

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

GEORGE SHOUN,)
Plaintiff,)
)
v.)
)
BEST FORMED PLASTICS,)
INC.,)
Defendant.)

CASE NO. 3:14-cv-00463-RLM-CAN

**PLAINTIFF'S AMENDED COMPLAINT FOR DAMAGES
AND REQUEST FOR TRIAL BY JURY**

I. INTRODUCTION

1. Plaintiff brings this lawsuit to address violations of his statutory rights pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (the "ADA") arising from certain acts, practices, and conduct with respect to his employment with Defendant.

II. JURISDICTION AND VENUE

2. Within 300 days after the unlawful employment practices as alleged herein occurred, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC").

3. In his charge, Plaintiff alleged that Defendant violated the ADA by disclosing confidential information about his medical condition and history to other persons as well as to the public at large by a post on FaceBook.

4. The EEOC assumed jurisdiction and processed Plaintiff's Charge.

5. Thereafter, the EEOC issued to Plaintiff, at his request, a Notice of Right to Sue, advising him that he had 90 days to file suit against Defendant.

6. Plaintiff filed the instant action within the aforementioned 90-day right to sue period.

7. Plaintiff has exhausted his administrative remedies and has complied with all conditions precedent to maintaining this action.

8. The Court has jurisdiction over Plaintiff's cause of action pursuant to 28 U.S.C. §§ 1343, 1331 as it arises under the laws of the United States.

9. Venue in this district is proper under 28 U.S.C. § 1391(b) as the events giving rise to this action occurred in this judicial district.

III. PARTIES

10. Plaintiff George Shoun is an individual who resides in the town of Contantine, Michigan.

11. Defendant is a corporation doing business in the City of Elkhart, located in Elkhart County, Indiana and is engaged in an industry affecting commerce which had

more than Twenty (20) employees for each working day in each of Twenty (20) or more calendar weeks in each calendar year relevant hereto.

IV. CAUSE OF ACTION

12. On March 9, 2013, Shoun was making an adjustment to a thermoforming machine while working for the Defendant, when he lost his balance and fell, injuring his left shoulder.

13. Shoun immediately reported the accident to Defendant's president, who questioned Shoun about what had happened. Shoun explained that he had injured his left shoulder in the fall. Defendant's president informed, Jane Stewart, about the accident. Ms. Stewart, who processed the company's worker's compensation claims, prepared a written accident report and notified the company's insurer, Frankenmuth Insurance Company, of the claim.

14. Under Indiana law, the employer is obligated to furnish medical care and treatment for any employee injured in an accident at work. The employer has the exclusive right to select and direct the employee's medical treatment.

15. Ms. Stewart closely directed and monitored Shoun's medical treatment between March 9, 2012 and August 13, 2012. Ms. Stewart frequently questioned Shoun about aspects of his medical condition in an effort to accommodate his doctor's work restrictions. Defendant preferred to keep Shoun working on "light" duty instead of

remaining off work on disability. As a consequence of these inquiries, Ms. Stewart learned the nature and extent of Shoun's left shoulder injury. Defendant was obligated to treat this information as confidential and to refrain from disclosing it to other persons under 42 U.S.C.A. §12112(d)(4)(C).

16. During all times referred to herein, Ms. Stewart was an officer of Defendant and was acting within the course and scope of her employment.

17. Ms. Stewart maintained a Facebook page for Defendant's benefit;

18. Ms. Stewart's Facebook page was linked to her business email address. To broaden Defendant's network within the business community of northeastern Indiana and southern Michigan, Ms. Stewart actively promoted and disseminated her email address on business cards, stationary, and chamber of commerce websites; and by doing so, Ms. Stewart broadened the reach of her Facebook page to other business men and women, both inside and outside Elkhart County, Indiana.

19. On February 19, 2013, Ms. Stewart posted the following statement on her Facebook page about Shoun's work related injury and kept it on display for 76 continuous days:

Isn't (sic) amazing how Jimmy experienced a 5 way heart bypass just one month ago and is back to work, especially when you consider George Shoun's shoulder injury kept him away from work for 11 months and now he is trying to sue us.
Love for everyone to hear the real truth! What a loser!

20. Ms. Stewart's deliberate disclosure of Shoun's medical condition to other persons violated 42 U.S.C.A. §12112(d)(3)(B) & (C).

21. Ms. Stewart acted with the intent to expose Shoun to public scorn and ridicule and to blacklist him among prospective employers within her broad network.

22. As a direct and proximate result of Defendant's misconduct, Shoun was exposed to public scorn and ridicule and prospective employers refused to hire him.

23. As a direct and proximate result of Defendant's misconduct, Shoun sustained damages, including loss of employment and impairment of earning capacity and emotional distress, humiliation, and mental pain and suffering, all of which will be proven at the trial of this action.

24. Defendant's discriminatory conduct exhibited a willful and/or reckless indifference to Plaintiff's federally protected right to be free from disability discrimination.

25. Plaintiff has been required to retain an attorney to prosecute this action.

WHEREFORE, Plaintiff prays that this Court enter judgment in his favor and grant him the maximum relief allowed by law, including, but not limited to punitive and compensatory damages, attorneys' fees, costs of this action, pre-judgment interest and for all other relief proper within the premises.

JURY DEMAND

Plaintiff, by counsel, demands this cause be tried to a jury.

/s/ Patrick F. O'Leary
Patrick F. O'Leary #10274-20
KeyBank, Suite 210
221 North Main Street
P.O. Box 556
Goshen, IN 46526-0556
Phone: 574-534-9722
Email: pfolearyl@aol.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that on the 6th day of May, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following: jslabaugh@riverwalklaw.com

/s/ Patrick F. O'Leary

Patrick F. O'Leary

General Information

Court	United States District Court for the Northern District of Indiana
Nature of Suit	Civil Rights: Americans with Disabilities - Employment
Docket Number	3:14-cv-00463