



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

E14-0486

Date: February 11, 2016

Heather M. McKinnon (Caratunk)

v.

North Country Variety, Inc. (Bingham)

I. Complaint:

Complainant alleged that Respondent unlawfully discriminated against her because of her physical disability (diabetes) by not granting the reasonable accommodation of limiting her work hours and providing extra breaks. She also alleged that she was unfairly criticized by her employer for not timely communicating her work restrictions, and that she was forced to resign due to these intolerable workplace conditions.

II. Respondent's Answer:

Respondent denied discrimination and stated that Complainant voluntarily resigned her position after receiving a written warning for not informing her employer of work restrictions, for not returning a telephone call, and for not calling in herself to say that she would be out sick.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: 5/27/2014.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): 9/12/2014.
- 3) Respondent North Country Variety ("the store") employs fewer than 15 individuals and is required to abide by the non-discrimination provisions of the MHRA, and state employment regulations.
- 4) Investigative methods used: A thorough review of the written material provided by the parties and a Fact Finding Conference ("FFC"). This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this matter.
- 5) Neither Complainant nor Respondent is represented by legal counsel.

IV. Development of Facts:

- 1) Complainant worked for Respondent as a clerk/cook from June 2013 until 5/27/2014, when she resigned her position. On 5/20/2014, she was diagnosed with [REDACTED] following a medical event.
- 2) Important third parties include the store's owner ("Owner"), and Complainant's boyfriend ("Boyfriend").

Complainant's Commission Claims

- 3) On 5/23/2014, Complainant provided her employer with doctor's notes which contained requests for accommodation for her disability. However, Owner gave these notes back to Complainant three times and then later claimed not to know that Complainant had any work restrictions.
- 4) On 5/27/2013, because of how she was being treated at work,¹ Complainant quit her job (constructive discharge).
- 5) Complainant believes that she was unlawfully discriminated against in employment (denied a reasonable accommodation, disciplined) because of her disability.

Respondent's Answer to Complainant's Complaint

- 6) All of Complainant's requests for accommodation/work restrictions were granted. The following is a chronology of events occurring during the week leading up to Complainant's last day of employment:
 - 5/20/15 (Tuesday): Complainant worked from noon until 6:19 P.M. She was scheduled to work until 8:00 P.M.
 - 5/21/15 (Wednesday): Complainant came to the store at 6:47 P.M. with a doctor's note that stated that she had been "admitted to [the doctor's] service on May 20th and 21st for a [REDACTED] emergency. She will require at least one day off to acclimatize to the [REDACTED]. She will also require frequent breaks to monitor her [REDACTED] administer [REDACTED] and ensure adequate food and fluid intake." It was not clear to Owner whether the doctor intended for Complainant's day off to be that day (the day the note was written/presented), or the next day, May 22nd. Owner asked Complainant if she knew which day off the doctor intended. Complainant told Owner that she felt fine and could work the following day. Owner gave Complainant her fax number and said that she would need an updated doctor's note regarding whether Complainant could work on the 22nd. Complainant said that she would contact her doctor's office in the morning.
 - 5/22/15 (Thursday): Complainant informed Owner that her doctor did not want her to work that day. Other cashiers adjusted the schedule to accommodate this.

¹ In her rebuttal to Respondent's answer to her complaint, Complainant provided that she resigned her position after Owner aggressively questioned her and Boyfriend about why they had not informed Owner of Complainant's work restrictions at the time they were issued. Complainant also claimed that Owner forced her to write a statement about why she had allegedly failed to respond to Owner's phone calls, which Owner then asked Complainant to rewrite, adding additional comments suggested by Owner. After Complainant refused to do so, Owner allegedly told Complainant that she would not be allowed to cash out to leave unless she completed the written statement. Complainant then quit.

