

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota by Velma Korbelt,
Commissioner of Human Rights v. City
of Saint Paul

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

The above-entitled matter involves a disability discrimination claim brought pursuant to the Minnesota Human Rights Act (hereinafter "MHRA") against the City of Saint Paul.

Margaret Jacot, Esq., Assistant Attorney General appeared on behalf of the Complainant, Velma Korbelt, Commissioner of the Minnesota Department of Human Rights ("the Department"). Gail L. Langfield, Esq., Assistant City Attorney appeared on behalf of the Respondent City of Saint Paul ("the City" or "Respondent"). Walter Hodynsky, Esq., Milavetz, Gallop & Milavetz, P.A., made an appearance as *amicus curiae* on behalf of Tamara Meisel.

This matter came before Administrative Law Judge Eric L. Lipman for an evidentiary hearing on March 3 and 4, 2008. The hearing record closed upon the receipt of post-hearings submission from the parties on April 15, 2008.

STATEMENT OF THE ISSUE

Whether, the City, in violation of Minn. Stat. § 363A.08, subd. (6) (2006), failed to make reasonable accommodation to a disability of Ms. Meisel's that was known to it?

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. In July of 2000, Tamara Meisel began working for the Respondent, City of Saint Paul, as a temporary payroll clerk in the Police Department.¹

¹ Exhibit 106; *Testimony of Tamara Meisel*.

2. In January of 2001, she received a certified appointment to a position as a Clerk-Typist II and was assigned to work a daytime shift in the Police Department's Crime Lab.²

3. Ms. Meisel sustained injuries from two different automobile accidents – one in April of 2001 and the second in January of 2002.³

4. As a result of one or both of those accidents, Meisel suffers from “periodic flare-ups of her neck condition and headaches.”⁴ When Meisel's condition becomes symptomatic, she is unable to walk, sit upright, undertake household chores or move around. Meisel has established that during a flare-up of her condition she is severely limited in her ability to care for herself, perform manual tasks, walk or work.⁵

5. In December of 2004, Ms. Meisel's day-time position in the Crime Lab was eliminated. Ms. Meisel accepted an open position in the Records Unit, working the nighttime shift from 10:30 p.m. to 7:00 a.m.⁶

6. As a Clerk-Typist II in the Records Unit, Ms. Meisel's job responsibilities were to answer the telephone and to prepare reports of missing persons, vehicles that had been towed and vehicular accidents. The position involved data entry, copying, filing and accessing official records.⁷

7. When Ms. Meisel began working in the Records unit, “the midnight shift” had three other full-time employees: Larry Geisen or Mary Spoden worked as a Clerk Typist IV, performing the duties of a Review Officer and Supervisor; Ruth Reinhart performed the duties of a Court Officer; and Sharon Hanestad performed Clerk-Typist III duties.⁸

8. In May of 2005, Ms. Reinhart retired. Upon her retirement, Ms. Hanestad succeeded to Ms. Reinhart's duties as the Court Officer.

9. A Court Officer is responsible for the preparation of misdemeanor cases files for officials in the Law Enforcement Center (LEC) and prosecutors appearing in Ramsey County District Court. The Court Officer's duties are time

² *Id.*

³ Ex. 107.

⁴ Ex. 107 (at STP 91).

⁵ See, Exs. 1, 2 and 3; Test. of T. Meisel.

⁶ Exhibit 106 (at STP 9); Test. of T. Meisel.

⁷ Test. of T. Meisel.

