

**BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON**

In the Matter of:

**BARRETT BUSINESS SERVICES,
INC.,**

Respondent.

Case No. 20-01

FINDINGS OF FACT
ULTIMATE FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
ORDER

SYNOPSIS

Complainant applied for work with Respondent as a medical transcriptionist. As part of the job application process and as a condition of employment, Respondent required Complainant to complete forms that made inquiries as to whether Complainant was a disabled person and to the nature and extent of any disability. By making these inquiries, Respondent violated ORS 659.447(1) and ORS 659.436. The forum found that Respondent did not violate ORS 659.436(2)(c) & (g) or ORS 659.448(1) because Complainant was neither a disabled person nor an “employee” at the time the inquiries were made. The forum also found that Respondent did not subject Complainant to a medical examination or evaluation and did not violate the provisions of ORS 659.447(1), 659.448(1), or *former* OAR 839-006-0242(1) that prohibit medical examinations or evaluations. Complainant was awarded \$15,000 in mental suffering damages. ORS 659.400(1), 659.400(2)(a), (b), & (d), 659.436, 659.447, 659.448, 658.449, OAR 839-006-0242.

The above-entitled case came on regularly for hearing before Alan McCullough, designated as Administrative Law Judge (“ALJ”) by Jack Roberts, Commissioner of the Bureau of Labor and Industries (“BOLI”) for the State of Oregon. The hearing was held on April 10, 2001, in BOLI’s Bend office located at 1250 NE 3rd, #B-105, Bend, Oregon.

1 The Bureau of Labor and Industries (“BOLI” or “the Agency”) was represented by
2 David K. Gerstenfeld, a case presenter employed by of the Agency. Complainant Marie
3 Annette was present throughout the evidentiary portion of the hearing and was not
4 represented by counsel. Respondent was represented by David J. Sweeney, attorney
5 at law. Jary Winstead, branch manager of Respondent’s Bend office, was present
6 throughout the hearing as the person designated to assist Respondent’s case.

7 The Agency called Complainant and Dr. John Corso, Complainant’s physician,
8 as witnesses. Respondent called Jary Winstead as its only witness.

9 The forum received into evidence:

10 a) Administrative exhibits X-1 through X-10 (submitted or generated prior to
11 hearing), and X-11 (Respondent’s “Hearing Memorandum” that was submitted at
12 hearing without objection);

13 b) Agency exhibits A-3 through A-11 (submitted prior to hearing); and a
14 portion of A-12 (submitted at hearing);

15 c) Respondent exhibits R-5, R-6, and R-10 (submitted prior to hearing).

16 Having fully considered the entire record in this matter, I, Jack Roberts,
17 Commissioner of the Bureau of Labor and Industries, hereby make the following
18 Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions
19 of Law, Opinion, and Order.

20 **FINDINGS OF FACT – PROCEDURAL**

21 1) On July 6, 1999, Complainant filed a verified complaint with the Agency’s
22 Civil Rights Division alleging that she was the victim of the unlawful employment
23 practices of Respondent. After investigation, the Agency found substantial evidence of
24 an unlawful employment practice and issued an Administrative Determination on July 6,
25 2000. (Exhibits X-1-a, X-2; Stipulation of Participants)

1 2) On October 31, 2000, the Agency issued Specific Charges alleging that
2 Respondent discriminated against Complainant by requiring her, at the time of her
3 application for employment with Respondent and prior to a job offer being made, to
4 provide medical information, including a signed medical release form, that was not job-
5 related or consistent with business necessity, in violation of ORS 659.436(c) and (g)
6 and OAR 839-006-0200(3)(c), (f)¹ and 839-006-0242. The Agency sought \$5,000 in
7 lost wages and benefits and \$15,000 in damages for mental, emotional and physical
8 suffering. (Exhibit X-1-a)

9 3) On October 31, 2000, the forum served on Respondent the Specific
10 Charges, accompanied by the following: a) a Notice of Hearing setting forth April 10,
11 2001, in Bend, Oregon, as the time and place of the hearing in this matter; b) a
12 Summary of Contested Case Rights and Procedures containing the information required
13 by ORS 183.413; c) a complete copy of the Agency's administrative rules regarding the
14 contested case process; and d) a separate copy of the specific administrative rule
15 regarding responsive pleadings. (Exhibits X-1-a, X-1-b, X-1-c, X-1-d, X-1-e)

16 4) On November 13, 2000, Respondent, through attorney David J. Sweeney,
17 filed an answer to the Specific Charges. (Exhibit X-2)

18 5) On November 30, 2000, the forum ordered the Agency and Respondent
19 each to submit a case summary including: a list of all persons to be called as
20 witnesses; identification and copies of all documents to be offered into evidence; a
21 statement of any agreed or stipulated facts; a brief statement of the elements of the
22 claim and any damage calculations (for the Agency only); and a brief statement of any
23 defenses to the claim (for Respondent only). The forum ordered the participants to
24

25 ¹ The provisions of OAR 839-006-0200(3)(c) and (f) did not go into effect until August 11, 2000. Because they did not exist in May 1999, the forum has not applied them.

1 submit case summaries by March 30, 2001, and notified them of the possible sanctions
2 for failure to comply with the case summary order. (Exhibit X-3)

3 6) On February 9, 2001, the Agency filed a motion for a discovery order
4 seeking numerous documents related to Complainant's application for employment with
5 Respondent and Respondent's hiring procedures. The Agency attached documentation
6 that the same documents had been requested informally on two occasions and a
7 statement showing how the documents requested were likely to produce information
8 generally relevant to the case. Respondent did not object to the Agency's motion and
9 the forum granted it in its entirety on February 23, 2001. (Exhibit X-6)

10 7) On March 12, 2001, the Agency filed a motion to amend the Specific
11 Charges to include an allegation that the facts alleged also constituted a violation of
12 ORS 659.447 and 659.448. Respondent did not object, and the forum granted the
13 Agency's motion on March 29, 2001. (Exhibits X-7, X-8)

14 8) On March 30, 2001, the Agency and Respondent timely filed their case
15 summaries. (Exhibits X-9, X-10)

16 9) At the commencement of the hearing, the ALJ verbally advised the
17 Agency and Respondent of the issues to be addressed, the matters to be proved, and
18 the procedures governing the conduct of the hearing. (Statement of ALJ)

19 10) Prior to opening statements, Respondent provided the forum with a
20 supplemental case summary. The Agency did not object and it was received as an
21 administrative exhibit. (Statement of ALJ; Exhibit X-11)

22 11) Prior to opening statements, the Agency and Respondent made a number
23 of factual stipulations. (Statements of ALJ; Gerstenfeld, Sweeney)

1 "Medical Transcriptionist: Part time temp-to-hire position. Flexible work
2 schedule. Must type 65-80 wpm. May go to fulltime for ideal candidate
3 with reception experience. \$7.50-\$8.50/hr."