- 5/23/15 (Friday): Complainant was scheduled to work as a cashier² from 1-11 P.M. After she arrived, she and Owner discussed work breaks. Owner told her that while there were no formal breaks scheduled (since only one cashier works at a time), Complainant could go to the bathroom as needed to check her [REDACTED] and administer [REDACTED] if needed. All cashiers are also aware that they can ask Owner to come downstairs to cover the cash register if needed. Cashiers have always been allowed to eat at their workstation. That evening Complainant also volunteered to cover an additional two hours the following day for a co-worker who needed to leave early due to a funeral. Owner asked Complainant about her [REDACTED] that evening and she said it was "around 200, which is a lot better than 1,250."
 - 5/24/15 (Saturday): Complainant arrived at noon to cover for her co-worker and punched out just after 8:00 P.M. Owner asked her how she was feeling as she left that evening and she replied that she was tired. Owner responded that it was understandable.
 - 5/25/15 (Sunday): Complainant was scheduled to work 2-9 P.M. in the kitchen. Around mid-morning, Owner was notified by the cashier that she had a message on the office answering machine. When Owner checked the messages, she found a message from Complainant's doctor that was left earlier that day (8:25 A.M.), as well as another message from Boyfriend that was left around 7:00 P.M. on Friday evening. Owner immediately called doctor, who indicated that he was concerned about Complainant's health. He asked Owner if she had received the fax that he had sent to the store on Friday, May 23rd. Owner stated that she had not. The doctor told Owner that he did not want Complainant to work more than six hours per day, which Owner agreed to do. Owner then immediately called Complainant to discuss which six hours she wanted to work that day, but there was no answer; Owner left a message instructing Complainant to call. Owner later called the store to inform the cashier of the schedule change. The cashier then informed Owner that Boyfriend had called earlier to inform the store that Complainant would not be coming to work that day.
 - 5/26/15 (Monday – Memorial Day): Complainant was scheduled to be off.
- 7) Complainant's last day of work was Tuesday, May 27, 2015. At 10:22 that morning, Complainant's doctor faxed a note indicating that Complainant could now work up to seven hours per day and would still need small breaks every couple of hours. Owner revised the schedule to accommodate the new work restriction. Later that day, Owner also contacted the doctor's office to obtain copies of the missing fax(es). That evening around 7:00 P.M., Owner received a fax from the doctor's office which included a single note dated 5/23/2015 which indicated that Complainant should work no more than four hours per day over the preceding weekend. The doctor's office stated it was the only note they had.
- 8) Complainant worked from 2-9 P.M. During her shift, Owner examined the doctor's notes provided and determined that Complainant's lack of communication was the common factor. This was the second³ occasion that Complainant's lack of communication was an issue, so the owner decided to issue her a written warning. Owner also wrote out her chronology of the events that had occurred over the preceding week. As Complainant's shift ended, Owner approached her to discuss this issue. Boyfriend was also present at the time. The following then occurred:

² Complainant also worked some shifts in the deli/kitchen section of the store.

³ In February 2015, Complainant received a written warning for not immediately notifying Owner when a food inspector was in the store.

- a) Owner asked Complainant why she never informed Owner about the additional work restriction (four hour limit) that her doctor had issued on 5/23/2015. Complainant loudly replied that she was unaware of any additional work restrictions. Boyfriend stated that, while he was aware of the restrictions because the doctor's office had called him on Friday, he never had a chance to inform Complainant due to their schedules. Boyfriend was asleep by the time Complainant came home from work late Friday night, and had already left for work by the time she woke up Saturday morning.
- b) Owner then asked Complainant why she had not returned the Owner's call on Sunday morning 5/25/2015. Complainant stated that she never left the house, had slept most of that day, and was unable to call because the phone had stopped working. Owner also asked Complainant why she had not called in sick personally (per store policy) instead of having Boyfriend call in for her. Complainant claimed that she had been too sick to call, so Boyfriend had called a cashier.
- c) Owner asked Complainant to write out her explanation of why she did not inform Owner about her additional work restrictions and why she did not return Owner's call on Sunday morning. However, when Owner reviewed what Complainant had written, Owner noticed that Complainant had written that she had been home *most* of the day on Sunday, instead of *all* day, as she had originally stated. Owner asked Complainant why her story had changed, which caused Complainant to become very agitated and confrontational. She could not explain why her story had changed and kept denying that she had ever said she had been home all day. She then accused Owner of micromanaging her and stated that Owner could find another cashier. Complainant said that she had another job and started to leave. Owner asked Complainant if she was quitting and she said "yes," before punching out and walking out of the store.⁴

