
UTAH LABOR COMMISSION

MICHAEL FRANCIS NIEMI,

Petitioner,

vs.

SOS STAFFING,

Respondent.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 8070503

Michael Francis Niemi asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse's dismissal of Mr. Niemi's complaint alleging that SOS Staffing ("SOS") discriminated against him in violation of the Utah Antidiscrimination Act, Title 34A, Chapter 5, Utah Code Annotated.

The Labor Commission 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.

BACKGROUND AND ISSUES PRESENTED

Mr. Niemi filed a complaint with the Utah Antidiscrimination and Labor Division ("UALD") alleging that SOS discriminated against him based on his disability, denied him reasonable accommodations for his disability, and retaliated against him because of his disability. After an investigation, UALD dismissed Mr. Niemi's complaint. Mr. Niemi then appealed that decision and requested an evidentiary hearing with the Adjudication Division, as permitted under the Utah Antidiscrimination Act.

Judge La Jeunesse held an evidentiary hearing on April 20, 2009, and later issued his decision dismissing Mr. Niemi's complaint against SOS.¹ Judge La Jeunesse found Mr. Niemi failed to establish the prima facie elements necessary to proving his claims against SOS. In his motion for review, Mr. Niemi contends SOS violated his employment contract and that SOS fired him without cause.²

FINDINGS OF FACT

¹ Mr. Niemi's companion case filed against Sorenson Communications, Inc., Case No. 8070504, was also adjudicated at the hearing and similarly dismissed.

² Mr. Niemi also makes several other arguments not relevant to the substantive issues of his claim under the Utah Antidiscrimination Act or he made arguments based on his misunderstanding of the procedural rules before and during the hearing. The Commission will only address those arguments material to the substantive issues of his discrimination claims.

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The Commission adopts Judge La Jeunesse's findings of fact. The facts relevant to the issues raised in Mr. Niemi's motion for review are summarized as follows:

Mr. Niemi worked for SOS as a temporary worker. SOS previously placed Mr. Niemi with one of its clients but this assignment was terminated at the client's request on April 6, 2007. SOS then placed Mr. Niemi with Sorenson Communications, Inc. ("Sorenson") to work at Sorenson's call center.

On Friday, July 20, 2007, Mr. Niemi was trying to find someone to cover his shift at Sorenson so he could leave for Las Vegas to attend a friends' wedding anniversary but was unsuccessful. Mr. Niemi sent an instant message to SOS's onsite manager to indicate his frustration at not finding someone to switch shifts. During that discussion, Mr. Niemi indicated that because he needed to have Saturdays and Sundays off, he would be looking for another assignment from SOS and that he would be ending his assignment with Sorenson. Mr. Niemi then followed SOS's onsite manager's request to turn in his badge and leave Sorenson. Because this was the second SOS account that Mr. Niemi had worked and been prematurely terminated from, by SOS's policy, he could not be placed in another assignment for a year.

DISCUSSION AND CONCLUSION OF LAW

The Commission has reviewed the evidentiary record and Mr. Niemi's motion for review to determine what findings of fact and conclusions of law Mr. Niemi was disputing in his motion for review. The Commission understands Mr. Niemi's primary contention is that SOS terminated his employment with SOS and its client, Sorenson, for discriminatory reasons. Under the Section 34A-5-106 of the Utah Antidiscrimination Act, "An employer may not refuse to hire, promote, discharge, demote, or terminate any person, or to retaliate against, harass . . . against any person otherwise qualified because of . . . disability."

Despite Mr. Niemi's argument that SOS unlawfully terminated him from his assignment at Sorenson, the evidence shows Mr. Niemi *chose* to leave this assignment when he was unable to get the time off he wanted to go to Las Vegas. Thus, SOS did not unlawfully terminate Mr. Niemi from his assignment because of his disability or for any other reason, since Mr. Niemi voluntarily ended his assignment with Sorenson.

Mr. Niemi also contends SOS terminated him from future assignments at SOS "without cause." However, claiming that his employment was terminated "without cause" alone does not meet Mr. Niemi's evidentiary burden of showing that SOS's actions were discriminatory. Mr. Niemi has not provided any evidence showing SOS made this decision because of his disability. Furthermore, SOS has articulated a legitimate, non-discriminatory reason for this action, i.e., that Mr. Niemi's previous record of having two job assignments prematurely terminated warranted a suspension of future job placements. Thus, there is no evidence that shows SOS's failure to place

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him at another job assignment since Sorenson was discriminatory.

In summary, the Commission concludes Mr. Niemi failed to provide any evidence to support his claims that SOS discriminated or took retaliatory action against him in violation of the Utah Antidiscrimination Act.

ORDER

The Commission affirms Judge La Jeunesse's decision. It is so ordered.

Dated this 29th day of July, 2009.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.