

**STATE OF MINNESOTA**  
**COUNTY OF RAMSEY**

**DISTRICT COURT**  
**SECOND JUDICIAL DISTRICT**

**Case Type: Employment**

**Court File No. 62-CV-10-10459**

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**Helen Broten,**

**Plaintiff,**

**vs.**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER FOR JUDGMENT**

**Boston Health Care Systems, Inc.,**

**Defendant.**

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This matter was heard before the **Honorable David C. Higgs** on October 24, 25 and 26, 2011. The case was tried to the Court.

**Charles Firth, Esq.**, Engelmeier & Umanah, P.A., 12 South Sixth Street, Suite 1230, Minneapolis, MN, 55402, appeared for and on behalf of Plaintiff.

**Steven C. Miller, Esq.**, Law Office of Steven C. Miller, P.A., 2277 Highway 36, Suite 306, Roseville, MN, 55113, appeared for and on behalf of Defendant.

Upon all of the files, records and proceedings herein, the Court makes the following:

**FINDINGS OF FACT**

1. The following witnesses testified at trial:

Helen Broten, Lindsay Terzich, Erica Kiesner, Dr. John Floberg, Dr. David Olson, Lori Ann Lindgren, Patrick Hagerty, Michele Boston, Tracey Wilson, Bruce Olien, Ginger Ostrander, and Michael Rhodes.

2. On October 22, 2006, Plaintiff, Helen Broten, applied for the position of Accounting Specialist at Defendant, Boston Health Care Services (hereinafter "BHC") by submitting

her resume in response to an on-line job advertisement. Broten interviewed with Erica Kiesner, the Assistant Controller, on October 26, 2006. Broten had a second interview with Kiesner and Lori Lindgren, BHC's Chief Financial Officer, at which time Broten asked about insurance coverage.

3. After a successful second interview, Lindgren called Broten and offered her a full-time job, 38- 40 hours/week, starting at \$16.35/hour. During that call, Broten disclosed to Lindgren that she has epilepsy, and that her last seizure was in 2005. Lindgren responded that her epilepsy was not an issue.
4. Broten was sufficiently qualified for the Accounting Specialist position. She had an AA degree in accounting, over two years of experience, was proficient in using a 10 key, had a working knowledge of Microsoft Word, Microsoft Excel and Integrated Accounting Systems, had a positive attitude, a sense of humor, and a cheerful and joyful demeanor. *See Exhibit 30, P-039 and P-058.*
5. Broten began working for BHC on November 27, 2006. On November 28, 2006, Broten asked Patrick Hagerty, BHC's Human Resource Director, about health insurance and was told that insurance would cost her approximately \$800.00 per month for her family and that she would have to wait for six months to qualify for insurance coverage.
6. On November 29, 2006, Dr. Olson, Broten's Physician, faxed a report form to BHC that disclosed her seizure disorder. *See Exhibit 30, P-062.*
7. Broten continued to work at BHC until February 22, 2007. During this time, there were no complaints about her performance.
8. Broten was never trained in all functions of her job. Terzich testified that she shifted approximately 70% of her job duties to Broten and did some of Broten's training.

9. On February 22, 2007, Broten suffered a serious seizure. She was taken to Regions Hospital where she was hooked up to a respirator and placed in an induced coma to stop the seizure. Broten remained hospitalized for three days.
10. Broten testified that during her hospitalization, her father called BHC to advise them of Broten's seizure and hospitalization and continued to communicate updates with BHC through Hagerty. Broten was discharged from Regions Hospital on February 26, 2007.
11. During her absence from BHC, Terzech testified that she assumed some of Broten's duties, without having to work overtime.
12. Broten visited Dr. Olson on March 2, 2007 for a follow-up appointment. At that time, Dr. Olson told Broten that she was not authorized to return to work. *See Exhibit 30, P-064.* Dr. Olson testified that he believed Broten should be restricted for a period of time due to the severity of the seizure.
13. Broten continued on unpaid leave until she returned to work on March 19, 2007 per Dr. Olson's recommendation. At that time, Broten gave Hagerty Dr. Olson's return to work authorization, which allowed Broten to return to work but not to drive until further notice. *See Exhibit 30, P-065.* Dr. Olson testified that, although there were no hour restrictions in the recommendation, he had communicated with Broten that she was restricted to no more than 5 hours/day.
14. Broten and Hagerty agreed that she would start working between four and five hours/day at that time.
15. Not long after she returned to work on March 19, 2007, Broten began requesting that she be permitted to return to work full-time.

