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Original Filed
AUG 26 2019
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SPOKANE COUNTY CLERK

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9
10 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
11 IN AND FOR THE COUNTY OF SPOKANE

12 DAVID SHEPLER,
13 Plaintiff,

Case No. 19-2-00673-32

14 vs.

SECOND AMENDED COMPLAINT

15
16 TERRY'S TRUCK CENTER, Inc., a
17 corporation of Washington, and TERRY
18 REES, individually,
19 Defendants.

20 The Plaintiff by and through DANIEL R. HAYWARD, of HAYWARD LAW, PLLC,
21 complains of Defendants and alleges as follows:
22

23 **I. PARTIES, JURISDICTION, & VENUE**

24 1. Plaintiff DAVID SHEPLER was a resident of Spokane County during all times
25 material to this lawsuit. Terry's Truck Center, Inc., ("TTC") employed Mr. Shepler.

1 only needed a week to recover Mr. Rees aggressively attempted to deter Mr. Shepler from filing an
2 L&I claim.

3 11. Mr. Rees told Mr. Shepler about his botched knee surgery. Mr. Rees exclaimed that
4 surgeons are incompetent, opined that surgery should be avoided at all cost, and tried to convince
5 Mr. Shepler not to take any more time off to heal from the injury.

6 12. When Mr. Shepler returned to work TTC's General Manager, Brian Brownlow,
7 called Mr. Shepler a "slacker" and a "milkman."

8 13. In 2013, Mr. Shepler fell on a jack in the workplace and injured his elbow. He filed
9 an L&I Claim and took a few days off. Mr. Rees's demeanor hardened against Mr. Shepler.

10 14. In December 2016, Mr. Shepler, injured his knee while on the job.

11 15. Given Mr. Rees's prior hostility toward Mr. Shepler's prior injuries, Mr. Shepler did
12 his best to work through the pain and to stay on the job. To that end, Mr. Shepler wore a knee brace
13 (which was visible and observed by Mr. Rees) from approximately December 2016 – March 2017.
14 Mr. Shepler wanted to keep working if could. He knew it would be difficult to find another job
15 making \$25.50 an hour.
16

17 16. Although on notice of Mr. Shepler's knee injury (he was wearing a knee brace) TTC
18 did not enter into the interactive process to see if Mr. Shepler's work responsibilities could be
19 modified so he could perform his job functions without further exacerbating his knee injury.
20

21 17. By April 2017, Mr. Shepler's unaccommodated knee injury was too much to handle.
22 Accordingly, Mr. Shepler had no meaningful choice but to leave work, undergo knee surgery, and
23 participate in the L&I process.

24 18. Between April 2017 and Mr. Shepler's April 2018 return to work (more detail below)
25

1 Mr. Shepler updated Terra Homen, Mr. Rees' daughter and office manager, regarding his ongoing
2 disability. Mr. Shepler supplied TTC with biweekly updates after doctor and physical therapy
3 appointments. At no time did Ms. Homen (or anyone from TTC) tell Mr. Shepler that he would not
4 have a job once he returned to work. At no time did anyone from TTC hint or otherwise imply that
5 his job at TTC was in jeopardy.

6 19. Mr. Shepler was absent from work for approximately one year. During the latter half
7 of that time Mr. Shepler's knee became infected. Mr. Shepler worried about telling his employer
8 that he would need more time to recover; however, he contacted Ms. Homen and let her know about
9 the delay. Ms. Homen did not imply or otherwise hint that Mr. Shepler's job was in danger.

10 20. James Anderson, an employee of TTC, overheard Brian Brownlow, the above-
11 referenced TTC manager, making disparaging comments about Mr. Shepler's L&I claims. Mr.
12 Anderson heard Mr. Brownlow describe Mr. Shepler's claim as "illegitimate."

13 21. By April 2018 Mr. Shepler recovered and was released to return to work on light
14 duty.

15 22. On or about April 16, 2018, Mr. Shepler visited his workplace in order to discuss his
16 return to work. He met with Mr. Rees. Mr. Rees told Mr. Shepler that he had already hired several
17 people and there were no job openings. Mr. Rees then told Mr. Shepler to retrieve his tools.

18 23. Mr. Shepler asked for a letter of recommendation and requested notification if any
19 job became available. Mr. Rees told him that he would give Mr. Shepler a letter of recommendation
20 but never followed through on that promise.

21 24. Mr. Shepler, needing to find work, repeatedly asked that Mr. Rees give him the
22 recommendation letter, but Mr. Rees did not do so. Eventually, Ms. Homen sent Mr. Shepler a
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1 document stating that Mr. Shepler once worked at TTC.

2 25. All told, Mr. Shepler applied for approximately 50 jobs between June 2018 and
3 September 2018 but received very few callbacks. Mr. Shepler only received an offer for work after
4 he removed TTC from his resume.

5 26. Upon information and belief, prospective employers of Mr. Shepler would call TTC
6 whereupon TTC would inform said prospective employers that Mr. Shepler should not be hired due
7 to his history of being disabled or words to that effect.

