

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11**

**PruittHealth Veteran Services –
North Carolina, Inc.,**

Respondent,

and

Ricky Edward Hentz, an Individual,

Petitioner.

Case: 10-CA-191492

**PRUITTHEALTH VETERAN SERVICES – NORTH CAROLINA, INC’S
EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE’S DECISION**

Now Comes Respondent PruittHealth Veteran Services-North Carolina, Inc. (“Respondent” or “PruittHealth”), and pursuant to Rule 102.46 of the Board’s Rules and Regulations, files the following exceptions to the decision of Administrative Law Judge (“ALJ”) Keltner W. Locke dated May 4, 2018, filed in the above-captioned matter.

A. Statement of the Case

1. Respondent excepts to the ALJ’s finding that Hentz told Morrison that employees “believed there was racial prejudice in the workplace” as unsupported by the preponderance of the evidence. (ALJD p. 1, Section “Statement of the Case” (unnumbered lines; approximately lines 23-29 and p. 25, lines 24-30).).

- Tr. 44:17-19, 84:10-23, 481:6-20, 556:2-25, 557:1-15, and 621:4-10
- Tr. 280:3-281:12
- Tr. 138:24-139:13
- Tr. 147:19-149:6

B. Complaint ¶ 9 – Hentz’s Alleged Protected Activity.

2. Respondent excepts to ALJ’s finding that employees had concerns about staffing assignments that Hentz reported to “Hentz” [sic] as erroneous and a scribner’s error. (ALJD p. 11, lines 4-6.)

3. Respondent excepts to the ALJ’s finding that Hentz was engaged in protected, concerted activity when he reported employees’ concerns about staffing assignments to “Hentz” [sic] as erroneous and a scribner’s error. (ALJD p. 11, lines 4-6.)

4. Respondent excepts to the ALJ’s implied finding that Rick Luce was concerned about staffing as based on an erroneous credibility determination and unsupported by the preponderance of the evidence. (ALJD p. 10, lines 13-14 and 30-35; p. 34, lines 1-42.)

- Tr. 120:3-12
- Tr. 119:16-120:12

5. Respondent excepts to the ALJ’s failure to make any findings as to whether an alleged concern attributed to Rick Luce was “based on an honest and reasonable belief” in accordance with NLRB v. City Disposal Systems, 465 U.S. 822, 840 (1984), and other applicable authority. (ALJD pp. 17-21 and *passim*.)

- Tr. 120:3-12
- Tr. 119:16-120:12

6. Respondent excepts to the ALJ’s conclusion that Hentz’s reporting of employees’ complaints to Morrison falls within the protections of Section 7 of the Act because such finding is contrary to NLRB case law and other authority and the ALJ failed to address critical, credible and contradictory evidence the ALJ is obligated to consider and reconcile. (ALJD p. 11, lines 11-12 and 24-26.)

- Tr. 111:11-127:7
- Tr. 91:1-259:25
- Tr. 242:25-243:1
- Tr. 242:5-243:25

7. Respondent excepts to the ALJ's conclusion that Hentz brought group complaints to management's attention because such finding is unsupported by the preponderance of the evidence. (ALJD p. 11, lines 11-12 and 17-18; lines 32-33.)

- Tr. 44:17-19, 84:10-23, 481:6-20, 556:2-25, 557:1-15, and 621:4-10
- Tr. 280:3-281:12
- Tr. 138:24-139:13
- Tr. 147:19-149:6

8. Respondent excepts to the ALJ's finding that the statement, "I spoke with some CNAs on the floor and they're really upset that you took those CNAs that Mary Ellen hired and put them in other positions rather than putting them on the floor to do work as a CNA on the floor," means that Hentz expressed concerns held by "other employees" as based on an erroneous credibility determination and unsupported by the preponderance of the evidence. (ALJD p. 11, lines 17-23; p. 20, lines 24-26; p. 32, lines 28-29.)

- Tr. 120:3-12
- Tr. 119:16-120:12

9. Respondent excepts to the ALJ's finding that Hentz engaged in protected activity when he walked along with Morrison and told the administrator about the CNAs' complaints that the floors were understaffed because such finding is contrary to NLRB case law and other authority. (ALJD p. 11, lines 24-26.)

