Record of Disability, Disability - Regarded as Having a Disability, Healthcare, Employment Law,
ADAAA

CLOSED

FILED

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SEP 30 2003

CLERK'S OFFICE
U. S. DISTRICT COURT
EASTERN MICHIGAN

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

Case No.:

03-73671

v.

Honorable **PAUL D. BORMAN**

SELECT SPECIALTY HOSPITAL - Macomb County, Michigan **MAGISTRATE JUDGE MORGAN**

Defendant.

ADELE RAPPORT (P44833)
STANLEY PITTS (P33519)
DALE PRICE (P55578)
Equal Employment Opportunity
Commission
477 Michigan Ave., Room 865
Detroit, Michigan 48226
(313) 226-5673

RECEIVED
SEP 24 2003
CLERK'S OFFICE
U.S. DISTRICT COURT

CONSENT DECREE

On September 24, 2003, this matter was commenced by the United States Equal Employment Opportunity Commission, (the "Commission") against Select Specialty Hospital-Macomb County, Inc., ("Defendant" or "Select Specialty") on behalf of Charging Party, Katrina Malone ("Charging Party" or "Malone"). The Commission's Complaint alleged that Malone was discharged based on her perceived disability (a back impairment) and a record of disability in violation of Title I of the Americans with Disabilities Act of 1990, as amended.

FINAL DISPOSITION

1. Through this Consent Decree, ("Decree) Plaintiff, the Commission, on behalf of Katrina Malone, and Defendant, Select Specialty, desire to forever resolve all issues raised, presented, or joined in Civil Action Number 23-7367 without the burden, expense and potential delay of further litigation, and intend to be bound by the promises made herein.

STIPULATED FACTS

2. The parties stipulate and agree that the EEOC is the agency of the United States government authorized to investigate allegations of unlawful employment discrimination, to bring civil actions to prohibit unlawful employment practices and to seek relief for individuals affected by the practices complained of in this lawsuit.
3. Select Specialty is an employer engaged in an industry affecting commerce within the meaning of Section 701(g) and (h) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e(g) and (h), which is incorporated by reference in the ADA. Select Specialty had at least fifteen (15) employees for twenty (20) or more calendar weeks during the relevant time period.
4. Pursuant to the ADA, the parties acknowledge the jurisdiction of the United States District Court for the Eastern District of Michigan (Southern Division) over the subject matter and parties to this case for the purpose of entering this Decree, and, if necessary, enforcing the provisions of this Decree.
5. Venue is appropriate in the Eastern District of Michigan (Southern Division). For purposes of this Decree and proceedings related to this Decree only, Select Specialty

agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

MONETARY RELIEF

6. Select Specialty agrees to pay Katrina Malone monetary relief in the amount of nine thousand dollars (\$9,000) within thirty (30) days of the acceptance and signing of this Decree. An IRS Form 1099 will be issued to Ms. Malone. The funds are to be paid directly to Malone, via U.S. Mail at 19303 Concord St., Detroit, Michigan 48234, with a copy of the check sent to Adele Rapport, Regional Attorney, Equal Employment Opportunity Commission, 477 Michigan Avenue, Room 865, Detroit, Michigan 48226.

NON-DISCRIMINATION

7. Select Specialty, its officers, agents, employees, successors, assigns and all persons in active concert of participation with it, shall comply with the ADA's in all respects.

NON-RETALIATION

8. Select Specialty, through its directors, officers, agents, successors, assigns and employees, will not retaliate against any person known to them who participated or cooperated in the investigation and prosecution by the EEOC of Charge Number 230-A1-1259, filed under the Americans with Disabilities Act.

DISPUTE RESOLUTION AND COMPLIANCE

9. The Parties agree that the United States District Court for the Eastern District of Michigan, Southern Division, shall retain jurisdiction and will have all available equitable powers, including injunctive relief, to enforce this Decree. Upon motion of

either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The parties shall engage in a good faith effort to resolve any dispute as to compliance prior to seeking review by the Court, and shall be required to give notice to each other ten (10) days before moving for such review.

POSTING OF NOTICE

10. Select Specialty agrees to post a mutually agreeable notification, attached as Attachment A, in at least one (1) conspicuous place at its Macomb County facility, which sets forth employees' rights regarding the federal anti-discrimination laws. This notice shall be posted for three (3) years from the entry of this Decree. Should any posted copies of the notice become defaced, marred or otherwise made unreadable, Select Specialty agrees to post a readable copy of this notice in the same manner heretofore specified as soon as practical thereafter.

NON-ADMISSION OF LIABILITY

11. Select Specialty has denied all allegations set forth in Civil Action 03-73671, along with any and all inferences of wrongdoing, and neither its consent to the entry of this Decree, nor any of the terms or conditions set forth herein shall constitute an adjudication or finding on the merits of the case or be construed as an admission of liability, wrongdoing, guilt, and/or violation of federal law, which Select Specialty expressly denies.

ALLOCATION OF COST

12. The Parties agree to pay their respective costs and attorneys fees associated with the drafting and enforcement of this Decree.

SEVERABILITY CLAUSE

13. If any provision of this Decree is found to be unenforceable by a court, only the specific provision in question shall be affected and the other enforceable provisions shall remain in full force.

TRAINING


14. Select Specialty agrees that it will provide a mandatory training program to all management and supervisory personnel at its Macomb County facility who participate in personnel decision making, which will focus on the Americans with Disabilities Act of 1990, as amended. The training will be completed within ninety (90) days of the entry of this Decree. The training will include information and discussion regarding the ADA requirement that employers must conduct an individual assessment of an applicant's ability to perform the essential functions of the job, with or without reasonable accommodation, before disqualifying such individuals from employment. The name of the individual(s) conducting the training, a list of participants and the topics discussed shall be provided to Adele Rapport, Regional Attorney, Equal Employment Opportunity Commission, 477 Michigan Avenue, Room 865, Detroit, Michigan 48226, within thirty (30) days of completion of the training.

ENTIRE AGREEMENT


15. This Decree constitutes the entire agreement and commitments of the parties. Any modifications to this agreement must be mutually agreed upon in writing and signed by the parties hereto.

DURATION

16. This Decree shall remain in effect for three (3) years from its entry with the Court.


ADELE RAPPORT (P44833)
STANLEY PITTS (P33519)
DALE PRICE (P55578)
Equal Employment Opportunity
Commission
477 Michigan Ave., Room 865
Detroit, Michigan 48226
(313) 226-5673

Respectfully submitted,


RICHARD SMITH (P36668)
Select Specialty Hospital-Macomb County,
Inc.
Blake, Kirchner, Symonds
Mcfarlane, Larson & Smith, PC
535 Griswold St. Ste 1432
Detroit, Michigan 48226
(313) 961-7321

IT IS SO ORDERED:


HONORABLE

9-22-03
DATE

EXHIBIT A

NOTICE

The ADA prohibits discrimination against any employee on the basis of disability with regard to any term or condition of employment including hiring, layoff, recall, promotion, discharge, pay and fringe benefits or in retaliation for the opposition to unlawful employment practices.

Select Specialty Hospital-Macomb County, Inc. supports and will comply with this federal law in all respects. Select Specialty Hospital-Macomb County, Inc. further agrees that it will conduct an individual assessment of all applicants' ability to perform the essential functions of the job, with or without reasonable accommodation, before disqualifying any applicant from employment.

Dated: _____

SELECT SPECIALTY HOSPITAL -
MACOMB COUNTY, INC.