

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION  
OF HUMAN RIGHTS

on the Complaint of

WILLIAM J. ELDRIDGE,

Complainant,

v.

HILL ELECTRIC SUPPLY CO., INC.,

Respondent.

NOTICE AND  
FINAL ORDER

Case No. 10110150

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order ("Recommended Order"), issued on January 10, 2008, by Christine Marbach Kellett, an Administrative Law Judge of the New York State Division of Human Rights ("Division"). An opportunity was given to all parties to object to the Recommended Order, and all objections received have been reviewed.

**PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE KUMIKI GIBSON, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER").** In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is

the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

**ADOPTED, ISSUED, AND ORDERED**, this 6th day of February, 2008.



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KUMIKI GIBSON  
COMMISSIONER

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**RECOMMENDED FINDINGS OF  
FACT, OPINION AND DECISION,  
AND ORDER**

Case No. 10110150

**SUMMARY**

Complainant charged his employer with unlawful discriminatory practices in employment based upon disability. Respondent denied the charges. Complainant failed to meet his burden of proof at the public hearing. The complaint should be dismissed.

**PROCEEDINGS IN THE CASE**

On February 9, 2006, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in an unlawful discriminatory practice. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Christine Marbach Kellett, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on November 27, 2007.

Complainant did not appear at the public hearing. Complainant's wife, Eileen Eldridge appeared on her husband's behalf. Respondent appeared at the hearing. The Division was represented by Robert Alan Meisels. Respondent was represented by Malcolm B. O'Hara, Esq.

Permission to file post-hearing briefs was granted. The attorneys filed post-hearing proposed findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. Complainant charged Respondent with unlawful discriminatory practices in employment on the basis of disability when Respondent failed to reasonably accommodate his temporary disability of a broken foot, and terminated his employment. (ALJ's Exh. 1)
2. Respondent denied the charges. (ALJ's Exh. 3)
3. Complainant has suffered from severe depression for many years. (Tr.3, 49, 67, 70)
4. Complainant's wife produced a note from Complainant's physician's assistant dated November 19, 2007, indicating Complainant was unable to testify. (Complainant's Exh. 1)
5. Complainant is currently employed. (Tr. 58).
6. Complainant's wife indicated she was comfortable proceeding with the public hearing, but that her husband was unable to deal with the public hearing or any discussions relating to his complaint against Respondent. (Tr. 6-7)
7. Respondent is an electric supply wholesaler. (Tr. 20-21, 126-127)
8. Scott Schwartz ("Schwartz") is Respondent's president and the majority owner. (Tr. 108)
9. Respondent hired Complainant in October 1998 as its Purchasing Agent. (Tr. 20, 108)
10. During the course of Complainant's employment there were numerous extended absences and accommodations for Complainant's health issues, including back injuries and

vertigo, which prevented Complainant from climbing ladders. (Respondent's Exh. 2; Tr. 51-52, 73-74, 112-113, 116-117)

11. Between January 1, 2005 and November 19, 2005, Complainant had been absent for illness 49 days. (Respondent's Exh. 3 ; Tr. 51-52, 74, 133-134)

12. On November 19, 2005, Complainant bruised his elbow falling off a ladder at his neighbor's house. (Tr. 21)

13. Because of the swelling in his elbow, Complainant's wife took him to the doctor on November 20, 2005, where it was discovered Complainant has also broken bones in his foot. (Tr. 22-23)

14. On November 21, 2005, the orthopedic surgeon to whom Complainant was sent for his foot told Complainant that he should stay home with his foot elevated. (Tr. 22-23)

15. Although the doctor had directed Complainant to stay home off his foot, Complainant's wife believed it was in Complainant's best interest to go to work, and she got a note from the physician's assistant indicating Complainant could return to work with the restriction that he have "light duty and no ambulation on his left foot." (Complainant's Exh. 2; Tr. 23-24, 47-48, 76)

16. In the late afternoon of November 21, 2005, Complainant's wife brought the physician's assistant's note to Respondent. (Complainant's Exh. 4; Tr. 25, 109-111, 147-48)

17. Complainant's wife claimed that Schwartz told her that he would prefer Complainant not come to work until he was able to hobble between Schwartz' office and Complainant's office. (Tr. 37-38)