- Tr. 111:11-127:7
- Tr. 91:1-259:25
- Tr. 242:25-243:1
- Tr. 242:5-243:25

10. Respondent excepts to the ALJ's failure to make any findings as to whether any alleged concerns expressed to Morrison when Hentz walked down the hall with him were based on "honest and reasonable belief(s)" held by the CNAs for whom Hentz purported to speak in accordance with NLRB v. City Disposal Systems, 465 U.S. 822, 840 (1984), and other applicable authority. (ALJD p. 11, lines 24-26 and *passim*.)

- Tr. 111:11-127:7
- Tr. 91:1-259:25
- Tr. 242:25-243:1
- Tr. 242:5-243:25

11. Respondent excepts to the ALJ's finding that Hentz was not simply speaking to benefit himself because such finding is not supported by the preponderance of the evidence. (ALJD p. 11, lines 32-33.)

- Tr. 111:11-127:7
- Tr. 91:1-259:25
- Tr. 242:25-243:1
- Tr. 242:5-243:25

12. Respondent excepts to the ALJ's finding that Hentz telephoned corporate-level management to express "employees' concerns" about racial prejudice in the workplace as unsupported by a preponderance of the evidence. (ALJD p. 11, lines 35-37.)

- Tr. 138:23-139:2
- Tr. 139:7-10
- Tr. 364:21-23; 370:1-5; 373:16-375:19; 379:14-21; 384:1-4
- Tr. 361:20-25
- Tr. 364:9-1

13. Respondent excepts to the ALJ’s finding that Hentz made a call to corporate-level management “shortly after” having conversations with other employees on or around November 9, 2016, as erroneous because such finding is not supported by the preponderance of the evidence. (ALJD p. 11, line 37 through p. 12, line 1; p. 13, lines 10-11; p. 16, lines 12-14; p. 25, lines 18-19; p. 33 fn. 21 (lines 5-6).)

- Tr. 138:24-139:10
- Tr. 111:17-112:8

14. Respondent excepts to the ALJ’s finding that other employees shared Hentz’s belief that racial prejudice resulted in some employees being treated differently from others as erroneous because such finding is not supported by the preponderance of the evidence. (ALJD p. 12, lines 5-6; p. 16, lines 19-22; p. 33, fn. 22 (lines 1-2).)

- Tr. 136:15-25
- Tr. 361:6-25
- Tr. 361:10-25
- Tr. 364:9-17

15. Respondent excepts to the ALJ’s failure to make any findings as to whether the concerns Hentz expressed in connection with his call to PruittHealth’s Corporate Office and the Veterans’ Home’s investigation into those concerns was “based on [those other

employees'] honest and reasonable belief(s)" of the alleged race discrimination reported.
(ALJD p. 11, lines 25-27.)

- Tr. 136:15-25
- Tr. 361:6-25
- Tr. 361:10-25
- Tr. 364:9-17

16. Respondent excepts to the ALJ's finding "employees" believe that there is a difference in the way employees are treated as erroneous because such finding is vague and not supported by the preponderance of the evidence. (ALJD p. 12, lines 5-13; fn. 7 (lines 1-7); p. 25, lines 15-20.)

- Tr. 136:15-25
- Tr. 361:6-25
- Tr. 361:10-25
- Tr. 364:9-17

17. Respondent excepts to the ALJ's failure to make any findings as to whether alleged concerns attributed to Marie Williams, Linda Brinson or Danielle Jeter were "based on [those individuals'] honest and reasonable belief[s]." (ALJD p. 12, lines 9-13; fn. 7 (lines 1-7); *passim*.)

- Tr. 136:15-25
- Tr. 361:6-25
- Tr. 361:10-25
- Tr. 364:9-17

18. Respondent excepts to the ALJ's finding that he did not consider the "truth of the matter" asserted by concluding that Williams believes there is a difference in the way employees are treated because the ALJ incorrectly applied NLRB case law and other authority. (ALJD p. 11, fn. 7 (lines 1-7); p.15, lines 7-14.)

- Tr. 136:15-25
- Tr. 361:6-25
- Tr. 361:10-25
- Tr. 364:9-17

19. Respondent excepts to the ALJ's finding that when Hentz telephoned the corporate headquarters and spoke with Manager Ellis, he was engaged in protected concerted activity because that conclusion is unsupported by a preponderance of the record evidence and the ALJ fails to address critical, credible and contradictory evidence the ALJ is obligated to consider and reconcile and the ALJ's conclusion is based on legal error. (ALJD p. 13, lines 11-12.)