Complainant's Reply to Respondent's Answers

- 9) After Complainant was discharged from the hospital on May 21, 2015, she filled her prescriptions and then took her doctor's note to Owner.⁵ The note clearly stated that Complainant had to be out of work for one day, which could refer only to the next day, 5/22/2015, since the note referred to her medical stay on that day, the 21st, and the prior day, the 20th. Owner gave the note back to Complainant and said she wanted it changed before she would accept it. Complainant then called the emergency room doctor, who was adamant that she not return to work the next day. Complainant called Owner to inform her of this. Owner told Complainant that she would have to make up those hours by adding additional shifts during that payroll period and working at least 10 hour days.
- 10) The next day, 5/22/2015, Complainant called her doctor about being scheduled for 10 hour days and her employer's request that she return to work early, but she never received any response. Accordingly, Complainant reported to work as scheduled on Friday 5/23/2015. The fax from her doctor was not sent until mid-afternoon, hours after her shift had started, so Complainant was unaware that new work restrictions had been sent. Boyfriend also called Owner's cell phone and the office phone to confirm that the doctor's orders were received. When none of his calls were returned, he asked the doctor's office to fax the note again. Transmission sheets from the doctor's office confirm that faxes were sent at 3:13 P.M. and 3:58 P.M and that the result of both attempts was "ok." Complainant did not have a chance to speak with

⁴ Respondent has also submitted a copy of a letter dated 5/27/2015 (faxed 5/30/2015) from Owner to Complainant's doctor, in which Owner stated that she had not followed the doctor's work restrictions over the prior weekend because Complainant had never made her aware of the restrictions, and had failed to respond to her call on Sunday 5/25/2015.

⁵ Complainant stated at the FFC that she delivered the note to the owner at approximately 3-4 P.M.

Boyfriend about the note either that night or the following morning, Saturday 5/24/2015. When Boyfriend came home from work that day, he called Owner to ask about the note but received no response.

- 11) Although Complainant asked Owner about taking breaks during her shift, Owner denied this request, stating that there would be no one to cover the register and that Owner would be too busy with paperwork to relieve Complainant. Owner told Complainant that she could leave the register unattended while she went to the bathroom, but that she would be responsible for any shortages or complaints that resulted from her being away from the register. Owner asked Complainant how she was feeling near the end of her shift; Complainant replied that she was not feeling well and was extremely tired. She also said that she did not know if she could handle another 10 hour shift the following day. When she got home, Boyfriend asked her if Owner had mentioned the doctor's note. Complainant said that she had not. Boyfriend told her that her doctor had faxed a note to the store with a restriction on daily hours. Complainant called Owner but did not get an answer.
- 12) Complainant awoke the next morning feeling very nauseous, weak, and shaking. She called the emergency number for her doctor. When he called her back, she told him the length of the shifts she had worked over the prior two days. The doctor was very shocked since he had previously issued a work restriction of no more than four hours per day. The doctor told Complainant that she was not to work that day and that he would be calling her employer. The doctor later called back to inform her that he had spoken with Owner regarding a six hour per day work restriction, and informed her that Complainant would not be coming to work that day.
- 13) Complainant then went to lay down. While she slept, Boyfriend tried calling Owner's cell phone and her office number to make sure the store knew that Complainant was unable to work that day. Owner did not respond to his messages, so Boyfriend called the store and informed the cashier that Complainant would not be working.
- 14) On Tuesday 5/27/2015, Owner approached Complainant at the very end of her shift and began questioning Boyfriend regarding Complainant's illness, the doctor's notes, and Boyfriend calling Owner. Boyfriend explained to Owner that Complainant had been unaware of the four hour weekend restriction because they had not had a chance to speak either late Friday night or early Saturday morning. Owner then began questioning Complainant about the same issues. Complainant stated that she had slept all day on Sunday. Owner asked if she had used the bathroom and Complainant replied that she had done so once, but was extremely tired and fell immediately back to sleep.
- 15) Owner called Complainant a liar for claiming that she had slept all day when she had actually gotten up once. Owner told her to write that down on paper ("Exhibit A"). She wrote that she had been "*home and sleepily [sic] on Sunday most of the day so my boyfriend called the store for me as I was jittery and shaking badly when I woke up.*" She wrote home and sleeping "*most*" of the day, instead of *all* day because Owner had just called her a liar for claiming she had slept the entire day. She told Owner that she had spent most of that day sleeping, she knew her doctor told Owner about her being out of work that day, and Boyfriend made multiple attempts to reach Owner directly to confirm that Complainant would be out. Complainant saw no need to return Owner's call given all this.
- 16) Owner continued to berate Complainant and told her to write additional comments on the note, which is why there is another paragraph after Complainant's signature. Complainant finally refused to write or change anything more, stating that what she had written accurately stated what had happened. Owner then became very upset. Complainant told Owner that she needed to cash out and that stress like this was not good for her medical condition. She told Owner that she was dizzy, shaking, and needed to rest. Owner told

her that she was not allowed to punch out unless she finished the statement. Complainant said that she would write nothing further, that she could not take the stress, and that she was quitting. Owner asked if she was really quitting. She asked Owner if she really had to finish writing the statement the way Owner wanted. Owner replied "yes," so Complainant said that she was really quitting.

