

Ronald J. Walker, Plaintiff

“Pro se”

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Representing Self

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

RONALD J. WALKER,	)	Case No. 4:19-CV-00043-BMM-JTJ
)	
Plaintiff,	)	PLAINTIFF’ MOTION AND
	)	COUNTER-CLAIM RESPONSE
v.	)	TO DEFENDANTS’ MOTION
	)	TO DISMISS EEOC CIVIL
	)	FOR LACK OF SUBJECT
JESSICA WINDY BOY, ROCKY BOY	)	MATTER JURISDICTION,
HEALTH CLINIC, and, CHIPPEWA CREE	)	FAILURE TO EXHAUST TRIBAL
TRIBE,	)	REMEDIES, AND
	)	INAPPLICABILITY OF FEDERAL
	)	STATUTES & QUESTION OF
Defendants.		PLAINTIFF’S MEDICAL
		DISABILITY

Plaintiff, Ronald J. Walker, By Representation as “Pro se” due to the failure to secure Legal Counsel because Law Firms in Montana fear the subject of “Tribal Sovereignty” and, would not explore representation. Plaintiff has no choice, but to represent himself in this legal matter because he was performing the job duties and responsibilities at the Rocky Boy Health Clinic (RBHC) and was retaliated against by one Ms. Jessica Windy Boy, former CEO on February 8, 2019, for the plain reason of stepping in for and on behalf of protecting Ms. Shannon Crossley, Supervisor Behavioral Health, Rocky Boy Health Clinic, located on the Rocky Boy Indian Reservation in Box Elder, Montana. Furthermore, Plaintiff was made the Culprit when in fact it was Ms. Crossley, who initiated the “hostile work environment” problems for him with the RBHC in late March 2019 and by February 8, 2019, where he felt he had no other choice but to resign the same day due to retaliation by Ms. Windy Boy. The facts were conveyed and supported by documentation previously submitted with Legal Complaint before the Court. Defendants Motion facts and Motion to dismiss are not factual. Plaintiff will counter-claim and dispute the main facts because the brief is so wrought with legal citation that defends the existence of the Chippewa Cree Tribe and does not address the cause and source of discrimination which occurred that morphed into retaliation by Ms. Windy Boy which started the claim with EEOC because Plaintiff received no advice or cooperation from HR-Director-RBHC in procedural policy or process.

The nepotism factor at this facility did not provide Plaintiff a technical, process or legal means in which to address his grievance” internally” with the “hostile work environment” he was suddenly subject to and it was unwarranted. Later in within a week, he was accused of something that did not in fact occur. The fact is, the way things transpired initially with attempted mediation due to an incident between he, supervisor and the presence of the HR-Director who witnessed it. Defendant’s legal representation has not addressed the administrative remedies sought and failed on Plaintiff’s behalf. How things occurred chronologically were not explained and actions taken were not addressed and there has been a lot of denial on part of the management of the RBHC. Another question, where is Joel Rosette, Tribal Attorney and his Mediator role in this matter and case? Plaintiff was never directed or referred to any EEO-Counselor. A name of an EEO-Counselor was ever provided.

STATEMENT OF FACTS

Plaintiff’s Chronology of event- facts: (1) An initial incident occurred that started discrimination claims when a Ms. Shannon Crossley came into Plaintiff’s office and interrupted him without displaying any courtesy. The matter was discussed immediately with Ms. Geri Racine, HR-Director, RBHC. She was the employee in his office when Ms. Crossley, rudely interrupted them when he was discussing matters behind closed doors with Ms. Racine. Ms. Racine was part and a witness to the action taken by Ms. Crossley;(2) After about 15-20 minutes, Ms. Crossley came back not to apologize, but mainly to advise him she did not think they could

work together. It was agreed with her and she stated, “Maybe she should go get Ms. Tessi LaMere, Clinical Director so we can discuss this matter.” That was stated because it was worked out a week earlier that Plaintiff would work with them jointly on projects; (3) Due to the incident that day, Ms. LaMere, came to Plaintiff’s Office later that morning and asked him if he was willing to meet with a third party to Mediate the indifferences between Ms. Crossley and him. He agreed, and a meeting was arranged at 2:00pm that day; (4) At 2:00pm, he met with Joel Rosette, Tribal Attorney. They met for approximately forty-five minutes. He advised him before they were done, he was going to meet with Ms. Crossley. Once he did that, Joel, Shannon and Plaintiff were scheduled to meet later that day. Plaintiff was left hanging that day without explanation and no meeting was ever scheduled to follow up for Mediation; (5) On Monday, February 1, 2019, an email and a letter written and submitted to Ms. Geri Racine due to the concern about the work hostile work environment created by Ms. Crossley. Plaintiff was seeking advice from the HR-Director. (6) On Wednesday, February 6, 2019, Plaintiff was facilitating a meeting with the Zero-Suicide Program when it was about to conclude and Ms. Window Boy attended for a brief period. She observed and was exposed to a question asked of Plaintiff. The question was, “Did you send the email and agenda of meeting to all Stakeholders, including the Mental Health employees who technically should be in attendance. Plaintiff proceeded to respond when a participant spoke up and said “Yes, Ron provided email and agenda to everyone who should have received the it.” Plaintiff remarked, “there’s your answer. Yes, it was.” This is where the CEO was blaming me for airing dirty laundry and talking disparaging of the Mental Health Program in her meeting with me on Friday, February 8,2019. (7) On Friday, February

