

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FILED IN CLERK'S OFFICE
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT
OF GEORGIA

2025 DEC 10 PM 1:31

VANIA S. ALLEN
CLERK

BY: DEPUTY CLERK
[Signature]

IN RE
LAVIE CARE CENTERS, LLC et al

Debtors,

CHAPTER 11

CASE NO. 24-55507-PMB

(JOINTLY ADMINISTERED)

JENEINE KANUPP'S RESPONSE TO GUC
TRUSTEE OBJECTION

**RESPONSE TO OBJECTION TO PROOF OF CLAIM FILED BY
JENEINE KANUPP (CLAIM NO. 5251)**

COMES NOW Jeanine Kanupp, ("Respondent"), and hereby files this Response to the Objection to her filed Proof of Claim in the Consulate Management Company, LLC, Case No. 55516-PMB ("Consulate"), Claim No. 5433, (the "Objection"), showing as follows:

BACKGROUND

1. Respondent filed a Charge of Discrimination Complaint with the Equal Employment Opportunity Commission (EEOC) on or about January 16, 2024 alleging Disability Discrimination and Retaliation under Title VII against Consulate Management Company, LLC. (Exhibit A: EEOC Charge #430-2024-01276)
2. Consulate, through its Counsel, responded with its Position Statement on or about February 28, 2024. Exhibit B.



2455507251211000000000002

3. Respondent filed a response to Consulate's Position Statement on or about June 13, 2024.
(Exhibit C)
4. Respondent made a demand to Consulate's counsel via letter dated July 2, 2024 for an amount of \$95,000.00. (Exhibit D)
5. The EEOC has been investigating the claims made by Respondent against Consulate since Respondent filed its response. (Exhibit E)
6. This case has been under the purview and control of the EEOC.
7. Respondent was under the belief that since this was under the investigative control of a government agency, the EEOC, that the claim was already filed.
8. The EEOC communicated with debtor over the next year and half regarding the discriminatory allegations made in Respondent's charging document.
9. The EEOC charge alleges unlawful conduct by the Consulate, arising from the same operative facts and asserting the same damages as the proof of claim filed in this bankruptcy case.
10. The EEOC did not end its investigation until September 17, 2025 when it issued the right to sue letter. This is when the claim became back in control of the Respondent.

ARGUMENT

Bankruptcy Courts have held that "the general rule is that a claim arises when the creditor evidences an intent to assert a claim versus the debtor. . . . A creditor can manifest its intention to hold a debtor liable in many ways, and the particular facts of the case will determine whether such a de facto claim has been made." *In re Wilkens*, 731 F.2d 462 (7th Cir.1984).

Respondent filed the EEOC charge claim in January 2024. Consulate (Debtor) responded to the EEOC Charge with a position statement in February 2024. In July 2024, Respondent

submitted to Consulate (Debtor) a written demand showing a full intent to hold Consulate liable for its discriminatory employment actions against Respondent. Respondent satisfied the notice requirement on debtor and her intent to hold debtor liable.

The EEOC charge continued to exist in the control and purview of the EEOC. EEOC is an investigative arm of the Federal government charged with the responsibility of investigating claims of employment discrimination and settling disputes. *Occidental Life Insurance Co. v. EEOC*, 432 U.S. 355, 368, 97 S.Ct. 2447, 2455, 53 L.Ed.2d 402 (1977). Thus, "[w]hen the EEOC acts, albeit at the behest of and for the benefit of specific individuals, it acts also to vindicate the public interest in preventing employment discrimination." *General Telephone Co. v. EEOC*, 446 U.S. at 326, 100 S.Ct. at 1704. Pursuant to 11 U.S.C. Sec. 362, filing a bankruptcy operates as an automatic stay of proceedings against a debtor. *E.E.O.C. v. Rath Packing Co.*, 787 F.2d 318 (8th Cir. 1984), 323. As such, Respondent was of the belief that the EEOC's investigative authority was not under the automatic stay provision of the under 11 USC Section 362. The EEOC communicated with the debtor throughout its investigative period, putting debtor on notice of the its intent to investigate and hold debtor liable for its discriminatory employment practices. Furthermore, under EEOC enforcement, "it seeks to harm to the public--invidious employment discrimination which is as detrimental to the welfare of the country as violations of environmental protection and consumer safety laws, which are expressly exempt from the automatic stay." *Id.*

CONCLUSION

WHEREFORE, Jeneine Kanupp, Respondent, respectfully requests that objection to proof of claim, [Claim No. 5251] be overruled, and that the Court grant such other and further relief as is just and proper. Respectfully submitted,

This the 10 day of December 2025


Jeneine Kanupp

CERTIFICATE OF SERVICE

I certify that on December 10, 2025, I electronically filed the foregoing RESPONSE TO OBJECTION TO CLAIM with the Clerk of Court using the CM/ECF system, which will send notification to all Users who have consented to such service:


GUC Trustee, Ryniker Consultants, LLC, 1178 Broadway, 3rd Floor #1505, New York, NY 1001, Attn: Brian Ryniker (brian@rkc.llc)