3 (Exhibits A-3, A-4; Stipulation of Participants)

4 4) In response to the advertisements, Complainant visited Respondent's
5 Bend office on May 18, 1999, to apply for the medical transcriptionist positions.

6 (Testimony of Complainant; Exhibit A-7; Stipulation of Participants)

7 5) Complainant received an associate's degree in Applied Science/Health
8 Information Technology from Central Oregon Community College ("COCC") in 1997 or
9 1998. Along with her degree, Complainant received certification in transcription. In late
10 1998, Complainant was nationally accredited as a medical transcriptionist when she
11 took and passed a test administered by the American Health Information Management
12 Association ("AHIMA"), the organization responsible for accrediting medical
13 transcriptionists. (Testimony of Complainant)

14 6) When Complainant arrived at Respondent's office, Stephanie Fountain, a
15 coordinator employed by Respondent, conducted a brief interview with Complainant.
16 Complainant told Fountain that she was interested in a medical transcriptionist position
17 and was responding to Respondent's advertisement. After asking Complainant about
18 her typing speed and education, Fountain gave Complainant a number of forms to fill
19 out that included an application, an "Essential Functions" form, Respondent's Alcohol
20 and Drug Policy, an Alcohol and Drug Screen Consent form, and a Medical History
21 Information ("MHI") form. (Testimony of Complainant; Exhibit R-10)

22 7) Complainant completed the application, but neglected to sign it.
23 (Testimony of Complainant; Exhibit A-7)

24 8) The "Essential Functions" form required Complainant to check one of
25 three boxes with regard to her ability to perform various physical activities and physical
functions and work in a variety of physical environments. Complainant was to check "I

1 CAN DO THIS,” “I CAN DO THIS WITH ACCOMMODATIONS (EXPLAIN),” or “I CAN
2 NOT DO THIS” for each activity, function, and environment listed on the form. The
3 physical activities listed included Complainant’s ability to carry weights of 0-100 pounds,
4 and her ability to perform nine different activities for “8 TO 10 HOURS” that were
5 “FIGURED PER DAY IN A 40 + HOUR WEEK.” Specifically, the activities were
6 “standing,” “sitting,” “walking, bending,” “squatting,” “kneeling,” “crawling,” “twisting,” and
7 “lifting.” The environments listed were “in or on high areas,” “wood dust or pollen,”
8 “fiberglass or fumes,” “close quarters,” “crowds of people,” “fast paced,” and “other.”
9 The physical functions were defined as “PHYSICAL FUNCTIONS CONTINUOUS FOR
10 8 HOURS PER DAY AT A 40 + HR WEEK.” The functions listed were “repetitive finger
11 movement,” “repetitive wrist movement,” “repetitive lifting,” “eye focusing
12 screens/monitors,” and “other.” After each section, there was a line where Complainant
13 was asked to “EXPLAIN.” At the bottom of the form, just above the signature line, there
14 was a final question that asked “TO THE BEST OF YOUR KNOWLEDGE ARE THERE
15 ANY PHYSICAL, ENVIRONMENTAL OR INDUSTRIAL WORK REQUIREMENTS YOU
16 WOULD FEEL UNCOMFORTABLE WITH, OR UNABLE TO DO WITHOUT
17 ACCOMMODATIONS? EXPLAIN.” Respondent uses this form to match employees to
18 job descriptions received from clients. (Testimony of Complainant, Winstead; Exhibits
19 A-7, A-8, A-10)

20 9) Based on her education, Complainant believed that some of the questions
21 on the form might not be legal, and asked Fountain about this. Fountain responded that
22 Respondent needs to ask everyone the same questions, even though all tasks are not
23 performed by all people. Complainant then completed the form. (Testimony of
24 Complainant; Exhibit R-10)

1 10) Respondent's two page MHI form asked Complainant to respond in writing
2 to the following questions pertinent to her:

3 "1. If the job(s) you are applying for require HAND OR ARM USE (such
4 as keyboard * * *) answer these questions:

5 "a) How long can you perform repetitive motion tasks with both hands?
6 _____ hours each day

7 "b) How long can you perform simple grasping of hand or power tools?
8 _____ hours each day

9 "c) What work have you done that involved repetitive use of your
10 hands, wrists, or arms?

11 "d) Have you ever had pain, numbness, tingling, or problems with your
12 hands, wrists, arms, shoulders or neck? Yes No

13 "If yes, describe what and when?

14 "If yes, describe medical treatment you received?

15 "If yes, describe any hands, wrists, arms, shoulders or neck
16 restrictions or limitations you **now** have?

17 "* * * * *

18 "3. If the job(s) you are applying for requires use of the LOWER BODY
19 (such as: * * *extended sitting * * *) answer these questions:

20 "* * * * *

21 "b) What work have you done that involved * * * extensive sitting * * *?

22 "c) Have you **ever** had pain, strains, sprains or problems with your
23 legs, knees, feet or pelvic areas? Yes No

24 "If yes, describe what and when?

25 "If yes, describe medical treatment you received?

 "If yes, describe any legs, knees, feet or pelvic areas restrictions or
limitations you **now** have? Yes No

 "* * * * *

"ALL APPLICANTS ANSWER THE FOLLOWING QUESTIONS

"7) Are you now taking any medications that may affect the quality,
quantity, or safety of your work? Yes No If yes, please list:

"8) Are you presently under the care of a physician of any type for any
physical ailment or illness that may affect the quality, quantity, or safety of
your work? Yes No If yes, please explain:

1 “9) Do you presently have a condition that may require a special work
2 place accommodation? Yes No If yes, please describe:

3 “10) Have you ever received medical or first-aid treatment for any injury
4 or illness that occurred while you were on a job? Yes No If yes,
5 please describe:

6 “11) Have you ever been unable to work on a job or unable to perform
7 an assigned task because of an inability to perform certain motions,
8 assume certain positions, or any other medical reason? Yes No If
9 yes, please describe:

10 “12) How physically fit are you now? Poor Not Bad Average Good
11 Very Good What activities do you regularly perform to help keep
12 physically fit?

13 “MEDICAL RECORDS RELEASE

14 “For purposes of assisting in safe job placement, supervision, and injury claim prevention
15 and management, I give my consent to any health care provider * * * to disclose upon
16 request to Barrett Business Services, Inc. * * * any and all information concerning past,
17 present and future medical conditions, evaluations or treatments including, but not limited
18 to, claim reports, medical records, medical records, x-rays, all diagnostic tests and
19 reports, consultations, examinations, prescriptions or treatments. This authorization
20 applies to any prior or future employer, insurance carrier, government agency, Social
21 Security Administration, Veterans Administration, or medical service provider of any type.

