
UTAH LABOR COMMISSION

CHERYL L FRANCE,

Petitioner,

vs.

ALBERTSONS,

Respondent.

ORDER OF REMAND

Case No. 04-0445

Cheryl L. France asks the Utah Labor Commissioner to review Administrative Law Judge Marlowe’s determination that Albertsons did not discriminate against Ms. France in violation of the Utah Antidiscrimination Act, Title 34A, Chapter 5, Utah Code Annotated.

The Labor Commissioner exercises jurisdiction in this matter pursuant to § 63G-4-301 of the Utah Administrative Procedures Act and § 34A-5-107(11) of the Utah Antidiscrimination Act.

ISSUE PRESENTED

Ms. France filed a complaint with the Utah Antidiscrimination and Labor Division (“UALD”) alleging that while working for Albertsons, she was discriminated against based on disability and retaliation. After an investigation, UALD found cause to believe that Ms. France was subject to the discriminatory conduct as alleged. Albertsons then requested a trial de novo with the Adjudication Division, as permitted under the Utah Antidiscrimination Act.

The matter was assigned to Judge Marlowe who conducted a three day evidentiary hearing on the matter. Judge Marlowe found that Ms. France was not subject to discrimination or retaliation by Albertsons and dismissed her complaint with prejudice.

In her motion for review, Ms. France contends that the preponderance of the evidence supports her complaint of discrimination based on disability, or more particularly, being regarded as disabled.¹

ORDER

The Commissioner has reviewed the evidentiary record and has discovered that the hearing record is incomplete, as a significant portion of one of the witness’s testimony is unavailable. The Commissioner therefore remands the matter to Judge Marlowe to conduct further proceedings as she deems necessary to complete the hearing record. Once the record is complete, Judge Marlowe may

¹ In her motion for review, Ms. France does not dispute the dismissal of her retaliation claim; therefore the Commissioner only reviews Judge Marlowe’s dismissal as it pertains to her claim of disability discrimination.

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reaffirm her decision and Ms. France's motion for review will be returned to the Commissioner for consideration in light of the full evidentiary record. If, however, Judge Marlowe makes any modification of her decision, both parties will be permitted an opportunity to file a motion for review of that modified decision. It is so ordered.

Dated this 28th day of April, 2009.

Sherrie Hayashi
Utah Labor Commissioner

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CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order of Remand in the matter of Cheryl L. France, Case No 04-0445 , was mailed first class postage prepaid this ____day of April, 2009, to the following:

Cheryl L. France
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and by Interdepartmental Mail to:

HEATHER MORRISON, DIRECTOR
UTAH ANTIDISCRIMINATION AND LABOR DIVISION

Sara Danielson
Utah Labor Commission