McDermott Will & Emery LLP 1180 Peachtree Street NE, Suite 3350 Atlanta, GA 30309, Attn: Daniel M. Simon (dsimon@mwe.com) McDermott Will & Emery LLP 444 West Lake Street, Suite 4000 Chicago, IL 60606, Attn: Emily C. Kiel (ekiel@mwe.com)

Office of the United States Trustee 362 Richard Russell Federal Building 75 Ted Turner Drive, SW Atlanta, GA 30303, Attn: Jonathan S. Adams (jonathan.s.adams@usdoj.gov)

Counsel to the GUC Trustee, Troutman Pepper Hamilton Sanders, LLP, 3000 Two Logan Square, Eighteenth and Arch Street, Philadelphia, PA 19103-2799, Attn: Francis J. Lawall (francis.lawall@troutman.com), 875 Third Avenue, New York N.Y. 10022, Att: Deborah Kovsky-Apap (Deborah.kovsky@troutman.com) and 1313 N. Market St., Suite 1000, Wilmington, DE 19801, Attn : Tori Remington (tori.remington@troutman.com)

This the 10 day of December 2025


Jeneine Kanupp

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA

☒ EEOC

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Jeannine Kanupp c/o Attorney Lawrence Wooden, Wooden Bowers PLLC

Home Phone (Incl. Area Code)

704-665-5838

Date of Birth

Street Address

City, State and ZIP Code

2029 Mulberry Creek Rd Lenoir, NC 28645

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

Consulate Management Company III, LLC DBA Gateway Health and Rehab Center

No. Employees, Members

>50

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

2030 Harper Ave. Lenoir, NC 28645

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☒ DISABILITY ☐ GENETIC INFORMATION
☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

July 1, 2023

July 25, 2023

☐

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

1/16/24

Date

Jeannine Kanupp

Charging Party Signature

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA

☒ EEOC

and EEOC

State or local Agency, if any

Complainant was terminated on July 25, 2023 for requesting a reasonable accommodation due to medical issues that she was having regarding anxiety and depression. On or about July 1, 2023, Complainant sent documentation to her employer notifying them of the medical issues and the request for accommodation came from her doctor. The employer never engaged in an interactive process and never responded to her about the accommodation. Complainant complained to management about the lack of response to her accommodation request. She still received no response. On or about July 25, 2023 Complainant filed written request for FMLA regarding another medical issue related to her Achilles tendon. Employer did not respond to the request. Employer notified her on or about July 25, 2023 that she was being terminated.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

1/16/24

Date

Termin Kamp

Charging Party Signature

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).
2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

E-File for Attorneys Information

EEOC Charge Number: 430-2024-01276

Date: 01/17/2024

Verified Path

Receiving Office: Charlotte District Office

Attorney Information

Name: Lawrence D. Wooden Esq.

Pronouns:

Address: 10130 Mallard Creek Rd. Suite 300

Charlotte, NC 28262

Email Address: lwooden@wbvlaw.com

Primary Phone: 704-665-5838

Secondary Phone:

Fax: 704-973-9380

Language Needs:

Disability Needs:

Bar Number: 47199

Bar Jurisdiction: North Carolina

Client Information

Name: Mrs. Jeannine Kanupp

Pronouns:

Address: 2029 Mulberry Creek Rd

Lenoir, NC 28645

Email Address: jkanupp@hotmail.com

Primary Phone: 407-310-1810

Secondary Phone:

Date of Birth:

Gender: Female

Disability: Yes

Hispanic or Latino: No

Race: White

Ethnicity/National Origin Group: American/Other Origin Group

Ethnicity/National Origin: American (U.S.) Origin

Language Needs:

Disability Needs:

Respondent Information

Name: Consulate Management Company III, LLC DBA Gateway Health and Rehab Center

Address: 2030 Harper Ave.

Lenoir, NC 28645

Primary Phone: 828-754-3888

Fax:

Institution Type: Private Employer

Number of Employees: 101 - 200 Employees

North American Industry Classification System (NAICS) Code: 623110
Tax Identification Number:

Worksite Address:
2030 Harper Ave. , Lenoir, NC, 28645

Service Address: 2030 Harper Ave. , Lenoir, NC, 28645

Allegation Information

Allegations: Disability, Retaliation

Additional Information

Class: I dont know

Policy: I dont know

Related Inquiries/Charge: No

Related Lawsuit: No

Requested Immediate Notice of Right to Sue: No

Requested Mediation: Yes

DIAS

& Associates, P.A.
Attorneys At Law

5102 W. Laurel Street
Suite 700
Tampa, FL 33607
Phone: 813-769-6280
Fax: 813-769-6281

February 28, 2024

VIA EEOC RESPONDENT PORTAL

Arlene Glover, Investigator
U.S. Equal Employment Opportunity Commission
Charlotte District Office
129 West Trade Street
Suite 400
Charlotte, North Carolina 28202

