

FILED
NOV 04 2015
FRANKLIN CIRCUIT COURT
AMY FELDMAN, CLERK

COMMONWEALTH OF KENTUCKY
48th JUDICIAL CIRCUIT
FRANKLIN CIRCUIT COURT – DIVISION II
CIVIL ACTION NO. 15-CI- 1168

LOWANDA McDONALD

PLAINTIFF

vs.

**COMPLAINT
JURY TRIAL DEMANDED**

COMMONWEALTH OF KENTUCKY,
JUSTICE & PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE

DEFENDANT

Serve: Hon. Jack Conway
Office of the Attorney General
700 Capitol Avenue
Frankfort, KY 40601
(agent for service of process)

Plaintiff Lowanda McDonald for her Complaint against the defendant Commonwealth of Kentucky herein states as follows:

I

Nature of the Case

1. This is an action pursuant to the Kentucky Civil Rights Act (KCRA), KRS Chapter 344, seeking recovery of damages, including lost pay and benefits, compensatory damages for emotional distress and mental anguish, physical pain and suffering, attorney's fees, litigation expenses and costs arising from defendant's unlawful actions.

II

Jurisdiction and Venue

2. Franklin Circuit Court has jurisdiction over this case pursuant to KRS 23A.010 and 344.450, and venue is proper herein because the claims arose in Franklin County, Kentucky.

III

Parties

3. Plaintiff Lowanda McDonald is a citizen of the United States of America and a resident of Anderson County, Kentucky.

4. The Commonwealth of Kentucky is the state government for Kentucky. Its agent for service of process is its Attorney General, the Hon. Jack Conway.

IV

Facts Giving Rise to Lawsuit

5. At all times pertinent hereto, McDonald has been an employee of the Commonwealth of Kentucky within the meaning of KRS 344.030(5).

6. At all times pertinent hereto, the Commonwealth of Kentucky has been the employer of McDonald within the meaning of KRS 344.030(2).

7. On or about June 7, 2010, McDonald began employment for the Commonwealth of Kentucky being then assigned to the Blackburn Correctional Complex as a Correctional Officer. On or about, October 1, 2012, McDonald began assignment with the Commonwealth's Department of Juvenile Justice.

8. On January 13, 2015, McDonald suffered a work-related injury during and in the course of her employment by the Commonwealth of Kentucky while performing services for it at the Fayette County Regional Juvenile Detention Center.

9. As of January 13, 2015, McDonald was assigned by her employer to its Justice and Public Safety Cabinet and its Department of Juvenile Justice holding the position of Youth Worker III.

10. As a result of the aforescribed work-related injury, McDonald is substantially limited in the following major life activities within the meaning of KRS 344.010(4)(a): performing manual tasks, walking, squatting, and lifting.

11. As a result of the work-related injury she sustained while working for defendant on January 13, 2015, McDonald suffers from a “disability” within the meaning of KRS 344.010(4).

12. At all times pertinent hereto, McDonald has been and is at present a qualified individual with a disability within the meaning of KRS 344.030(1).

13. As a result of her work-related injury and her consequent disability, McDonald can no longer perform the essential functions of her position as Youth Worker III. Specifically, as a result of the injury and disability, McDonald can no longer maintain Akido martial arts certification.

14. Because of her work-related injury and consequent disability, McDonald has requested from her employer reassignment to another position as a reasonable accommodation for her disability.

15. Defendant has failed and refused to reassign McDonald to another position for which she is qualified and is consistent with her disability.

16. Since on or about May 1, 2015, McDonald has applied for 100+ alternative positions with the Commonwealth, because she needs to continue her employment and maintain her health insurance and income.

17. While failing to reassign her as a reasonable accommodation for her disability, defendant has terminated McDonald's active employment and imposed adverse employment actions and conditions on her including cessation of the employer's portion of her health insurance premium.

18. While failing to reassign her as a reasonable accommodation for her disability, defendant has also taken the position that McDonald's injury is not work-related and, as a result, has ceased paying her temporary total disability benefits and paying for any medical treatment or care for McDonald necessary as a result of her injury and disability.

19. McDonald has requested a reasonable accommodation for her disability: reassignment to any number of the vacant positions for which she has applied and for which she is qualified.

20. Defendant has refused to consider this reasonable accommodation and otherwise has refused to return McDonald to active employment with it.

21. As a direct and proximate result of defendant's actions and inactions, McDonald has suffered, is suffering and is reasonably certain to suffer in the future, lost wages and benefits, impairment to her future earning capacity, emotional distress and hardship along with mental anguish.

V

CAUSES OF ACTION

Count 1

Discrimination by Failure to Allow or Provide a Reasonable Accommodation

22. McDonald incorporates paragraphs 1 through 21 hereof as if fully set forth herein.

23. The KCRA prohibits discrimination by an employer against an employee that is a qualified individual with a disability.