18. Complainant's wife did not know that Complainant already had accommodations from Respondent including the elimination of climbing ladders as he suffered from vertigo. (Tr. 73, 88-89)

19. The conversation between Complainant's wife and Schwartz was witnessed by employee, Ambyr Warner, who reported Complainant's wife said she wanted to get Complainant back to work soon, and that Schwartz wanted Complainant back to work. (Respondent's Exh. 4)

20. Schwartz testified he thought Complainant's wife was telling him Complainant was quite bruised in addition to having a broken foot and she wanted to bring Complainant back to work on Wednesday. (Tr. 111)

21. Schwartz told Complainant's wife Complainant's needs could be accommodated, but that as it was Thanksgiving week, he suggested Complainant remain at home for the remainder of the week, and then contact the office on the following Monday as to when he would be in. (Respondent's Exh.4; Tr. 111)

22. Schwartz also told Complainant's wife that there was no need for Complainant to go on ladders, and that he wanted Complainant back, even part-time. (Tr. 112)

23. Complainant's wife only heard the remark about not coming in that week and interpreted it as a denial of her request for an accommodation. (Tr. 26, 38)

24. Complainant's wife obtained disability papers from Respondent and had Complainant file for disability. (Respondent's Exh. 1; Tr. 80-82)

25. The medical portion of the disability form indicated Complainant was unable to work, and would be unable to work until December 19, 2005. (Respondent's Exh. 1)

26. Complainant never contacted the Respondent after his wife's initial visit, but Schwartz called Complainant at home numerous times asking when he would be returning. (Tr. 114)

27. Complainant put him off, saying his foot was still tender and he would call him after another doctor's appointment. (Tr. 114)

28. Complainant never called. (Tr. 114, 137)

29. The lack of information or contact from Complainant was a problem for Schwartz. (Tr. 137)

30. On December 30, 2005, not having heard from Complainant, Schwartz terminated Complainant. (Complainant's Exh. 5; Tr. 40, 42, 137 )

31. There were issues of fact, including the nature and content of any discussions between Schwartz and Complainant which could not be fully explored as Complainant did not appear at the public hearing.

### **OPINION AND DECISION**

Under the Human Rights Law, an employer is forbidden from discriminating against an employee on the basis of disability. N.Y. Executive Law §296.3(a). Further, an employer has a statutory duty to provide reasonable accommodation to the known disabilities of an employee by engaging in an interactive process to determine what is a reasonable accommodation. N.Y. Executive Law §296 (3) (a); 9 NYCRR §466.11(j).

Complainant is a person with several disabilities: his vertigo, his injured elbow, his broken foot and his depression. The record presented showed an employer willing to work with its employees in accommodating their disabilities, and with a history of accommodating Complainant's specific health issues.

The law anticipates an exchange of information regarding the accommodation requested and the Complainant's needs. In November and December 2005, no such exchange was taking place here. For reasons that could not be explored on the record because Complainant was not

present at the public hearing, Complainant was not contacting Respondent. Complainant did not follow up with Schwartz even when he was asked about his condition and his expected return to work.

While the testimony is clear as to Complainant's wife's desire for him to work, the testimony and evidence presented is not clear as to whether or not Complainant wanted to work, or could work given the many disabilities he faced. The testimony and record strongly suggest that the identified disability about which the complaint was filed, his injured foot, may not have been the disability most impacting Complainant at the time.

Complainant filed the complaint and was on notice of the public hearing. Although his wife attended the hearing and testified on his behalf regarding her contact with Respondent, there were issues of fact involving Complainant's interactions, if any, with Schwartz which could not be fully explored because Complainant did not appear.

The ultimate burden of proof is belongs to Complainant. *Ferrante v. American Lung Association*, 90 N.Y.2d 623, 687 N.E.2d 1308, 665 N.Y.S.2d 25 (1997). Complainant's failure to appear and answer questions relating to what, if anything, he told his supervisor, or why he failed to provide the requested information as to when he could return to work requires dismissal of the complaint.

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that the complaint be and the same hereby is dismissed.

DATED: January 10, 2008  
Bronx, New York

A handwritten signature in cursive script that reads "Christine Marbach Kellett".

Christine Marbach Kellett  
Administrative Law Judge