

Eastern District of Kentucky

FILED

MAR 0 1 2006

IN THE UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

AT LEXINGTON
LESLIE G WHITMER
CLERK U S DISTRICT COURT

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	CIVIL ACTION NO. 05-593-JMH
Plaintiff,)	
)	
v.)	
)	COMPLAINT-IN- INTERVENTION
PHYSICIAN SERVICES, P.S.C.)	
)	
Defendant)	
)	JURY TRIAL DEMAND
SRETTA CLARK, BONNIE CENTERS,)	
FRAN HOWARD,)	
)	
Intervenors)	

NATURE OF THE ACTION

1. Intervenors Sretta Clark, Bonnie Centers, and Fran Howard, hereinafter sometimes referred to as "intervenors" bring this action to obtain redress for discrimination due to sexual and disability harassment in the workplace, and retaliatory demotion and/or constructive discharge from their employment with defendant Physician Services, P.S.C., (hereinafter referred as PSP). The Equal Employment Opportunity Commission (hereinafter sometimes referred to as the "EEOC"), filed suit on behalf of the intervenor-applicants and the public interest and defendant was served on October 5, 2005.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to §§107(a) and 503 (a) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12117(a)

and 12203(a), and §§ 704(a) and 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-3(a) and 2000e-5(f)(1) and (3) (“Title VII”), and § 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a; and the Kentucky Civil Rights Act, KRS 344, *et. seq.*, and the common law tort of intentional infliction of emotional distress.

3. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Eastern District of Kentucky, Lexington Division.

PARTIES

4. Intervenor Sretta Clark, (Reese), was employed by Physician Services in March 2003 as a Privacy Officer, and was thereafter promoted to a Compliance Officer, and Human Resources Director.

5. Intervenor Bonnie Center was employed by Physician Services in May 2003 as a front desk clerk.

6. Intervenor Fran Howard was employed by Physician Services in February 2002 as a part-time nurse.

7. Intervenors filed charges with the Equal Employment Opportunity Commission on a timely basis against Physician Services. (Certified copies of the EEOC charges of intervenors are attached hereto and incorporated by reference).

8. Defendant, PSP, is a corporation and at all relevant times has continuously been a corporation doing business in the Commonwealth of Kentucky and the City of Lexington, and has continuously had at least 15 employees.

9. At all relevant times, PSP has been an employer engaged in an industry affecting commerce within the meaning of § 101(5) of the ADA, 42 U.S.C. § 12111(5),

§101(7) of the ADA, 42 U.S.C. § 12111(7), and §§ 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

CLAIMS

10. From at least October 2003, Defendant engaged in unlawful employment practices at its facility in Lexington and London, Kentucky, in violation of §§ 703(a)(1) and 704(a) of Title VII, 42 U.S.C. §§ 2000e-2a(1) and 2000e-3(a), and §§ 102(a) and 42 U.S.C. § 12117(a) and 12203(a), and KRS 344, *et. seq.* Defendant subjected Clark, Howard and Centers to a retaliatory hostile work environment and demotion and/or constructive discharge for participating in an investigation, and complaining about and opposing PSP's unlawful conduct.

11. The defendant, through its agents, sought to intentionally induce severe emotional distress upon the intervenors contrary to state common law. The conduct was outrageous and intolerable, and offended the generally accepted standards of decency and morality within our society. Intervenors have suffered severe emotional distress by defendants, and suffered damages.

12. The effect of the practices complained of in Paragraph 10 above has been to deprive Centers, Howard and Clark of equal employment opportunities and to otherwise adversely affect their respective status as employees of PSP.

13. The unlawful employment practices complained of in Paragraph 10 above were intentional.

14. The unlawful employment practices complained of in Paragraph 10 above were done with malice or with reckless indifference to Cochran, Centers, Howard, and Clark's respective federal and state protected rights.

PRAYER FOR RELIEF

WHEREFORE, the Intervenors respectfully requests that this Court:

A. Grant a permanent injunction enjoining PSP, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in a hostile work environment based upon disability discrimination and sexual harassment and retaliatory conduct.

B. Order PSP to make Clark, Centers, and Howard whole by providing appropriate back-pay with prejudgment interest in amounts to be determined at trial and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

C. Order PSP to make Clark, Centers and Howard whole by providing each compensation for past and future pecuniary losses resulting from the unlawful employment practices described in Paragraph 10 above, in amounts to be determined at trial.

D. Order PSP to make Clark, Centers and Howard whole by providing each compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in Paragraph 10 above, including losses resulting from any emotional pain, suffering, inconvenience, loss of enjoyment of life, embarrassment and humiliation, in amounts to be determined at trial.