Investigator

17) The following additional/clarifying information was provided by **Complainant** at the FFC:

- a) Complainant was the only one who was qualified to work both as a cashier and in the deli area.
- b) She was diagnosed with [REDACTED] on the evening of May 20, 2015 and was admitted to the intensive care until the following afternoon. She then went to the store to speak with Owner and give her a doctor's note. Owner wanted to know when she would be returning to work. Complainant replied that she did not know, but would be contacting her doctor the following day to schedule an appointment. She did not tell Owner that she was fine with working Thursday, as Owner claims. It was not even discussed.
- c) Complainant went to her doctor's appointment the next morning but she was not given any specific work restrictions because her doctor was still waiting on additional hospital records. The doctor said that he would send a note with the restrictions over to her employer once he had reviewed the records, which did not occur until the following afternoon, after Complainant had already begun her shift.
- d) Complainant was not aware of the four hour per day weekend work restriction until Sunday morning.⁶
- e) On her last day of work, 5/27/2015, Owner came downstairs from her office when there was about 15 minutes left in Complainant's shift. Complainant heard Owner question Boyfriend about the doctor's notes, faxes, etc. Boyfriend told Owner that he had tried to contact her many times but that she had never responded to any of his messages.
- f) After Boyfriend left to go wait in the car for Complainant to finish her shift, Owner asked Complainant the same questions. Owner then wanted Complainant to write a statement about why she was unaware of the doctor's note dated 5/23/2015, which she did. Then Owner wanted Complainant to write something about why she had not returned Owner's call on Sunday. After she eventually refused to write any more, she was told she could not cash out until she finished, so she quit. She does not recall ever seeing Owner with a written warning for her during that discussion.

18) The following additional/clarifying information was provided by **Respondent** (owner) at the FFC:

- a) There is no employee handbook that contains a policy regarding how to request accommodation for a disability but some procedures are in writing.
- b) Complainant gave Owner a doctor's note at about 7:00 P.M. on Wednesday 5/21/2015. The note stated that she needed a day off and needed more frequent breaks. Complainant told Owner that she could work the following day.
- c) Owner spoke with Complainant several times the next day but Complainant was unable to reach her doctor so her shift was covered by other employees. There was no discussion regarding whether Complainant would be working the next day, 5/23/2015, but Owner assumed she would be working as scheduled.
- d) Owner had experienced some prior problems with receiving fax transmissions, such as when the machine was out of paper. The store received very few faxes aside from some from its fuel supplier.

⁶ Boyfriend stated at the FFC that, while they had generally discussed late Saturday night that a doctor's note was sent on 5/23/2015, neither of them knew what the specific work restrictions were until the following morning.

- e) Owner does not recall receiving any calls on her cell phone from Boyfriend and she was unaware of his Friday evening call to her office number until Sunday morning.
- f) Owner still expected that Complainant would come in to work her shift on Sunday 5/25/2015, even with the six hour restriction that her doctor had discussed Owner earlier that morning. Owner called Complainant around 9:00 A.M. to discuss this but instead had to leave a message.
- g) At the time the owner prepared the written warning for Complainant's failure to communicate with her, Owner was unaware that Complainant and Boyfriend had not spoken about the four hour work restriction her doctor had issued the prior Friday. Owner did not question Boyfriend about the doctor's notes or calls. Owner was speaking with Complainant at the time but Boyfriend then explained that they had not seen each other and that was why Complainant was unaware of the work restrictions in the note when she worked her full shift on Saturday 5/24/2015. Owner had to no reason to believe that Boyfriend was being untruthful.
- h) Owner then asked Complainant to write a note about why she had been unable to return Owner's call on Sunday morning. Complainant originally claimed that she had been home all day but in her written statement she changed this to *most* of the day. Owner asked Complainant to address this change in her written note. Complainant then became combative.
- i) Owner did not tell Complainant she could not cash out until she finished the note. Complainant just said she quit and walked out of the store.

