

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building – Third Floor
Des Moines, Iowa 50319

DAVID LUCAS,)	Docket No. 12ICRC005
)	
Complainant,)	
)	
and)	
)	
IOWA CIVIL RIGHTS COMMISSION,)	
)	
v.)	
)	PROPOSED DECISION
BEEF PRODUCTS INC.,)	
)	
Respondent.)	

The parties to this proceeding are Complainant David Lucas, the Iowa Civil Rights Commission, and Respondent Beef Products Inc. (“BPI”). On April 16, 2010, Lucas filed a Complaint with the Commission alleging BPI discriminated against him on the basis of disability when it refused to hire him. Lucas averred BPI discriminated against him based on his children’s disabilities, and noted his prior work-related injuries. The Commission commenced an investigation. Following a determination that probable cause existed in the case, the Commission filed a Statement of Charges against BPI, alleging BPI discriminated against Lucas on the basis of his perceived disability and engaged in disability association discrimination when it rescinded Lucas’ job offer after learning about his son’s disabilities. The Commission transferred the matter to the Department of Inspections and Appeals for a contested case hearing.

On May 24, 2013, BPI filed a Motion for Summary Judgment and/or to Dismiss, and Index of Evidence in Support of motion for Summary Judgment and/or to Dismiss, and a Brief in Support of Motion for Summary Judgment and/or to Dismiss. On June 17, 2013, the Commission filed a Resistance to Motion for Summary Judgment and/or to Dismiss, two differing Statements of Disputed Material Facts, and Index of Evidence in Support of Resistance to Motion for Summary Judgment and/or to Dismiss, and a Brief in Support of Resistance to Motion for Summary Judgment and/or to Dismiss. BPI filed a Reply Brief in Support of Motion for Summary Judgment and/or to Dismiss, and Response to Commission’s Statement of Facts on June 27, 2013. The Motion for Summary Judgment was granted, in part, with respect to Lucas’ association claim. The Motion was denied with respect to Lucas’ disability discrimination claim.

The hearing on the merits of Lucas’ disability discrimination claim was held on August 28, 2013 at the Wallace State Office Building. Assistant Attorney General Katie Fiala and attorney Alex Smith represented the Commission and Lucas. Attorney Crystal Raiber also

appeared on Lucas' behalf. Shawn Nelson appeared on behalf of the Commission, but did not testify. Lucas appeared and testified. Attorney Heidi Gutttau-Fox represented BPI. Tina Auge, Lynnelle Conley, and Rick Wood appeared and testified on behalf of BPI. Jennifer Stubbs appeared on behalf of BPI, but did not testify. Exhibits A through Z were admitted into the record. The record was held open for post-hearing briefing.

FINDINGS OF FACT

Complainant David Lucas applied for a position with Respondent Beef Products Inc. ("BPI") in Waterloo, Iowa, on January 28, 2010. When he signed the application, Lucas acknowledged any job offer would be conditioned upon the results of a post-offer medical exam. Lucas consented to take any physical exams required by BPI.

After Lucas submitted his application, BPI's Human Resources Manager, Rick Wood, called Lucas to schedule an interview. While working for BPI Wood received training on antidiscrimination laws, including the Americans with Disabilities Act ("ADA").

On February 1, 2010, Wood interviewed Lucas for the C-Shift Sorter/Sanitation position. Lucas indicated he was interested in a production supervisor position. Wood explained that the open position was a floor position and BPI follows a policy that every employee has to work on the floor for at least 12 to 18 months before the employee is eligible for a supervisor position. Lucas testified Wood told him the position would involve lifting blocks of meat and cleaning the facility.

Wood checked Lucas' references and made him a conditional offer of employment on February 2, 2010, subject to a physical exam. Lucas accepted the conditional offer of employment. Lucas testified he did not discuss any previous work-related or other injuries with Wood. Wood reported he did not discuss Lucas' medical records or workers' compensation records with other BPI staff.