24. Included within the KCRA's definition of prohibited discrimination the failure to make reasonable accommodations to the known physical limitations of an otherwise qualified individual with a disability who is an employee unless doing so would impose an undue hardship on the employer.

25. The employer's failure to offer a reasonable accommodation is direct evidence of discrimination.

26. The KCRA requires that an employer and employee engage in an interactive process to determine whether a reasonable accommodation can be achieved.

27. Both employer and employee have a duty to participate in good faith in the interactive process to determine whether a reasonable accommodation can be achieved.

28. The KCRA and its federal counterpart, the Americans With Disabilities Act (ADA), both provide that "reassignment to a vacant position" is a form of reasonable accommodation.

29. Under the KCRA, reassignment as a reasonable accommodation must be provided to an employee who, because of a disability, can no longer perform the essential functions of his/her current position, with or without reasonable accommodation, unless the employer can show that it would be an undue hardship.

30. Under the KCRA, when considering reassignment as a reasonable accommodation, the employee must be "qualified" for the new position. An employee is "qualified" for a position if s/he: (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the new position, with or without reasonable accommodation. The employee does not need to be the best qualified individual for the position in order to obtain it as a reassignment.

31. Under the KCRA, The employer must reassign the individual to a vacant position that is equivalent in terms of pay, status, or other relevant factors (e.g., benefits, geographical location) if the employee is qualified for the position.

32. The KCRA requires employers to provide reasonable accommodations to individuals with disabilities, including reassignment, even though they are not available to others. Therefore, an employer who does not normally transfer employees would still have to reassign an employee with a disability, unless it could show that the reassignment caused an undue hardship. And, if an employer has a policy prohibiting transfers, it would have to modify that policy in order to reassign an employee with a disability, unless it could show undue hardship.

33. Under the KCRA, even if the employer has a policy prohibiting transfers from one office, branch, agency, department, facility, personnel system, or geographical area to another. The ADA contains no language limiting the obligation to reassign only to positions within an office, branch, agency, etc. Rather, the extent to which an employer must search for a vacant position will be an issue of undue hardship.

34. Reassignment means that the employee gets the vacant position if s/he is qualified for it. Otherwise, reassignment would be of little value and would not be implemented as the General Assembly intended.

35. Defendant has failed to provide or allow a reasonable accommodation to McDonald, who is a qualified individual with a disability.

36. Defendant could have and should have reassigned McDonald to an appropriate position well and far in advance of the filing of this lawsuit. McDonald advised defendant as of January 29, 2015, that she was capable of

returning the employment with a reasonable accommodation for her injury and related disability.

37. Defendant has discriminated against McDonald in violation of the KCRA by failing to allow or provide a reasonable accommodation for her disability.

38. As a direct and proximate result of defendant's unlawful discrimination against McDonald arising from its failure to allow or provide a reasonable accommodation for his disability, she has suffered, is suffering and is reasonably certain to suffer in the future damages including lost pay and benefits, impairment to her future earning capacity, emotional distress and mental anguish.

39. As a further direct and proximate result of defendant's unlawful discrimination, it has created dire and immediate financial hardship for McDonald and is threatening with permanent of loss of insurability for some medical conditions and injury for which there is no adequate remedy at law.

VI

DEMAND FOR RELIEF

WHEREFORE, plaintiff Lowanda McDonald demands the Court enter judgment as follows:

(1) awarding her compensatory damages in an amount in excess of this Court's jurisdictional minimum and such additional amount as determined by a jury to be fair based on the evidence at trial to compensate her for the lost wages and benefits, emotional distress and mental anguish,

embarrassment and humiliation, impairment to her earning capacity, past, present and future, caused by defendant's unlawful actions;

(2) grant her injunctive relief to prevent injury to McDonald for which there is no adequate remedy at law;


(3) award her costs, reasonable attorney's fees, and litigation expenses pursuant to KRS 344.450; and,

(4) all such other relief to which she proves entitled.

DEMAND FOR TRIAL BY JURY

Plaintiff demands pursuant to CR 38 trial by jury of all issues herein so triable.

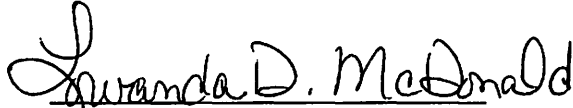
Respectfully submitted,



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COUNSEL FOR PLAINTIFF

VERIFICATION

I hereby verify and attest that I have read the foregoing Complaint and state that its factual allegations are true and correct to the best of my belief and knowledge.


Lowanda McDonald

COMMONWEALTH OF KENTUCKY)
)
 COUNTY OF FAYETTE)

Subscribed and sworn to before me by Lowanda McDonald this 27 day of October 2015.

My Commission Expires: 4/29/19


527076
 Notary Public, State-at-Large