V. Analysis and Conclusions

- 1) The MHRA requires the Commission here to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

Disability Discrimination – Failure to Accommodate

- 2) The MHRA provides that it is unlawful to discriminate against an employee because of physical or mental disability. *See* 5 Maine Revised Statutes ("M.R.S.") § 4572(1)(A).
- 3) Pursuant to the MHRA, unlawful discrimination includes "[n]ot making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity." 5 M.R.S. §§ 4553(2)(E), 4572(2).
- 4) To establish this claim, it is not necessary for Complainant to prove intent to discriminate on the basis of disability. *See Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252, 264 (1st Cir. 1999). Rather, Complaint must show (1) that she is a "qualified individual with a disability" within the meaning of the MHRA; (2) that Respondent, despite knowing of Complainant's physical or mental limitations, did not reasonably accommodate those limitations; and (3) that Respondent's failure to do so affected the terms, conditions, or privileges of Complainant's employment. *See id.* The phrase "terms, conditions or privileges of employment" is broad and not limited to discrimination that has an economic or tangible impact. *See Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986) (interpreting Title VII of the Civil Rights Act of 1964); *King v. Bangor Federal Credit Union*, 611 A.2d 80, 82 (Me. 1992).
- 5) Examples of "reasonable accommodations" include, but are not limited to, making facilities accessible, "[j]ob restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies". 5 M.R.S. § 4553(9-A).

In proving that an accommodation is "reasonable," Complainant must show "not only that the proposed accommodation would enable [her] to perform the essential functions of [her] job, but also that, at least on the face of things, it is feasible for the employer under the circumstances." *Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1st Cir. 2001). It is Respondent's burden to show that no reasonable accommodation exists or that the proposed accommodation would cause an "undue hardship." See *Plourde v. Scott Paper Co.*, 552 A.2d 1257, 1261 (Me. 1989); Me. Hum. Rights Comm'n Reg. 3.08(D)(1) (July 17, 1999). The term "undue hardship" means "an action requiring undue financial or administrative hardship." 5 M.R.S. § 4553(9-B).

- 6) Here, Complainant alleged that Respondent unlawfully discriminated against her because of her physical disability (diabetes) by refusing to grant the reasonable accommodation of reducing her daily work hours and providing additional breaks.
- 7) Complainant has [REDACTED] which is listed as a disability without regard to severity under the MHRA, § 4553-A(1)(B).
- 8) To prevail, Complainant needs to demonstrate that Respondent denied her a reasonable accommodation, and that the denial affected the terms and conditions of her employment.
- 9) In this case, the requested accommodation was reasonable, it was denied, and its denial did affect the terms and conditions of Complainant's employment. Reasoning is as follows:
 - a) Complainant presented her first doctor's note to her employer, on 5/21/2015. The note indicated that she needed "at least one day" to acclimatize to her [REDACTED] regimen. Owner rejected the note, claiming that it was unclear whether the intended day off was for that day, or the following day, 5/22/2015. Although the note could have been clearer, the far more plausible interpretation was that the intended day off was the following day, especially since it was already late afternoon/early evening when the note was submitted, and the note indicated that Complainant had just been released that day. Nonetheless, while Owner was not particularly accommodating, she ultimately did let Complainant remain out of work as requested.
 - b) The evidence also in the record strongly suggests that mid-afternoon on Friday 5/23/2015, Complainant's doctor sent a note to her employer imposing a limit of no more than four hours per day over the upcoming weekend. The evidence also suggests that a second copy of the same note was sent over within an hour of the first.
 - c) Respondent disputes that it received either copy of the Friday 5/23/2015 doctor's note. However, Owner offered no plausible explanation as to why two separate faxes with the transmission status as "ok" would not have arrived on their fax machine. Aside from a brief comment at the FFC that the machine had once encountered problems when it ran out of paper, Respondent does not assert that there was any such issue with paper in this case. The fact that a subsequent fax from the doctor's office sent Sunday 5/25/2015 arrived without any problems also casts doubt on whether there was any mechanical problem with the fax two days earlier. Although Respondent also suggested at the FFC that the fax(es) could possibly have been overlooked, due to the fact that very few faxes were typically received at the office, had that occurred in this case, the fax(es) would still have been sitting there when the owner received the doctor's next fax on Sunday, which she claims they were not.
 - d) If the faxes were sent and received without issue on Friday 5/23/2015, the only two likely explanations for why the work restrictions were not followed were either that Owner saw the notes but ignored them because she was short staffed and needed Complainant to work her full shift (it was Memorial Day weekend), or that Owner somehow overlooked the faxes and did not notice them until Sunday morning,

when she received the other fax from the doctor. In either case, the result was the same, that Complainant's health was put at risk by her employer not complying with her work restrictions. This is found to be a failure to provide reasonable accommodation to an employee with a disability. It is also noted that Complainant would have no apparent motivation to hide her work restrictions from Respondent.

