

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

SUSAN P. INGLE

Plaintiffs,

v.

BURKE CENTER

Defendant.

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**Case 9:19-cv-195
Jury Demanded**

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff, Susan P. Ingle hereby files this, her Original Complaint, against Burke Center (hereinafter collectively referred to as “Defendant” or “Burke Center”), for violating the Americans with Disabilities Act. The causes of action and summary of claims relating thereto are addressed below:

I. INTRODUCTION

1. This case is about discrimination and retaliation by Burke Center against Susan P. Ingle because of: a) her physical disability/serious medical condition; b) her age; and c) her claiming benefits under the Family Medical Leave Act.

2. Plaintiff Ingle was terminated on March 15, 2016 after suffering a severe on-the-job injury as a Burke Center employee. As a direct and foreseeable consequence of the defendants’ actions, Plaintiff has suffered economic and professional reputation damage, emotional distress, humiliation, embarrassment, lost wages, lost benefits, all being past, present and future, together with costs and reasonable attorney fees. Plaintiff claims for damages are more fully set forth below.

II. PARTIES, JURISDICTION AND VENUE

3. Plaintiff Susan P. Ingle (“Plaintiff” or “Ingle”) is currently a citizen and resident of Lufkin, Texas.

4. Defendant Burke Center is a non-profit business entity engaged in the operation of treatment facilities and institutions in the State of Texas. Defendant is also a special purpose governmental unit and therefore, an agency of the State and a local governmental unit. Burke Center may be served with process by delivering the summons and complaint upon Melanie Taylor, its CEO at 2001 South Medford Drive, Lufkin, TX 75901. It has its principal place of business in Angelina County, Texas.

5. Venue is proper in this Court because the acts of which Plaintiff complains occurred within the Eastern District of Texas – Lufkin Division.

6. Ingle filed a charge of discrimination with the EEOC on or about June 12, 2016 which was within 180 days of her termination alleging age discrimination, disability discrimination and retaliation against Defendant. The EEOC made a cause finding issued its right to sue letter on September 19, 2019, which is attached hereto as Exhibit A.

III. FACTUAL BACKGROUND

7. Plaintiff Ingle was born on February 25, 1954. Ingle worked for Burke Center for a total of almost 8 years until her termination on March 15, 2016.

8. On September 25, 2015, Plaintiff sustained an on the job injury while on a team building exercise when she fell and suffered a severe leg fracture.

9. On or about November 25, 2015, Plaintiff received a COBRA letter from Burke Center indicating that she had been terminated. When she confronted Burke Center regarding the COBRA letter, Plaintiff was told it was a ‘mistake.’

10. On December 21, 2015, Plaintiff was released to return with restrictions of non-weight bearing on the left leg and use of a wheelchair. Plaintiff was denied the reasonable accommodation and was told she could not return until she had a full duty release by Crystal Bonner, the clinic supervisor.

11. On January 25, 2015, Plaintiff was allowed to return to work with the same doctor's restrictions given on December 21, 2015. Plaintiff returned with a cam boot on her leg and a walker. Plaintiff was told she could not ask for help or have more than 8 hours off total for the year and was told if she had not been careless, she would have not gotten hurt.

12. On January 26, 2016, Plaintiff suffered complications from her leg injury and required hospitalization for a bone infection. Plaintiff was hospitalized until March 16, 2016 due to the severity of her condition.

13. On March 15, 2016, Plaintiff was terminated pursuant to a 'no-fault' separation policy of Defendant.

IV. CAUSES OF ACTION

A. Age Discrimination

14. Plaintiff realleges and incorporates the allegations contained in all previous paragraphs as if fully stated herein.

15. Plaintiff has satisfied all jurisdictional prerequisites in connection with her claim under the Age Discrimination in Employment Act.

16. Defendant is an "employer" as defined by the ADEA.

17. At all relevant times Plaintiff was over the age of 40; thus she was in a protected category as defined by the ADEA.

18. Plaintiff was terminated because of her age and/or by reason of her complaints of age discrimination.

19. As described above, Defendant intentionally and willfully violated the ADEA by discriminating against Plaintiff because of her age.

B. Disability Discrimination

20. Plaintiff realleges and incorporates the allegations contained in all previous paragraphs as if fully stated herein.

21. At all relevant times, Plaintiff has been an individual with a “disability” as defined by the Americans with Disabilities Act. More particularly, Plaintiff has a physical impairment that substantially limits one or more of her major life activities, has a record of such an impairment, and is regarded by Burke Center as having such an impairment.

22. Plaintiff is a “qualified individual with a disability”. More specifically, Plaintiff is an individual with a disability who can perform the essential functions of her job as Medical Support Staff III at Burke Center.

23. Burke Center’s termination because of Plaintiff’s physical disability and/or by reason of her complaints of disability discrimination constitutes discrimination against Plaintiff with respect to terms, conditions, or privileges of employment. Burke Center’s actions constitute a violation of the Americans with Disabilities Act. Plaintiff also alleges a disparate treatment based upon Burke Center’s fitness for duty policy which required a full duty release which imposes qualification standards and other criteria that screen out individuals with disabilities. Plaintiff also alleges that Burke Center’s ‘no-fault’ separation policy imposes qualification standards and other criteria that adversely impacts individuals with disabilities.

24. Burke Center also failed to accommodate Plaintiff’s physical disability and failed to engage in the required interactive process.

25. In terminating Plaintiff by reason of her physical disability and/or by reason for her complaints of disability discrimination, Burke Center acted with malice or with reckless indifference to the rights of Plaintiff.

C. Family Medical Leave Act Retaliation

26. Plaintiff realleges and incorporates the allegations contained in all previous paragraphs as if fully stated herein.

27. Pursuant to 29 U.S.C. § 2615(a)(2), the FMLA prohibits discrimination or retaliation by any employer against any individual based upon their exercise of any rights provided by the FMLA.

28. Plaintiff alleges that Defendant terminated her employment because she sought leave benefits under the FMLA, thereby retaliating against her in violation of the law.

29. Plaintiff alleges that Defendant acted willfully in violation of her FMLA rights.

V. DAMAGES

30. As a result of Defendant's violations as alleged herein, Plaintiff has suffered actual damages in the form of lost wages and benefits (past and future). Plaintiff has also suffered severe mental trauma, loss of enjoyment of life, and other losses.

31. As a result of this willful violation of the ADEA and the FMLA by Defendant, Plaintiff requests that she be awarded liquidated damages, to which she is entitled, equitable and/or injunctive relief and costs.

VI. ATTORNEY'S FEES

32. Plaintiff seeks recovery of all attorney's fees under the applicable statutes.

VII. JURY DEMAND

33. Plaintiff requests trial by jury on all claims.

VIII. PRAYER FOR RELIEF

Wherefore, Plaintiff have judgment against Defendant as follows:

- a. Judgment against Defendant for actual damages, including lost wages and benefits (both back pay and front pay), the sum to be determined at time of trial;
- b. Judgment against Defendant for compensatory damages in the maximum amount allowed by law;
- c. Judgment against Defendant for punitive damages in the maximum amount allowed under law;
- d. Judgment against Defendant for liquidated damages as allowed by the ADEA;
- e. An order that Defendant take such other and further actions as may be necessary to redress Defendant's violations of the ADA and ADEA;
- f. Pre-judgment and post-judgment interest at the maximum amount allowed by law;
- g. Costs of suit, including attorney's fees;
- h. The award of such other and further relief, both at law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ William S. Hommel, Jr.

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