

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Patricia Andrews
2838 Pleasant Hill
Maumee, Ohio 43537

Plaintiff,

v.

Bristol Myers Squibb
c/o General Counsel John Bonomi
345 Park Avenue
New York, NY 10154

Defendant

) Case No.

) [Hon. _____]

) COMPLAINT
) WITH JURY DEMAND

NOW COMES Plaintiff, Patricia Andrews, by and through her attorneys, McHugh,

DeNune, & McCarthy, and for her Complaint states as follows:

General Allegations

1. Plaintiff Patricia Andrews is an individual residing in Lucas County, Ohio who worked as a pharmaceutical drug representative of Bristol-Myers Squibb from July 19, 1999 until her unlawful termination on September 29, 2000.

2. Bristol Myers Squibb (“BMS”) is a corporation organized and existing under the laws of Delaware with its principle place of business at 345 Park Avenue, New York, New York, 10154.

3. Federal subject matter jurisdiction is proper pursuant to 28 U.S.C. §1331 as this complaint involves questions arising under federal law.

4. The Defendants' business transactions and tortious conduct causing injury in the State of Ohio provide personal jurisdiction under the Ohio Long Arm Statute, R.C. §2307.382, and constitute sufficient minimum contacts to comport with due process, fair play and substantial justice.

5. A substantial part of the events giving rise to the claims hereunder arose in Toledo, Ohio such that venue is proper in the Northern District of Ohio, Western Division.

6. On or about October 30, 1999, eight months prior to her employment with BMS, Patricia Andrews incurred a medical condition and disability which included partial, permanent blindness. Upon examination, her medical doctors determined that brain surgery was required to alleviate internal bleeding. Despite her partial, permanent blindness, Patricia Andrews remained able to work and was hired by BMS on or about July 19, 2000.

7. At all times during her employment with BMS, Patricia Andrews performed her employment duties and responsibilities far above employer expectations.

8. In early January, 2000, Patricia Andrews was working 12 to 14 hour days in order to discharge her employment responsibilities, which included finishing her annual report to BMS. The morning after completing and submitting her annual report to BMS, Patricia Andrews, in a state of exhaustion, experienced for the first time a massive grand mal seizure.

9. The grand mal seizure required extensive time off work and resulted in frequent follow up petite seizures. Patricia Andrews therefore went on short term disability leave and applied for long term disability during her leave.

10. By the end of August, her doctor deemed her recovery to be sufficient for her to return to work, but forbade her to drive due to the recurring petit seizures that could not, at that time, be controlled by medication.

11. On September 18, 2000, BMS, by and through CORE, denied Patricia Andrew's long term disability claim because her condition was "pre-existing." As Patricia tried to resolve with BMS this unusual explanation for denial of coverage, BMS terminated her on September 29, 2000 without even attempting to engage in the interactive process of exploring a reasonable accommodation for her disability.

12. In terminating Ms. Andrews, BMS relied upon outdated medical reports and did not contact Ms. Andrews' physician as to her current state of health. BMS regarded her as having a disability. BMS terminated her employment based upon erroneous information and belief concerning the status and consequences of Ms. Andrews' disability.

13. BMS' simultaneous termination of her employment and disability benefits suddenly left Patricia Andrews without any financial means. The resulting stress worsened her fragile condition such that her seizures occurred more frequently and with increasing severity. During this same time, BMS failed to honor or failed to process Andrews COBRA benefits, such that she had no insurance for medical care.

14. Despite the fact that Patricia Andrews had sent checks to BMS for her COBRA benefits in November and December of 2000 and January of 2001, BMS failed to process her COBRA benefits so that she would have COBRA coverage. Furthermore, BMS ignored Patricia Andrews' repeated calls and inquiries as to why her COBRA coverage had not been processed.

15. On February 9, 2001 Patricia Andrews, by and through counsel, wrote BMS to request proper care to her COBRA paperwork. BMS again ignored her request. Approximately five months after her termination, BMS did eventually begin to process her COBRA paperwork. In the interim, however, medical bills piled up and collectors called her and sought to impose personal liability on her. At the same time, the lack of medical insurance impeded her access to medical care. The resulting emotional distress increased the frequency and severity of her seizures.