E. Order PSP to pay Clark, Centers and Howard punitive damages for its malicious and reckless conduct described in Paragraph 10 above, in amounts to be determined at trial.

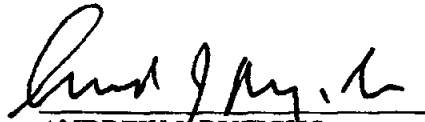
F. Grant such further relief as the Court deems necessary and proper.

G. Award the Intervenor's their reasonable attorney's fees and costs of this action.

JURY TRIAL DEMAND

The Intervenor's request a jury trial on all questions of fact raised by its Complaint-in-Intervention.

Respectfully submitted,



ANDREW J. RUZICHO
271 W. Short Street, Suite 500
Lexington, KY 40507
(859) 231-0926 – office
(859) 254-7096 – fax
jruzicho@hotmail.com
COUNSEL FOR INTERVENORS
CLARK, CENTERS and HOWARD

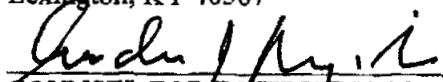
CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2005, a copy of the foregoing document was mailed, postage pre-paid to the following:

Jo Ann Farnsworth
Senior Trial Attorney
EEOC Indianapolis District
101 W. Ohio Street, Suite 1900
Indianapolis, IN 46204-4203

R. Gary Winters
McCaslin, Imbus & McCaslin
Suite 900, Provident Bank Building
632 Vine Street
Cincinnati, OH 45202-2442

Richard A. Getty
Getty, Hargadon Miller & Keller PLLC
1900 Lexington Financial Building
250 W. Main Street
Lexington, KY 40507


COUNSEL FOR INTERVENORS

STATE OF INDIANA)
)
COUNTY OF MARION) SS

CERTIFICATION

I, Danny G. Harter, District Director of the Indianapolis District Office of the Equal Employment Opportunity Commission ("EEOC"), being duly sworn, and under oath, hereby certify:

That, as the District Director, all administrative files in the Indianapolis District Office and the Louisville Area Office were under my care and custody on November 10, 2005;

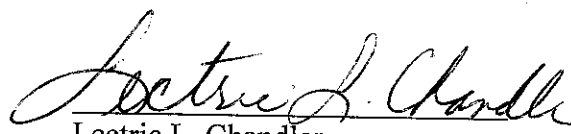
That an administrative file was prepared in the regular course of business of the Indianapolis District Office of the EEOC on Charge No. 241-2004-01450 in which Sretta Reese alleged that Spine & Brain Neurological Center committed an unlawful employment practice in violation of Title VII of the Civil Rights Act, as amended;

That the Charge of Discrimination, dated March 15, 2004 and the Amendment, dated August 6, 2004 attached hereto are true and accurate copies of the Charge of Discrimination and the Amendment from the administrative file of EEOC charge number 241-2004-01450, Sretta Reese v. Spine & Brain Neurological Center.


DANNY G. HARTER
District Director

STATE OF INDIANA)
) SS
COUNTY OF MARION)

Before me the undersigned, a Notary Public for Marion County, State of Indiana, personally appeared Danny G. Harter and he being first duly sworn upon his oath, says that the facts alleged in the foregoing certification are true. Signed and sealed this 10th day of November, 2005.


Lectric L. Chandler
Notary Public

My Commission Expires: November 30, 2007
County of Record: Marion

EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA
 EEOC

241-2004-01450

Kentucky Commission On Human Rights

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Ms. Sretta Reese

Home Phone No. (Incl Area Code)

(859) 523-2930

Date of Birth

Street Address

City, State and ZIP Code

3957 Hillside Drive, Lexington, KY 40514

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

SPINE & BRAIN NEUROSURGICAL CENTER

No. Employees, Members

15 - 100

Phone No. (Include Area Code)

(859) 252-6500

Street Address

City, State and ZIP Code

1721 Nicholasville Road, Lexington, KY 40503

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

02-24-2004

02-24-2004

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

PERFECTED CHARGE

In October 2003, I was hired by the Spine & Brain Neurosurgical Center as their Compliance Officer. Two weeks later, I was given the title of Human Resources Manager. During my first few months on the job, I brought to Rebecca Gilbert's attention, who is the Chief Executive Officer, several practices that I believed were violations of the laws that the Equal Employment Opportunity Commission (EEOC) enforced. Ms. Gilbert returned my memo's with the admonishment that I never put that type of information in writing. On February 11, 2004, I received an anonymous complaint of sexual harassment and immediately began an investigation. After conducting the investigation, I submitted my findings and recommendations to the Ms. Gilbert. Ms. Gilbert became upset when I recommended termination or severe discipline for the those involved and stated that, from now on, she would be handling the investigation. On or about February 24, 2004, I was told that I would no longer be the Human Resources Director. Since then, I have been assigned duties in the billing office. I believe that I have been demoted in retaliation for having complained of what I believed to be violations of Title VII of the Civil Rights Act of 1964 and for having participated in an investigation of sexual harassment, in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY (When necessary for State and Local Agency Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

Sretta Reese

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

March 15, 2004
Shelley Brewer 5/25/05

I declare under penalty of perjury that the above is true and correct.

