

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

STEVE KAUFMAN,)	Case No. 7:06cv5017
)	
Plaintiff,)	
)	
v.)	AMENDED COMPLAINT AND
)	DEMAND FOR JURY
THE WESTERN SUGAR)	TRIAL
COOPERATIVE, Inc.,)	
)	
Defendant.)	

Comes now the plaintiff, through counsel and for his Complaint against the defendant, states:

1. This is an action for declaratory, injunctive, monetary and other appropriate relief necessary to redress the defendant(s)' violations of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. Section(s) 12101 *et seq.* and the Nebraska Fair Employment Practices Act ("NFEP"), N.R.S. Section(s) 48-1101 *et seq.*
2. Jurisdiction of this Court is invoked pursuant to 42 U.S.C. Sections 12101 *et seq.* and 28 U.S.C. 1331, 1343, 2201 and 2201. This Court has jurisdiction of the plaintiff's state law claim(s) based on the doctrine of pendent jurisdiction.
3. Plaintiff, Steve Kaufman is a resident of Nebraska and has been a resident of Nebraska at all times relevant to the instant action.
4. Defendant, The Western Sugar Cooperative ("Western Sugar") is a cooperative foreign corporation conducting business in Nebraska. Defendant is an "employer" as that term is defined by the ADA and NFEP as it is engaged in industry affecting commerce and employs fifteen (15) or more employees and has done so at all times relevant to the instant action.

5. All unlawful activities alleged in this Complaint for which redress is instantly sought occurred in Nebraska.
6. On or about August 30, 2004, plaintiff timely filed a charge of discrimination with the Nebraska Equal Employment Opportunity Commission (“NEOC”) alleging, inter alia, that the defendant discriminated against him by violating the ADA and NFEPA. Said charge was dually filed with the Equal Employment Opportunity Commission (“EEOC”) in Denver, Colorado.
7. Plaintiff was issued a Right to Sue Letter by the (“EEOC”) on or about June 27, 2006. Said Right to Sue Letter is attached hereto and marked as exhibit “A”. The Right to Sue Letter indicates that it was mailed September 21, 2005. However, plaintiff did not receive the Right to Sue Letter until, approximately June 27, 2006. A copy of the envelope in which the aforementioned Right to Sue Letter arrived is attached hereto and marked exhibit “B”. Said envelope indicates a postmark from Denver, Colorado of June 26, 2006. Plaintiff diligently monitored the administrative progression of his Complaint. Upon receiving the Commission Determination of the NEOC indicating a finding of no reasonable cause and indicating a form of review by the EEOC in Denver, Colorado, plaintiff timely requested such review of the EEOC. In approximately, October or November, 2005, plaintiff sent a letter to Ron Houser of the EEOC inquiring into the “status of the case” to which plaintiff received no reply. Plaintiff subsequently called the EEOC and was directed to Ron Houser’s voicemail where he left one, possibly two voicemail inquiries into the status of the case. Again, plaintiff received no response from the EEOC. Plaintiff subsequently called the EEOC and inquired if Mr. Houser could be reached via email. He was informed that Mr. Houser could be reached via email. On March 17, 2006 plaintiff emailed Ron Houser again inquiring into the status of his case. A redacted printout of said email is attached hereto and marked exhibit “C”. Plaintiff received no response from the aforementioned email correspondence to Ron Houser/EEOC. In approximately mid June, 2006, plaintiff again called Ron Houser to inquire into the status of his case and spoke to Mr. Houser. Mr. Houser indicated in

this phone conversation in mid June, 2006 that he would send a “Right to Sue Letter” to plaintiff and informed the plaintiff that he had ninety (90) days in which to file suit upon receipt of the Right to Sue Letter. As noted above, plaintiff received the Right to Sue Letter (exhibit “A”) in the envelope (exhibit “B”) postmarked June 26, 2006, Denver, Colorado.