10) Based upon these facts, and in light of the MHRC's "reasonable grounds" standard that there is at least an even chance of Complainant prevailing in a civil action, it is found that Respondent unlawfully failed to provide an accommodation for Complainant's disability.⁷

Constructive Discharge

11) It is also violation of the Maine Human Rights Act if, although not formally terminated, an employee has no reasonable alternative to resignation because of intolerable working conditions. *See King v. Bangor Federal Credit Union*, 611 A.2d 80, 82 (Me. 1992). "The test is whether a reasonable person facing such unpleasant conditions would feel compelled to resign." *Id.* In addition, "an employee can be constructively discharged only if the underlying working conditions were themselves unlawful (i.e., discriminatory in some fashion)." *Sweeney v. West*, 149 F.3d 550, 557-558 (7th Cir. 1998).

12) In this case, Complainant resigned her position immediately after her employer questioned her about events related to her disability and requests for accommodation. It is found that Complainant had been denied a reasonable accommodation (reduced hours) and had no reasonable option but to resign, with reasoning as follows:

- a) It is clear that Owner took great umbrage at minor violations of policy while Complainant was in the midst of a medical crisis. For example, she was very upset that Complainant did not return her call personally, despite evidence that she had the information she needed from multiple sources (doctor, Boyfriend) and Complainant was very sick. Owner appears to have been hostile to Complainant's efforts to have her disability accommodated from the very start.
- b) The final incident occurred when Owner insisted on dictating to Complainant what she should say in a written statement. An employee cannot be compelled to prepare what they believe to be an inaccurate recitation of events because their employer has given them the choice of either doing so, or not being allowed to leave. Although Owner denied at the FFC that she ever conditioned Complainant's ability to leave upon completion of the statement, the fact that the written statement contains two separate sections from Complainant, in addition to a paragraph from Owner, suggests that Owner placed great importance on obtaining a statement from Complainant that shifted blame for the failure to comply with Complainant's medical restrictions from Owner to Complainant. Complainant was found to be more credible in her claim that she was given the ultimatum of not being allowed to leave until the statement was completed to Owner's satisfaction.
- c) Owner claimed that Complainant unexpectedly resigned after being confronted with the fact that her story allegedly changed from being home *all* day Sunday versus *most* of the day. Complainant stated in her rebuttal and at the FFC that this minor change in wording occurred because Owner had just called her a liar for claiming she had been in bed all day when she had gotten up once to use the bathroom.

⁷ Complainant also claimed that Respondent failed to accommodate her doctor's request that she be provided additional breaks, due to the fact that she had to leave the register unattended while she used the bathroom to attend to her medical condition. However, there is no evidence that this arrangement was ineffective or unduly burdensome to Complainant.

However, even if Complainant's story was marginally different, Respondent has not established that it had any reason to believe that by Complainant being at "home and sleepily (*sic*) on Sunday most of the day," versus her alleged earlier claim to have been home and asleep all day, somehow suggested that Complainant was being dishonest with her employer about her ability to respond to telephone messages on that day. Further, for reasons noted earlier herein, Complainant had ample reason for believing that returning Owner's call that day was not necessary.

- d) It appears that Complainant had no alternative except to resign her position, especially since she was not being allowed to leave the store until preparing what she reasonably viewed as a false statement. This is especially so where it appears that the statement was being dictate in order for the employer to minimize its own culpability for failure to comply with Complainant's work restrictions.

19) Based upon these facts, a constructive discharge is found in this case.

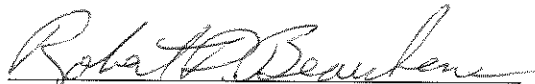
VI. Recommendations

Based upon the information contained herein, the following recommendations are made to the Maine Human Rights Commission:

- 1) There are **REASONABLE GROUNDS** to believe that Respondent North Country Variety, Inc. discriminated against Heather A. McKinnon on the basis of disability (failure to provide reasonable accommodation);
- 2) There are **REASONABLE GROUNDS** to believe that Complainant Heather A. McKinnon was constructively discharged by Respondent; and
- 3) Conciliation should be attempted on this claim in keeping with 5 M.R.S. § 4612(3).



Amy M. Speirson
Executive Director



Robert D. Beauchesne
MHRC Investigator