16. By and through counsel, Patricia Andrews wrote multiple letters requesting a dialogue as to an accommodation and reinstatement to her prior position. She suggested several

possible accommodations and invited the input of BMS as to accommodations. BMS refused to discuss any type of accommodation whatsoever, or even to engage in the interactive accommodation process. Patricia Andrews specifically asked BMS what it considered to be possible accommodations. BMS failed to develop or consider any possible accommodations and failed to even acknowledge her requests.

17. In January, 2001 Patricia filed a complaint with the Ohio Civil Rights Commission (“OCRC”) and the Equal Employment Opportunity Commission (“EEOC”) under a dual filing.

18. From January 2001 through August 2001, BMS ignored the efforts of the OCRC and the EEOC to resolve the question of Ms. Andrews’ wrongful termination. BMS not only ignored the government’s discovery requests, it also ignored governmental subpoenas. After exhausting the administrative process of the OCRC and the EEOC, Patricia Andrews received her Notice of Right to Sue on September 7, 2001. *See* Exhibit “A” attached and incorporated herein.

19. Contrary to BMS’ mistaken perception of Patricia Andrews’ disability, Patricia successfully applied for a similar position at Merck. While some permanent effects remain, such as the partial blindness and structural abnormality of the brain, the seizures have decreased in severity such that she has been given medical clearance to drive again. Today, Patricia Andrews fully and adequately discharges her employment responsibilities for her present employer, Merck, which responsibilities are substantially the same as those she discharged while employed by BMS.

COUNT ONE

(Violation of Ohio Discrimination Laws)

20. Plaintiff incorporates the preceding paragraphs of her complaint as if fully restated herein.

21. Ohio law prohibits discrimination in any matter directly or indirectly related to employment based upon race, color, religion, sex, national origin, handicap, age, or ancestry.

22. A prima facie case of handicap discrimination under Ohio law may be established by demonstrating (1) the plaintiff is handicapped or perceived to be handicapped; (2) an adverse employment action was taken because of plaintiff's perceived or actual handicap; and (3) the plaintiff can nonetheless safely and substantially perform the essential functions of the position in question, with or without an accommodation.

23. Under Ohio law, a person is considered to be handicapped if they (1) have a physical or mental impairment that substantially limits one or more major life activities; (2) is regarded as having such an impairment.

24. Patricia Andrews was regarded by BMS as having a physical or mental impairment that substantially limits one or more of the major life activities. BMS continued to regard her so. In fact, BMS viewed Patricia Andrews as wholly unable to participate in the major life activity of working at *any* job.

25. Furthermore, Patricia Andrews qualifies as handicapped because she is substantially limited in the major life activities of seeing due to her partial blindness. She is also disabled from performing manual tasks, walking, seeing, hearing, speaking, learning, and working during epileptic episodes. Thus, at all times relevant to BMS' discrimination and wrongful termination, Patricia Andrews fell within the protections of the ADA and its Ohio counterpart.

26. On the basis of Patricia's perceived and actual disabilities, BMS took adverse employment action by terminating Patricia Andrews. BMS undertook said adverse action despite the fact that Patricia Andrews could safely and substantially perform the essential functions of the position in question, i.e., encouraging doctors to prescribe Glucophage for diabetics.

27. As a direct and proximate result of BMS' unlawful discrimination and termination of Patricia Andrews in violation of R.C. § 4112.02(A) as enforced through R.C. §4112.99, she has suffered lost wages, emotional distress, and the resulting worsening of her condition during the times of emotional distress.

COUNT TWO

(Violation of the Americans with Disabilities Act:

Failure to Engage In the Interactive Accommodation Process)

28. Plaintiff incorporates the preceding paragraphs of her complaint as if fully restated herein.

29. Patricia Andrews is disabled due to partial blindness, a brain structural abnormality, and uncontrollable epilepsy. These conditions substantially limit her in one or more of the major life activities. Furthermore, BMS regarded her as being disabled. She was not, however, disabled from the major life activity of working and was indeed qualified to perform a variety of jobs at BMS. Having previously worked as a pharmaceutical representative, and having the requisite education and skill therefore, Patricia Andrews qualified to perform work as a pharmaceutical representative. As such, Patricia Andrews falls within the American's With Disabilities Act's definition of a qualified individual with a disability.

30. Although BMS knew of her disability, it assumed that she remained completely disabled without verification of recent medical reports and did not contact Ms. Andrews herself. Instead, BMS terminated her employment.