8 27. As part of the job search process Mr. Shepler worked with a recruiting company
9 called Mechanic's Hub. It is Mr. Shepler's understanding that Mechanic's Hub would post job
10 openings for mechanic jobs in the Spokane area, receive applications for those jobs, and forward
11 those applications to prospective employers.
12

13 28. Upon information and belief, TTC uses Mechanics Hub as a means to recruit workers.

14 29. On or about June 15, 2018, Mr. Shepler applied for a job through Mechanic's Hub.
15 The unknown prospective employer was looking for an individual with five-years of experience as
16 a diesel mechanic. Since Mr. Shepler met the criteria, he applied.
17

18 30. Mr. Shepler was not interviewed or accepted for that position.

19 31. The diesel mechanic position, which Mr. Shepler applied for through Mechanic's
20 Hub, was for a diesel mechanic job at TTC.

21 32. TTC did not hire Mr. Shepler for the above-referenced diesel mechanic job.

22 III. CAUSES OF ACTION

23 33. Plaintiff incorporates the above paragraphs as if pled verbatim herein.

24 **(Count One – Violation of the Washington Law Against Discrimination (WLAD) RCW**
25 **49.60.180 – Discrimination based on actual disability, record of disability, and perceived**

disability & failure to accommodate – against TTC and Mr. Rees)

1
2 34. The WLAD requires equal employment opportunities for individuals with actual
3 disabilities, perceived disabilities, and a history of disability and prohibits employers from
4 discriminating against a qualified individual regarding any terms, conditions, or privileges of
5 employment. RCW 49.60.

6
7 35. Additionally, the WLAD imposes, upon employers, a duty to provide reasonable
8 accommodation to individuals with disabilities.

9 36. Mr. Shepler worked for TTC for almost ten years. Before working for TTC, Mr.
10 Shepler had years of experience as a diesel mechanic. He is certified and trained in several
11 mechanical applications.

12 37. Mr. Shepler, therefore, satisfies the requisite skill, experience, education and other
13 job-related requirements of this position at TTC. Without question, Mr. Shepler was able to perform
14 the essential functions of his job. Mr. Shepler was diagnosed with impairments involving a knee
15 injury and elbow injury. These impairments substantially limited one or more of his major life
16 activities. Mr. Shepler is, therefore, a “qualified individual with a disability” under the WLAD.

17
18 38. To identify and determine the appropriate accommodation of a qualified individual
19 with a disability, employers have a mandatory obligation to engage in an interactive process that
20 involves both the employer and employee. The interactive process is a problem-solving approach
21 used to: (1) analyze the particular job involved and its essential functions; (2) consult with the
22 employee to ascertain the precise job-related limitations imposed by the employee’s disability and
23 how they could be overcome with a reasonable accommodation; (3) identify potential
24 accommodations and assess their effectiveness; and (4) select and implement the accommodation
25

1 that is most appropriate for both the employee and the employer.

2 39. The interactive process is triggered either by request for accommodation by a
3 disabled employee or by the employer's recognition of the need for such an accommodation. In
4 requesting an accommodation, an employee need only use "plain English" and is not required to
5 mention the ADA or use the phrase "reasonable accommodation."

6 40. Once triggered, the employer's duty to accommodate is a continuing duty that is "not
7 exhausted by one effort." *McAlindin v. County of San Diego*, 192 F.3d 1226, 1237 (9th Cir. 1999).
8 Where an employer rejects an employee's suggested accommodation, it is not the employee's burden
9 to suggest another accommodation, but rather it is the employer's affirmative duty to explore further
10 methods of accommodation before terminating the employee.
11

12 41. Employers who fail to engage in the interactive process in good faith, face liability
13 under the Act if a reasonable accommodation would have been possible. *Humphrey v. Mem'l Hosps.*
14 *Ass'n*, 239 F.3d 1128, 1137-38 (9th Cir. 2001).

15 42. After he was injured on the job, Mr. Shepler attempted to work with a knee brace.
16 After a short time, he was unable to continue working and required surgical intervention. At no time
17 did TTC engage in the interactive process once it learned of Mr. Shepler's knee injury. Since TTC
18 did not engage in the interactive process so as to see if steps could be taken to lessen the impact of
19 Mr. Shepler's job duties on his injured knee Mr. Shepler had no choice but to leave work in April
20 2017 for knee surgery.
21

22 43. And after surgery and physical therapy, Mr. Shepler returned to TTC only to discover
23 that he had been terminated and no jobs were (allegedly) available.

24 44. TTC terminated Mr. Shepler's employment because of Mr. Shepler's history of being
25

1 disabled, his knee injury, and TTC's perception that Mr. Shepler had not fully recovered (nor would
2 fully recover) from his knee surgery and was still disabled.

3 45. TTC's statement that "no jobs were available" for Mr. Shepler was a pretext designed
4 to mask disability discrimination and retaliation because Mr. Shepler soon discovered that TTC was
5 actively seeking diesel mechanics.

6 46. Mr. Shepler subsequently applied for the TTC diesel mechanic opening but TTC did
7 not hire him because of Mr. Shepler's history of being disabled, his knee injury, and TTC's
8 perception that Mr. Shepler had not fully recovered (or would never fully recover) from his knee
9 injury.