BPI Registered Nurse Tina Auge performed Lucas' physical exam. Auge was the only nurse working in BPI's Waterloo facility. Auge worked for BPI from October 2008 through July 2010.

BPI's Medical Evaluation form asked Lucas if he had ever experienced a work-related injury. Lucas responded he injured his right knee at Nagle Signs eight years ago and was placed on light duty. Lucas stated he later returned to full duty with no ongoing problems. Lucas further reported he injured his lower back when reaching for a wrench at Terex 18 months ago. Lucas stated he was diagnosed with a muscle strain and placed on light duty, but he was later released to full duty with no ongoing problems.

During the physical exam, Auge had Lucas squat, bend, kneel, and reach. Lucas told Auge he had previously received workers' compensation and he had injured his knee and had surgery. Auge stated she needed to review the records related to his workers' compensation claims and injuries. Auge provided Lucas with a Request for Medical Records asking for information regarding his right knee injury and surgery and lower back pain, including "any restrictions, release of restrictions, ect." (Exhibit H).

Lucas' medical records reveal that in April 1999, Lucas injured his right knee when he was working for Nagle Signs. He complained of right knee pain while standing from a squatting position while working on a sign. Lucas was referred to Wilbert Pino, Jr., M.D. Dr. Pino noted Lucas reported a ripping type sensation in his right knee and he was unable to fully extend his knee. Upon examination, Dr. Pino suspected Lucas had an acute meniscal tear of the right knee and recommended surgery. Dr. Pino noted: "[a]t this point in time we'll continue to have _____ restrictions in terms of kneeling, squatting, bending, pivoting, heavy lifting, climbing, or standing for prolonged periods of time and would like to see him once we have authorization for scheduling of his surgical procedure to his right knee." (Exhibit I).

Dr. Pino performed an arthroscopy of Lucas' right knee. During a follow-up visit on September 8, 1999, Dr. Pino noted:

David is a known patient to my service who I have been following now for several months status post an arthroscopy of his right knee. At this point in time, he continues to have on and off symptoms with problems with effusions, but overall improvement of his symptoms as compared to the preoperative status and no further locking or catching of his joint. These effusions, unfortunately, I feel may be of a chronic nature and I would not recommend surgical intervention at this point in time unless the pain becomes intense enough that it interferes with activities of daily living or there is any other mechanical problems with the knee. At this point in time, I have placed him on permanent restrictions and closed his case. . . .

(Exhibit J). The permanent restrictions from Dr. Pino included "lift, carry, push, pull up to 75 lbs" occasionally, and "squat or kneel" occasionally. (Exhibit J). The form defines occasionally as "11-33% of the time, 7-19 reps/hr." (Exhibit J).

In September 2004, Lucas injured his right knee and back while working for Nagle Signs when he slipped off the back of a truck, striking his back on a trailer hitch and hitting his knees on the ground. Lucas went to Sartori Memorial Hospital for treatment and saw David Kinkle, D.O. Dr. Kinkle noted Lucas had full range of motion of his knees, with a slight abrasion to the right knee. Dr. Kinkle determined Lucas sustained lumbar and knee contusions and an abrasion. He instructed Lucas to return if symptoms worsened. Lucas' medical records from Dr. Kinkle do not mention any permanent restrictions.

On January 4, 2008, Lucas bent down to pick up a wrench while he was working for Terex Crane and felt a sharp pain in his lower back on the left side. Lucas went to Sartori Memorial Hospital and saw Dr. Kinkle. Dr. Kinkle noted "[h]e can stand on heels and toes and squat without difficulty." (Exhibit N). Dr. Kinkle diagnosed a lumbar strain and prescribed physical therapy. Dr. Kinkle provided Lucas with work restrictions "of lift, carry, push and pull up to 15 pounds occasionally. Bend, twist and reach rarely. Stand, sit and walk as tolerated. No overtime and no working over 40 hours a week. To return to clinic in one week for follow up." (Exhibit N).

