

IN THE MATTER OF a Complaint
Pursuant to sections 9 of the *Human
Rights Code*, R.S.N.L. 1990. c. H-14

File No. 2699

BETWEEN:

AUBREY LYNCH

COMPLAINANT

AND:

THE GO-GETTERS COURIER SERVICE
KEN PLOUGHMAN

RESPONDENTS

Adjudicator: Keri-Lynn Power

Heard: October 7-October 9, 2008

Decision: December 17, 2009

Appearances:

On behalf of the Complainant

Aubrey Lynch

And on behalf of the Newfoundland

And Labrador Human Rights Commission:

John Hartery

On behalf of the Respondents:

Ken Ploughman

DECISION OF THE ADJUDICATOR

INTRODUCTION

1. The Complainant, Aubrey Lynch, was an employee of Go-Getters Courier Service from approximately March, 2001 until March, 2002 and again from March, 2004 until January 16, 2006 as a driver/broker whose duties included picking up and dropping off courier packages for customers, pricing jobs, and invoicing for jobs.
2. The Respondent, The Go-Getters is a Courier Service whose address is 291 Empire Avenue, in the City of St. John's, Province of Newfoundland and Labrador, where the Complainant was employed as a courier driver and the courier service is owned by Ken Ploughman, also named in the Complaint Form and another Respondent herein.

NATURE OF COMPLAINTS

3. The Complainant completed and signed a standard Complaint Form prepared by the Human Rights Commission (hereinafter called the "HRC") and Mr. Lynch on January 30th, 2006 claiming violations under section 9 *Human Rights Code* on the grounds of physical disability.

4. Mr. Lynch's Complaint Form statement is as follows:

"When I was 10 months old I was diagnosed with Pyruvate Kinase Deficiency- Hemolytic anemia, which subsequently led to the removal of my spleen. As an adult, this has not had a detrimental affect on my life or employment until recently (e.g. I have completed an undergraduate degree and in 2001 I was off work for just one week due to illness). However, bacterial and viral infections can adversely affect my immune system and cause fatigue. During the last several years, I have been hospitalized because of various infections.

I started work as a courier for Ken Ploughman in 2001. As I mentioned, I was unable to work for one week during this one-year period because of my disability. However, I made up for that by not taking any vacation (other employees each took two-weeks). Mr. Ploughman, who is aware of my disability, has been extremely abusive with regards to my medical condition, and I eventually left this job because of this abuse. However, in March 2004 I started working for him, once again. At this time, I agreed to provide a replacement worker to cover any shifts that I missed. I hoped this would improve our working relationship as I needed the income and Mr. Ploughman indicated that he was pleased with my replacement worker.

Since 2001 Mr. Ploughman seems to have been satisfied with my work ethic and performance but has a problem with the fact that I have a physical disability. Whenever I informed him that I was not well or unavailable to work because of a medical appointment he was sarcastic, verbally abusive, and, at times, physically threatening. It has come to the point where I no longer feel comfortable meeting with him and during telephone conversations he is so vulgar and insulting that it is usually impossible to talk to him. Between the stress of this abuse and the stress of needing to support myself financially I believe that my health has suffered unnecessarily. Although I have made every effort to provide excellent and reliable service, I believe that Mr. Ploughman's expectation that I make myself constantly available is unreasonable. On January 16, 2006 I was fired because of my disability. As Mr. Ploughman explained in an email dated July 12, 2004 "your effort is never in question when you are well but how can I determine when you will fall ill and for how long". He has gone so far as to call me a burden.

I believe that Mr. Ploughman's failure to accommodate my illness is discrimination on the grounds of physical disability contrary to section 9 of the Human Rights Code."

5. This is the Complaint made against Go-Getters Courier Service and Ken Ploughman, which was before the Board and upon which the Board is required to render its decision.

LEGISLATION

6. In ascertaining whether the Complainant experienced discrimination on the grounds of physical disability, regard must be had to the following pertinent legislation:

Human Rights Code, RSNL 1990, c. H-14

Definitions

“2. In this Act

- (1) "physical disability" means any degree of infirmity, malformation or disfigurement of the body suffered by a person as a result of injury, illness or birth defect, and includes a handicap resulting from epilepsy, paralysis, lack of co-ordination, amputation, blindness, deafness, muteness or reliance upon a guide dog, a wheelchair, a cane or crutch or other remedial appliance or device;

Discrimination in Employment

9. (1) An employer, or a person acting on behalf of an employer, shall not refuse to employ or to continue to employ or otherwise discriminate against a person in regard to employment or a term or condition of employment because of:

- (a) that person's race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, family status, physical disability or mental disability; or

but this subsection does not apply to the expression of a limitation, specification or preference based on a good faith occupational qualification.

