

**IN THE MATTER OF** a Human Rights complaint  
pursuant to section 14 of the *Human Rights Act, 2010*

Complaint File No. 12-7044

**BETWEEN:**

**RUBY RICHARDS**

**COMPLAINANT**

**AND:**

**SHIRLEY'S HAVEN PERSONAL  
CARE HOME**

**RESPONDENT**

**AND:**

**HUMAN RIGHTS COMMISSION  
NEWFOUNDLAND and LABRADOR**

**COMMISSION**

---

**DECISION**

---

The Parties to this proceeding agreed to proceed by way of an Informal Hearing. Briefs were filed by all Parties.

**FACTS**

The Complainant was involved in a motor vehicle accident on April 13, 2012 and her injuries were treated by a doctor. Following this accident, the Complainant returned to her job as a Cook with the Respondent and worked two (2) shifts before being taken off work by her doctor. She advised the Respondent of her accident and provided the Respondent with sick notes from her doctor. The Complainant worked on a part time basis as a cleaner at the Salvation Army Church during the period in which she was off work. She was assisted in this job by two (2) other people. On July 25, 2012 she was advised that she could return to light duties on July 28, 2012.

The Complainant's job involved some heavy lifting of pots, pans and bags of food. The Respondent moved another employee into the Complainant's position on an interim basis. As summer approached the Respondent was short staffed and finding employees in the area was difficult. The Respondent contacted the Newfoundland and Labrador Labour Standards to determine her obligations to the Complainant and was advised that an employer was required to provide an

employee with seven (7) days of unpaid leave or family leave in a year. The Respondent terminated the Complainant on July 11, 2012. Subsequently, the Respondent offered employment to the Complainant however she declined to return to work with the Respondent.

On July 30, 2012 the Complainant prepared a complaint to the Newfoundland and Labrador Human Rights Commission which was received by the Commission on August 20, 2012. The complaint states, in part “I feel that my employer Shirley’s Haven Personal Care Home, has terminated my employment because I was partially disabled after being in a car accident...I believe that my employer thinks I will be unable to perform my job duties in the future. I feel that I have been discriminated against on the basis of disability and/or perceived disability, contrary to section 14 of the *Human Rights Act, 2010*.” (the “Act”)

The Respondent is an incorporated entity and should be referred to as Shirley’s Haven Inc.

The facts as set forth have not been disputed.

### **ISSUES**

1. Did the Complainant have a disability?
2. Was the Complainant discriminated by the Respondent?
3. If so, can the Respondent show that they accommodated the Complainant’s disability to the point of hardship?
4. If not, what is the appropriate remedy?

The medical evidence presented by the Complainant consists of copies of nine (9) Official Disability Certificates from Labrador-Grenfell Health, three (3) predate this complaint; one (1) refers to her being absent from work for the period of April 18, 2012 to April 22, 2012; three (3) state that she is capable of returning to full duty on each of May 11, 2012, May 28, 2012 and June 07, 2012; and two (2) refer to a partial disability until further reassessment on each of July 11, 2012 and July 27, 2012. It is apparent to me that there is a difference in the way in which these certificates are completed by representatives of Labrador-Grenfell Health. I accept the evidence of the Complainant that she was off work until being cleared to return to light duties on July 28, 2012.

This being said, there is no information contained in these certificates on the nature or extent of her disability, rather the certificates say that “The above named person has legitimate medical reason for being absent from work/~~school~~ on the following dates:...” The Complainant herself references that she suffered a “severe whiplash” in an accident in April 2012. The Respondent was aware that the Complainant was in an accident and received the notes from Labrador Grenfell provided by the Complainant.

Section 2 (c) of the Act defines “disability as follows:

“disability” means one or more of the following conditions:

- (i) A degree of physical disability,
- (ii) A condition of mental impairment or a developmental disability,
- (iii) A learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or language, and
- (iv) A mental disorder.

The Newfoundland and Labrador Court of Appeal in *Human Rights Commission (Critch) v. Newfoundland and Labrador*, 263 Nfld & P.E.I.R. 60 at paragraph 28 state that to establish disability under the Act a Complainant’s medical condition has to have “a degree of severity and permanence and must impair their ability to carry on with their work” [Emphasis added]. The onus is on the Complainant to prove that the “legitimate medical reason” for being absent from her employment is within the definition of disability in the Act.

The question then becomes whether the Complainant on a balance of probabilities has established that she suffered from a disability under 2(c)(i) of the Act, no evidence having been produced by the Complainant of a disability pursuant to the other provisions of section 2. In *Human Rights Commission v. Health Care Corporation of St. John’s*, 2003 NLCA 13 at paragraph 31 Justice Cameron writing for the Court stated:

However, it is, I believe, dangerous to simply jump to the conclusion that because someone else who had that same diagnosis was held to have a disability the complainant has a disability. Whiplash...is a prime example. It can range from a very mild, slightly irritating, transitory injury to a severe, highly debilitating one. On the mild end of things, it can hardly be said to be disabling.

The Complainant while stating that she had a “severe whiplash” acknowledged that she continued to work at her second job while she was off work for a “legitimate medical reason” albeit with the assistance of other people. The Respondent relies upon this fact as evidence that the Complainant did not suffer from a physical disability as contemplated by the Act. Unfortunately, we do not have any evidence of the nature of her employment duties in her second job or of the work completed by the people who were helping her. If one were provided with a note from the doctor stating that you should remain off work without any further details of the limitations that you were under, anyone reading the note would assume that it meant you were not to work at all.

In this instance while the Complainant may have had limitations arising from the injuries she sustained in the accident, I am unable to find that the Complainant has established that she suffered from a physical disability that is severe and has some permanence. It is also clear that the Complainant perceived that she had a disability that impeded her ability to carry out her employment duties with the Respondent. The Respondent did not have this same perception.

The Commission has provided me with the decision of the our Court of Appeal in *Human Rights Commission v. Health Care Corporation of St. John's* that addresses the circumstance when an employer wrongly perceives that an employee has a disability that will limit their ability to function, whether or not the Complainant is disabled. This presents a different fact situation than the one before me.

Given that I have found that the Complainant was not disabled based upon the evidence before me, there is no need for me to address the remaining issues.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador this 27<sup>th</sup> day of November, 2019.

---

GLEND A BEST, Q.C.  
Adjudicator