On January 15, 2008, Lucas returned to Dr. Kirkle for a recheck of his lumbar strain. Dr. Kirkle noted Lucas had full range of motion without discomfort and released him for regular duty.

Because of the fluctuating needs and nature of BPI's processing facility, floor employees have to be able to work at other positions on short notice to meet production needs. BPI used the Sorter, Sanitation, Hourly Production and Sorting Line job descriptions to determine the essential functions of the C-Shift Sorter/Sanitation position Lucas applied for. The Safety Department prepared BPI's job descriptions. The Hourly Production, Sorting Line and Sanitation descriptions state the positions require squatting and kneeling one to three hours per day. The Hourly Production and Sanitation positions require lifting, carrying, pushing, and pulling over 60 pounds. The Sorter position requires lifting and carrying of 25 to 60 pounds, and pushing and pulling of 10 to 25 pounds. The Sorter description states "the secondary position may require an employee to be able frequently lift up to 60 pounds or more." (Exhibit B). The Sorter position also requires occasional lifting, pushing and pulling, and pushing and holding over 60 pounds. The Sorter position description defines occasional as 25% or less of the employee's time.

Auge testified when a candidate had permanent restrictions, BPI required her to send the candidate's medical records to the Sioux City BPI Safety Department. The Safety Department made the decision on whether the employee could perform the essential functions of the position. Auge reported she sent Lucas' records to Sioux City for review.

Conley was the Nursing Services Coordinator in the Safety Department for BPI in 2010. Conley reported she discussed the essential functions of the position Lucas applied for with Auge. Conley reported Auge told her Lucas had permanent restrictions. And the position involved squatting and kneeling three hours per day. Conley testified the position involved more than occasional squatting and kneeling. Dr. Pino's 1999 restrictions included occasional squatting and kneeling, 11 to 33% of the time. The restrictions are less than three hours of an eight hour shift. Conley reported she and Auge determined Lucas could not perform the essential functions of the position. Auge testified she could not recall Lucas.

Auge testified that if a candidate had permanent restrictions, the candidate could seek to have the restrictions lifted. Auge reported she did not tell candidates they could seek to have medical restrictions lifted. Auge testified it would be unethical to request the applicant have their treating physician remove permanent restrictions.

On February 5, 2010, Auge signed the Post Offer Medical Exam Summary stating Lucas could not perform the essential functions for the C-Shift Hourly Production Position because "medical records received indicate a chronic medical condition and permanent restrictions." (Exhibit L). Auge checked the phrase "needs further medical review" and noted "knee injury, lower back pain, injury. Restrictions include: occasionally lift, carry, push, pull up to 75 lbs" and "occasionally squat or knee." (Exhibit L). At hearing Auge reported the Sioux City office made the decision Lucas could not perform the essential functions of the position.

On February 5, 2010, Wood informed Lucas BPI was rescinded his job offer for medical reasons. Lucas had resigned from his other position and was without work.

Lucas testified he was stressed when BPI rescinded his job offer. He did not know how he was going to pay his bills and provide for his family. Lucas gained 35 pounds. He started drinking heavily and arguing with his wife. Lucas received collection calls. In June 2010 he started with Nestle, earning \$17.80 per hour, plus benefits. Lucas did not receive counseling or mental health treatment after BPI rescinded his job offer. After securing employment with Nestle, Lucas stopped drinking and fighting with his wife. Two months after starting his new job he lost the 35 pounds he gained while he was unemployed.

Lucas does not receive any accommodations to perform his work at Nestle. Lucas regularly lifts 50 pound bags into a blender and dumps 1,000 pounds into the blender at Nestle seven times per day.