Orders of Board

28. (1) A board of inquiry
- (a) shall, where it finds that a complaint is not justified, order that the complaint be dismissed; and

(b) may, where it finds that a complaint is justified in whole or in part, order the person against whom the finding was made to do 1 or more of the following:

(i) to stop the contravention complained of,

(ii) to refrain in future from committing the same or a similar contravention,

(iii) to make available to the person discriminated against the rights, opportunities or privileges he or she was denied contrary to this Act,

(iv) to provide compensation to the person discriminated against, including compensation for all or a part of wages or income lost or expenses incurred because of the discriminatory action, and

(v) to take whatever other action the board considers appropriate.

(2) A board of inquiry may make whatever order as to costs that it considers appropriate.

(3) An order of a board of inquiry shall be binding on all parties.

(4) An order or decision of a board of inquiry shall be made in writing, together with a written statement of the reasons for the order or decision and copies of them shall be provided to the parties

EVIDENCE

By Consent

7. The following evidence was submitted by consent at the hearing:

- (a) Consent # 1- Email from Sara Sexton to Ken Ploughman dated October 6, 2008;
- (b) Consent #2- Confidential Investigation Report, File No. 2699 by Sharon Samson, a Human Rights Specialist, which contained:
 - Her Investigator Report,
 - Appendix “A” which is email correspondence between the parties, all dated in 2004

- Appendix “B” medical documentation of Mr. Lynch,
 - Appendix “C” which is email correspondence between the parties dated July 20 and 22 2004,
 - Appendix “D” written submission of Mr. Lynch dated January 17, 2006,
 - Appendix “E” written submission of Mr. Lynch dated January 29, 2006,
 - Appendix “F” response of Mr. Ploughman dated February 15, 2006, and
 - Appendix “G” Interview Questions of Mr. Dave Maher;
- (c) Consent #3- Medical Chart of Aubrey Lynch;
- (d) Consent # 4- Income Tax Return for 2002 of Aubrey Lynch;
- (e) Consent # 5 -Invoice for August 17, 2004;
- (f) Consent # 6- Letter from Aubrey Lynch to Human Rights Commission dated April 11, 2006; and
- (g) Consent # 7- Agreement between Go-Getters and Mr. Lynch, dated March 16, 2001.

On behalf of the Complainant, the Testimony of Serena Lynch

8. The viva voce evidence was taken over three very long days, resulting in substantial testimony from numerous individuals. It was evident that the Parties were still very emotional over this matter and strongly affected by the situation. Furthermore, two of the Parties were self represented. The result of which was that some of the evidence tendered whilst pertinent to the Parties, was not of benefit to the legal question before the Board.
9. Ms. Lynch is the wife of Aubrey Lynch. The Board could not put substantial weight into some of her testimony for much of her evidence was based on what she was told by her husband, and how he interpreted things. The Board believes that she was truthful in reiterating to the Board what her Husband told her, however from an

evidentiary perspective, the same was no more than hearsay and the Board was unable to put much weight on it.

10. She testified that at times she filled in for her husband when he was ill, with the Respondents and did so approximately 5-6 times. Her evidence was that her husband suggested she fill in so the Respondents would not be inconvenienced.
11. She stated that her impression she received from her husband was that someone was needed to fill in to save her husband's job, so Mr. Ploughman was not down a driver, so her husband was not a burden. She also testified that the money she made whilst covering for her husband was paid to her husband.
12. She also testified to what her husband told her pertaining to issues with Mr. Ploughman, conversations he had had, and what was said, however, she was not witness to any of this.

On behalf of the Complainant, the Testimony of Aubrey Lynch

13. Mr. Lynch testified that he first worked for the Respondents from March, 2001 until March, 2002 and experienced sickness during this time. He stated that the Respondents expressed concerns about reliability and inconvenience when he sought time off for stomach pains; however he also never fully discussed his medical situation with Mr. Ploughman.
14. He testified that Mr. Ploughman's reaction to time off and intolerance of the same was much more severe the second time he worked for him. He testified that during his second stint of working for Mr. Ploughman from March, 2004 until January, 2006 Mr. Ploughman referenced the inconvenience of time off, and the necessity of someone having to cover.
15. He also testified that he did not tell Mr. Ploughman about his medical condition until the second time he was hired, in which the same was explained in great detail.