⁸ Test. of T. Meisel and Testimony of Larry Geisen.

sensitive, because each case file that is prepared relates to a suspect that is in custody and who will be appearing in District Court later that morning.⁹

10. On average, the Court Officer processes between 1 to 10 files on Monday, Tuesday, Wednesday or Thursday nights and between 12 to 30 files on Sunday nights. This work is sedentary – with most of the duties performed while one is seated at a desktop computer. Yet, there are also occasions where a Court Officer must leave the work station – as in the case of retrieving a file – or is permitted to do so – as in the case of a scheduled break.¹⁰

11. In addition to the preparation of these records, the duties of the Court Officer included answering the telephone and preparing records of other events occurring that evening – such as reports of stolen checks, accidents and the towing of vehicles.¹¹

12. In May of 2005, Larry Geisen learned that Ms. Meisel had taken a photograph of Ms. Hanestad while Hanestad was in her office cubicle sleeping.¹²

13. For his part, Geisen was aware that his subordinate, Hanestad, would occasionally sleep during her shift. At the evidentiary hearing, Geisen testified that he overlooked this shortcoming in Hanestad because she would otherwise complete her work, was helpful to others and, at the time this misconduct was occurring, Hanestad been experiencing a number of challenges in her personal life.¹³

14. In the early morning hours of May 25, 2005, Mr. Geisen asked Ms. Meisel to have a private conversation with him in an adjacent room that the Records Unit personnel used for work breaks. During that conversation Mr. Geisen inquired of Ms. Meisel as to whether Meisel had photographed Hanestad while Hanestad was sleeping, and, if she had, what purposes Meisel had for taking such a photograph. At the evidentiary hearing, Geisen testified that he did not receive satisfactory or complete answers to such inquiries, principally because Meisel responded to his questions by giggling. From her responses, Geisen inferred that Meisel intended to use the photograph to exploit Hanestad or prompt discipline for Records Unit personnel.¹⁴

15. Later that evening, while Geisen was outside of the building on a work break, Ms. Meisel informed Ms. Hanestad that she was not feeling well.

⁹ Ex. 118; Test. of T. Meisel; Testimony of Sharon Hanestad.

¹⁰ Test. of S. Hanestad and Test. of L. Geisen.

¹¹ Test. of S. Hanestad.

¹² Ex. 114; Test. of L. Geisen.

¹³ Test. of L. Geisen.

¹⁴ *Id.*

Ms. Meisel then signed herself out on the work roster as sick for the remainder of the May 25 shift and the shifts on the following two days.¹⁵ After making these entries on the roster, Ms. Meisel left the building through an exit that was not visible from the point where Mr. Geisen was taking his work break.¹⁶

16. During her car ride home, Ms. Meisel telephoned the Manager of the Records Unit, Sergeant John Peck and left him a voicemail regarding her dispute with Mr. Geisen.¹⁷

17. Later, that day, Sergeant Peck and Ms. Meisel spoke by telephone. Sergeant Peck informed her that it was inappropriate for an employee to mark herself sick on the work roster in advance – explaining that the appropriate practice was to telephone the work site each day if the employee was still sick. When Ms. Meisel inquired about changing the status listed on the roster to “leave with no pay,” Peck informed her that such a designation must be authorized by the Office of the Chief of Police. At the evidentiary hearing, Peck testified that at the close of the call he inquired of Meisel if there were things that he could do to make her work shift “more bearable” and that she replied “no.”¹⁸

18. Ms. Meisel did not report for work on the evening of the May 25, 2008. On May 26, 2008, Sergeant Peck telephoned Meisel to urge her to return to work that evening.¹⁹

19. The Records Unit Commander, Mark Pearson, was apprised of the Meisel-Geisen dispute by Sergeant Peck. Commander Pearson directed both Mr. Geisen and Sergeant Peck to prepare written memoranda regarding these events. Likewise, Commander Pearson scheduled a meeting with Ms. Meisel for June 1, 2005.²⁰

20. Attending the June 1, 2005 meeting were Ms. Meisel, Ms. Meisel’s Union Shop Steward Lydia Belair, Sergeant Peck and Commander Pearson. In response to a discussion of why Ms. Meisel left work early on May 25, Ms. Meisel detailed that the confrontation with Larry Geisen triggered symptoms of pain and headaches that she had been suffering intermittently since a car accident in 2002. To substantiate this claim, Commander Pearson asked Ms. Meisel to provide him with a doctor’s note.²¹

¹⁵ Ex. 114, 115; Test. of L. Giesen.

¹⁶ Ex. 114; Test. of L. Geisen; Test. of S. Hanestad.