CONCLUSIONS OF LAW

I. Disability Discrimination

The ICRA prohibits an employer from refusing to hire an applicant or otherwise discriminate in employment against an applicant for employment because of the applicant's disability,

unless based on the nature of the occupation. If a person with a disability is qualified to perform a particular occupation, by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminating practices prohibited by this subsection.¹

The statute defines disability as a "physical or mental condition of a person which constitutes a substantial disability."² The Commission's rules have not been updated to define the term "disability," but define the term "substantially handicapped person" found in an earlier version of the statute as "any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment."³

The Commission's rules define "physical or mental impairment" as "[a]ny physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;" and any mental or psychological disorder.⁴

The Commission's rules further define the term "is regarded as having an impairment" as:

¹ Iowa Code § 216.2(5).

² *Id.*

³ 161 IAC 8.26(1).

⁴ 161 IAC 8.26(2).

- a. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;
- b. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
- c. Has none of the impairments defined to be “physical or mental impairments,” but is perceived as having such an impairment.⁵

BPI rescinded Lucas’ job offer and contends it based its decision on the permanent restrictions imposed by Dr. Pino in 1999. BPI relies on the *McDonnell Douglas* burden shifting analysis in its Brief and Reply Brief. That is not the analysis that applies in this case. In a refusal to hire case under the ICRA, the plaintiff must prove: (1) the plaintiff has a disability; (2) the plaintiff was qualified for the position; and (3) the employer refused to hire the plaintiff because of the plaintiff’s actual or because it regarded him as having a disability.⁶

A. Lucas had a Perceived Physical Impairment

The threshold question is whether Lucas has a disability. BPI contends he does not. The Commission contends Lucas is not actually disabled, but BPI regarded him as disabled when it rescinded his offer of employment. Prior to the most recent amendments to the ADA, in the case of *Breitkreutz v. Ambrex Charles City, Inc.*, the Eighth Circuit held “regarding an employee as having a limitation that is not itself a disability cannot constitute a perception of disability.”⁷ At the time of the *Breitkreutz* decision in 2006, Congress had defined the term “disability” as:

- (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.⁸

After the *Breitkreutz* decision, Congress amended the ADA, expanding the definition of disability as follows:

As used in this chapter:

(1) Disability

The term “disability” means, with respect to an individual:

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of having such an impairment; or

⁵ *Id.* 8.26(5).

⁶ *Vincent v. Four M Paper Corp.*, 589 N.W.2d 55, 60 (Iowa 1999) (citing *Boelman v. Manson State Bank*, 522 N.W.2d 73, 76 (Iowa 1994) and noting *Boelman* “altered the *McDonnell Douglas* prima facie case requirement normally used to prove a discriminatory motive for cases in which the employer acknowledges reliance on the employee’s disability in its employment decision”).

⁷ *Breitkreutz v. Ambrex Charles City, Inc.*, 450 F.3d 780, 784 (8th Cir. 2006).

⁸ Pub. L. 101-336, § 3, July 26, 1990, 104 Stat. 329.

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of “disability” in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability;

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—

(I) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term “low vision devices” means devices that magnify, enhance, or otherwise augment a visual image.⁹

The Iowa courts have looked to the ADA and federal regulations implementing the ADA in developing standards for disability discrimination claims under the ICRA.¹⁰ Recently the Iowa Court of Appeals followed the amendments to the ADA in interpreting the ICRA in the case of *Knudson v. Tiger Tots Community Child Care*, involving an episodic nut allergy.¹¹

“[T]he 2008 amendments made clear the ADA applies to a person who ‘has been subjected to [adverse employment] action . . . under [the ADA] because of an actual *or perceived* physical or mental impairment *whether or not* the impairment limits *or is perceived to limit* a major life activity.”¹²

Lucas has a history of knee and back impairments. Knee and back impairments may be disabilities, as defined by the ICRA.¹³ Dr. Pino imposed permanent restrictions on Lucas to lifting or carrying up to 75 occasionally, and squatting or kneeling occasionally. Dr. Pino defined occasionally and 11 to 33% of the time. The hourly production, sorting line and sanitation positions require squatting and kneeling three hours per day. BPI avers it rescinded Lucas’ job offer because the position required him to engage in squatting and kneeling more than occasionally. The evidence establishes BPI perceived Lucas has having a physical impairment when it rescinded his job offer.