16. He testified that he felt he always had to accommodate Mr. Ploughman, Mr. Ploughman did not accommodate him, and his illness was always a burden.
17. He testified that he felt pressured to offer his wife to cover his shifts because Mr. Ploughman was seeking a solution from him to cover his work load with him being of sick and other employees being booked for holidays.
18. He testified that he was denied holidays and said that Mr. Ploughman said
“I guess you will not be taking not time off will you Aubrey.”
At the time he had been ill quite a bit and did not take any holidays, for he felt it was not right to take additional time off and Mr. Ploughman did not want him to.
19. He also testified that Mr. Ploughman criticised his illness at times, and was verbally abusive to him, but admitted there was correspondence between them addressing issues in his work performance such as mistakes, invoicing concerns, and billing concerns.
20. He testified that he missed approximately 7-10 days from work for illness in 2004 and approximately 8 days from work due to illness in 2005, in January.

On behalf of the Respondent, the Testimony of Madeline Ploughman

21. She is the mother of Mr. Ploughman, and like Ms. Lynch was not privy to many of the discussions between Mr. Lynch and Mr. Ploughman and could not offer any weighted evidence to the same. She did testify that when Mr. Lynch returned the radio equipment to the residence on January 16, 2006, she asked him if he was going on leave and he stated that he quit.

On behalf of the Respondent, the Testimony of David Maher

22. Mr. Maher is also a broker of Mr. Ploughman, and former co-worker of Mr. Lynch. He testified that he had heard some arguing between the Parties over the radio on

January 16, 2006 but was not really paying attention to the same and could not remember the subject of the same.

23. He also testified that another employee had an illness and Mr. Ploughman supported her illness, gave her the time off she needed for doctor appointments and treatment, and it was his understanding that Mr. Lynch quit.

On behalf of the Respondent, the Testimony of Kenneth Ploughman

24. Mr. Ploughman testified that Mr. Lynch quit and the incident which led to it were issues pertaining to work performance particularly invoicing, uniformity, and professionalism, there had been incidents with customers and he suggested a meeting to address the same, and this was not the first time they had discussed these work performance issues.

25. He also testified that in November/December 2005 Mr. Lynch had been making more than average mistakes, it was not anything that could not be corrected and those were the concerns he expressed to Mr. Lynch.

26. He explained that he did tell Mr. Lynch he would perhaps need to consider alternate employment if they could not meet and discuss the errors and performance issues and try to rectify or resolve the same.

27. In relation to Mr. Lynch's health, he explained that he found out about Mr. Lynch being hospitalised on July 22, 2004 but before then did not know where he was, why he was not at work and was not kept informed.

28. He also testified that he knew in the past Mr. Lynch had the flu but did not know the seriousness of Mr. Lynch's health situation and was not informed enough prior to the July, 2004 incidents.

29. He testified that the emails describing the incident in December, 2005 in which Mr. Lynch was sick was not an issue for him because it was a down time.

ARGUMENT

Made by the Commission on behalf of the Complainant

30. The Commission's position was that Mr. Lynch was subject to discrimination in violation of section 9(1)(a) of the *Code* on the basis of illness and was subject to this by the Respondents.

31. They submitted that the medical evidence in Consent # 3 verified Mr. Lynch's illness and that the same was a disability, a medical physical chronic disability that would not go away.

32. They submitted that Mr. Lynch should not feel he was a burden to his employer and he subjectively in his own mind felt he was being a burden to his employer when he was ill.

33. They submitted that the duty to accommodate in Human Rights Cases is very, very high when there is such a physical disability and Mr. Lynch was afraid that if he did not arrange a solution for when he was sick, he would lose his job.

34. In arguing for the relief sought the Commission made reference to **British Columbia (Public Service Employee Relations Comm.) v B.C.G.E.U.** (1999) 35 CHRR D/257 (SCC); **Ontario Human Rights Comm. and O'Malley v Simpsons –Sears Ltd.** (1985) 7 CHRR D/3102 (SCC); **Canadian Pacific Ltd. v Canada (Human Rights Comm.) and Fontaine** (1990) 16 C.H.R.R. D/470 (F.C.A.); and **British Columbia (Superintendent of Motor Vehicles) v British Columbia (Council of Human Rights)** (1999) 36 C.H.R.R. D/129 (SCC).

