

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )

Plaintiff, )

v. )

SELECT SPECIALTY HOSPITAL- MACOMB )  
COUNTY, INC. )

Defendant. )

HONORABLE

03-73671

CASE NO. PAUL D. BORMAN

COMPLAINT  
AND JURY TRIAL DEMAND

MAGISTRATE JUDGE MORGAN

NATURE OF THE ACTION

This is an action under Title I of the Americans With Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of disability and to make whole Katrina Malone ("Malone").

The Equal Employment Opportunity Commission alleges that Defendant, Select Specialty Hospital-Macomb County, Inc. ("Select Specialty") violated the Americans with Disabilities Act by terminating her employment based on her perceived disability (a back impairment).

JURISDICTION AND VENUE

1. 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 Section 107(a) of the Americans With Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, as amended, 42 U.S.C. Section 1981(A).

2. The employment practices hereafter alleged to be unlawful were committed in the Eastern District of Michigan.

### PARTIES

3. The Plaintiff, Equal Employment Opportunity Commission (the "Commission"), is an agency of the United States of America charged with the administration, interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant Select Specialty was doing business in the State of Michigan and the City of Mount Clemens, and continuously had at least fifteen (15) employees.

5. At all relevant times, Defendant Select Specialty was continuously engaged in an industry affecting commerce within the meaning of Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Section 701(g) and (h) of Title VII, 42 U.S.C. § 2000e(g) and (h).

6. At all relevant times, Defendant Select Specialty was a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

### STATEMENT OF CLAIMS

7. More than thirty (30) days prior to the institution of this lawsuit, Malone filed a charge with the Commission alleging violations of Title I of the ADA by Defendant Select Specialty. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Beginning May 21, 2001, Defendant Select Specialty engaged in unlawful employment practices in violation of the ADA Sections 102(a), 42 U.S.C. §§ 12112(a), at its Mount

Clemens, Michigan facility. The Defendant's unlawful practices include, but are not limited to, failing to reasonably accommodate Malone as an employee by discharging her based on her perceived disability (a back impairment).

9. Malone is a qualified individual with a disability who was able to perform the essential functions of her position with or without reasonable accommodation.

10. The effect of the above-mentioned unlawful employment practices has been to deprive Malone of equal employment opportunities because of her disability.

11. The above-mentioned unlawful employment practices were intentional.

#### PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining the Defendant Employer, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in any unlawful employment practice which discriminates on the basis of disability;

B. Order the Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices;

C. Order the Defendant Employer to provide training to its management employees regarding the ADA;

D. Order the Defendant Employer to make whole Malone by providing her with appropriate lost earnings and benefits, with pre-judgment interest, in amounts to be proven at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices;

E. Order Defendant Employer to make whole Malone by providing compensation for

past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 8 above in amounts to be proven at trial.

- F. Grant the Commission its costs in this action; and
- G. Grant such further relief as the Court deems necessary and proper.

Respectfully submitted,

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9/23/03  
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