¹⁷ Ex. 115; Test. of T. Meisel; Testimony of John Peck.

¹⁸ Ex. 115; Test. of J. Peck.

¹⁹ *Id.*

²⁰ Ex. 116; Testimony of Mark Pearson; *see also*, Ex. 107 (at STP 90 – 91).

²¹ *Id.*

21. Further, during the June 1, 2005 meeting, Ms. Meisel stated that the requirement that she both cradle the handset of the telephone, and type, so as to complete data entry on events that were reported to the Records Unit during her shift, aggravated her symptoms. Meisel requested a telephone headset. Sergeant Peck testified at the hearing that in reply to this request he stated that there were telephone headsets available in the Records Unit and that Meisel should try one of the existing and available sets.²²

22. Some days after the June 1, 2005 meeting, Commander Pearson received a doctor's note prepared by Dr. Diane Barry which stated Ms. Meisel was not able to work on May 24 and 25, 2005 "due to neck condition and headaches." At approximately the same time, Commander Pearson received a letter from Dr. Barry dated June 8, 2005. This letter indicated:

Tammy Meisel was injured in a car accident on 1/21/02. She suffered injuries to her neck and back. Unfortunately, she never fully recovered from her injuries and her condition is now chronic. As a result, she experiences periodic flare-ups of her neck condition and headaches. The flare-ups can be severe and impair her ability to function. She may be unable to work during acute flare-ups of her condition.²³

Commander Pearson testified at the evidentiary hearing that he regarded this second writing from Dr. Barry as providing additional detail as to why Ms. Meisel was not able to work on May 24 and 25, 2005.²⁴

23. During the week of August 20, 2005, Commander Pearson received another Doctor's note regarding Ms. Meisel. This note, signed by Dr. Barry, indicated that an "Evaluation/correction for ergonomically correct work station" was needed.²⁵

24. Following the receipt of that note, Commander Pearson telephoned an ergonomic consultant who had recently preformed an evaluation for another employee in the Records Unit. After approximately one week of calling and not receiving a call back, Commander Pearson verified the telephone number and discovered that he had been dialing the wrong number. He corrected his error and contacted the evaluator's office. When he still had not made contact during the third week of September, Commander Pearson sought the help of a staff member who had assisted with the previous evaluation.²⁶

²² Test. of M. Pearson.

²³ Ex. 107 (at STP 90-91); Test. of M. Pearson.

²⁴ Test. of M. Pearson.

²⁵ Ex. 107 (at STP 92).

²⁶ Ex. 107 (at STP 90-91); Test. of M. Pearson.

25. On September 15, 2005, Commander Pearson sent Larry Geisen an electronic mail message regarding his efforts to schedule and obtain an ergonomic consultation. In that message, he directed Mr. Geisen to inform Ms. Meisel of the efforts that had been made. Larry Geisen testified he talked with Ms. Meisel about the matter on the evening that he received the message.²⁷

26. On or around September 15, 2005, Commander Pearson received a note from a Dr. James Sorensen which stated that "Tamara J. Meisel has missed the past couple of days because of a medical problem but may return to work tonight if improved. I also advise an ergonomic work analysis."²⁸

27. Sometime between September 1 and September 20, 2005, Commander Pearson learned that the consultant he had originally attempted to contact was no longer available to the Police Department but that Ramsey County might provide such an evaluation. Commander Pearson then telephoned the County evaluator and requested an evaluation.²⁹

28. On September 20, 2005, Ms. Meisel submitted her resignation, "effective October 1st, 2005." Ms. Meisel explained:

[A while] back, you were given a letter from my doctor explaining my medical condition resulting from a car accident in January of 2002. At least once every month or two, I would have a flare-up in my neck but ever since May I have been having 2-3 flare-ups per month causing me to miss at least two days each time they would occur.