8,2019, Ms. Windy Boy scheduled a meeting in her office. This meeting was one of the worst and most hostile managerial meetings Plaintiff has ever participated. He was dismissed from duty by Ms. Windy Boy that day. He removed himself because of the concern that Plaintiff felt he would be from this meeting because he felt that Ms. Windy Boy's motive was to remove him by being escorted out of the RBHC by the Law Enforcement. This tribe is known for conducting this type of action from their Tribal Offices. This is the day he felt he had no other choice but to resign; (8) Plaintiff wrote a letter to the Tribal Chairman, Chippewa Cree Tribe to advise him of his need to resign from his job at RBHC; (9) Tanya Schmoekle, Tribal Compliance Officer, contacted me at the direction of the Tribal Chairman to discuss my work situation. A meeting was scheduled but after I thought about what she told me during that first conversation, I had second thoughts and cancelled it. She stated two things which I was uncomfortable with. **A).** She stated all I did in my letter to the Chairman is blast Ms. Windy Boy for 10 pages. I disagreed; **B).** She advised me that she would be recording the meeting. After thinking about that, Plaintiff felt uncomfortable with the situation and called Ms. Schmoekle and left message with her secretary and cancelled the meeting; **C).** The following day Ms. Schmoekle called Plaintiff and asked why he cancelled the meeting. As he was explaining his reason, she hung up the phone. (10) Plaintiff filed an EEOC grievance and charge of employment discrimination on February 16,2019 with the EEOC- Seattle Field Office, located in Seattle, Washington; (11) EEOC- Seattle Field Office notified Plaintiff that EEOC had no jurisdiction on the Rocky Boy Indian Reservation and provided him the Right To File Federal Lawsuit. (12) Plaintiff's Federal Lawsuit was filed on: June 14, 2019, after Plaintiff felt he did; **A).** Attempt to resolve through internal mediation with

RBHC, because of his hostile work environment with supervisor and CEO and, B). Notified the Chairman, Chippewa Cree Tribe, on February 9, 2019. Once initial contacts, discussions and/or letters, nothing was ever followed-up on in both contacts explaining policy, procedure, laws or instruction on how to proceed. No one ever got back to him on this matter through mediation at RBHC. Plaintiff felt he had no choice but to take matter of discrimination to EEOC in Seattle, WA.

DISPUTE/COUNTER-CLAIMS

Plaintiff, (1) Wants to dispute a statement both by the Former, CEO's Affidavit and Attorneys that he never mentioned that he was physically disabled. Plaintiff did advise his supervisor and HR-Director that he had disabilities. Case in point is when he was hired and when he was first assigned to a small office with a co-worker and shortly thereafter he advised Supervisor not only about his medically disability, but he also advised her of his speech impediment up until he was about twenty-seven years old. He requested to be moved to another office under accommodation purposes. Also, it's obvious to most people who meet him that he is disabled because of his posture and his walk or gait. Fact. As late as last May 16, 2018, Plaintiff experienced another of many spinal surgeries. If he did not go through this surgery, he most likely would be bed ridden or at best confined to a wheelchair today. He has experienced multiple spinal surgeries since 2003 whereas metal rods were inserted into his lumbar spine and later removed due to infringement on his spinal nervous system in 2006. Furthermore, he has experienced multiple spinal surgeries to both the lumbar and c-section (upper) neck areas. This fact is what caused him to reluctantly retire from Federal Service after thirty-32 years at the recommendation of his doctors. Plaintiff wants no

