

United States Equal Employment Opportunity Commission

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JAIMIE COLE

Petitioner,

-against-

SAVASENIORCARE ADMINISTRATIVE SERVICES, LLC, a Delaware limited liability company, SSC WEAVERVILLE OPERATING COMPANY, LLC, d/b/a THE BRIAN CENTER HEALTH & REHABILITATION/ WEAVERVILLE, a Delaware limited liability company,

Respondents.

AFFIDAVIT IN SUPPORT OF EEOC COMPLAINT

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State of North Carolina )  
 : ss.  
County of [REDACTED] )

JAIMIE COLE, being duly sworn, deposes and says:

Introduction and Overview

1. Respondents, SavaSeniorCare Administrative Services (“Sava”) and SSC Weaverville Operating Company, d/b/a the Brian Center Health & Rehabilitation/ Weaverville (“Brian Center”), discriminated against me on the basis of sex and pregnancy in violation of Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, 42 U.S.C. §§ 2000e(k), 2000e-(2)(a), (k), and on the basis of disability in violation of the Americans with Disabilities Act, 42 U.S.C. §§ 12102(1)(A), (2), and other civil rights laws when they forced me onto unpaid leave during my pregnancy and refused to grant me the reasonable accommodation of temporary light duty work, even though the Brian Center and Sava routinely grant this and similar accommodations to other workers who have temporary lifting restrictions. Sava and the Brian Center further discriminated against me when they continued to refuse to allow me to work, even after I no longer required a temporary accommodation.

## Facts

2. I worked as a Certified Nursing CNA at the Brian Center from September 2012 until September 2014. My understanding is that the Brian Center is a Sava long-term care facility and that many of the policies are set by Sava. My job consisted of providing personal care and services to residents, as well as reporting data concerning the residents to keep track of the patients' care. The job description stated that I was required to engage in lifting up to 35 pounds without assistance.

3. During April and May 2014, I was in my third trimester of pregnancy with my third child. During both of my previous two pregnancies, I suffered from preeclampsia. Preeclampsia is a condition that is characterized by high blood pressure for the mother and which can be harmful for both the mother and the baby.

4. On April 30, 2014, at a routine appointment, my doctor recommended that I not do any lifting during the rest of my pregnancy, due to the risk of my developing preeclampsia again and risk of preterm labor, and due to my back pain. He wrote a note to my employer stating that I could not lift,.

5. On May 1, 2014, I presented that note to [REDACTED], [REDACTED] [REDACTED]. I informed [REDACTED] that my blood pressure was being monitored because of my high risk for preeclampsia. I also said that I was experiencing back pain as a result of my pregnancy, for which I was seeing a chiropractor, which I had previously mentioned to [REDACTED]. I requested light duty or another reasonable accommodation for the duration of my pregnancy. I signed a "Reasonable Accommodation Acknowledgment" form in order to make this request. However, [REDACTED] wrote that she was denying me the accommodation because I could not perform the essential functions of the CNA job since I could not lift 35 pounds without assistance.

6. I asked her whether light duty was available. [REDACTED] told me that light duty was not available for pregnant workers. She told me that the company "has dealt with a lot of pregnant women and she feels confident about this."

7. At that meeting, [REDACTED] also asked me to sign Family and Medical Leave Act (“FMLA”), 29 U.S.C § 2613(a)(1)(D), papers to put me out on leave until July 27, 2014, two weeks after my due date. I declined to sign the papers because I wanted to continue working. I was told not to return to work, even though I told her I was still capable of working and that I wanted to keep working. [REDACTED] did tell me, however, that if my doctor would give me a note saying that I could lift the required 35 pounds, then I would be able to come back to work.

8. On May 8, 2014, I received a new note from my doctor which said that I could lift up to 35 pounds, and beyond that could lift with assistance. I scanned the new note to [REDACTED]. [REDACTED] let me know that she had shown it to [REDACTED] a [REDACTED] [REDACTED], and that [REDACTED] had sent it to her boss in corporate, but that the response was still no, that I still could not come back to work. Sava and the Brian Center denied my request to return to work, even though I no longer had a lifting restriction, because I was pregnant and/or because they regarded me as disabled.

9. I was out of work from May 1, 2014 until June 10, 2014, when I was allowed to return to work on June 11, following actions by my attorneys on my behalf. During the time when I was not allowed to work, I first had to use up my remaining vacation and sick leave, and after that I was not paid.

10. During the times in question, I suffered from pregnancy-related impairments, including back pain, a high blood pressure reading, and risk of, and record of, preeclampsia, which substantially limited me in the major life activities of, among other things, lifting and working, and in addition Sava and the Brian Center regarded me as having such a condition, even after my doctor had cleared me to lift up to the amount specified in my job description.

11. Sava and the Brian Center routinely grant what is referred to as “light duty,” and other similar accommodations, to workers who are unable to lift, but routinely deny similar requests when made by pregnant workers. For example, workers who have been injured on the job are allowed to come to work on light duty. On light duty, workers do all of the job tasks except

lifting – these tasks include feeding residents, oxygen tubing, cleaning, and providing nail care, mouth care, and nebulizers. During my time working for Sava and the Brian Center, on information and belief, there was a CNA who was put on light duty after suffering an injury unrelated to pregnancy.

### Conclusion

12. Sava and the Brian Center routinely grant the light duty and other accommodation requests of non-pregnant employees who are temporarily unable to lift or otherwise fulfill the CNA job description. Yet, they refused to accommodate my request for light duty work while I was pregnant and at risk for preeclampsia. By refusing my request for light duty work and by forcing me to leave work, Sava and the Brian Center forced me off the job in violation of Title VII, as amended by the Pregnancy Discrimination Act. The policies described above also have an unlawful disparate impact on pregnant workers, who are among the only workers left out of Sava and the Brian Center's accommodation and light duty policies.


13. Sava and the Brian Center further discriminated against me on the basis of my sex and pregnancy by continuing to refuse to allow me to work, and by forcing me to use up my vacation days and sick days and forcing me to take unpaid leave, even when I could perform all the work required of my job according to my doctor's note of May 8, 2014.

14. Sava and the Brian Center discriminated against me on the basis of disability in violation of the Americans with Disabilities Act by failing to consider any reasonable accommodations, such as light duty, that would have enabled me to continue working as a CNA after I requested a reasonable accommodation due to my high-risk pregnancy and the temporary pregnancy-related impairments that prevented me from lifting. Further, Sava and the Brian Center discriminated against me on the basis of disability by forcing me to take unpaid leave and to use up my vacation and sick days, even when I could perform all the work required of my job according to my second doctor's note, because I was pregnant and they regarded me as disabled.

15. Based upon the foregoing, I charge Sava and the Brian Center with sex and pregnancy discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended by the PDA,

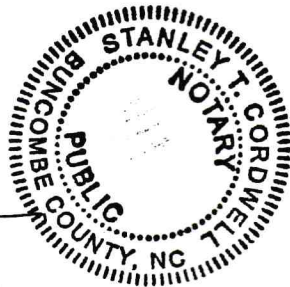
42 U.S.C. §§ 2000e(k), 2000e-(2)(a), (k), and with disability discrimination in violation of the Americans with Disabilities Act, 42 U.S.C. §§ 12102(1)(A), (2).

16. For the foregoing reasons, I respectfully submit this affidavit in support of my complaint of employment discrimination based on sex, pregnancy, and disability. I seek economic and emotional damages, both past and future, punitive damages, and attorneys' fees and costs and appropriate equitable relief.

  
Jaimie Cole

Sworn before me this  
24 th day of October, 2014

  
NOTARY PUBLIC



Commission Expires : August 26 2018