In August, I brought in a note from my doctor to have my work station evaluated and properly adjusted to avoid any other discomforts or injuries to my neck. Nothing has been done yet, and my symptoms have only been getting worse. Stress does not help this condition. I know that a couple of months ago my supervisor came to you and told you that I was upset about a co-worker sleeping during our shift. I did meet with you and talk to you about this situation although to this very day, nothing has ever been done about it. The only action you ever decided to take was against me for using my sick time to leave work early the night that Larry confronted me and told me it was wrong for me to talk about what happens on the midnight shift (others sleeping). This has really bothered me that everything was twisted around to make me look like the bad person and then nothing was ever to done to resolve the situation.³⁰

²⁷ Ex. 116 (at STP 125); Test. of L. Giesen.

²⁸ Ex. 107 (at STP 93).

²⁹ Ex. 116 (at STP 125-26); Test. of L. Giesen; Test. of M. Pearson.

³⁰ Ex. 108.

29. Following the receipt of Ms. Meisel's resignation letter, Commander Pearson cancelled his request for an ergonomic evaluation of her workstation.³¹

30. On Thursday, September 22, 2005, Commander Pearson had a conversation with Ms. Meisel about her claims for "out-of-title" pay. Ms. Meisel had expressed the view that the duties of the Court Officer were sufficiently different from those of a Clerk Typist II that she was entitled to higher, out-of-title pay for those hours in which she performed these duties. Commander Pearson disagreed with this view and stated that he would not approve her requests for out-of-title pay. Additionally, Commander Pearson discussed what he regarded as Meisel's improper use of sick leave on May 25 and unwarranted claims for overtime.³²

31. On Sunday, September 25, 2005, at approximately 11:00 p.m., Commander Pearson received a telephone call from Mr. Geisen. Mr. Geisen informed the Commander that Sharon Hanestad had earlier telephoned the Records Unit to say that she was sick would not be coming to work. Further, Geisen reported that notwithstanding the fact that Ms. Meisel was on duty that evening, Meisel had refused to perform the Court Officer's duties in place of Ms. Hanestad. Ms. Meisel asserted that the Commander's earlier conclusion that she was not entitled to receive out-of-title pay for performing the Court Officer's duties, was tantamount to a declaration that she was likewise "not qualified" to perform these duties. Accordingly, Meisel would not perform these duties.³³

32. In the early morning hours of Monday, September 26, 2005, Commander Pearson met with Ms. Meisel and Lydia Belair. The trio discussed the dispute which occurred earlier that day and the claims made in Ms. Meisel's letter of resignation dated September 20, 2005.³⁴

33. On September 27, 2005, Commander Pearson issued a written reprimand to Ms. Meisel regarding the circumstances of her absences from work on May 24 and May 25, 2005.³⁵

34. Ms. Meisel's last work day for the St. Paul Police Department was September 29, 2005.³⁶

³¹ Ex. 116 (STP 124); Test. of M. Pearson; see also, Ex. 118.

³² *Id.*; Ex. 116 (at STP 124).

³³ Ex. 102 (at page 14, entry for September 22); Ex. 114 (at STP 127); Test. of L. Giesen; compare generally, Ex. 111, Section 14.

³⁴ Test. of L. Belair; Test of M. Pearson.

³⁵ Ex. 116 (at STP 105).

³⁶ Ex. 104; Ex. 106 (at STP 001).

35. On or around November 3, 2005, Ms. Belair and Ms. Meisel submitted a Union Grievance Form challenging the reprimand of Ms. Meisel and the denial of her claims for out of title pay, mileage, sick leave and night differential pay.³⁷

36. On December 19, 2005, Ms. Meisel filed a charge of discrimination with the Minnesota Department of Human Rights.³⁸

37. The Department investigated the charge and on February 12, 2007, Complainant determined that there was probable cause to believe that Respondent had violated the Minnesota Human Rights Act (“MHRA”) by failing to accommodate Ms. Meisel’s disability.³⁹

38. Complainant commenced the current proceeding to enforce the MHRA and a hearing was held on March 3 and 4, 2008.

39. Any of the Conclusions below that are more properly characterized as Findings, are hereby incorporated by reference.

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction to consider the issues in this proceeding, pursuant to Minn. Stat. § 14.50 and 363A.29 (2006).