- Tr. 138:23-139:2
- Tr. 139:7-10
- Tr. 364:21-23; 370:1-5; 373:16-375:19; 379:14-21; 384:1-4
- Tr. 361:20-25
- Tr. 364:9-1
- Tr. 139:7-10 and 111:17-112:8
- Tr. 364:21-23, 370:1-5, 373:16-375:19, 379:14-21; 384:1-4

20. Respondent excepts to the ALJ's finding that Hentz assisted others by voicing "their complaints" to corporate-level management is erroneous because the ALJ fails to

address critical, credible and contradictory evidence the ALJ is obligated to consider and reconcile. (ALJD p. 14, lines 36-37; p. 32, lines 27-29 and 36-45; p. 33, lines 6-9.)

- Tr. 136:15-25
- Tr. 361:6-25
- Tr. 361:10-25
- Tr. 364:9-17
- Tr. 138:23-139:2
- Tr. 139:7-10
- Tr. 364:21-23; 370:1-5; 373:16-375:19; 379:14-21; 384:1-4
- Tr. 361:20-25
- Tr. 364:9-1

21. Respondent excepts to the ALJ's finding that Hentz had spoken with other workers who agreed with him that African-American employees were being treated differently because such finding is not supported by the preponderance of the evidence. (ALJD p. 14, lines 14-16.)

- Tr. 136:15-25
- Tr. 361:6-25
- Tr. 361:10-25
- Tr. 364:9-17

22. Respondent excepts to the ALJ's analysis of Mervin's statement, "I'm not here to talk about them. I'm here to talk about me," and the ALJ's implied finding that Mervin is unreliable because she was paraphrasing or could have taken Hentz's words out of context,

which is an erroneous credibility determination and an analysis unsupported by the preponderance of the evidence. (ALJD p. 14, lines 19-32; p. 33, fn. 21 (lines 1-9).)

- Tr. 138:23-139:2
- Tr. 139:7-10
- Tr. 364:21-23; 370:1-5; 373:16-375:19; 379:14-21; 384:1-4
- Tr. 361:20-25
- Tr. 364:9-1

23. Respondent excepts to the ALJ's finding that witnesses identified by Hentz had seen other things which also demonstrated the presence of racial prejudice in the workplace and that others perceived an atmosphere of racial bias is erroneous because those findings are not supported by the preponderance of the evidence. (ALJD p. 15, lines 4-8.)

- Tr. 136:15-25
- Tr. 361:6-25
- Tr. 361:10-25
- Tr. 364:9-17
- Tr. 139:23-141:7
- Tr. 140:13-14
- Tr. 141:2-4
- Tr. 140:10-17
- Tr. 140:15-16
- Tr. 140:19-20
- Tr. 302:22-303:3

24. Respondent excepts to the ALJ's finding that a "feeling" of being heard is a condition of employment because such finding is an unreasonable application of the NLRA and not in accordance with sound labor board policy. (ALJD p. 15, lines 14-26.)

- Tr. 463:22-464:13

25. Respondent excepts to the ALJ's generalized finding that "employees were sincere" and "had some basis for believing that management was not listening to them" because such finding is vague and not supported by the preponderance of the evidence and the ALJ failed address critical, credible and contradictory evidence showing that Morrison did listen to employees as part of his "open door" policy. (ALJD p. 15, fn. 10 (lines 2-5).)

- Tr. 463:22-464:13

26. Respondent excepts, for purpose of presentation of this issue to the National Labor Relations Board and consideration in any applicable appeals, to the ALJ's failure to overrule Fresh & Easy Neighborhood Market, Inc., 361 NLRB No. 12 [200 LRRM (BNA) 1401], 2014 WL 3919910, No. 28-CA-064411 (8/11/14), to the extent it is inconsistent with the standard for concerted protected activity under Section 7 articulated in former Member Miscimarra's dissent in that opinion. (ALJD p. 15, lines 28 through p. 16, line 22; *passim*.)

- Tr. 139:7-10
- Tr. 361:10-25
- Tr. 364:9-17
- Tr. 140:13-16; Tr. 140:13-14
- Tr. 301:17-301:20
- Tr. 271:1-306:13
- Tr. 302:10-303:1

- Tr. 356:9-23

27. Respondent excepts to the ALJ’s application of Compuware Corp., 320 NLRB 101 (1995), enf. 134 F.3d 1285 (6th Cir. 1998), on the grounds that it is contrary to established NLRB case law and other authority and sound labor policy and based on facts not supported by the preponderance of the evidence. (ALJD page 16, lines 1 through 22.)