22 “* * * I understand and agree that falsification of information, misleading statements,
23 misrepresentation, or omission of facts called for anywhere on this form is cause for
24 denial of employment, or if employed, cause for dismissal regardless of when discovered.
25 This release is valid for seven years from the date signed below or the date of my
termination from employment with Barrett, whichever is later.

“APPLICANT SIGNATURE TODAY’S DATE”

(Testimony of Complainant; Exhibit A-8)

11) Complainant believed that Respondent’s MHI form was “a total invasion”
of her privacy and contained illegal questions concerning her medical history. She was
especially offended, upset, and taken aback by the requirement that she sign the
“MEDICAL RECORDS RELEASE” at the bottom of the form. (Testimony of
Complainant)

12) Complainant told Fountain that she didn’t think Respondent could legally
require her to complete and sign the MHI form. Fountain told Complainant it was a
required part of Respondent’s application process that had been approved by
Respondent’s lawyers and that Respondent wouldn’t be checking Complainant’s

1 medical records unless she “indicate[d] restrictions, allergies, or other possible medical
2 restrictions that we would want a doctor’s consent to work from.” (Testimony of
3 Complainant; Exhibit R-10)

4 13) Complainant became extremely upset with Fountain’s statements,
5 including her assertion that she had to sign the MEDICAL RECORDS RELEASE.
6 Fountain then asked Shannon, one of Respondent’s management employees, to
7 provide assistance. Shannon reiterated to Complainant and Fountain that the MHI form
8 was a required form and that Complainant would not be considered a Barrett employee
9 if she refused to sign the form. Shannon also told Complainant that she could become
10 a Barrett employee if she later chose to sign the MHI form and application. (Testimony
11 of Complainant; Exhibit R-10)

12 14) Complainant remained at Respondent’s Bend office for about five minutes
13 after being given the MHI form. (Testimony of Complainant)

14 15) Complainant received no safety training from Respondent and did not see
15 or sign Respondent’s “Employee Safety Handbook.” (Testimony of Complainant;
16 Exhibit A-11)

17 16) Complainant was in disbelief that Respondent’s employees were requiring
18 her to sign the MHI form and became very upset over the incident. She was depending
19 on Respondent to help her “get her foot in the door” for employment as a medical
20 transcriptionist because it is a hard field to get into and felt Fountain’s and Shannon’s
21 actions indicated that “the door was shut” to her in the Bend area where she lived.
22 Complainant then left Respondent’s office. She became more upset about her visit as
23 the day went on until she was “shaking upset” and probably couldn’t have driven back to
24 Respondent’s office, even if she had tried. Later that day, Complainant called
25 Respondent and asked Shannon what statute allowed Respondent to ask the

1 information contained on the MHI form, but Shannon could not give her a statute.
2 Shannon did tell Complainant “if it’s that much of a problem, maybe we could let it
3 slide.” Complainant declined to return to Respondent’s office, distrusting Shannon’s
4 sincerity after her experience earlier that day. (Testimony of Complainant; Exhibit R–
5 10)

6 17) Complainant has fibromyalgia and was diagnosed as having fibromyalgia
7 in 1994. Dr. Corso has been treating Complainant for her fibromyalgia since September
8 1999. (Testimony of Complainant, Corso)

9 18) Fibromyalgia is a chronic medical disorder that causes pain, stiffness, and
10 fatigue. It is a widespread pain syndrome with pain in multiple areas of the body.
11 Stress and negative emotions can exacerbate these symptoms. (Testimony of Corso)

12 19) In the year prior to May 18, 1999, and up to her interview at Respondent’s
13 office, Complainant had experienced fluctuations in the intensity and location of pain
14 from fibromyalgia, including periods of remission. She was able to sit and type at the
15 time she applied for employment with Respondent. (Testimony of Complainant)

16 20) Complainant was emotionally upset for a couple of days after her visit to
17 Respondent’s office. Over the next two and one-half weeks following her interview at
18 Respondent’s office, Complainant experienced an acceleration in pain, with no
19 accompanying remissive symptoms. Complainant became unable to sit. Her feet then
20 became sore from standing. She was unable to sit and type. Two and one-half weeks
21 after her interview with Respondent, Complainant took a medical transcription test as
22 part of the application process for another job and was unable to complete it due to pain
23 from fibromyalgia that prevented her from sitting for the time necessary to complete the
24 test. Prior to her interview with Respondent, Complainant could have completed this
25 test. Complainant has been disabled from working because of pain due to her

1 fibromyalgia and inability to sit for any extended period of time since shortly after
2 applying for work with Respondent and believes that her current level of disability is
3 connected to Respondent's rejection of her application due to her refusal to complete
4 Respondent's MHI form. (Testimony of Complainant; Observation of ALJ)

5 21) On May 18, 1999, both medical transcriptionist positions advertised by
6 Respondent had been filled internally through the client doctors' offices. Respondent
7 was unaware on May 18, 1999, that the positions had been filled. (Testimony of
8 Winstead)

9 22) In 1999, Respondent's written hiring policy stated that Respondent would
10 take the following steps with all applicants before making a hiring decision:

11 a) All applicants were required to complete and sign Respondent's
12 application form;

13 b) All applicants were to given the following forms: Application, Safety
14 Handbook, Alcohol & Drug Policy, Drug Screen Consent Form, Disclosure
15 Statement, Policies for Termination, and Benefit Sheet.

16 c) Respondent's service representative would review the paperwork,
17 interview the applicant, conduct safety training, and have the "employee"
18 sign "check list." The service representative would also ask "how
19 repetitious" their former work was and "how much weight" was involved.