more questions about this fact. He can provide all the medical facts, records and statements in the world, if necessary. Moreover, for the past seventeen years he has experienced multiple surgeries not only in the spinal area of his body, but other areas and the rehabilitation efforts to continue being productive and living a quality way of life has and is on-going. (2) Defendants want case dismissed for lack of subject matter jurisdiction. Plaintiff spent his federal career working all over the United States for the U.S Department of the Interior-Bureau of Indian Affairs (DOI-BIA), on behalf of Tribal Nations. He knows full well what sovereignty means to Tribal Nations and what it means to their respective existence in the way of survival to their people. This case is not about a question of challenging tribal sovereignty, and the Chippewa Cree Tribe's right to govern or to regulate employment matters as they choose, but to address a case of employment discrimination against a non-member Native American, but an enrolled Native American in another Tribe who was discriminated against not once but twice and their denial or refusal to cooperate with Plaintiff in resolving it internally. This is an additional form of prejudice, or discrimination by the Tribe's internal actions by its failure to resolve matters. They are hiding behind the Cloak of Tribal Sovereign Immunity constantly. The subject matter jurisdiction is there despite Defendant's legal representation argument that it is not. Additionally, RBHC is selective in how it develops policy or procedure regarding the Equal Employment Opportunity (EEO) regulations. For the most part, they are almost non-existent or incomplete even though they may have and distribute a handbook with only a portion of this subject matter contained in it. (3) Failure to Exhaust Administrative Remedies; Plaintiff, has attempted to address the hostile work environment by Internal (Mediation Policy)? at RBHC and through the Chippewa

Cree Tribe's, Compliance Officer, Plaintiff briefly attempted to work with this representative to no avail. Also, within the compliant, Defendants try to water down the legal complaint by failure to fully address and respond to the question on: Page 4 of 6, III. Statement of Claim A. The discrimination conduct of which {I} complain in this action includes (check all that apply): "Unequal terms and conditions of my employment. "Retaliation" "Other acts (specify): Bullying, Intimidation and Harassment." On Friday, February 8, 2019, Ms. Windy Boy, former CEO, did these acts by the way she set the stage in her conference room to treat Plaintiff in the meeting. (4) Plaintiff's Medical Disability. This has been explained earlier and, if necessary, Plaintiff can provide medical records to prove his medical disability by providing substantial records. He has been officially declared and designated as disabled by the Social Security Administration (SSA), for a while now.

ARGUMENT/ISSUE:

The main two arguments to dismiss Plaintiff's lawsuit as stated by Defendant's response by legal representation is whereas their first argument is under its defense is pursuant with; Federal Rule of Civil Procedure 2(b)(3) provides, "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." If the court determines this to be the case under the rule of law, and it is in fact the case, Plaintiff argues that the Court remand this case back to the Tribal Court of jurisdiction and allow his case to be heard before this court. The second reason or unjustified claim is that Plaintiff has not exhausted his administrative remedies under the Chippewa Cree's tribal process. This claim is based upon "Iowa Mut Ins. Co. 480 U.S. at 16, 107 S Ct. at 976" "This

Court should stay its hand and dismiss this case as a matter of comity with Tribal Court due to Plaintiff's failure to exhaust all available tribal remedies." Plaintiff on the day the incident which started his unwarranted "hostile work environment" was only exacerbated by a ruthless CEO who has since been removed or inasmuch fired from her position at RBHC due to whatever actions this Tribe deemed necessary. The point is, Plaintiff the day incident occurred with supervisor, the Clinical Director came to him and stated that he needed to mediate his conflict with her." He did agree and met with Joel Rosette, Tribal Attorney and discussed his position on the conflict, but he was held in abeyance indefinitely and no mediation ever at occurred to resolve his concern about his hostile work environment at RBHC. Within a week, the CEO, retaliated against Plaintiff. These facts on his effort to resolve his work situation through Mediation and a letter to the Chairman of the Chippewa Cree Tribe have not been addressed by Defendants legal representation.

CONCLUSION:

Plaintiff, for the above reasons herein stated, respectfully requests the Court to allow this employment discrimination case to proceed and be placed on the Docket for Jury Trial and heard before the Court, or remanded back to the Chippewa Cree Tribe's jurisdiction for resolution. Defendant's Motion for case to be dismissed should be cancelled and the jury trial should be scheduled as early as possible. A speedy trial is requested. Plaintiff stands ready to provide witnesses.

Furthermore, Plaintiff did not respond to Defendant's first Motion to dismiss because he felt that he stated his case in the Complaint filed with the Court. But, now that Defendants have submitted a second Motion to Dismiss, he

feels he needs to counter their persistence insofar that this case is not dismissed by the Court.

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7. 1(d)(2)(E), I certify that this **Brief in Support of Motion/ Counter-Claim Defendants reasons to Dismiss Employment Discrimination Lawsuit in District Court for Lack of Subject Matter Jurisdiction, Failure to Exhaust Tribal Remedies, and Inapplicability of federal Statues**, is double spaced, is a proportionately spaced 14 typeface and contains 2,634 words.

/s/___Ronald J. Walker_____

Pro se

DATED this 8th day of October,2019.

Ronald J. Walker:

/s/ __Ronald J. Walker_____

Pro se

CERTIFICATE OF SERVICE

I hereby certify that on the 8^h day of October,2019, a true copy of the foregoing was mailed by first-class mail to the following party:

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