

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

OFFICE OF FEDERAL CONTRACT COMPLIANCE)	
PROGRAMS, UNITED STATES DEPARTMENT)	
OF LABOR,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
RESOURCE METRIX, a limited liability company,)	
D/B/A RESOURCE METRIX LC ¹ , a limited liability company,)	
D/B/A CORY ASH, sole proprietorship,)	
)	
Defendant.)	

ADMINISTRATIVE COMPLAINT

Plaintiff, Office of Federal Contract Compliance Programs, United States Department of Labor (“OFCCP”), by its attorneys, alleges the following facts and violations:

1. This action is brought by OFCCP to enforce the contractual obligations imposed by Section 503 of the Rehabilitation Act (29 U.S.C. § 793) and the rules and regulations issued pursuant thereto at 41 C.F.R. Chapter 60.

2. This Court has jurisdiction over this action under Section 503 of the Rehabilitation Act (“Section 503”), 41 C.F.R. § 60-741.65(b)(1) and 41 C.F.R. § 60-741.66(d).

3. Defendant Resource Metrix (“Defendant”) is a cyber security firm with a business office in Alexandria, Virginia.

4. At all times relevant hereto, Defendant has had multiple ongoing contracts with the federal government to provide data security. Specifically, Defendant has an ongoing contract

¹ Resource Metrix is listed as Resource Metrix “LC” on Virginia’s entity search website.

with the National Guard Bureau (“NGB”) at the worksite where the discrimination complaint in this matter originated. In addition, Defendant has at least one ongoing contract with the U.S. Army (Contract Number W9133L18F0004, November 28, 2017-November 26, 2022), the Federal Aviation Administration (Contract Number DTFAWA17A00072, September 27, 2017-September 30, 2024), and the General Services Administration (Contract Number 47QTCA19D00HW, August 15, 2019-August 14, 2024).

5. Accordingly, at all times relevant hereto, Defendant is and has been a federal contractor within the meaning of Section 503.

6. The regulations issued pursuant to Section 503 provide that each contractor with a non-exempt federal contract is required to comply with the nondiscrimination provisions of Section 503 and its implementing regulations. Defendant’s contracts, several of which had individual values in excess of \$15,000 per year, were not exempt from Section 503’s requirements. Accordingly, under 41 C.F.R. § 60-741.4, Defendant was covered by the requirements of Section 503.

7. OFCCP began an investigation after (b) (6), (b) (7)(C) (“Complainant”) filed a complaint alleging discrimination based on disability. OFCCP found that Defendant discriminated against Complainant by terminating her employment due to her disability, in violation of 41 C.F.R. §§ 60-741.5(a)(1)(ii) and 60-741.21(a)(1), and by retaliating against her for engaging in protected activity in violation of 41 C.F.R. § 60-741.69(a)(4). OFCCP also found that Defendant failed to reasonably accommodate Complainant’s known physical limitations and failed to provide OFCCP access to records, in violation of 41 C.F.R. §§ 60-741.21(a)(6), 60-741.44(d) and 60-741.81.

Defendant Discriminated Against Complainant Because of her Disability

8. On February 20, 2020, OFCCP began its complaint investigation of Defendant’s

establishment at 1727 King Street, Alexandria, Virginia, 22314.

9. Pursuant to Section 503 and 41 C.F.R. Part 60-741, Defendant agreed not to discriminate against any employee or applicant for employment because of disability.

10. Complainant suffers from lumbar and cervical radiculopathy and post-laminectomy syndrome, a back condition that led her to retire from her civil service position with the military in 2017.

11. Complainant is an individual with a disability within the meaning of Section 503. Complainant's disability causes her regular neck pain that makes it difficult to sit still. Complainant's disability impacts her major life activities, including her ability to sit still in one place for prolonged periods and, therefore, her ability to work.

12. On or about August 28, 2019, Complainant interviewed with Defendant for an Executive Administrative Assistant position. Defendant's owner and President, Cory Ash ("Ash"), as well as Defendant's Human Resource Coordinator and Recruiter, were present at the interview. Prior to her interview, Complainant had marked on her job application that she needed an ergonomic chair. During the interview, Complainant informed Ash and the HR Coordinator and Recruiter of her disability and that she required the reasonable accommodation of an ergonomic chair.

13. On or about August 28, 2019, Defendant hired Complainant for the Executive Administrative Assistant position with a start date of September 3, 2019.