20 (Testimony of Winstead; Exhibit A-9)

21 23) After these steps are listed in Respondent's written hiring policy,
22 Respondent's policy states "You now must make the decision to hire the applicant at
23 your desk or not. If your decision is to hire, welcome them and advise them that they
24 have been hired." (Exhibit A-9)

25 24) Complainant was not given safety training, did not sign a "check list," and
was not told that she was hired. (Testimony of Complainant)

26 25) When Respondent decides to hire an applicant, Respondent places them
in a "job pool" to be considered for future job openings if there is not an immediate job
opening in which to place the applicant. Respondent considers that an applicant is

1 “hired” at the time an applicant is either placed with a client or placed in Respondent’s
2 job pool, whichever comes first. (Testimony of Winstead)

3 26) Respondent has a job pool of applicants to draw from so that client job
4 orders can be filled quickly. (Testimony of Winstead)

5 27) Applicants placed in Respondent’s job pool who are not immediately
6 referred to a job assignment with one of Respondent’s clients do not know where they
7 will be working, their rate of pay, who their supervisor will be, or whether they will ever
8 be placed in a job. Some applicants placed in Respondent’s job pool are never referred
9 to a job assignment. If these applicants apply for unemployment benefits, their previous
10 employer, not Respondent, is responsible for those benefits. Applicants placed in
11 Respondent’s job pool never receive any pay before being referred to a job assignment.
12 (Testimony of Winstead)

13 28) Winstead, who was safety manager in Respondent’s Bend office in May
14 1999 and became branch manager in July 2000, testified that that applicants are
15 considered employees of Respondent as soon as they are placed in Respondent’s job
16 pool and that in May 1999 all applicants were given Respondent’s MHI form only after
17 placement in Respondent’s job pool. This testimony was directly contradicted by
18 Stephanie Fountain’s contemporaneous handwritten notes related to Complainant’s
19 interview stating that Complainant was given Respondent’s MHI form to complete
20 before Complainant was considered an employee, leading the forum to conclude that
21 Winstead was either untruthful in this part of his testimony or testified to facts to which
22 he lacked accurate knowledge. Because of this, the forum finds his testimony to be
23 unreliable and has only credited it where it is unopposed or supported by other credible
24 evidence in the record. (Testimony of Winstead)

1 was presently under the care of a physician for any physical ailment or illness that might
2 affect her work, whether she presently had a condition that might require a special work
3 place accommodation, and if she had ever been unable to work on a job or perform an
4 assigned task because of any medical reason. She was also asked to sign a Medical
5 Records Release included on the MHI form authorizing Respondent to obtain
6 information from any health care provider regarding any medical condition Complainant
7 had ever experienced in the past or within seven years after signing the Release.

8 8) Complainant refused to sign the Release and was told by Fountain and
9 Shannon, both employees of Respondent, that she would not be considered
10 Respondent's employee without her signature. As a result, Complainant left
11 Respondent's office without signing the form and was not placed in Respondent's job
12 pool nor referred to either advertised position.

13 9) Complainant was not a disabled person on May 18, 1999.

14 10) Complainant experienced substantial emotional suffering as a result of
15 Respondent's requirement that she complete the MHI form and sign the Release as a
16 condition of being placed in Respondent's job pool or being referred to a specific job.

17 **CONCLUSIONS OF LAW**

18 1) At all times material herein, Respondent was an employer subject to the
19 provisions of ORS 659.010 to 659.110 and 659.400 to 659.449.

20 2) The Commissioner of the Bureau of Labor and Industries has jurisdiction
21 over the persons and of the subject matter herein and the authority to eliminate the
22 effects of any unlawful employment practice found. ORS 659.040, 659.050, and
23 659.436.

24 3) The actions of employees Stephanie Fountain and Shannon, described
25 herein, are properly imputed to Respondent.

4) ORS 659.436 provides, in pertinent part:

1 “(1) It is an unlawful employment practice for any employer to refuse to
2 hire, employ or promote, to bar or discharge from employment or to
3 discriminate in compensation or in terms, conditions or privileges of
4 employment because an otherwise qualified person is a disabled person.

5 “(2) An employer violates subsection (1) of this section if the employer
6 does any of the following:

7 “ * * * * *

8 “(c) The employer utilizes standards, criteria or methods of
9 administration that have the effect of discrimination on the basis of
10 disability, or that perpetuate the discrimination of others who are subject to
11 common administrative control.

12 “ * * * * *

13 “(g) The employer uses qualification standards, employment tests or
14 other selection criteria that screen out or tend to screen out a disabled
15 person or a class of disabled persons unless the standard, test or other
16 selection criterion, as used by the employer, is shown to be job-related for
17 the position in question and is consistent with business necessity.”

18 ORS 659.447 provides, in pertinent part:

19 “(1) Except as provided in this section, an employer violates ORS 659.436
20 if the employer conducts a medical examination of a job applicant, makes
21 inquiries of a job applicant as to whether the applicant is a disabled person
22 or makes inquiries as to the nature or severity of any disability of the
23 applicant.

24 “(2) An employer may make inquiries into the ability of a job applicant to
25 perform job-related functions.”

OR 659.448 provides, in pertinent part:

“(1) Except as provided in this section, an employer may not require
that an employee submit to a medical examination, may not make
inquiries of an employee as to whether the employee is a disabled person,
and may not make inquiries of an employee as to the nature or severity of
any disability of the employee, unless the examination or inquiry is shown
to be job-related and consistent with business necessity.

“ (2) An employer may conduct voluntary medical examinations,
including voluntary medical histories, that are part of an employee health
program available to employees at that work site. An employer may make
inquiries into the ability of an employee to perform job-related functions.”

Former OAR 839-006-0242 provided, in pertinent part:²

² This version of the rule was in effect in May 1999.

1 “(1) An employer may not require of any applicant any medical
2 examination or evaluation prior to an offer of employment.

3 “(2) An employer may require a medical examination or evaluation after
4 an offer of employment but before the individual commences work only if a
5 medical examination or evaluation is required of all employees hired into
6 that same job category.”

7 ORS 659.449 provides:

8 “ORS 659.436 to 659.449 shall be construed to the extent possible in a
9 manner that is consistent with any similar provisions of the federal
10 Americans with Disabilities Act of 1990, as amended.”

11 Respondent made inquiries of Complainant, a job applicant, concerning whether she
12 was a disabled person and as to the nature or severity of any disability. By doing so,
13 Respondent violated ORS 659.447(1) and ORS 659.436. Respondent did not violate
14 the provisions of ORS 659.448(1) prohibiting inquiries of an employee as to whether
15 Complainant was a disabled person or as to the nature or severity of her disability for
16 the reason that Complainant was never hired by Respondent and did not become an
17 “employee.” Respondent did not conduct a medical examination of Complainant or
18 require a medical examination or evaluation and did not violate the prohibitions against
19 those actions contained in ORS 659.447(1), 659.448(1), and *former* OAR 839-006-
20 0242. Although Respondent required Complainant, a job applicant, to provide
21 information concerning her physical ability to perform functions that were not job-
22 related, Respondent did not violate ORS 659.436(2)(c) and (g) because Complainant
23 was not a disabled person at the time of her application.