B. Lucas was Qualified for the Position

BPI next contends Lucas was not qualified for the position because he received permanent restrictions for his right knee from Dr. Pino in 1999. The Commission counters that in 2004 Lucas injured his right knee a second time and saw Dr. Kirkle. Dr. Kirkle did not provide Lucas with any permanent restrictions for his right knee after examining Lucas’ right knee. Lucas testified Auge did not find any physical impairment through her examination. BPI’s decision to rescind Lucas’ job offer was based solely on Dr. Pino’s restrictions from 1999.

⁹ 42 U.S.C. § 12102.

¹⁰ *Vincent*, 589 N.W.2d at 59-60.

¹¹ No. 12-0700, 2013 WL 85798, at *3 (Iowa Ct. App. Jan 9, 2013) (holding “[a]pplying the federal framework for analysis of disability claims, the question is whether her allergy would substantially limit a major life activity ‘when active’” and remanding case to the district court to consider the question).

¹² *Brown v. City of Jacksonville*, 711 F.3d 883, 889 (8th Cir. 2013) (emphasis original) (concluding district court’s reliance on pre-amendment ADA standards was incorrect, but affirming grant of summary judgment finding plaintiff failed to present a prima facie case even assuming she was disabled because there was no evidence the defendant terminated the plaintiff’s employment “on the basis of disability”).

¹³ 161 IAC 8.26(2).

BPI avers Lucas could have obtained a release from Dr. Pino. Dr. Kirkle examined Lucas' right knee in 2004. He did impose any permanent restrictions on Lucas. Dr. Kirkle noted

The patient has full range of motion of the knees, has a slight abrasion to the right lateral knee. He is healing well. No signs of infection. Joints are stable. No tenderness to palpate. **He can squat without difficulty and has good strength.** Back has full range of motion . . .

(Exhibit M) (emphasis added). Dr. Kirkle expressly noted Lucas could squat without difficulty. This finding is inconsistent with Dr. Pino's prior finding. The evidence supports Lucas was qualified for the position.

C. BPI Improperly Rescinded Lucas' Job Offer

BPI rescinded Lucas' job offer based on the restrictions imposed by Dr. Pino in 1999, more than 10 years before he applied for the position with BPI. Dr. Kirkle subsequently examined Lucas' knee in 2004 and did not impose any restrictions. Dr. Kirkle observed Lucas did not have any difficult squatting, a finding inconsistent with Dr. Pino's earlier findings. Lucas has proven BPI improperly rescinded his job offer based on a perceived physical injury.

II. Damages

Under Iowa Code section 216.15(9), if the administrative law judge finds the respondent has engaged in a discriminatory or unfair practice, the administrative law judge "shall issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice" and afford necessary remedial action. Remedial action includes, but is not limited to "payment to the complainant of damages for an injury caused by the discriminatory or unfair practice which damages shall include but are not limited to actual damages, court costs and reasonable attorney fees."¹⁴

A. Lost Wages and Benefits

Lucas was scheduled to commence his employment with BPI on February 9, 2010. Lucas resigned from his other position around February 5, 2010, in anticipation of beginning his new job. Although Lucas immediately began looking for work when BPI rescinded his job offer, he did not find a new position until June 2010. Lucas was unemployed 16 weeks.

Exhibit X shows if Lucas had commenced his employment with BPI, he would have earned \$10 per hour, and would typically work a six-day workweek. Lucas would have been eligible for overtime. Wood also reported BPI employees were eligible for a 401K contribution of 3% of their salary after a 90 day probation period.¹⁵

¹⁴ Iowa Code § 216.15(9) a.