Made by the Complainant on behalf of the Complainant

35. The Complainant's submissions were that he was told to pack it all in because he was an inconvenience and burden to his work due to his illness; and his health was an issue from a business standpoint since July, 2004 and that he was abused and discriminated because of the illness.

Made by Mr. Ploughman on behalf of the Respondents

36. Mr. Ploughman submitted that the illness did not meet the test of being a physical disability under section 9(1) of the *Human Rights Code*, that furthermore he did not fire Mr. Lynch and the evidence supported his position, and Mr. Lynch's end of employment was not due to a physical disability but issues pertaining to performance. In presenting the same reference was made to section 2(1) of the *Code* as well as **Newfoundland and Labrador v Critch** 2007 NLCA 10.

37. He also argued that the complaint was outside the limitation period as per section 20(1) of the *Code* and cited **Re The Queen in Right of Manitoba and Manitoba Human Rights Commission et al.** (1983) 2 DLR (4th) for asserting there had been no evidence of time off work for illness since July, 2004 however the complaint was brought in January 2006.

DECISION

38. The emails attached in Consent #1 are of interest to the Board. Appendix "A" dated July 12-July 14, 2009 states that whilst Mr. Lynch does claim to have the flu, Mr. Ploughman expresses concerns about meeting obligations and the need for to not be understaffed and he did state Mr. Lynch's health was an issue of concern. As well Mr. Lynch expressed that he felt obligated to find a solution. In the correspondence Mr. Ploughman did express to Mr. Lynch they needed a solution for when he was off on extended sick leave and made rude remark about a spleen.

39. The email of July 20, 2004 in Appendix "C" speaks of the need to hire another employee if he was unable to work and if so Mr. Lynch may be off until September,

2004 for this new person would have to be hired for 5 weeks. There was no email reply to the same submitted.

40. The email of July 22, 2004 in Appendix "C" in which Mr. Lynch offers for his wife to cover until he recovers and states he cannot work until he is healthy, and the reply by Mr. Ploughman is also not nice, however, considering it had been over a week since they last corresponded and Mr. Lynch had indicated he expected to have been back to work the week before, the Board sees it as a way of checking on the status of Mr. Lynch, albeit sarcastically.
41. The email of July 22, 2004 from Mr. Lynch explains he has been hospitalised and would be off until the following week
42. In the emails of December 29, 2004 in which Mr. Lynch offers himself or his wife to cover, Mr. Ploughman takes no issue with that and claims he may not require either, however there is no blatant inference from Mr. Ploughman that Mr. Lynch's health is a problem.
43. Appendix "D" which is Mr. Lynch's letter to the Human Rights Commission states that after the incidents in 2004, he was not off work until 2005 for 1 week and he arranged for someone experienced to fill in his position. It also states that Mr. Ploughman did hire someone to cover for Mr. Lynch in July, 2004 and even though in the previous emails Mr. Ploughman threatened to keep Mr. Lynch off work until September 1, 2004; it appears that did not happen.
44. Appendix "F" includes an email from Mr. Ploughman dated November 22, 2005 referencing a mistake and another email dated November 24, 2005 referencing discrepancies, and another email on November 27, 2005 asking to "meet and talk again". There are other emails dated January 2, 2006, and January 13, 2006 referencing the same, and the evidence shows that Mr. Lynch refused to meet and

discuss the matters, address the invoicing issues, or return to work as was in the emails of January 13, 2006, January 16, 2006 and January 20, 2006.

45. Consent #3 is the partial medical chart of Mr. Lynch and shows some tests being doing in 2002 and 2003, proof of him being ill in July, 2004, and an application to social services seeking benefits due to disability, but nothing pertaining to receiving any treatment or referencing illness for 2005.

Outside Limitation Period

46. Mr. Lynch had two episodes of working with the Respondents, the first being from March, 2001 until March, 2002 and the second from March, 2004 until January 16, 2006. The first work stint was not accepted as pertinent to this matter because the evidence submitted showed that Mr. Ploughman was not aware of Mr. Lynch's condition during this time, Mr. Lynch voluntarily left employment from them, Mr. Lynch choose to apply and return to employment with them for the second stint and any claims that may have arisen during that time are outside the statutory limitation period. The second stint is the focus of this adjudication.