24 5) Pursuant to ORS 659.060(3) and by the terms of ORS 659.010(2), the
25 Commissioner of the Bureau of Labor and Industries has the authority under the facts
and circumstances of this case to award Complainant money damages for emotional
distress suffered as a result of Respondent’s unlawful employment practice and to
protect the rights of Complainant and others similarly situated. The sum of money

1 awarded and the other actions required of Respondent in the Proposed Order below are
2 appropriate exercises of that authority.

3 **OPINION**

4 The Agency alleges that Respondent violated Oregon's disability laws in several
5 ways. First, that Respondent violated ORS 659.436 and 659.447 by making an inquiry
6 of Complainant, prior to employment with Respondent, concerning whether she was a
7 disabled person, the nature or severity of any disability she might have, and by inquiring
8 into her abilities to perform non-job-related functions. Second, that Respondent violated
9 OAR 839-002-0242(1) by requiring Complainant, prior to an offer of employment, to
10 undergo a medical examination or evaluation. Third, that Respondent violated ORS
11 659.448 by requiring her to provide medical information and undergo a medical
12 examination as a condition of employment. Fourth, that Respondent violated ORS
13 659.436(2)(c) and (g) by requiring Complainant to fill out forms that sought medical
14 information that was not job-related and had the effect of discrimination on the basis of
15 disability. The Agency seeks \$15,000 in mental suffering damages to compensate
16 Complainant for Respondent's alleged unlawful employment practices.

17 **RESPONDENT DID NOT MAKE AN OFFER OF EMPLOYMENT TO COMPLAINANT**

18 ORS 659.447 and OAR 839-006-0242(1) only apply to actions to which an
19 employer subjects a job applicant prior to an actual job offer. In defense, Respondent
20 contends that a job offer was made to Complainant and she was placed in
21 Respondent's job pool, thereby justifying the inquiries made into Complainant's medical
22 history on the MHI form. Winstead, Respondent's branch manager, also testified that
23 job applicants became employees as soon as they were placed in Respondent's job
24 pool.

25 Complainant testified credibly that Respondent did not offer her the medical
transcriptionist jobs for which she applied for or placement in Respondent's job pool.

1 Respondent’s written policy and the contemporaneous handwritten notes of Stephanie
2 Fountain both support Complainant’s testimony. Among other things, the policy states
3 that applicants must sign Respondent’s application form, sign a “check list,” and
4 undergo safety training before Respondent’s representative could make a hiring
5 decision. Complainant did none of these things. Fountain’s note lends unequivocal
6 support to Complainant’s testimony. In pertinent part, it reads:

7 “[Shannon] reiterated that [the MHI form] was a required form, the
8 necessity of the form, and that if [Complainant] didn’t want to sign it that
9 was ok, but she wouldn’t be considered a Barrett employee. If she chose
 to later sign the form and her application, then we could continue with the
 process.”

10 Based on this evidence, the forum concludes that Respondent did not offer Complainant
11 either the medical transcriptionist positions or placement in Respondent’s job pool.

12 Even if Respondent had offered Complainant placement in Respondent’s job
13 pool, this would not constitute an offer of employment that made Complainant an
14 “employee” under the provisions of ORS 659.448. Neither ORS chapter 659 nor the
15 Agency’s administrative rules³ interpreting those statutes defines what an offer of
16 employment is that elevates a job applicant to “employee” status upon acceptance of
17 the offer. ORS 659.449 provides interpretive guidance by requiring that “ORS 659.436
18 to 659.449 shall be construed to the extent possible in a manner that is consistent with
19 any similar provisions of the [ADA], as amended.” The ADA, in turn, contains provisions
20 almost identical to ORS 659.447⁴ and ORS 659.448.⁵ Those provisions have been
21 interpreted by the EEOC in guidelines applicable to workers employed by temporary
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24 ³ OAR 839-006-0200 through 839-006-0265.

25 ⁴ 42 U.S.C. § 12112(d)(2)(A) & (B).

⁵ 42 U.S.C. § 12112(d)(4)(A) & (B).

1 staffing agencies such as Respondent.⁶ Those guidelines state that a “staffing firm’s
2 offer to place an individual on its roster for possible consideration in the future for
3 temporary work assignments with its clients” does not constitute an “offer of
4 employment” under the ADA.⁷ The guidelines also state that an offer of employment
5 “[generally] occurs when a staffing firm worker is given an assignment with a particular
6 client.” Based on these provisions, the forum concludes that placement of Complainant
7 or any other job applicant in Respondent’s job pool does not constitute an offer of
8 employment that entitles Respondent, under ORS 659.447(3) or 659.448, to conduct
9 medical examinations, make inquiries as to whether a person is disabled, or make
10 inquiries of as to the nature or severity of a person’s disability when the examination or
11 inquiry is shown to be job-related and consistent with business necessity.

12 **SCOPE OF ORS 659.447(1), 659.448(1), AND 659.436(2).**

13 ORS 659.447 protects all job applicants, *regardless of whether or not they have*
14 *a disability*, from medical examinations, inquiries as to whether the applicant is a
15 disabled person, and inquiries as to the nature or severity of any disability of the
16 applicant. An employer is allowed to inquire into the ability of a job applicant to perform
17 job-related functions. ORS 659.448 extends the same protections to all employees,
18 unless the examination or inquiry is shown to be job-related and consistent with
19 business necessity. Again, it is irrelevant whether or not the employee has a disability.

20 In contrast, the provisions of ORS 659.436(2) prohibit an employer from taking
21 certain specific actions based on the disability of an applicant or employee.⁸ It

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23 ⁶ Enforcement Guidance: Application of the ADA to Contingent Workers Placed By Temporary Agencies
24 And Other Staffing Firms, 8 FEP Manual (BNA) 405:7551 (1997). This document may be found on the
internet at www.eeoc.gov/docs/guidance-contingent.html (visited April 2, 2001).

25 ⁷ *Id.*

⁸ The exception is ORS 659.436(2)(d), which prohibits discrimination on the basis of “relationship or
association” with a disabled person.

1 necessarily follows that a person must be disabled or associated with a disabled person
2 to come under the umbrella of protection afforded by ORS 659.436(2).

3 **RESPONDENT VIOLATED ORS 659.436 AND 659.447(1) BY REQUIRING**
4 **COMPLAINANT TO COMPLETE THE “ESSENTIAL FUNCTIONS” AND “MEDICAL**
5 **HISTORY INFORMATION” FORMS.**

6 **A. Respondent made inquiries of Complainant as to whether she was a**
7 **disabled person and violated ORS 659.447(1) and 659.436.**

8 EEOC Guidelines define a “disability-related inquiry” as “a question that is likely
9 to elicit information about a disability.”⁹ The Guidelines provide examples of disability-
10 related inquiries that include the following:¹⁰

- 11 1) asking a job applicant whether s/he has (or ever had) a disability or
12 how s/he became disabled or inquiring about the nature or severity of an
13 employee’s disability;
- 14 2) asking about a job applicant’s prior workers’ compensation history;
- 15 3) asking a job applicant whether s/he currently is taking any
16 prescription drugs or medications, whether s/he has taken any such drugs
17 or medications in the past * * *;
- 18 4) asking a job applicant a broad question about his/her impairments
19 that is likely to elicit information about a disability (e.g., What impairments
20 do you have?).”