FACTS

8. Plaintiff is a 62 year old man who was employed at defendant’s Scottsbluff, Nebraska facility as an electrician since approximately 1986.
9. Plaintiff suffers from diabetes and medical condition(s) that customarily accompany the ailment of diabetes, including diabetic retinopathy. The plaintiff’s diabetic condition substantially limits him in one or more major life activity.
10. Defendant initiated a rotational shift work schedule for, inter alia, the plant’s electricians in approximately 1992 or 1993. Prior to the initiation of the aforementioned rotational shift scheduling regime, the plant’s electricians worked fixed shift schedules, with the exception of the “campaign season” in which rotating shift schedules were utilized.
11. Upon the implementation of the rotational shift scheduling regime, four electricians worked rotating shift schedules and two worked straight day shift schedules. Plaintiff was required to work a rotational shift schedule effective with the initiation of the rotational shift scheduling regime.
12. The rotational shift work schedule adversely effected the plaintiff’s ability to maintain stable blood sugar levels and contributed to the onset of episodes of diabetic retinopathy. Beginning in approximately, 1996, plaintiff began requesting to the defendant that he be transferred to one of the fixed day shift electrician positions. Plaintiff made approximately four or five such requests accompanied with medical documentation, indeed, some of these requests were made directly by the plaintiff’s medical provider(s); however, defendant always denied the plaintiff’s requested accommodation.
13. The plaintiff’s physical condition continued to deteriorate. In approximately, late Winter/early Spring of 2004, he had to undergo laser surgery on his eye(s)

to correct a recent retinopathic episode and had to take a leave of absence. After recovering from this surgery, in approximately, June, 2004, plaintiff again requested that he be allowed to work one of the straight day shift electrician positions and, again, he was denied. At this time plaintiff also requested that he be transferred to a comparable position that worked a straight day shift position but no such position was ever suggested or made available to him.

14. In addition to denying the plaintiff's accommodation requests, upon plaintiff's recovery from the aforementioned laser surgery, defendant refused to allow plaintiff to return to his electrician position because his eyesight did not allow him to weld and the defendant adopted the position that the ability to weld comprised an essential function of the electrician position. The electrician position at the defendant's facility rarely required welding and on the rare occasion when some welding needed to be performed, that task was generally delegated by the electrician to a plant mechanic. Plaintiff came into the plant approximately a half dozen times in June and July of 2004 inquiring whether there were any comparable straight day shift positions available for him and was always informed by defendant's management that no such positions were available.

COUNT I

15. Plaintiff incorporates paragraphs 1-14 as if fully set forth herein.
16. The defendant's refusal to provide the plaintiff with the sought requested accommodation, refusal to engage in an interactive process to identify a reasonable accommodation that could be provided to the plaintiff and the discharge/denial of return to work of the plaintiff violate the ADA.
17. As a direct and proximate cause of the defendant's aforementioned violation of the ADA, plaintiff has suffered lost wages and benefits, undue hardship, humiliation, loss of enjoyment of life and mental anguish.
18. Defendant's actions were willful and/or recklessly indifferent to the plaintiff's federally protected rights. Punitive damages are appropriate.

COUNT II

19. Plaintiff incorporates paragraphs 1-18 as if fully set forth herein.
20. The defendant's refusal to provide the plaintiff with the sought requested accommodation, refusal to engage in an interactive process to identify a reasonable accommodation that could be provided to the plaintiff and the discharge/denial of return to work of the plaintiff violate the NFEPA.
21. As a direct and proximate cause of the defendant's aforementioned violation of the NFEPA, plaintiff has suffered lost wages and benefits, undue hardship, humiliation, loss of enjoyment of life and mental anguish.
22. Defendant's actions were willful and/or recklessly indifferent to the plaintiff's state protected rights. Punitive damages are appropriate.

WHEREFORE, plaintiff respectfully requests that this Court assume jurisdiction herein and grant the following relief:

- a. Declare the conduct of the defendant to be violative of the rights of plaintiff, Steve Kaufman under the ADA and the NFEPA.
- b. Award plaintiff compensatory back pay, reinstatement or front pay in lieu thereof, lost benefits, compensatory damages, punitive damages, attorney's fees and costs and such other and further relief as justice and equity require.

STEVE KAUFMAN, Plaintiff

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JURY DEMAND

The plaintiff requests a jury trial in North Platte, Nebraska.

/s/Paul D. Boross