31. After BMS had summarily terminated her due to her perceived disability, Patricia Andrews provided an updated medical report and clearance to work. At the same time, she requested reasonable accommodation. With reasonable accommodation, she could perform the essential functions of a pharmaceutical sales representative. Although Ms. Andrews requested accommodation, and offered several suggestions as to possible accommodation, BMS completely refused to engage in the interactive accommodation process.

32. As a direct result of BMS's failure to engage in the interactive accommodation process and BMS's wrongful termination, Patricia Andrews has suffered damages of lost income, emotional distress, and a resulting worsening of her condition during the times of emotional distress.

COUNT THREE

(Violation of the Americans with Disabilities Act:

Failure to Accommodation)

33. Plaintiff incorporates the preceding paragraphs of her complaint as if fully restated herein.

34. Plaintiff Patricia Andrews is a qualified individual with a disability protected by the Americans with Disability Act. Indeed, BMS was aware of her disability and regarded her as disabled.

35. The Americans with Disability Act provides an obligation of the employer to provide an reasonable accommodation for a qualified individual such as the Plaintiff.

36. Reasonable accommodations were available, but BMS failed to accommodate Patricia Andrews. Instead, BMS terminated her employment

37. As a direct and proximate cause of BMS's failure to accommodate and wrongful termination, Patricia Andrews has been suffered loss of wages, emotional distress, and the worsening of her physical condition during those times of emotional distress.

COUNT FOUR

(Violation of the Americans with Disabilities Act:

Disparate Impact Discrimination)

38. Plaintiff incorporates the preceding paragraphs of her complaint as if fully restated herein.

39. Plaintiff Patricia Andrews is a qualified individual with a disability protected by the Americans with Disability Act.

40. The Americans with Disability Act prevents an employer from unlawfully discriminating against an individual due to a disability.

41. Because of Patricia's actual and perceived disability, BMS treated other pharmaceutical representatives, not in the protected class, in a more favorable manner. To wit, other pharmaceutical representatives maintained their employment while Patricia Andrews lost hers.

42. For BMS's disregard of the American's With Disability Act, the unlawful termination of Ms. Andrews' employment, and BMS's failure to accommodate, Patricia Andrews suffered lost wages, emotional distress, and the resulting worsening of her condition during the times of emotional distress.

COUNT FIVE

(Failure to Process COBRA Insurance and Interference Therewith
in Violation of COBRA, including but not limited to 29 U.S.C. §§1140 and 1161)

43. Plaintiff incorporates the preceding paragraphs of her complaint as if fully restated herein.

44. Patricia Andrews elected COBRA coverage and timely paid her monthly premiums therefore.

45. BMS accepted the monthly premium payments, but failed to process her COBRA paperwork or interfered with her benefits for approximately five months after the date of her termination.

46. During those five months, Patricia Andrews repeatedly contacted BMS and its agents in an attempt to determine why she had no COBRA coverage and attempted to obtain coverage. Due to BMS's failure to process her COBRA paperwork or interference her COBRA benefits, Patricia Andrews remained without coverage until approximately March, 2001.

47. Because BMS failed to process her COBRA coverage, Plaintiff incurred medical expenses, such as prescription costs, and could not obtain access to the full medical care she required. In some instances, she was denied medical care due to her apparent lack of medical insurance coverage.

48. As a direct and proximate result of BMS' failure to properly process Patricia Andrews COBRA coverage and or interfere therewith, Patricia Andrews suffered out of pocket prescription costs, a lack of access of medical care, emotional distress, and a worsening of her condition resulting from the lack of medical care and from the increased emotional distress.

COUNT SIX

(Interference with Employee Benefits Under ERISA)

49. Plaintiff incorporates the preceding paragraphs of her complaint as if fully restated herein.

50. ERISA, by and through 29 U.S.C. §1132, provides a right of private enforcement to recover benefits or enforce rights thereunder.

51. By failing to process Plaintiff's COBRA coverage and or interference therewith, BMS has violated Plaintiffs' rights under ERISA.

52. As a direct and proximate result of BMS's interference with employee benefits in violation of ERISA, Patricia Andrews suffered out of pocket prescription costs, a lack of access of medical care, emotional distress, and a worsening of her condition resulting from the lack of medical care and from the increased emotional distress.