47. The Human Rights Code currently states,

- “20. (1) A person who has reasonable grounds for believing that a person has contravened this Act may file with the executive director a complaint in a form acceptable to the commission.
- (2) A complaint made under subsection (1) shall be made within 12 months after the alleged contravention occurs or, in the case of a continuing contravention, within 12 months after the last incidence of the alleged contravention.
- (3) Where a complaint is made by a person other than the person who it is alleged was dealt with contrary to this Act, the executive director may refuse to act on the complaint unless the person alleged to be offended against consents.

1988 c62 s21; 2006 c22 s8”

48. At present, as per section 20(2) not 20(1) of the *Code* as referenced by Mr. Ploughman, the time frame in which to file a complaint is within 12 months of the contravention, however this statute was amended on May 26, 2006.

“8. Subsection 20(2) of the Act is amended by striking out the number "6" where it twice occurs and substituting the number "12".”

RSNL1990 cW-11 Amdt.”

49. Prior to that date, it stated,

“(2) A complaint made under subsection (1) shall be made within 6 months after the alleged contravention occurs or, in the case of a continuing contravention, within 6 months after the last incidence of the alleged contravention.”

50. Which means when Mr. Lynch made his complaint on January 30, 2006 the contravention had to have occurred within the 6 months prior, in other words between July 30, 2005 and January 30, 2006.

51. The wording of the emails of 2004 as referenced above, cause the Board concern and the Board understands why Mr. Lynch felt he had to find a replacement for when he was off sick, and whilst in the December 2004 email Mr. Ploughman did not make unsavoury comments like he did in the July 2004 emails about Mr. Lynch’s health, Mr. Lynch still felt the need to offer a replacement, to diffuse a potential situation.

52. However, the Board also recognises that the nature of the employment in which Mr. Lynch was a broker for the Respondents meant that if Mr. Lynch was not working, he was not earning money and getting paid; for the remuneration was akin to a commission situation; and considering he was the main income earner in his family, he and his wife both had an interest in her covering for him when he was sick, for they received financial benefits from the same.

53. The Board also understands that Mr. Lynch has struggled with health issues all of his life, that the same is a continuous area of concern for him, and subjectively he feels it is an issue in his employment.

54. Based on all of the documents submitted, including the report, the emails, and medical charts it appears the December, 2004 incident was the last time that proof

was provided of Mr. Lynch being unable to work due to health and the same being an issue between the Parties, therefore this claim is outside the six month statutory limitation period and should be dismissed.

55. Mr. Lynch did testify that he was off sick for about a week in 2005 and thinks it may have been January, which if that is the case, it too is outside the limitation period. In addition there is no reference of the same in the medical chart provided and there is no routine correspondence between the parties on the same, therefore the evidence has not been provided to substantiate a claim for an incident in 2005 that would fall within the limitation period statutorily required, or that the Respondents took issue with this time off and Mr. Lynch's health.

56. Mr. Lynch also claimed that during the incident in January, 2006 which led to him being fired, Mr. Ploughman made reference to his illness as being a problem in his employment. If such is the case, then it would fall within the statutory time line and based on the concept of continuous contravention, would render all incidents to be pertinent in rendering a decision from the Board. The statute makes it clear that if the breach has been taking place over a period of time, the person must file the complaint within six months of the last incident of the alleged contravention.

57. In **Re The Queen in Right of Manitoba and Manitoba Human Rights Commission et al.** (1983) 2 DLR (4th) Manitoba CA it established the test for continuing contravention as follows:

“ To be a continuing contravention there must a be a succession or repetition of separate acts of discrimination of the same character. There must be present acts of discrimination which could be considered as separate contraventions of the Act, and not merely one act of discrimination which may have continuing effects or consequences.”

58. The Board finds that based on the viva voce testimony and the documentation submitted, that the focus of why Mr. Lynch left employment and the issues Mr. Ploughman had with Mr. Lynch are grounded in work performance issues pertaining to billing, invoicing, professionalism and dealing with customers. The Board also

finds that there were not continuous contraventions of acts of discrimination from July 2004 until the complaint was laid, and certainly nothing in the pertinent time frame in 2005 which would be considered acts of discrimination of the same character, therefore the complaint is outside the statutory limitation period.

59. Due to the claim being brought outside the statutory limitation period, as per section 20(2) of the *Human Rights Code* at the time, this matter is dismissed.

Physical Disability

60. Had the matter not been outside the statutory limitation period, the claim would still have been dismissed based on the following reasoning.