16. On March 30, 2007, Broten visited Dr. Floberg, her neurologist, who indicated that Broten had experienced a recent episode of status epilepticus, an extremely serious complication related to her epilepsy that was potentially life-threatening. *See* Exhibit 40, P-0599.
17. On Friday, April 20, 2007, Hagerty approached Broten and asked if she had an idea when she could return to her full-time schedule. Broten then called her primary clinic to request that she be approved to return to work full-time. *See* Exhibit 11.
18. After receiving no response, Broten called her doctor's office again at approximately 8:05 a.m. on Wednesday, April 25, 2007, and repeated her request to be approved to return to work full-time. *See Id.* Later that day, Hagerty again asked Broten when she could return to work full-time. Broten explained she was waiting to hear from her doctor. Hagerty told her that he needed to have an answer that day. Broten called the clinic again.
19. At approximately 12:36 p.m. on April 25, 2007, Dr. Olson's office faxed a Return to Work Recommendations Record to BHC referencing Broten's seizure disorder, treatment and recommendations. Dr. Olson recommended that Broten return to work with limitations on April 30, 2007 and may return to eight hours per day "as tolerated". *See* Exhibit 30, page P-069.
20. Dr. Olson testified that the "as tolerated" language was included because he still had concerns about Broten's fatigue and stress but that Broten was persistent in wanting to get back to work.
21. In the afternoon of April 25, 2007, Kiesner told Broten to see Hagerty before she left work for the day. When Broten went to Hagerty's office, Lindgren was also present.

Hagerty acknowledged receipt of the Return to Work Recommendations Record which stated that Broten could return to work for 8 hours/day “as tolerated.”

22. Lindgren testified that, during that meeting, she went to speak with CEO Michele Boston, who told Lindgren to fire Broten based on her inability to work more hours. She further testified that Broten was fired because she could not be accommodated, and the termination had nothing to do with her performance. Lindgren returned to Hagerty’s office and told Broten that BHC had extended their employees as far as they could, and could not take the chance with the audit coming up. Lindgren terminated Broten’s employment.
23. During this April 25 meeting, Broten offered to speak with Dr. Olson about having the words “as tolerated” removed from the return to work authorization. Neither Lindgren nor Hagerty considered Broten’s offer. Lindgren and Hagerty did not contact Dr. Olson directly to determine what the phrase “as tolerated” meant. Dr. Olson testified that it was common for employers to contact him for clarification of his recommendations.
24. There was no discussion of options or accommodations that would enable Broten to continue working.
25. Lindgren never explained what she meant by saying that “she could not take a chance.”
26. There were no complaints or issues regarding Broten’s performance prior to her termination. Kiesner testified that she was in charge of ninety day performance evaluations and was told to create a performance evaluation for Broten and did so prior to February 27, 2007. However, the metadata of the document indicates that Broten’s Employee Evaluation was created on April 25, 2007 at 7:55 a.m., the day Broten was terminated. *See Exhibit 14.* Broten had no performance review prior to her termination.

