
UTAH LABOR COMMISSION

MICHAEL FRANCIS NIEMI,

Petitioner,

vs.

SORENSEN COMMUNICATIONS, INC.,

Respondent.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 8070504

Michael Francis Niemi asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse's dismissal of Mr. Niemi's complaint alleging that Sorenson Communications, Inc. ("Sorenson") 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.

ISSUE PRESENTED

Mr. Niemi filed a complaint with the Utah Antidiscrimination and Labor Division ("UALD") alleging that Sorenson 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 Sorenson.¹ Judge La Jeunesse found Mr. Niemi failed to establish the prima facie elements necessary to proving his claims. In his motion for review, Mr. Niemi argues that Sorenson denied him reasonable accommodations for his disabilities.²

¹ Mr. Niemi's companion case filed against SOS Staffing, Case No. 8070503, was also adjudicated at the hearing and similarly dismissed.

² Mr. Niemi makes several other arguments that are not relevant to the substantive issues of his claim under the Utah Antidiscrimination Act or he makes arguments based on his misunderstanding of the procedural rules before and during the hearing. This decision only addresses those arguments material to the substantive issues of his discrimination claims.

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FINDINGS OF FACT

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

Mr. Niemi worked for S.O.S. Staffing Services ("SOS") as a temporary worker. On April 6, 2007, SOS placed Mr. Niemi with its client, Sorenson, to work at Sorenson's call center. In June of 2007, Mr. Niemi was invited to take a typing testing to determine whether he was eligible for hire as a permanent employee of Sorenson. Sorenson required all employees to be able to type a minimum of 60 words to become a permanent employee. Mr. Niemi was only able to type 45 words a minute.

At some point during his assignment at Sorenson, Mr. Niemi requested time off from work "to help someone out." On Friday, July 20, 2007, Mr. Niemi was trying to find someone to cover part of his shift 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 was ending his assignment with Sorenson. Mr. Niemi then turned in his badge and other items and left Sorenson.

Mr. Niemi has cerebral palsy that currently affects his lower body. He also suffers from several eye conditions, including astigmatism, presbyopia, and a herniating exotropia in his right eye. In his decision, Judge La Jeunesse found Mr. Niemi was significantly impaired based on these conditions and qualified as an individual with a disability.

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 from Judge La Jeunesse's decision with respect to his claim against Sorenson. The Commission understands the issue to be resolved is whether Sorenson denied Mr. Niemi reasonable accommodation (1) by refusing to let him have time off from work for "stress days" or to attend doctor visits and (2) by failing to provide him a voice recognition system.³

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." Commission Rule R606-1-2(I) further provides, "An employer shall make reasonable accommodation to the known physical or

³ Mr. Niemi contends that he suffers from post traumatic stress disorder and thus occasionally needs some days off from work due to his stress.

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mental limitations of an otherwise qualified disabled applicant or employee unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its program.”

Contrary to his assertions in his motion for review, Mr. Niemi never put forth any evidence, testimony or otherwise, proving he requested time off from work as a reasonable accommodation for any disability. The evidence available shows only that Mr. Niemi asked for time off work “to help someone out” and to attend an event in Las Vegas. Without notice that his request for time off was related to a disability and need for accommodation for that disability, Sorenson could not deny Mr. Niemi a reasonable accommodation. Thus, the Commission finds that Sorenson’s failure to grant Mr. Niemi’s requests for time off work was not a denial of a reasonable accommodation.

Similarly, despite Mr. Niemi’s argument that Sorenson denied him a reasonable accommodation by failing to provide him a voice recognition system, Mr. Niemi never put forth any evidence, testimony or otherwise, that showed he *ever requested* such adaptive equipment or how it would have accommodated his disability and ability to perform his job. He only states in his motion for review that this adaptive equipment may have assisted him in meeting Sorenson’s 60 words per minute typing requirement. Thus, the Commission also finds that Sorenson did not deny Mr. Niemi the reasonable accommodation of having a voice activation system.

In summary, the Commission finds that Mr. Niemi failed to establish that Sorenson denied him any reasonable accommodation requests and affirms Judge La Jeunesse’s dismissal of this claim.

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

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the date of this order.