3-15-04
Date

Sretta Reese
Charging Party Signature

AMENDMENT TO CHARGE NUMBER 241-2004-01450
Sretta Reese v. Spine & Brain Neurosurgical Center

On May 24, 2004, I was forced to resign my position. I believe I was forced to resign in retaliation for my actions relating to a claim of sexual harassment which I investigated and in retaliation for filing a charge with the Equal Employment Opportunity Commission.

I declare under penalty of perjury that the above is true and correct.

x 8-6-04
Date

x Sretta Reese
Charging Party Signature

STATE OF INDIANA)
)
COUNTY OF MARION) SS

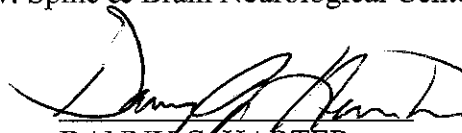
CERTIFICATION

I, Danny G. Harter, District Director of the Indianapolis District Office of the Equal Employment Opportunity Commission ("EEOC"), being duly sworn, and under oath, hereby certify:

That, as the District Director, all administrative files in the Indianapolis District Office and the Louisville Area Office were under my care and custody on November 10, 2005;

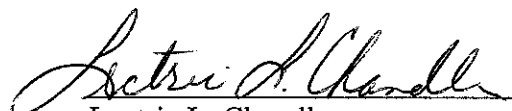
That an administrative file was prepared in the regular course of business of the Indianapolis District Office of the EEOC on Charge No. 241-2004-02777 in which Fran Howard alleged that Spine & Brain Neurological Center committed an unlawful employment practice in violation of Title VII of the Civil Rights Act, as amended;

That the Charge of Discrimination, dated August 6, 2004 and attached hereto is a true and accurate copy of the Charge of Discrimination from the administrative file of EEOC charge number 241-2004-02777, Fran Howard v. Spine & Brain Neurological Center.


DANNY G. HARTER
District Director

STATE OF INDIANA)
) SS
COUNTY OF MARION)

Before me the undersigned, a Notary Public for Marion County, State of Indiana, personally appeared Danny G. Harter and he being first duly sworn upon his oath, says that the facts alleged in the foregoing certification are true. Signed and sealed this 10th day of November, 2005.


Lectric L. Chandler
Notary Public

My Commission Expires: November 30, 2007
County of Record: Marion

Aug-04-04 02:56pm From=EEOC-LOUISVI

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T-219 P.005/010 F-360

EEOC Form 5 (5/01)

<p align="center">CHARGE OF DISCRIMINATION</p> <p><small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small></p>	<p>Charge Presented To: Agency(ies) Charge No(s):</p> <p><input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC</p> <p align="right">241-2004-02777</p>
---	--

Kentucky Commission On Human Rights and EEOC
State or local Agency, if any

Name (indicate Mr., Ms., Mrs.) Ms. Fran Howard	Home Phone No. (incl Area Code) (859) 277-4696	Date of Birth 07-03-1941
--	--	------------------------------------

Street Address City, State and ZIP Code
2313 Southgate Drive, Lexington, KY 40503

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name SPINE & BRAIN NEUROLOGICAL CENTER	No. Employees, Members 15 - 100	Phone No. (include Area Code) (859) 252-6500
--	---	--

Street Address City, State and ZIP Code
1721 Nicholasville Road, Lexington, KY 40503

Name	No. Employees, Members	Phone No. (include Area Code)
------	------------------------	-------------------------------

