

# New Hampshire Commission for Human Rights



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**JESSICA NADEAU**

**V.**

**DNMAN, LLC**

**ED 0129-16; 16D-2016-00128**

**DECISION ON THE MERITS AFTER PUBLIC HEARING**  
**ON JANUARY 17, 2019**

**I. PROCEDURAL BACKGROUND**

1. Jessica Nadeau filed a Charge of Discrimination based on disability in employment on March 28, 2016 against DNMAN, LLC.
2. After the investigation by the Commission based on document production, interviews and legal analysis concluded on July 6, 2018, the Investigating Commissioner found sufficient evidence had been produced to find probable cause that discrimination had occurred.
3. The Commission issued Orders of Notice on August 9, 2018, which indicated that the Investigating Commissioner had found probable cause in this case and the next steps in the process.
4. On November 20, 2018, the Commission conducted a Prehearing Conference at which the parties agreed the issue that would be presented for decision at the public hearing would be whether the Complainant was terminated for her disability in violation of RSA 354-A.
5. At the Prehearing Conference, the Public Hearing was scheduled for January 17, 2019.

6. Commissioner Nancy LeRoy, as Chair, Commissioner Jose Luna and Commissioner Harvey Keye were assigned to hear the case at the Public Hearing on January 17, 2019. Attorney Leslie Nixon appeared on behalf of the Complainant, Jessica Nadeau and Karen Cox appeared *pro se* as the representative for the Respondent, DNMAN, LLC.

## **II. AGREED UPON FACTS**

7. The parties agreed Ms. Cox owns DNMAN, LLC and during Ms. Nadeau's employment in 2015 operated a convenience store in Keene and a convenience store in Swanzey.
8. The parties agreed Ms. Nadeau started working for Ms. Cox on March 3, 2015 and had previously worked for Ms. Cox on two other occasions.
9. The parties agreed Ms. Nadeau has been diagnosed with epilepsy and that epilepsy is a seizure disorder.
10. The parties agreed Ms. Cox was aware of Ms. Nadeau's diagnosis of epilepsy when Ms. Nadeau was hired on March 3, 2015.
11. The parties agreed Ms. Nadeau reported having two seizures to Ms. Cox on December 29, 2015 via text and that she would be unable to attend work on that date. (See Complainant's Exhibit 1.)

## **III. FINDINGS OF FACT BY COMMISSION PANEL**

12. The Commission Panel found Ms. Nadeau was hired by Ms. Cox on at least two occasions and worked for Ms. Cox on another occasion. The Commission Panel found on each of these occasions, Ms. Cox was aware of Ms. Nadeau's diagnosis of epilepsy.
13. The Commission Panel found there was a text exchange between Ms. Nadeau and Ms. Cox on December 29, 2015. The Commission Panel further found Ms. Nadeau had two seizures on December 29, 2015, reported the seizures to Ms. Cox and requested that her shift be covered. Ms. Cox was able to get Ms. Nadeau's shift covered. (Complainant's Exhibit 1)
14. The Commission Panel found when Ms. Nadeau contacted Ms. Cox via text message to alert Ms. Cox of the seizures that Ms. Nadeau texted to Ms. Cox that she would see how she felt and that she had already called out from her second job. (Complainant's Exhibit 1)

15. The Commission Panel found Ms. Nadeau did not contact Ms. Cox until January 1, 2016 to ask why Ms. Nadeau was not on the schedule and about holiday pay. (Complainant's Exhibit 1)
16. The Commission Panel found Ms. Cox told Ms. Nadeau that Ms. Nadeau was not on the schedule because Ms. Cox had not heard from Ms. Nadeau after the two seizures and had safety concerns. (Complainant's Exhibit 1)
17. The Commission Panel found Ms. Cox neither told Ms. Nadeau she was terminated nor mentioned termination to Ms. Nadeau.
18. The Commission Panel found Ms. Nadeau approached Ms. Cox and Ms. Cox's teenage son at Market Basket. During that encounter, Ms. Cox was a customer at Market Basket and Ms. Nadeau was an employee of Market Basket.
19. The Commission Panel found during the encounter at Market Basket that Ms. Cox requested Ms. Nadeau supply a doctor's note to allow Ms. Nadeau to return to work.
20. The Commission Panel found Ms. Nadeau had knowledge of Ms. Cox's request for a doctor's note returning her to work and declined to supply the doctor's note.
21. The Commission Panel found Ms. Cox requested Ms. Nadeau return her keys, uniform and pay her "tab" at the store on January 5, 2016 after it being made clear through Ms. Nadeau's actions and comments to Ms. Cox and Ms. Harris that she did not intend to supply a doctor's note.

#### **IV. DECISION ON THE MERITS**

22. The Commission Panel found that Ms. Nadeau satisfied the burden in that Ms. Nadeau is a person with a disability as defined by NH RSA 354-A and the Americans with Disabilities Act, as amended ("ADAA").
23. The Commission Panel found that Ms. Cox, as the employer and owner of DNMAN, LLC, was aware that Ms. Nadeau was a person with a disability.
24. The Commission Panel found that Ms. Nadeau was qualified for the position and performing adequately.
25. The Commission Panel found that Ms. Nadeau did not satisfy her burden that the parties had entered into the reasonable accommodation interactive process and that Ms. Cox failed to accommodate her.

26. The Commission Panel found that even if the parties had entered into the reasonable accommodation process, Ms. Nadeau declined to provide Ms. Cox with a doctor's note to outline what, if any, reasonable accommodations Ms. Nadeau needed to be successful in her position, which in turn would have allowed Ms. Cox to complete a direct threat analysis and determine if the requested accommodations would be an undue burden to DNMAN, LLC.

27. The Commission Panel found that Ms. Nadeau did not satisfy her burden that she was terminated based on her disability. Rather, the Commission Panel found that Ms. Nadeau's refusal to supply a requested doctor's note returning her to work with or without accommodations prevented the interactive process from occurring and from Ms. Nadeau returning to work.

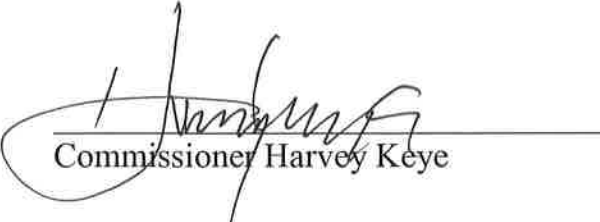
**COMPLAINT DISMISSED. NEITHER PARTY IS ENTITLED TO ATTORNEY FEES OR COSTS.**

**SO ORDERED.**

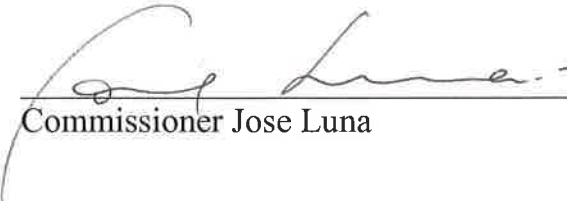
2/21/19  
Date

  
Commissioner Nancy LeRoy, chair

2-19-2019  
Date

  
Commissioner Harvey Keye

2/28/2019  
Date

  
Commissioner Jose Luna