¹⁵ BPI did not address damages in its Brief or Reply Brief. The Commission set forth Lucas' damages claims in its principal Brief. BPI has not contested the lost wages and benefits the Commission avers Lucas is entitled to or questioned the Commission's analysis of the hours Lucas would have worked, the hourly and overtime pay he would have received, or 401K contributions he would have received.

For his 16 weeks of employment, Lucas would have earned regular wages of \$400 per week, and overtime of hours per week at \$15 per hour, or \$120, for a total of \$520 per week, or a total of \$8,320. Lucas would have been entitled to a 3% contribution of his \$520 per week wages, to his 401K for three weeks, or \$15.60, or \$46.80. Lucas' total compensation would have been \$8,366.80.

B. Emotional Distress Damages

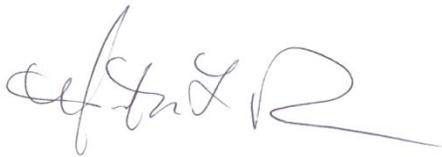
The Commission seeks an award of \$25,000 for Lucas' emotional distress damages. The Iowa Supreme Court has recognized that emotional distress damages are recoverable under the ICRA.¹⁶ A complainant may recover emotional distress damages "without a showing of physical injury, severe distress, or outrageous conduct."¹⁷

Lucas resigned from a full-time position to take a position with BPI. When BPI rescinded its offer, Lucas was without work for 16 weeks. Lucas gained 35 pounds. He was drinking heavily and fighting with his wife. Lucas has two children with severe disabilities. Lucas was scared and did not know how he was going to support his family. Bill collectors called Lucas during his unemployment. After finding full-time employment, Lucas stopped drinking heavily and fighting with his wife. He lost the 35 pounds within two months of starting his new job. While Lucas did not receive mental health treatment or counseling, he experienced severe emotional distress when he was unemployed and unable to support his family. An award of \$25,000 is appropriate.

ORDER

BPI discriminated against Lucas on the basis of disability when it rescinded his job offer. BPI shall cease and desist from engaging in discriminatory or unfair practices that violate the ICRA. Lucas is awarded \$8,366.80 for lost wages and benefits, and \$25,000 for emotional distress, for a total of \$33,366.80. Costs are assessed to BPI.¹⁸

Dated this 27th day of November, 2013.



Heather L. Palmer
Administrative Law Judge
515-281-7183

¹⁶ *Chauffers, Teamsters & Helpers, Local Union No. 238 v. Iowa Civil Rights Comm'n*, 394 N.W.2d 375, 383 (Iowa 1986).

¹⁷ *City of Hampton v. Iowa Civil Rights Comm'n*, 554 N.W.2d 532, 537 (Iowa 1996) (modifying \$50,000 emotional distress award to \$20,000 where complainant and her daughter testified about her emotional distress, but the case lacked any medical or psychiatric evidence to support it); *Hy-Vee Food Stores, Inc. v. Iowa Civil Rights Comm'n*, 453 N.W.2d 512, 526 (Iowa 1990) (affirming award of emotional distress damages where complainant alleged stress from not being promoted caused her to feel bad, have headaches, and caused her psoriasis to flare up).

¹⁸ 161 IAC 4.32.

cc: AG – K. Fiala
Atty – C. Raiber
Atty – H. Gutttau-Fox
ICRC – A. Smith

Notice

Any adversely affected party may appeal this decision to the Iowa Civil Rights Commission within 30 days of the date of the decision.¹⁹ The appeal must be signed by the appealing party or representative of the appealing party and contain a certificate of service upon the other parties, and specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.²⁰

The Commission may also initiate review of a proposed decision on its own motion at any time within 60 days following the issuance of the decision.²¹

¹⁹ 161 IAC 4.23(1).

²⁰ *Id.* 4.23(3).

²¹ *Id.* 4.23(2).