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of pertinent statutes and rules have been fulfilled.

3. The MHRA prohibits covered employers from discharging or discriminating against an employee with respect to terms, conditions, or privileges of employment because of disability, except when based on a *bona fide* occupational qualification.⁴⁰

4. At the times relevant to this proceeding, Respondent City of Saint Paul was an “employer” within the meaning of Minn. Stat. §§ 363A.03, subd. 16 and 363A.08, subd. 6, and the Charging Party, Tamara Meisel, was an “employee” within the meaning of Minn. Stat. § 363A.03, subd. 15.

³⁷ Ex. 110; Test. of L. Belair.

³⁸ Ex. 30.

³⁹ Ex. 31.

⁴⁰ See, Minn. Stat. § 363A.08 (2) (2006).

5. The term “disability” is defined in Minn. Stat. § 363A.03, subd. 12, to mean “any condition or characteristic that renders a person a disabled person. A disabled person is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.”

6. When defining in the Minnesota Human Rights Act who qualifies as a disabled person, the Minnesota Legislature crafted a statutory definition of disability that incorporates federal regulations under the Americans with Disabilities Act.⁴¹ Importantly, the parallel federal regulations under the Americans with Disabilities Act define “Major Life Activities” as “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”⁴²

7. Ms. Meisel established by a preponderance of the evidence that her “periodic flare-ups of her neck condition and headaches,” limited one or more of her major life activities and that she was a qualified disabled person within the meaning of Minn. Stat. § 363A.03, subd. (6).

8. Under Minn. Stat. § 363A.08, subds. (2) and (6), it is an unfair and unlawful employment practice for an employer not to make reasonable accommodation to the known disability of a qualified disabled person.

9. A reasonable accommodation may include, but does not necessarily require: (1) making facilities readily accessible to and usable by disabled persons; and (2) job restructuring, modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, and the provision of aides on a temporary or periodic basis.⁴³

10. However, an employer is not obligated to make a reasonable accommodation of a disability until the employee notifies the employer of the particular limitations produced by that disability for which accommodation is being requested.⁴⁴

⁴¹ See, Minn. Stat. § 363A.03 (12) (2006); *State by Cooper v. Hennepin County*, 441 N.W.2d 106, 110 (Minn. 1989); *Miller v. Centennial State Bank*, 472 N.W.2d 349, 351 (Minn. App. 1991); compare also, Minn. Stat. § 609.2336 (1)(5) (2006).

⁴² See, 29 C.F.R. § 1630.2 (i) (2007); compare also, Minn. Stat. § 609.2336 (1)(6) (2006).

⁴³ See, Minn. Stat. § 363A.08 (6) (2006).

⁴⁴ See, *Cannice v. Norwest Bank Iowa N.A.*, 189 F.3d 723, 727 (8th Cir. 1999); *Mole v. Buckhorn Rubber Products, Inc.*, 165 F.3d 1212, 1217 (8th Cir. 1999); *Wallin v. Minnesota Dept. of Corrections*, 153 F.3d 681, 689 (8th Cir. 1998); *Miller v. National Casualty Co.*, 61 F.3d 627, 630 (8th Cir. 1995).

11. Employers and disabled employees are both responsible under the MHRA for engaging in good faith in an interactive process to determine an appropriate accommodation for a disability-related limitation.⁴⁵

12. The schedule accommodations requested of the City by Ms. Meisel were reasonable responses, within the meaning of Minn. Stat. § 363A.08, subd. (6), to the requests made by Ms. Meisel before August 20, 2005.

13. Ms. Meisel did not establish that before August 20, 2005, she notified the City of any limitations on her work activities that were caused by the configuration of her work station.

14. Ms. Meisel failed to establish by a preponderance of the evidence that the City failed to engage in a good faith, interactive process to make reasonable accommodations to the limitations that were disclosed on or around August 20, 2005.

15. Ms. Meisel failed to establish by a preponderance of the evidence that the City engaged in an unfair and unlawful employment practice under Minn. Stat. § 363A.08.