10 47. As a direct and proximate cause of Defendants' unlawful conduct, Mr. Shepler has
11 been damaged in amounts to be proven at the time of trial, to include but not limited to emotional
12 distress and economic losses

13
14 **(Count Two – Aiding and Abetting violation of WLAD – Terry Rees)**

15 48. The WLAD makes it illegal for any person to "aid, abet, encourage, or incite the
16 commission of any unfair practice, or to attempt to obstruct or prevent any other person from
17 complying with the" WLAD's requirements. RCW 49.60.220.

18 49. Mr. Rees aided and abetted in TTC's discriminatory treatment of Mr. Shepler by: (a)
19 failing to accommodate Mr. Shepler's disability; (b) disregarding Mr. Shepler's rights, under the
20 law, to not have his (Shepler's) disability held against him as it relates to making decisions about
21 Mr. Shepler's livelihood; (c) encouraging his daughter and other members of TTC to go along with
22 his (Mr. Rees's) disregard of the law as it relates to the duties an employer owes to not discriminating
23 against disabled employees; and (d) encouraging other prospective employers of Mr. Shepler to not
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25

1 hire Mr. Shepler on account of Mr. Shepler's actual disability, perceived disability, or record of
2 being disabled.

3 50. Mr. Rees's acts and omissions have caused Mr. Shepler damages in an amount to be
4 proven at trial.

5 **(Count three – Wrongful Discharge in Violation of Public Policy)**

6 51. Washington State recognizes a cause of action for wrongful discharge in violation
7 of public policy, in part, where the discharge resulted because the employee exercised a legal right
8 or privilege such as making a Workers Compensation (e.g., L & I) claim.

9 52. On or about April 2017, Mr. Shepler made an L&I claim.

10 53. Ultimately that L&I claim resulted in TTC paying an excess of \$140,000.

11 54. Upon information and belief, Mr. Shepler's \$140,000 L&I claim is the highest L&I
12 claim that TTC has paid in the last ten years.

13 55. Upon information and belief, TTC deducted or otherwise characterized the money it
14 paid as a result of Mr. Shepler's L&I claim as a business loss and, in doing so, designated Mr.
15 Shepler as an employee.

16 56. After Mr. Shepler filed his L&I claim, Mr. Anderson, an employee of TTC,
17 overheard Mr. Brownlow, making disparaging comments about Mr. Shepler's L&I claims.

18 57. Additionally, Mr. Brownlow made other negative comments about employees who
19 used L&I. Mr. Brownlow further stated, in Mr. Anderson's presence, that he (Brownlow) did not
20 like the fact that Shepler was on L&I and that he (Brownlow) did not believe that Mr. Shepler's
21 claim was legitimate.

22 58. Upon information and belief, Mr. Brownlow discussed Mr. Shepler's L&I claim
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1 (along with Mr. Brownlow's belief about the invalidity of Mr. Shepler's L&I claim) with Mr. Rees.

2 59. Whereas TTC has, in the past, allowed workers who made low-value L&I claims
3 to return to work at light duty capacity, TTC did not afford Mr. Shepler that option. By way of an
4 example, Mr. Anderson had a shoulder injury that resulted in an L&I claim. Mr. Rees knew about
5 Mr. Anderson's L&I claim and allowed Mr. Anderson to continue to work at TTC because the
6 claim was not significant. By way of comparison, TTC treated Mr. Shepler differently by not
7 offering him light duty following his return to work after his workplace injury.

8 60. Defendants' acts and omissions caused Mr. Shepler to be damaged in an amount to
9 be proven at trial.

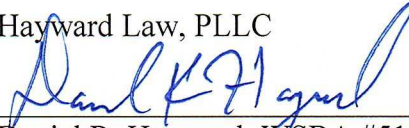
11 IV. PRAYER FOR RELIEF

12 Plaintiff respectfully seeks:

- 13 A. All damages allowed under the law including front pay, back pay, pre-judgment
14 interest, adverse tax consequences, liquidated damages, and general damages.
15 B. Attorneys' fees, costs, and litigation expenses as allowed under 49.60.030(2).
16 C. A declaration that Defendants violated the WLAD.
17 D. All other relief that is just and equitable.

18
19 DATED this 26 day of August, 2019.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the 26 day of August, 2019, at Spokane, Washington, the foregoing document was caused to be served on the following person(s) in the manner indicated:

| | |
|--|--|
| Geoff Swindler, WSBA# 20176 Law Office of Geoffrey D. Swindler P.S. 103 E Indiana Ave Suite A Spokane, WA 99207 Phone: (509) 326-7700 Fax: (509) 326-7503 gds@swindlerlaw.com Attorney for Defendant | <input type="checkbox"/> VIA REGULAR MAIL <input type="checkbox"/> VIA CERTIFIED MAIL <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> VIA FACSIMILIE <input type="checkbox"/> VIA EXPRESS DELIVERY <input checked="" type="checkbox"/> VIA EMAIL |
|--|--|


Daniel R. Hayward, WSBA #51293
Attorney for Plaintiff