61. Section 9(1) of the Code, pertaining to Discrimination states,

9. (1) An employer, or a person acting on behalf of an employer, shall not refuse to employ or to continue to employ or otherwise discriminate against a person in regard to employment or a term or condition of employment because of:

(a) that person's race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, family status, physical disability or mental disability; or

62. When breaking this section down, the Board does not find the Respondents refused to employ Mr. Lynch and actually hired him back for a second stint. Also, the Respondents did not refuse to continue to employ Mr. Lynch and the evidence provided indicates that Mr. Lynch quit his work, and even after doing so the emails from Mr. Ploughman included an invitation to meet, discuss their issues, and to return to work, however, Mr. Lynch did not avail of the same.

63. The Board also finds that the Respondents did not otherwise discriminate against Mr. Lynch in regards to a term of his employment based on a physical disability. Whilst

Mr. Lynch claimed he could not take holidays in 2004 because he had been off ill, the evidence provided was that he felt he should not take holidays because he had been ill and the Board recognises that from a financial perspective, it was probably not prudent for him to take holidays having lost pay whilst being sick. From the evidence the Board has found that there was no blatant denial of a right to holidays by Mr. Ploughman, therefore no other form of discrimination of a term or condition of his employment. Furthermore, evidence was provided by the Respondents and Mr. Maher that there was another employee of the Respondents who was battling cancer and was given the time she needed for her doctor appointments, treatments and what was required from a health perspective.

64. In addition, if it was found that Mr. Ploughman had discriminated against Mr. Lynch (which it did not find), the Board does not find that the same was done because of a physical disability The same is defined in the *Human Rights Code* as

“2. In this Act

(l) "physical disability" means any degree of infirmity, malformation or disfigurement of the body suffered by a person as a result of injury, illness or birth defect, and includes a handicap resulting from epilepsy, paralysis, lack of co-ordination, amputation, blindness, deafness, muteness or reliance upon a guide dog, a wheelchair, a cane or crutch or other remedial appliance or device;”

65. The Courts have done much assessment as to what constitutes a physical disability and what has been found is that in assessing the same the question is whether there is a degree of permanence and impaired ability to carry on work.

66. In Critch in paragraph 22, reference was made to the Trial decision where the Trial Judge relied on the test of:

“The disability must arise out of a person’s physical limitation, an illness, a social constraint and/or a combination of these factors;

The illness or condition must be persistent and ongoing; and

There should be some significant limitation on the person's ability to function normally.”

67. The Court of Appeal in paragraph 23 stated the test in a different manner in that physical disability as defined in section 2(1) of the *Code* is to include an infirmity, malformation or disfigurement of the body suffered by a person as a result of injury, illness or birth defect that has a degree of severity and permanence.

68. Whilst there is no doubt that Mr. Lynch has an illness and it is something that he has had almost all of his life, and whilst the illness is ongoing, the Board does not find the test of permanency is met nor that the illness causes significant limitations on his ability to function normally. The Board recognises that due to his illness, Mr. Lynch is more susceptible to viral and bacterial infections and impacted more by colds, flus and sinus problems, but by his own evidence, his illness for the most part has not affected his ability to work and even in 2005 he lost about a week from work.

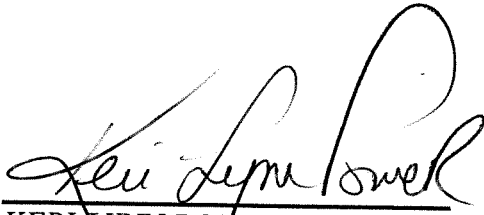
69. For this reason the Board finds that the effects of flus, colds, bacterial and viral infection he sporadically endures, because of his compromised immune system due to his illness, does affect him differently than others but does not meet the standard of being permanent nor a significant limitation on his ability to function normally and impair his ability to carry on work and therefore does not meet the standard of being a physical disability under the *Code*.

70. It is for the aforementioned reasons, that had the matter not been dismissed because it was brought outside of the statutory limitation period, the Board would still have found that the matter be dismissed

Conclusion

71. Having taken into account all of the factors, the legislation, the jurisprudence and the facts of the matter, the Board finds the matter is dismissed for being brought outside of the statutory limitation period at the time as per section 20(2) of the *Human*

Rights Code and passes comment that had it been brought within the statutory time limitation, it would have still been dismissed for not meeting the test of the refusal to continue employment or the endurance of other discrimination in employment based on a physical disability.


KERI-LYNN POWER
Adjudicator