14. On September 3, 2019, Complainant arrived for her first day of work at the NGB and was not provided the ergonomic chair she requested. On that day, Complainant informed both Ash and her direct supervisor from the NGB that she needed the ergonomic chair. On September 4, 2019, Complainant informed Defendant's HR Coordinator and Recruiter that she had yet to receive the chair she requested. In response, Defendant's HR Coordinator and Recruiter referred Complainant to the contracting officer liaison between

Defendant and the NGB for him to help find a chair for Complainant. On September 5, 2019, Complainant again approached her direct supervisor about the chair. Complainant's supervisor then provided her with a substitute chair that was not an ergonomic chair that would supposedly accommodate her disability.

15. Complainant worked with the substitute chair for the remainder of September 5, 2019 and the morning of September 6, 2019.

16. On September 6, 2019, Complainant told Defendant's HR Coordinator and Recruiter that the substitute chair exacerbated her back condition and requested permission to leave early to meet with her physician. Defendant's HR Coordinator and Recruiter told Complainant that it was fine to leave to go to the doctor and that they would work on getting the requested ergonomic chair. The HR Coordinator and Recruiter also requested a doctor's note confirming Complainant's disability. Complainant informed Defendant's HR Coordinator and Recruiter that she would have her doctor send the medical documentation to Defendant via fax.

17. Complainant did not work on September 9, 2019 or September 10, 2019. Instead, she continued to correspond with Defendant's HR Coordinator and Recruiter via phone and email, making sure her absence was excused while Defendant checked the status of her new ergonomic chair.

18. On September 10, 2019, Complainant emailed Defendant's HR Coordinator and Recruiter to confirm receipt of the faxed doctor's note. The doctor's note, dated September 9, 2019 (see Paragraph 33 below), stated that Complainant suffers from lumbar and cervical radiculopathy and post laminectomy syndrome and that Complainant should be given reasonable accommodations. The note also recommended telework for Complainant. Defendant's HR Coordinator and Recruiter told Complainant via voice message that she could not find an operable fax machine and was looking for alternative ways for Complainant to

send the doctor's note. Later in the day, Complainant received an e-mail from Defendant indicating that her government credentials and security pass had been revoked and must be returned.

19. On September 11, 2019, Complainant spoke with Ash about her termination. Ash told Complainant that he was terminating her for being a "no-show," missing work on September 6, 9, and 10, 2019. Complainant had requested and was granted leave for those days. When Complainant attempted to explain that she had been granted leave for the days in question and was waiting for Defendant to obtain the ergonomic chair she requested as an accommodation for her disability, Ash responded "Don't give me that disability excuse."

20. The regulations issued pursuant to Section 503 at 41 C.F.R. § 60-741.5(a)(1) (ii), 60-741.20, and 60-741.21(a)(1) provide that each Federal contractor is required to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices.

21. OFCCP conducted an investigation based on Complainant's complaint. As a result of this investigation, OFCCP found that Resource Metrix discriminated against Complainant in violation of Section 503 by terminating Complainant's employment due to her disability.

Defendant Failed to Reasonably Accommodate Complainant

22. The Secretary incorporates by reference paragraphs 1 through 21 of this Complaint as if fully set forth herein.

23. Complainant repeatedly requested an ergonomic chair as a reasonable accommodation on her job application, at her job interview, and to multiple representatives of Defendant during her first four days of work (September 3-6, 2019).

24. On the afternoon of September 6, 2019, Complainant requested leave to visit her doctor regarding her disability. Defendant granted the requested leave and asked for

medical documentation of Complainant's disability while continuing to procure the ergonomic chair.

25. On September 9 and 10, 2019, Complainant requested and was granted leave while she waited for the arrival of her ergonomic chair.

26. On September 10, 2019, Complainant contacted Defendant's HR Coordinator and Recruiter seeking to confirm that Defendant had received the medical documentation her doctor had faxed. On the same day, Resource Metrix terminated Complainant without explanation.

27. On September 11, 2019 Complainant asked Ash about her termination. Ash's response showed that her termination was related to her request(s) for an ergonomic chair and approved leave while she waited for the chair.

28. The regulations issued pursuant to Section 503 at 41 C.F.R. § 60-741.21(a)(6) and 60-741.44(d) provide that each Federal contractor is required to provide reasonable accommodation for the known physical limitations of its employees.