27. Michael Rhodes, an employee in the accounting department, and Erica Kiesner testified that when working with Broten following the seizure, repetitive training was needed for some functions. BHC contends that this was a significant stress on the accounting department because the year-end audit process was coming up. The audit process usually ran from mid-April to early June.
28. Dr. Olson testified that following a seizure, the brain takes some time to function at 100%, but that Broten's recoveries were consistent with previous ones and Broten reported no memory loss. *See Exhibit 39, P-618.*
29. BHC terminated Broten during its year-end audit process.
30. With regard to the Accounting Specialist job description, Broten performed duties in Section II, Personal Needs Auditing and Section III, Independent Audit Reconciliation, primarily. *See Exhibit 101.*
31. Rhodes performed Sections I(C) and I(D) in the Accounting Specialist job description prior to Broten being hired and continued to do so after Broten left. *See Id.*
32. Tracey Wilson was hired to replace Broten on about May 24, 2007. In the month-long interval between Broten's termination and Wilson's job commencing, Kiesner participated in two separate interviews with Wilson. Wilson testified that she did not get the sense that BHC was in a hurry to hire for the position.
33. Wilson was trained by Kiesner and Lindsay Terzich. She did not help in performing any year-end audit duties in 2007. Kiesner testified that training Wilson caused a strain on her. She spent approximately five to eight days in training. Terzich testified that she spent three days training Wilson, and that the training added to her strain and took away from time she would be performing her regular job functions.

34. Broten has epilepsy, a seizure disorder. She first had a seizure when she was two years old. She was formally diagnosed with epilepsy when she was in her late teens, and has had over 10 seizures in her lifetime. Ms. Broten has been hospitalized numerous times when she has a seizure.
35. Dr. Olson testified that Broten experienced tonic-clonic seizures, which includes contractions of the whole body and affects the brain. He stated that Broten has a history of being severely affected by her epilepsy and that medication has not been able to control the condition.
36. Broten's doctors testified that she is completely incapacitated at the time she has a seizure, loses consciousness and all control of her body, and cannot hear, see, or walk, shakes convulsively, and loses control of her bladder.
37. Broten testified her epilepsy affects her at all times in her ability to care for herself, work, think, concentrate, and when she has seizures, affects her ability to perform a number of tasks including breathing, talking, lifting and reaching.
38. Dr. Floberg testified that epilepsy limited Broten in many ways, during seizures and from the side effects of medication. Floberg also testified that the most recent seizure was very severe, and Broten could not afford to have another seizure of that magnitude in the future, as she may not come out of it.
39. Had Ms. Broten remained employed with BHC, she would have become eligible for health insurance on May 1, 2007.
40. The health care plan at BHC for 2007 was \$795/month with a \$3000 deductible. In 2008, the plan was changed to a 50% reimbursement plan.

41. Broten was forced to go on medical assistance approximately two months after her termination. Prior to going on medical assistance, Broten paid for her medications out-of-pocket. Ms. Broten's damages relating to her payment of medications out-of-pocket were \$1,140.
42. Broten did not have private health insurance for 11 months.
43. After her termination, Broten continued to look for work until she found a job in February 2008. *See* Exhibits 32, 33, 34, 35, and 45.
44. Broten began working at Wells Fargo Bank as a bank teller for 36-40 hours/week at \$10.50/hour. After sixty days, she was eligible for medical benefits.
45. Broten then obtained employment at Probill as a bookkeeper in June 2008, where she started at a salary of \$12.35/hour for 40 hours/week. Broten is currently paid \$13.13/hour and works approximately 32 hours/week. *See* Exhibit 45, P- 0549 and P-0748.
46. Broten testified that she has been with Probill for three years now and is not looking for a higher paying job because she enjoys working at Probill and it is closer to her home reducing her commute.
47. Broten suffered emotional distress and mental anguish as a result of her termination from BHC. She testified that she now worries about how she will be perceived by others and it has affected her trust in people.

Based upon the foregoing Findings of Fact, the Court makes the following:

#### **CONCLUSIONS OF LAW**

1. The Minnesota Human Rights Act ("MHRA") declares it an unfair discriminatory practice for an employer to discharge or otherwise discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities or privileges of



employment because of their disability. Minn. Stat. § 363A.08, subd. 2 (2011).

