

IN THE CIRCUIT COURT OF WASHINGTON COUNTY
FOURTH JUDICIAL CIRCUIT
FIRST CIVIL DIVISION

BALANCE REED,
*individually and on behalf
of all others similarly situated*

PLAINTIFF

v.

CASE NO.: 72CV-21-931

NORTHWEST ARKANSAS HOSPITALS, LLC

DEFENDANT

DEFENDANT NORTHWEST ARKANSAS HOSPITALS, LLC'S
MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to Ark. R. Civ. P. 12(c), Defendant Northwest Arkansas Hospitals, LLC (“NWAH” or “Defendant”) hereby submits this Motion for Judgment on the Pleadings (“Motion”), respectfully requesting judgment on the pleadings and dismissal, with prejudice, of Plaintiff Balance Reed’s (“Plaintiff”) complaint. In support of this Motion, NWAH states as follows:

1. On May 5, 2021, Plaintiff filed a putative Class Action Complaint (“Complaint”).
2. In the Complaint, Plaintiff challenges NWAH’s decision to rescind its conditional offer of employment to the position of Mental Health Tech I in NWAH’s Springdale Hospital Behavioral Health Unit due to Plaintiff’s positive drug screen for marijuana, under the Arkansas Medical Marijuana Amendment of 2016, AR. Const. Amend. 98, and the Arkansas Civil Rights Act, Ark. Code Ann. § 16-123-101 et seq. [Complaint ¶¶ 19-20]. Plaintiff alleges that the “application” and the “written offer of employment did not list the Mental Health Tech I position

as safety-sensitive.”¹ [Complaint ¶¶ 12 and 14]. Plaintiff claims that he informed NWAH on or about May 8 and May 12, 2020, that he was a medical marijuana patient. [Complaint ¶ 18].

3. In his complaint, Plaintiff admits that the Defendant can exclude current medical marijuana users from designated safety sensitive positions. [Complaint ¶¶ 35, 42].

4. On June 4, 2021, NWAH filed its Answer and Affirmative Defenses (“Answer”) to the Complaint, and attached as Exhibit A is a written Position Description for the Mental Health Tech I position at one of the Defendants hospital’s behavioral health units provided to Plaintiff that he acknowledged and signed on or about May 18, 2020 (the “Position Description”). The Position Description states that one year experience as a patient care assistant in a mental health hospital setting and current patient care assistant or certified nurse assistant certification, HWC Verbal and Physical Deescalation is preferred. [Answer, Exhibit A, p. 1]. It also states that a current American Heart Association BLS² must be acquired within first 90 days of employment. [Answer, Exhibit A, p. 1]. The Position Description specifically states that the employee “[m]ay be exposed to . . . safety sensitive situations.” [Answer, Exhibit A, p. 2]. It also indicates, among other things, that the employee must be “[a]ble to handle emergency or crisis situations,” will be “exposed to infections and contagious diseases,” “[m]ay be required to wear protective equipment” and “[m]ay be in contact with patients under a wide variety of circumstances[.]” [*Id.*] The Position Description also states in writing that the Mental Health Tech I position is “[r]esponsible for ensuring patient care”. All the specific designations are included in the Position Description and

¹ Plaintiff’s complaint admits that a person using marijuana has no cause of action for being denied employment to a position which has been characterized as “safety sensitive.” [Complaint ¶ 42]. Also, *see* AR. Const. Amend. 98, § 2(25)(B) stating that a “safety sensitive position” also means any position designated in writing by an employer as a safety sensitive position in which a person performing the position while under the influence of marijuana may constitute a threat to health or safety...”

² “BLS” stands for Basic Life Support.

discussed in more detail in Defendants' Brief in Support of Rule 12(c) Motion to Dismiss also filed herewith.

5. Although not required by law, Plaintiff clearly had notice in writing via the Position Description that the Mental Health Tech I job was characterized as safety sensitive as defined by AR. Const. Amend. 98, § 3(f)(3)(B)(iii). The written Position Description was acknowledged and signed by the Plaintiff on May 18, 2020.

6. Based on Plaintiff's own statements and positive drug screen, NWAH developed a good faith belief, as defined by AR. Const. Amend. 98, § 2(23)(c)(iii) and (vi), that Plaintiff was a medical marijuana patient and could not pass a drug screen.

7. NWAH therefore was permitted under AR. Const. Amend. 98, § 3(f)(3)(B)(iii) to rescind its offer of employment to Plaintiff for the safety sensitive Mental Health Tech I position.

8. NWAH is therefore entitled to judgment on the pleadings in its favor on Plaintiff's claim of violation of Amendment 98, and Plaintiff's Complaint must be dismissed with prejudice, on behalf of himself and any purported class.

9. NWAH has submit a Brief in Support of this Motion.

WHEREFORE, Defendant NWAH respectfully requests that the Court grant its Motion for Judgment on the Pleadings, dismiss Plaintiff's claims with prejudice, and award all other relief.

/s/ James M. Gary

James M. Gary

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CERTIFICATE OF SERVICE

I, James M. Gary, hereby certify that the above and foregoing was filed electronically via eFlex on June 3, 2021, which will serve a copy of same upon all counsel of record.

/s/ James M. Gary

James M. Gary