COUNT SEVEN

(Bad Faith)

53. Plaintiff incorporates the preceding paragraphs of her complaint as if fully restated herein.

54. By failing to process Plaintiff's COBRA paperwork in a timely manner, BMS acted in bad faith.

55. As a direct and proximate result of BMS's bad faith, Patricia Andrews suffered out of pocket prescription costs, a lack of access of medical care, emotional distress, and

a worsening of her condition resulting from the lack of medical care and from the increased emotional distress.

COUNT EIGHT

(Wrongful Discharge in Violation of Public Policy)

56. Plaintiff incorporates the preceding paragraphs of her complaint as if fully restated herein.

57. Ohio law provides that wrongful discharge in violation of public policy may occur when (1) a clear public policy existed; (2) the wrongful discharge jeopardizes the public policy; (3) the wrongful discharge was motivated by conduct related to the public policy (causation); and (4) the employer lacks an overriding legitimate business justification for the discharge.

58. Under R.C. 4112.02 and the Americans With Disability Act, a clear public policy existed to prevent discrimination against individuals with a disability affecting a major life activity.

59. BMS' wrongful discharge of Patricia Andrews jeopardizes the public policy by essentially discarding a former high performer who had become disabled or was perceived as disabled.

60. The wrongful discharge of Patricia Andrews was motivated by conduct related to the public policy because she was discharged due to her disability. BMS lacked an overriding legitimate business justification for the discharge and cited none.

61. Due to BMS' wrongful discharge in violation of public policy, Patricia Andrews suffered lost wages, emotional distress, and the resulting worsening of her condition during the times of emotional distress.

COUNT NINE

(Intentional Infliction of Emotional Distress)

62. Plaintiff incorporates the preceding paragraphs of her complaint as if fully restated herein.

63. Ohio law recognizes the tort of intentional infliction of emotional distress when (1) the actor knew or should have known that actions taken would result in serious emotional distress to the plaintiff; (2) that the actor's conduct was so extreme and outrageous as to go beyond all possible bounds of decency and was such that it can be considered as utterly intolerable in a civilized community; (3) that the actor's actions were the proximate cause of plaintiff's psychic injury; and (4) that the mental anguish suffered by plaintiff is serious and of a nature that 'no reasonable man could be expected to endure it.

64. Knowing of Plaintiff's fragile state, BMS knew or should have known that its actions would cause serious emotional distress to Patricia Andrews.

65. Nonetheless, BMS fired Patricia Andrews without cause and in violation of R.C. 4112.02, the Americans With Disability Act, and public policy. Having been duly informed of the law and given multiple chances to correct its mistakes, BMS nonetheless ignored Patricia Andrews pleas for accommodation, reinstatement and COBRA coverage. BMS furthermore ignored the OCRC and EEOC's investigative requests for information, discovery, and subpoenas. Finally, BMS's failure to process Patricia's COBRA benefits timely caused her to be denied access to medical care and worsened her medical condition. In *toto*, BMS' complete disregard and disrespect for the law, Ms. Andrews rights, and even the inquiries of the State of Ohio and the United States government constitutes outrageous corporate behavior.

66. BMS's outrageous behavior proximately caused great emotional distress, worsened her health and delayed her recovery, and placed her in great financial straits such that she was compelled to liquidate her retirement savings, furniture, and family heirlooms to survive.

WHEREFORE, Plaintiff Patricia Andrews prays to this Court for the following relief:

- A. Payment of back wages in excess of \$40,000;
- B. Loss of future wages;
- C. Payment and reimbursement of past medical expenses denied due to BMS' failure to properly process or interfere with Patricia Andrews' COBRA benefits;

- D. Compensation as is determined equitable and just for emotional distress;
- E. Compensation as is determined equitable and just for the worsening of her condition and the delay in her recovery;
- F. Punitive damages for BMS' outrageous conduct and violations of the Ohio law, the Americans With Disabilities Act, Public Policy, COBRA and ERISA, in the amount of 1% of BMS' average net income for the years 1999, 2000, and 2001.
- G. Pre and post judgment interest;
- H. Attorney fees; and
- I. Any additional relief available within the law and deemed equitable by this Court to substantiate justice and enforce public policy.

Respectfully submitted,

Mark A. Davis (0070983)

JURY DEMAND

Plaintiff Patricia Andrews requests a jury for all issues so triable.

Attorney for Plaintiff