- Tr. 111:11-127:7
- Tr. 91:1-259:25
- Tr. 242:25-243:1
- Tr. 242:5-243:25
- Tr. 139:7-10 and 111:17-112:8
- Tr. 364:21-23, 370:1-5, 373:16-375:19, 379:14-21; 384:1-4

C. Complaint ¶ 8(b) – Allegations Pertaining to Brandi Sigmund

28. Respondent excepts to the ALJ’s finding that Missy Ellege ever denied a request by Brandi Sigmund to work “PRN” as unsupported by the preponderance of the record evidence. (ALJD p. 21, lines 20-39; p. 22, lines 22-24 and 31-34; p. 23, lines 25-27; p. 24, lines 2-6.)

- Tr. 123:14-124:10
- Tr. 124:16-125:11
- Tr. 123:14-124:10
- Tr. 124:16-125:11

29. Respondent excepts to the ALJ’s finding that Brandi Sigmund wanted to work “PRN” as unsupported by the preponderance of the record evidence. (ALJD p. 23, fn. 14 (lines 1-7).)

- Tr. 123:14-124:10
- Tr. 124:16-125:11
- Tr. 123:14-124:10
- Tr. 124:16-125:11

30. Respondent excepts to the ALJ’s finding that Missy Ellege was a “Director of Health Services” as erroneous because such conclusion is not supported by the preponderance of the record evidence. (ALJD p. 24, lines 3-6.)

- Tr. 123:14-124:10
- Tr. 124:16-125:11
- Tr. 123:14-124:10
- Tr. 124:16-125:1

D. Complaint ¶¶ 10–14 – Alleged Protected Activity Involving Hentz’s Communications with Mr. Morrison and Others.

31. Respondent excepts to the ALJ’s finding that Hentz told Morrison, “I feel like Amy definitely treats African Americans differently than she do others, and I’m not the only one. I’ve had that conversation with other people as well who felt like there definitely was a discrepancy in the way that she treated African Americans. I mean she was very standoffish and whatnot. And I told him I was going to go to corporate,” because such finding is not supported by the preponderance of the record evidence and because the ALJ made erroneous credibility determinations and failed to evaluate critical, credible and contradictory evidence showing that this statement was never made. (ALDJ p. 25, lines 24-30.)

- Tr. 44:17-19, 84:10-23, 481:6-20, 556:2-25, 557:1-15, and 621:4-10
- Tr. 280:3-281:12

- Tr. 138:24-139:13
- Tr. 147:19-149:6

32. Respondent excepts to the ALJ's finding that Hentz's statements to Tammy Ellis show that "[Hentz] was expressing the work-related concerns of other employees as well as his own" on the grounds that such conclusion is not supported by the preponderance of the evidence. (ALJD p. 28, lines 4-5; p. 32, lines 27-29.)

- Tr. 139:7-10 and 111:17-112:8
- Tr. 364:21-23, 370:1-5, 373:16-375:19, 379:14-21; 384:1-4

33. Respondent excepts to the ALJ's erroneous credibility determination in concluding that Hentz told Ellis "that myself as well as some other staff members there felt like Amy and some other staff members were definitely racist" because the preponderance of the evidence does not support the conclusion that that statement was ever made or that Ellis took any notes of her communications with Hentz and dismissed what Hentz had said. (ALJD p. 12, lines 16-35; p. 13, lines 4-7; p. 26, fn. 16 (lines 1-5); p. 27, line 17 through p. 28, line 16.)

- Tr. 416:3-449:10
- Tr. 44:2-16
- Tr. 136:15-23
- Tr. 354:24-355:15
- Tr. 448:10-23, 352:16-353:1
- Tr. 136:15-23; 146:2-10

34. Respondent excepts to the ALJ's legal analysis and conclusions of law with respect to protected concerted activity, including whether such statements must be made in

good faith, as unsupported by the preponderance of the evidence, much of which is not considered or addressed in the ALJ's decision and as based on legal error. (ALJD p. 25, lines 14-20; p. 28, lines 16-25; p. 32, lines 1-45; p. 33, lines 1-21; p. 34, lines 1-4; p. 46, lines 5-15; p. 50, lines 30-34; p. 52, lines 11-19.)