2. Defendant BHC is an employer as defined by the MHRA.
3. Plaintiff Helen Broten is an employee as defined by the MHRA.
4. At all times relevant hereto, Broten had a “disability” as defined in the MHRA.
5. The MHRA defines a disabled person as “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 impairment; or (3) is regarded as having such impairment.” Minn. Stat. §363A.03, subd. 12 (2011).
6. The degree to which a condition limits one or more major life activities, as basis for finding the plaintiff is a disabled person under the MHRA is evaluated based on the plaintiff's specific circumstances. *Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534 (2001).
7. Courts have consistently held that epilepsy is a condition which limits one or more major life activities. *See, e.g., Dicksey v. New Hanover Cnty. Sheriff's Dep't*, 522 F. Supp.2d 742 (E.D. N.C. 2007) (holding that a reasonable juror could find that a plaintiff who suffered over 10 grand mal seizures was substantially limited in a major life activity); *Rowles v. Automated Prod. Sys., Inc.*, 92 F. Supp.2d 424 (M.D. Pa. 2000) (finding unpersuasive a defendant's argument that because the plaintiff suffered about one seizure a year, no reasonable juror could conclude that his epilepsy substantially limited a major life activity); *Susie v. Apple Tree Preschool and Child Care Center, Inc.*, 866 F. Supp. 390, 395 (N.D. Iowa 1994) (where epilepsy caused absences from work).
8. Broten testified her epilepsy affects her at all times in her ability to care for herself, work, think, concentrate, and when she has seizures, affects her ability to perform a number of

- tasks including breathing, talking, lifting and reaching.
9. Broten's doctors testified that she is completely incapacitated at the time she has a seizure, loses consciousness and all control of her body, and cannot hear, see, or walk, shakes convulsively, and loses control of her bladder.
  10. Broten has an impairment that materially limits one or more major life activity.
  11. Furthermore, Broten's record of her epilepsy is well documented; BHC had knowledge of such impairment and regarded Broten as having epilepsy. Therefore, Broten is considered to have a disability under MHRA.
  12. Under the *McDonnell-Douglas* Test, a plaintiff attempting to prove disability discrimination under the MHRA must make out a prima facie case of discrimination. The burden then shifts to the employer to articulate legitimate reasons for the discharge. The factfinder must then determine whether the employer's reasons are pretextual or not. *Graham v. Special School Dist. No. 1*, 472 N.W.2d 114 (Minn. 1991).
  13. To establish a prima facie case of disability discrimination under the Minnesota Human MHRA, an employee must show (1) she has a disability within the meaning of the MHRA, (2) she is qualified to perform the essential functions of her job, with or without reasonable accommodation, and (3) she suffered an adverse employment action because of her disability. *Liljedahl v. Ryder Student Transp. Services, Inc.*, C.A.8 (Minn.)2003, 341 F.3d 836.
  14. Broten, having shown that she has a disability under MHRA, must then show that "she meets the necessary prerequisites for the job, and that she can perform the essential functions, with or without reasonable accommodation; or if the employee establishes that she cannot perform the essential functions of the job without accommodation, she must

show that reasonable accommodation is possible and that the accommodation will allow her to perform the essential functions of the job.” *Burchett v. Target Corp.*, 340 F.3d 510 (8<sup>th</sup> Cir. 2003).

15. Broten met the necessary prerequisites for the job. It is disputed whether she could perform the essential functions without accommodation upon her return to work following the grand mal seizure. Reasonable accommodation could have allowed Broten to perform the essential functions of her job.
16. An employer “must reasonably accommodate an employee's disability and engage in an interactive process to identify potential accommodations that could overcome her limitations.” *See Ballard v. Rubin*, 284 F.3d 957 (8th Cir. 2002). “If the employee makes a showing that reasonable accommodation is possible, the burden of production then shifts to the employer to show that it had a legitimate nondiscriminatory reason not to provide the accommodation.” *Burchett*, 340 F.3d 510.
17. The interactive process could include “restructuring her work load, allowing her to work diminished hours, and providing flexibility in her schedule”; BHC did not seriously engage in such a process to aid Broten in overcoming her limitations. *Id.*
18. Lastly, Broten was clearly terminated under circumstances which give rise to an inference of discrimination. Broten suffered an adverse employment action because of her disability.
19. As Broten has established a prima facie showing of discrimination, the burden shifts to BHC to produce sufficient evidence that there was a legitimate, nondiscriminatory reason for its action.
20. BHC is unable to prove its burden. BHC’s primary allegations are that Broten was having difficulty performing her job after a leave of absence. BHC did not inform Broten of this