29. OFCCP conducted an investigation based on Complainant's complaint. As a result of this investigation, OFCCP found that Resource Metrix violated Section 503 by: failing to provide a reasonable accommodation for Complainant's known limitations; terminating her employment because of her disability; and discriminating against her because of her engaging in a protected activity, requesting an ergonomic chair.

Defendant Unlawfully Retaliated against Complainant After She Engaged in Protected Activities

30. The Secretary incorporates by reference paragraphs 1 through 29 of this Complaint as if fully set forth herein.

31. Beginning with her job application and interview, and continuing each day of her employment, Complainant requested the reasonable accommodation of an ergonomic

chair to accommodate her disability. As either a continuation of her request for the reasonable accommodation of the ergonomic chair or as a related request, Complainant, on September 6, 2019, requested leave to see her doctor regarding her disability, to obtain documentation from her doctor for Defendant and to request leave to wait for the arrival of the ergonomic chair on September 9 and 10, 2019.

32. At her doctor's appointment on September 6, 2019, Complainant asked her doctor to send documentation of her disability and needed reasonable accommodation(s) to Defendant via fax.

33. A note from Complainant's doctor containing a date stamp from the doctor's office of September 9, 2019 and Defendant's fax information reflected that Complainant suffers from lumbar and cervical radiculopathy and post laminectomy syndrome and that Complainant should be given reasonable accommodations. The note also recommended telework for Complainant.

34. On September 10, 2019, Complainant requested that Defendant confirm receipt of the doctor's note. Defendant did not confirm receipt of the note and, instead, terminated Complainant without explanation.

35. The regulations issued pursuant to Section 503 at 41 C.F.R. § 60-741.69(a)(4) provide that each federal contractor shall not harass, intimidate, threaten, coerce or discriminate against any individual because the individual has exercised a protected right.

36. As a result of this investigation, OFCCP found Resource Metrix violated Section 503 by terminating Complainant in retaliation for her requesting the reasonable accommodation(s) of an ergonomic chair and requesting and taking approved leave until the chair arrived.

Violations

37. Through the acts and practices described in paragraphs 7 through 36 above, Defendant violated Section 503 and the regulations promulgated thereunder, as well as Defendant's contractual obligations to the federal government.

38. Unless restrained by Administrative Order, Defendant will continue to violate the obligations imposed upon it by Section 503 and the regulations promulgated thereunder.

Prayer for Relief

39. WHEREFORE, plaintiff OFCCP prays for a Decision and Order pursuant to 41 C.F.R. § 60-741.65(b)(1) and 41 C.F.R. § 60-741.66(d), providing the following relief:

- A. Permanently enjoining Defendant, its successors, officers, agents, servants, employees, divisions, subsidiaries, and all persons in active concern with them from failing and refusing to comply with the requirements of Section 503 and the regulations promulgated thereunder; and
- B. Requiring Defendant to provide complete relief to Complainant, including, but not limited to, reinstatement, back pay, interest, front pay, retroactive seniority, and all other benefits of employment resulting from its discrimination.

40. In the event Defendant fails to provide relief as ordered, pursuant to 41 C.F.R. § 60-741.66, Plaintiff prays that Defendant be subject to the following:

- A. An Order canceling all of Defendant's contracts and/or subcontracts with the federal government and those of its officers, agents, successors, divisions and subsidiaries, including Defendant, and persons in active concert or participation with them, and declaring said persons and entities ineligible for the extension or modification of any such federal contracts; and

B. An Order debarring Defendant, and its officers, agents, successors, divisions and subsidiaries, and persons in active concert or participation with them, from entering into future federal contracts until such time as Defendant can satisfy the Director of the Office of Federal Contract Compliance Programs that it has undertaken efforts to remedy its prior noncompliance and is currently in compliance with the provisions of Section 503 of the Rehabilitation Act and the regulations promulgated thereunder.

41. Plaintiff further prays for such other relief as justice may require.

Respectfully submitted,

Post Office Address:

Oscar L. Hampton III
Regional Solicitor
Office of the Solicitor
U. S. Department of Labor
1835 Market Street, Mailstop SOL/22
Philadelphia, PA 19103-2968

(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)@dol.gov

Seema Nanda
Solicitor of Labor

Oscar L. Hampton III
Regional Solicitor

/s/
Edwin M. Ferguson
Trial Attorney

U.S. DEPARTMENT OF LABOR

Attorneys for Plaintiff

Date: September 29, 2022