- Tr. 111:11-127:7
- Tr. 91-259
- Tr. 242:25-243:1
- Tr. 242:5-243:25
- Tr. 139:7-10 and 111:17-112:8
- Tr. 364:21-23, 370:1-5, 373:16-375:19, 379:14-21; 384:1-4

35. Respondent excepts to the ALJ's legal analysis and conclusions of law with respect to the Veterans' Home's knowledge of Hentz's alleged protected activity because the ALJ failed to make necessary findings as to which instances of protected concerted activity Morrison knew of and, instead, based his opinion on an improper imputation of knowledge to Morrison. (ALJD p. 16, lines 26-8; p. 32, lines 2-8; p. 33, lines 10-22.)

- Tr. 111:11-127:7
- Tr. 91:1-259:25
- Tr. 242:25-243:1
- Tr. 242:5-243:25
- Tr. 139:7-10 and 111:17-112:8
- Tr. 364:21-23, 370:1-5, 373:16-375:19, 379:14-21; 384:1-4

36. Respondent excepts to the ALJ's legal analysis and conclusions of law with respect to the Veterans' Home's knowledge of Hentz's alleged protected activity because the

preponderance of the evidence does not support a finding that Hentz told Morrison he would be contacting PruittHealth's Corporate Office to report alleged discrimination or that Morrison knew what Hentz communicated to PruittHealth's Corporate Office or otherwise during the corresponding investigation. (ALJD p. 33, lines 10-21; p. 50, lines 30-34.)

- Tr. 44:17-19, 84:10-23, 481:6-20, 556:2-25, 557:1-15, and 621:4-10
- Tr. 280:3-281:12
- Tr. 138:24-139:13
- Tr. 147:19-149:6
- Tr. 111:11-127:7
- Tr. 91:1-259:25
- Tr. 242:25-243:1
- Tr. 242:5-243:25

37. Respondent excepts to the ALJ's proposed remedies because the preponderance of the evidence, much of which is not considered or addressed in the ALJ's decision, does not support any such remedies with respect to the discipline, alleged demotion, and termination of Hentz. (ALJD p. 51, lines 15-32.)

- Tr. 111:11-127:7
- Tr. 91:1-259:25
- Tr. 242:25-243:1
- Tr. 242:5-243:25
- Tr. 139:7-10 and 111:17-112:8
- Tr. 364:21-23, 370:1-5, 373:16-375:19, 379:14-21; 384:1-4

38. Respondent excepts to the contents of the ALJ's proposed Order with respect to Hentz because the preponderance of the evidence, much of which is not considered or addressed in the ALJ's decision, does not support the issuance of any such Order and because the ALJ's proposed Order is based on legal error. (ALJD p. 53, lines 6-42; p. 52, lines 36-42; p. 54, lines 2-4 and Appendix A.)

- Tr. 111:11-127:7
- Tr. 91:1-259:25
- Tr. 242:25-243:1
- Tr. 242:5-243:25
- Tr. 139:7-10 and 111:17-112:8
- Tr. 364:21-23, 370:1-5, 373:16-375:19, 379:14-21; 384:1-4

Respectfully submitted this 31st day of May, 2018.

/s/Jana L. Korhonen

Jana L. Korhonen
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
919 Peachtree Street, NE. – Suite 4800
Atlanta, GA 30303
(404) 870-1791
(404) 870-1732 (fax)
e-mail: jana.korhonen@ogletreedeakins.com

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Ricky Edward Hentz, an Individual,

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Case: 10-CA-191492

CERTIFICATE OF SERVICE

I hereby certify that on this the 31st day of May, 2018, date I have served a copy of the foregoing *Respondent's Exceptions to Administrative Law Judge's Decision* on counsel for Ricky Edward Hentz and General Counsel, by depositing same in the U.S. Mail, postage prepaid, and addressed as follows, as well as via Electronic Mail:

Joel R. White, Esq.
Counsel for General Counsel
National Labor Relations Board, Subregion 11
4035 University Parkway, Suite 200
Winston-Salem, NC 27106-3275
joel.white@nrlb.gov

Glen Shults, Esq.
Linda Vespereny, Esq.
Law Office of Glen C. Shults
959 Merrimon Avenue – Suite 204
P. O. Box 18687
Asheville, NC 28814
shultslaw@bellsouth.net

/s/Jana L. Korhonen

Jana L. Korhonen

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