concern, and did not attempt to accommodate Broten's disability through an interactive process. Further, BHC failed to show how accommodating Broten's disability would have created an undue hardship on the company.

21. The evidence sufficiently shows that Broten was fired due to her disability and the fear that another seizure would require more time out of the office. BHC's stated reason for Broten's termination is a pretext for discrimination.
22. BHC violated the MHRA when it discriminated against Broten based on her disability, engaged in retaliation against Broten based on her disability, and failed to accommodate Broten's disability or establish how doing so would imposed an undue hardship.
23. Where Defendant has engaged in an unfair discriminatory practice under the MHRA, a plaintiff may recover compensatory damages in an amount up to three times the actual damages sustained. Minn. Stat. §363A.29, subd. 4. The Court may also order the employer to pay reasonable attorney's fees, in addition to punitive damages. *See* Minn. Stat. §363A.29, subd. 4.
24. Compensatory damages include past wage loss, future wage loss and damages for mental anguish or emotional distress.
25. Damages for mental anguish may also include compensation for personal humiliation and impairment of reputation. *See Kohn v. City of Minneapolis Fire Department*, 583 N.W.2d 7 (Minn. App. 1998). Damages for mental anguish, including a diminished sense of self-worth, may be established solely through subjective testimony. *Gillison v. Dep't of Natural Resources*, 492 N.W.2d 835 (Minn. App. 1992).
26. Punitive damages are allowed upon a clear and convincing showing that a defendant showed deliberate disregard for the rights and safety of others. Minn. Stat. § 549.20,

subd. 1(a).

27. Broten is also entitled to an award of pre-judgment interest. *See State by Cooper v. Mower County Social Services*, 434 N.W.2d 494 (Minn. App. 1989) (award of prejudgment interest in a discrimination suit under the Human Rights Act was discretionary); *see also* Minn. Stat. § 549.09.

28. Broten is entitled to past wage loss up until the time she received her job at Probill and damages for emotional distress, mental anguish and suffering.

Based upon the foregoing Findings of Fact and Conclusions of Law,

**IT IS HEREBY ORDERED,**

1. Defendant Boston Health Care Systems violated Plaintiff Helen Broten's rights in violation of Minn. Stat. § 363A.08 and 363A.15.

2. As a result of these violations, Ms. Broten has suffered damages as follows:

a. Compensatory Damages:

Past wage loss and benefits	\$ 33,006.00
Future wage loss and benefits	\$ 0
Emotional Distress, mental anguish and suffering	\$ 50,000.00

b. Punitive Damages \$ 25,000.00

3. As Defendant BHC engaged in an unfair discriminatory practice, the court, being authorized to order damages in the amount of up to three times compensatory damages, orders compensatory damages to be doubled, totaling \$166,012.00.

4. Plaintiff Helen Broten is entitled to judgment against Defendant Boston Health Care in the total amount of \$191,012.00.


5. Broten is entitled to pre-judgment interest pursuant to Minn. Stat. §549.09, and payment of


reasonable attorneys' fees and costs pursuant to Minn. Stat. §363A.29, subd. 4(a).

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

**BY THE COURT:**

**Date: December 6, 2011**

E-Signed by Hon. David C. Higgs  
Tuesday, 06 December, 2011 16:09:24 



**David C. Higgs  
District Court Judge**