Street Address City, State and ZIP Code

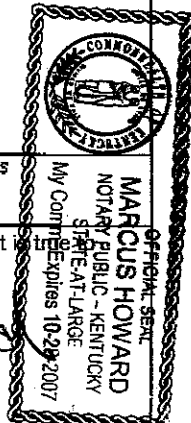
<p>DISCRIMINATION BASED ON (Check appropriate box(es))</p> <p><input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN</p> <p><input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify below.)</p>	<p>DATE(S) DISCRIMINATION TOOK PLACE</p> <p align="center">Earliest Latest</p> <p align="center">02-15-2004 03-12-2004</p> <p align="center"><input type="checkbox"/> CONTINUING ACTION</p>
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THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I was hired as a Nurse in February 2000. On or about February 15, 2004 until March 12, 2004, I was harassed for protesting what I felt to be discriminatory treatment of another employee and for participating in the investigation of a complaint regarding sexual harassment and harassment due to a disability. I was forced to resign on March 12, 2004 due to the harassment. I believe I have been harassed and forced to resign in violation of Title VII of the Civil Rights Act of 1964, as amended, and in violation of the Americans with Disabilities Act of 1990, as amended, in retaliation for protesting what I felt to be discriminatory acts and for participating in the investigation of those acts.

<p>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</p>	<p>NOTARY - When necessary for State and Local Agency Requirements</p>
--	--

<p>I declare under penalty of perjury that the above is true and correct.</p> <p><u>8/6/04</u> <u>Mary Jane Howard</u> Date Charging Party Signature</p>	<p>I swear or affirm that I have read the above charge and that it is the best of my knowledge, information and belief.</p> <p>SIGNATURE OF COMPLAINANT <u>Mary Jane Howard</u></p> <p>SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) <u>8 6 04</u></p>
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STATE OF INDIANA)
)
COUNTY OF MARION) SS

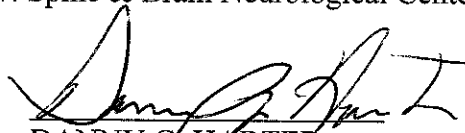
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That, as the District Director, all administrative files in the Indianapolis District Office and the Louisville Area Office were under my care and custody on November 10, 2005;

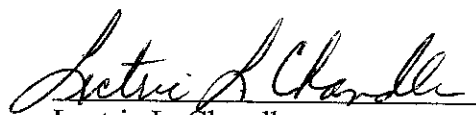
That an administrative file was prepared in the regular course of business of the Indianapolis District Office of the EEOC on Charge No. 241-2004-02779 in which Bonnie Centers alleged that Spine & Brain Neurological Center committed an unlawful employment practice in violation of Title VII of the Civil Rights Act, as amended;

That the Charge of Discrimination, dated August 7, 2004 and attached hereto is a true and accurate copy of the Charge of Discrimination from the administrative file of EEOC charge number 241-2004-02779, Bonnie Centers v. Spine & Brain Neurological Center.


DANNY G. HARTER
District Director

STATE OF INDIANA)
) SS
COUNTY OF MARION)

Before me the undersigned, a Notary Public for Marion County, State of Indiana, personally appeared Danny G. Harter and he being first duly sworn upon his oath, says that the facts alleged in the foregoing certification are true. Signed and sealed this 10th day of November, 2005.


Letric L. Chandler
Notary Public

My Commission Expires: November 30, 2007
County of Record: Marion

Aug-04-04

02:58pm

From-EEOC-LOUISV

502 582 5895

T-219

P.008/010

F-360

EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION

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Charge Presented To:

Agency(ies) Charge No(s):

- FEPA
 EEOC

241-2004-02779

Kentucky Commission On Human Rights

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Ms. Bonnie Centers

Home Phone No. (Incl Area Code)

(606) 864-3172

Date of Birth

12-15-1965

Street Address

City, State and ZIP Code

308 Pistol Creek Road, London, KY 40741

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

SPINE & BRAIN NEUROLOICAL CENTER

No. Employees, Members

15 - 100

Phone No. (Include Area Code)

(859) 252-6500

Street Address

City, State and ZIP Code

1721 Nicholasville Road, Lexington, KY 40503

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

- RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

02-15-2004

04-08-2004

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I was hired on May 6, 2003 as the Front Desk Coordinator in the London, Kentucky office. On or about February 15, 2004 until April 8, 2004, I was harassed for protesting what I felt to be discriminatory treatment of another employee and for participating in the investigation of a complaint regarding sexual harassment and harassment due to a disability. I was forced to resign on April 8, 2004 due to the harassment. I believe I have been harassed and forced to resign in violation of Title VII of the Civil Rights Act of 1964, as amended, and in violation of the Americans with Disabilities Act of 1990, as amended, in retaliation for protesting what I felt to be discriminatory treatment and for participating in the investigation of those acts.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

Jennifer Lynn Bauling
 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

Bonnie Centers

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

August 7, 2004

I declare under penalty of perjury that the above is true and correct.

8-7-04
 Date

Bonnie Centers
 Charging Party Signature