16. These Conclusions are made for the reasons set forth in the Memorandum below and that Memorandum is incorporated here by reference.

ORDER

Based on the foregoing Conclusions, IT IS HEREBY ORDERED:

1. The charges of the charging party and Complaint of the Department are DISMISSED with prejudice.
2. This Order constitutes the final decision in this case and is effective immediately.

Dated: April 25, 2008

/s/ Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally Recorded

⁴⁵ See, *Cannice v. Norwest Bank Iowa, N.A.*, 189 F.3d 723, 727 (8th Cir. 1999).

NOTICE

Pursuant to Minn. Stat. § 363A.29, subd. 3, this Order is the final decision in this matter. Any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 through 14.68 and 363A.29, subd. 1.

MEMORANDUM

Ms. Meisel's discrimination claims fail because they depend upon a contention that, after the evidentiary hearing, cannot be sustained. Specifically, Ms. Meisel claims that early in 2005, she urged her supervisors to assess and reconfigure her work station, and that in bad faith, those requests for reasonable accommodations were ignored until her resignation in late September.

First, Ms. Meisel's claims falter upon her own writings. In the journal that she kept while she was an employee in the Records Unit, as well as in her September 20, 2005 resignation letter, Meisel acknowledges that her request for an evaluation of her work station was made in August of 2005 – not early 2005.⁴⁶

Second, her contrary claims at the evidentiary hearing are not credible. It strains credulity to believe that Ms. Meisel would fail to document a spring 2005 request for accommodations, a singularly important event, at a time when she was assembling a wide-ranging catalogue of the shortcomings of her co-workers – including how long they spent on smoking breaks, what they gossiped about together and which websites they reviewed during work hours.⁴⁷ Likewise, the record reflects that before, during and after the instant controversy, Ms. Meisel was accustomed to thoroughly documenting a variety of employment-related claims for senior officials – including claims for sick leave, leaves of absence, overtime pay and out of title pay. The fact that a spring 2005 request for a disability accommodation was not also included among the sheaves of contemporaneous documents is anomalous and telling.

Similarly puzzling is the fact that notwithstanding Ms. Meisel's and Ms. Belair's testimony at the evidentiary hearing that the failure to accommodate Ms. Meisel's limitations was at the core of the June 1 and September 26 meetings with St. Paul Police officials, the Union Grievance Form that the pair wrote and submitted following the later of these two meetings does not reference this claim. The omission is curious because, arguably, job discrimination against a disabled employee is a far more serious violation of the Collective Bargaining Agreement

⁴⁶ Ex. 102 (at page 13-14, entries for August 20 and September 19); Ex. 108.

⁴⁷ Exs. 101 and 102.

than the claims they did set forth – such as a failure to pay mileage for the short drive from the Law Enforcement Center to the Ramsey County Courthouse.⁴⁸

For these reasons, the best understanding of the underlying record is that St. Paul Police officials were first apprised of Ms. Meisel’s request for an assessment and improvement to her work station on or about August 20, 2005.

While the response to Ms. Meisel’s request for an ergonomic assessment was slow – and, as acknowledged by Commander Pearson, inartful – it was not a sham nor was it in bad faith. Ms. Meisel has failed to establish by a preponderance of the evidence that the City failed to engage in a good faith, interactive process to make reasonable accommodations to a known disability.

Lastly, while the City of Saint Paul is not adjudged to be liable in this case for compensatory damages, punitive damages, litigation expenses or attorneys fees, it should nonetheless give serious consideration to the other elements of the Commissioner’s prayer for relief. The Commissioner urged that the St. Paul Police Department be ordered to: (a) further develop its procedures for responding to requests for accommodation; (b) develop a system of tracking accommodation requests it receives from employees; and (c) provide up-to-date training to supervisory employees on the disability provisions of the Minnesota Human Rights Act. While no such Order is warranted under the MHRA, the Department’s plan could potentially help the City to avoid future litigation and therefore merits attention and review.

E. L. L.

⁴⁸ See, Ex. 110.