21 Respondent’s MHI form made an indirect inquiry about Complainant’s workers’
22 compensation history (“Have you ever received medical or first-aid treatment for any
23 injury or illness that occurred while you were on a job?”)¹¹ and a direct inquiry as to the
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25 ⁹ Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations Under
the Americans with Disabilities Act of 1990, 8 FEP Manual (BNA) 405:7192 (1995). This document may
be found on the internet at www.eeoc.gov/docs/preemp.html (visited April 2, 2001).

¹⁰ Enforcement Guidance: Disability-Related Inquiries and Medical Examinations Under the Americans
with Disabilities Act (ADA) (2000). This document may be found on the Internet at
www.eeoc.gov/docs/guidance-inquiries.html (visited April 2, 2001).

¹¹ The forum considers this an inquiry about Complainant’s workers’ compensation history because
persons answering affirmatively to the question were directed to “please describe” the treatment for the
“injury or illness” and the resultant probability that the affirmative answer and resultant description would
elicit information from which Respondent could infer or conclude that the injury or illness was a
compensable injury or illness under the workers’ compensation system.

1 medications Complainant was taking (“Are you now taking any medications that may
2 affect the quality, quantity, or safety of your work?”). Other questions on the MHI form
3 specific to the job Complainant applied for inquire if Complainant had ever had “pain * *
4 * or problems with [her] hands * * * neck,” “any hands * * * or neck restrictions or
5 limitations you now have.” Those questions, along with the other questions contained in
6 the section on the MHI form that Respondent required all applicants to complete, fit into
7 the category of prohibited inquiries 1 and 4 cited above¹² and violated ORS 659.447(1)
8 and ORS 659.436. The Essential Functions form made broad inquiries into
9 Complainant’s ability to lift different amounts and perform a wide variety of physical
10 activities and functions, and work in various environments. If Complainant indicated an
11 inability to lift a specific amount, perform any activity or function, or work in an
12 environment, the form then asked if Complainant could do it “with accommodations” and
13 asked for a specific explanation. The form’s final sweeping question asked
14 Complainant to state any “physical, environmental or industrial work requirements” she
15 “would feel uncomfortable with, or unable to do without accommodations” and asked for
16 a explanation. These questions fit within the category of questions “likely to elicit
17 information about a disability.” By requiring Complainant to answer them, Respondent
18 violated ORS 659.447(1) and ORS 659.436.

19 **B. Respondent made inquiries as to the nature or severity of any disability of**
20 **Complainant and violated ORS 659.447(1) and 659.436.**

21 Respondent’s MHI form asked Complainant to “explain” if she answered “yes” to
22 the question of whether she was “under the care of a physician of any type for any
23 physical ailment or illness that may affect the quality, quantity or safety of [her] work.”
24 The form also asked Complainant to “describe” if she “presently ha[d] a condition that

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¹² See Finding of Fact – The Merits 10, *supra*.

1 may require a special work place accommodation.” The forum interprets these open-
2 ended questions as seeking specific information as to the nature and severity of any
3 disability that Complainant had. Had Complainant completed the form and answered
4 the questions truthfully, she would have had no choice but to provide details about her
5 fibromyalgia. These inquiries violated ORS 659.447(1) and ORS 659.436.

6 **C. Respondent did not violate ORS 659.436(2)(c) and (g).**

7 As stated earlier, the provisions of ORS 659.436(2)(c) and (g) prohibit an
8 employer from taking certain specific actions based on the disability of an applicant or
9 employee. In pertinent part, ORS 659.400(1) defines a “disabled” person as:

10 “a person who has a physical or mental impairment which substantially
11 limits one or more major life activities, [or] has a record of such an
impairment * * *.”

12 “Physical impairment” is defined in *former* OAR 839-006-0205(3)¹³as:

13 “any physiological disorder or condition * * * affecting one or more of the
14 following body systems: neurological, musculoskeletal * * *.”

15 “Major life activity” is defined in ORS 659.400(2)(a) as:

16 “includ[ing] but not limited to self-care, ambulation, communication,
17 transportation, education, socialization, employment and ability to acquire,
rent or maintain property.”

18 “Has a record of such an impairment” is defined in ORS 659.400(2)(b) as:

19 “[H]as a history of, or has been misclassified as having, a mental or
20 physical impairment that substantially limits one or more major life
activities.”

21 “Major life activity” is defined in *former* OAR 839-006-0205(2)¹⁴ as:

22 “[I]n addition to the activities listed in ORS 659.400(2)(a), [major life
23 activity] includes but is not limited to speaking, performing manual tasks,
walking, seeing, hearing, breathing, learning, sleeping and working. When
24 working is the major life activity in which the person is substantially limited,

25 ¹³ Currently renumbered as OAR 839-006-0205(10).

¹⁴ This version of the rule was in effect in May 1999.

1 the person must be significantly restricted in the ability to perform a class
2 of jobs or a broad range of jobs in various classes when compared to the
3 ability of an average person with comparable skill, experience, education
4 or other job related requirements needed to perform those same jobs.”

5 “Substantially limits” is defined in ORS 659.400(2)(d)(A) and (B) as:

6 “(A) The impairment renders the person unable to perform a major life
7 activity that the average person in the general population can perform; or

8 “(B) The impairment significantly restricts the condition, manner or
9 duration under which an individual can perform a particular major life
10 activity as compared to the condition, manner or duration under which the
11 average person in the general population can perform the same major life
12 activity.”

13 Dr. Corso, who has been treating Complainant for fibromyalgia since September 1999,
14 testified that Complainant’s fibromyalgia is a chronic disorder that causes widespread
15 pain, stiffness, fatigue, and sleep problems. Complainant testified that she experiences
16 those symptoms. This evidence established that Complainant’s fibromyalgia is a
17 “physical impairment.” Complainant further testified that fibromyalgia has made it
18 impossible for her to sit in one position for any appreciable length of time without
19 experiencing extreme discomfort and that, as a result, she is unable to work at any job
20 that requires sitting, including working in her chosen profession. This testimony
21 established that Complainant is “significantly restricted in the ability to perform a class of
22 jobs or broad range of jobs”¹⁵ and is “substantially limit[ed]” in the “major life activity” of
23 working. Consequently, the forum concludes that Complainant was a “disabled person”
24 *at the time of the hearing* based on her physical impairment that substantially limits one
25 or more major life activities *and* has a record of a physical impairment that substantially
limits or more major life activities.

¹⁵ Former OAR 839-006-0205(2).

1 In this case, for Respondent to have violated ORS 659.436(2)(c) and (g), the
2 evidence must show that Complainant was a disabled person who had a physical
3 impairment or record of a physical impairment that substantially limited one or more
4 major life activities as of May 18, 1999, the date of her job application with Respondent.
5 There is insufficient evidence in the record to establish either. The forum has concluded
6 that Complainant was disabled at the time of the hearing based on her substantial
7 limitation, caused by her fibromyalgia, in the major life activity of working. However, the
8 record does not disclose that she fit within the statutory definition of a “disabled person”
9 at the time of her application with Respondent. She testified that she was able to work
10 as a medical transcriptionist when she applied for work with Respondent and, in her
11 opinion, became disabled from working based on her inability to sit for any extended
12 period of time, in the two and one-half weeks following her application. Although
13 Complainant testified as to her fibromyalgia-related symptoms since 1994, the Agency
14 did not present any substantial evidence that, prior to Complainant’s application for work
15 with Respondent, Complainant’s fibromyalgia substantially limited her in any major life
16 activity, including working, or that Complainant had a record of being substantially
17 limited in a major life activity because of her fibromyalgia. Because the evidence in the
18 record did not establish that Complainant was substantially limited in a major life activity
19 at the time of her job application with Respondent, the forum may not conclude that
20 Complainant was a “disabled person” at that time or that Respondent violated ORS
21 659.436(2)(c) or (g).¹⁶

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25 ¹⁶ If Complainant had met the statutory definition of “disabled person” at the time of her application with Respondent, the forum would have concluded that Respondent violated ORS 659.436(2)(c) and (g).

1 **D. Summary**

2 In Jary Winstead's testimony and Respondent's closing argument, Respondent
3 argued that a job pool and the application process Complainant was subjected to is
4 necessary so Respondent can provide next-day service and successfully operate its
5 business. As the Agency pointed out in its closing argument, having people in a job
6 pool does not put Respondent in a unique category. Respondent's practices, if upheld,
7 would gut Oregon's employment disability laws and the ADA, in that employers would
8 be able to evade the law by the simple expedient of utilizing a temporary staffing agency
9 like Respondent as the source for its employees. This is neither the intent nor letter of
10 the law.

11 **COMPLAINANT WAS NOT REQUIRED TO UNDERGO A MEDICAL EXAMINATION OR**
12 **EVALUATION.**

13 The Agency's allegation that *former* OAR 839-006-0242 was violated carries with
14 it the necessary inference that Respondent required a "medical examination" or
15 "medical evaluation" of Complainant prior to making an offer of employment. In this
16 case, any violation of *former* OAR 839-006-0242 would also constitute a violation of
17 ORS 659.436 and 659.447.¹⁷ The issue is whether Respondent's requirement that
18 Complainant complete the Essential Functions and MHI forms constituted a "medical
19 examination" or "medical evaluation."

20 OAR 839-006-0205(7) defines "medical" as "authored by or originating with a
21 licensed health care professional." There is no evidence that Respondent's Essential
22 Functions or MHI forms were authored by or originated with a "licensed health care
23 professional." Therefore, even if Respondent's requirement that Complainant complete
24 the Essential Functions and MHI forms was construed as an "examination," by definition

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¹⁷ Respondent could not have violated ORS 659.448 because Complainant never became an "employee."

1 it would not be a “medical examination.” Accordingly, the forum concludes that
2 Respondent did not violate OAR 839-006-0242 and the language in ORS 659.447(1)
3 prohibiting pre-employment “medical examinations.”

4 **COMPLAINANT’S MENTAL SUFFERING DAMAGES**

5 In determining mental distress awards, the commissioner considers a number of
6 things, including the type of discriminatory conduct, and the duration, frequency, and
7 pervasiveness of that conduct. *In the Matter of James Breslin*, 16 BOLI 200, 219
8 (1997), *aff’d without opinion, Breslin v. Bureau of Labor and Industries*, 158 Or App 247,
9 972 P2d 1234 (1999). Awards for mental suffering damages depend on the facts
10 presented by each complainant. A complainant’s testimony about the effects of a
11 respondent’s conduct, if believed, is sufficient to support a claim for mental suffering
12 damages. *In the Matter of Sears, Roebuck and Company*, 18 BOLI 47, 77 (1999).

13 In this case, Complainant was asked to complete two forms that made unlawful
14 inquiries concerning whether she had a disability and, if so, the nature and severity of it.
15 At the time Complainant was asked to complete the forms, she believed they made
16 unlawful inquiries. Complainant refused to complete and sign Respondent’s MHI form
17 and was told she couldn’t be hired unless she completed and signed it. This made her
18 very upset, and she became more upset about Respondent’s behavior as the day went
19 on, perceiving it as an indicator that she would not be able to get work as a medical
20 transcriptionist in the Bend area where she lived. She was upset for at least two more
21 days after that over Respondent’s behavior. Over the next two and one-half weeks, her
22 fibromyalgia increased in intensity, without any remission, and she lost her ability to sit
23 for any extended period of time and was unemployable in her chosen field from the date
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1 she lost her ability to sit for any extended period of time until the date of the hearing.¹⁸
2 Complainant expressed her belief that the emotional upset she experienced as a result
3 of Respondent's behavior caused her fibromyalgia to accelerate because of the close
4 connection in time. Although there was no evidence of any other intervening factors
5 and Dr. Corso testified that stress and negative emotions can aggravate the symptoms
6 of fibromyalgia, Dr. Corso was unable to testify that Respondent's behavior caused
7 Complainant's fibromyalgia to accelerate because he did not see Complainant until
8 September 14, 1999. Complainant's testimony alone is not enough to prove that the
9 acceleration in her fibromyalgia was caused by Respondent's behavior. Considering all
10 of these factors, the forum concludes that \$15,000 is an appropriate award of mental
11 suffering damages.

12 **CEASE AND DESIST ORDER**

13 The commissioner of BOLI is authorized to issue an appropriate cease and
14 desist order reasonably calculated to eliminate the effects of any unlawful practice
15 found. *In the Matter of A.L.P. Incorporated*, 15 BOLI 211, 213-14 (1997), *aff'd* 161 Or
16 App 417, 984 P2d 883 (1999). In this case, a cease and desist order is of particular
17 significance, as Respondent's practices concerning inquiries regarding job applicant's
18 disabilities and ability to perform functions that were not job-related, at the time of
19 Complainant's application for employment with Respondent, violated ORS 659.436 and
20 659.447(1) with respect to every job applicant, and ORS 659.436(2)(c) and (g)¹⁹ with
21 respect to every disabled job applicant. This problem in part stemmed from
22 Respondent's policy of treating all applicants as employees prior to placing them with a
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25 ¹⁸ As Respondent correctly pointed out in its exceptions, there was no evidence presented that Complainant's fibromyalgia has led to a permanent inability to be employed.

¹⁹ See footnote 15, *supra*.

1 client. Consequently, the forum has crafted a cease and desist order designed to
2 constrain Respondent from these practices in the future.

3 **RESPONDENT’S EXCEPTIONS**

4 **A. Proposed Finding of Fact – The Merits 28.**

5 Respondent excepts to the finding that Winstead’s testimony was contradicted by
6 Fountain’s notes and requests that Finding 28 be withdrawn because it has no
7 evidentiary foundation. Respondent is partially correct, and Finding 28 has been
8 modified to reflect Respondent’s exception.

9 **B. Proposed Ultimate Findings of Fact 6, 7, and 10.**

10 Respondent excepted to the ALJ’s use of the word “required” in Findings 6 and 7
11 to describe the process Respondent used in getting Complainant to fill out the Essential
12 Functions and MHI forms. Respondent also excepted to the ALJ’s finding that
13 Complainant experienced substantial “physical” suffering. Both of Respondent’s
14 exceptions are well taken and Ultimate Findings of Fact 6, 7, and 10 have been
15 modified in response. The word “required” has also been changed to “asked” in the
16 body of the Opinion discussing Complainant’s mental suffering damages.

17 **C. Respondent’s MHI form: inquiries about Complainant’s workers’ 18 compensation history.**

19 Respondent excepted to the ALJ’s statement in the Proposed Opinion that
20 “Respondent’s MHI form made specific inquiries about Complainant’s worker’s
21 compensation history.” This portion of the Order has been revised in response.

22 **D. Complainant’s unemployability due to her fibromyalgia.**

23 Respondent excepted to the ALJ’s conclusory statement in the Proposed Opinion
24 that Complainant “became unemployable in her chosen field.” Respondent’s point is
25 well taken and the Opinion has been modified to reflect this.

1 **E. Complainant's mental suffering damages.**

2 Respondent excepts to the ALJ's recommendation that Complainant be awarded
3 \$15,000 in mental suffering damages, arguing that it is "excessive, unwarranted and
4 unsupported by evidence." The forum disagrees with Respondent's assessment of
5 Complainant's damages and concludes that Complainant's testimony concerning her
6 emotional upset experienced as a result of Respondent's unlawful acts is sufficient to
7 support the proposed award of \$15,000.

8 **F. Requirement of certified check.**

9 Respondent excepts to the requirement that the damages awarded be paid by
10 certified check on the basis that there is no evidence that Respondent is in any way
11 fiscally irresponsible and the requirement of a certified check does not relate to
12 eliminating any effect of an unlawful employment practice. Respondent's exception is
13 overruled. The requirement of a certified check in no way implies that Respondent is
14 fiscally irresponsible; it is merely the Commissioner's standard means by which
15 payment of damages, wages, or penalties is ordered in every case in which a
16 respondent incurs a financial liability.

17 **ORDER**

18 NOW, THEREFORE, as authorized by ORS 659.010(2) and ORS 659.060(3),
19 and in order to eliminate the effects of the unlawful practices found in violation of ORS
20 659.436 and 659.447, and as payment of the damages awarded, and in order to
21 eliminate the effects of the unlawful practices found in violation of ORS 659.436 and
22 659.447, the Commissioner of the Bureau of Labor and Industries hereby orders
23 Respondent **Barrett Business Services, Inc.** to:
24
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1 1) Deliver to the Fiscal Services Office of the Bureau of Labor and Industries,
2 800 NE Oregon Street, Portland, Oregon 97232-2162, a certified check payable to the
3 Bureau of Labor and Industries, in trust for Complainant Marie Annette, in the amount
4 of:

5 a) FIFTEEN THOUSAND DOLLARS (\$15,000.00), representing
6 compensatory damages for mental and emotional suffering as a result of Respondent's
7 unlawful practices found herein, plus

8 b) Interest at the legal rate on the sum of \$15,000.00 from the date of the
9 Final Order until Respondent complies herewith.

10 2) Cease and desist from:

11 a) Making inquiries of any job applicant as to whether the applicant is
12 a disabled person;

13 b) Making inquiries of any job applicant as to the nature or severity of
14 any disability of the applicant;

15 c) Making inquiries of any disabled job applicant as to the applicant's
16 ability to perform functions that are not job-related;

17 d) For the purposes of ORS 659.447 and 659.448, regarding any
18 applicant as an employee until such time as such applicant is given an job
19 assignment with a particular client.

20 DATED this _____ day of _____, 2001.

21
22
23 _____
24 Jack Roberts, Commissioner
25 Bureau of Labor and Industries

1 **JUDICIAL REVIEW NOTICE**

2 Pursuant to ORS 183.482, you are entitled to judicial review of this Final Order.
3 To obtain judicial review, you must file a Petition for Judicial Review with the Court of
4 Appeals in Salem, Oregon, within sixty (60) days of the service of this Order.

5 If you file a Petition for Judicial Review, YOU MUST ALSO SERVE A COPY OF
6 THE PETITION ON the BUREAU OF LABOR AND INDUSTRIES and THE
7 DEPARTMENT OF JUSTICE - APPELLATE DIVISION

8 AT THE FOLLOWING ADDRESSES:

9 **BUREAU OF LABOR AND INDUSTRIES**
10 **HEARINGS UNIT APPELLATE DIVISION**
11 **1025 STATE OFFICE BUILDING**
800 NE OREGON STREET #32
PORTLAND, OREGON 97232-2162

DEPARTMENT OF JUSTICE
400 JUSTICE BUILDING
SALEM, OREGON 97310

12
13 If you file a Petition for Judicial Review and if you wish to stay the enforcement of
14 this final order pending judicial review, **you must file a request with the Bureau of**
15 **Labor and Industries**, at the address above. Your request must contain the
16 information described in ORS 183.482(3) and OAR 137-003-0090 to OAR 137-003-
17 0092.

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22
23 CERTIFIED TO BE A TRUE AND
24 CORRECT COPY OF THE ORIGINAL
AND OF A WHOLE THEREOF.

25 Focrd/Barrett Business Services, Inc.doc