Re: Jeneine Kanupp v. Gateway HealthCare, LLC
Charge No.: 430-2024-01276

Dear Investigator Glover:

I am counsel for Gateway HealthCare, LLC, d/b/a Gateway Rehabilitation and Healthcare ("Gateway" or "Respondent"), which the charging party incorrectly identifies as "Consulate Management Company III, LLC d/b/a Gateway Health and Rehab Center".¹ Please accept this correspondence as the Respondent's position statement in response to the charge of discrimination filed by Jeneine Kanupp ("Ms. Kanupp").²

I. The Nature of Gateway's Business.

Gateway is a 100-bed skilled nursing center located in Lenoir, North Carolina. The center provides both long- and short-term rehabilitative services to a diverse resident population.

Gateway is committed to providing a work environment free from discrimination, harassment, and retaliation. To this end, Gateway maintains an equal employment opportunity policy that prohibits discrimination based on disability, handicap, age, race, sex, pregnancy, color, national origin, sexual orientation, creed, ancestry, religion, marital status, and other characteristics protected by federal, state, and local law. Gateway encourages employees who have concerns about discrimination to bring

¹ Ms. Kanupp's charge incorrectly identifies "Consulate Management Company III, LLC d/b/a Gateway Health and Rehab Center" as the Respondent. Ms. Kanupp's correct employer was Gateway HealthCare, LLC d/b/a Gateway Rehabilitation and Healthcare.

² The statement of facts set forth herein is based upon the Respondent's investigation at the time of the submission of this position statement. By submitting this position statement, the Respondent in no way waives its right to present new or additional facts or arguments based upon subsequently acquired information or evidence. Furthermore, this position statement, while believed to be true and correct in all respects, does not constitute an affidavit and is not intended to be used as evidence of any kind in any Commission or court proceeding. The Respondent requests that this position statement be treated as confidential and used only for the Commission's internal review.

DIAS

& Associates, P.A.
Attorneys At Law

5102 W. Laurel Street
Suite 700
Tampa, FL 33607
Phone: 813-769-6280
Fax: 813-769-6281

Arlene Glover
Re: EEOC Charge No. 430-2024-01276
February 28, 2024
Page 2

such concerns to the attention of their supervisor or human resources representative. Gateway promptly investigates all complaints and prohibits retaliation against employees who make such complaints in good faith.

II. Ms. Kanupp's Employment at Gateway.

Ms. Kanupp was hired on August 15, 2022, as a Minimum Data Set Licensed Practical Nurse ("MDS LPN"). The primary purpose of Ms. Kanupp's position was to coordinate the entire Resident Assessment Instrument ("RAI") process assuring the accuracy, timeliness, and completion of the MDS, Care Area Assessments ("CAAs") and interdisciplinary Care plan for all residents in the care center in accordance with all federal and state certification guidelines. Ms. Kanupp's position was full-time, five (5) days a week, with a shift of 8:30 a.m. to 4:30 p.m. Ms. Kanupp's supervisor was Patricia McLeod, MDS Registered Nurse ("Ms. McLeod") and Ms. Kanupp reported to Allen Phillips, Gateway's Executive Director ("Mr. Phillips").

At the time of her hire, Ms. Kanupp indicated that she did not have any mental or physical condition that would substantially limit her performance of the essential functions of her job, and she did not require any type of reasonable accommodation to perform the essential functions of her job.

In April 2023, unbeknownst to Gateway, and without any prior approval, Ms. Kanupp began working a second job as an MDS LPN at a separate, unaffiliated facility, which later began requiring Ms. Kanupp to go in-person to the facility at least once a week. In June 2023, Ms. Kanupp made a request to Mr. Phillips, and Ruby Bennett ("Ms. Bennett"), Regional Minimum Data Set Nurse ("RMDS"), for a four (4) day – forty (40) hour workweek. Mr. Phillips denied Ms. Kanupp's request due to her position requiring a full-time, 5-day workweek. Thereafter, on June 23, 2023, Ms. Kanupp provided a doctor's note to Mr. Phillips and Gateway's Human Resource Coordinator, Tona Walker ("Ms. Walker"). The doctor's note stated that "[d]ue to Ms. Kanupp's medical issues affecting mood, sleep, concentration and focus, it would be reasonable accommodations [sic] to allow her to maintain a 4-day, 40-hour work week." Upon receipt, Ms. Walker forwarded the note to Cassie Mahala, Regional Director of Human Resources ("Ms. Mahala"), to begin the interactive process under the Americans with Disabilities Act ("ADA").

On July 23, 2023, Ms. Kanupp was performing a one-on-one with a resident when the resident suffered a fall. Pursuant to Gateway's policies and procedures, Ms. Kanupp was asked by Gateway's Director of Nursing,

DIAS

& Associates, P.A.
Attorneys At Law

5102 W. Laurel Street
Suite 700
Tampa, FL 33607
Phone: 813-769-6280
Fax: 813-769-6281

Arlene Glover
Re: EEOC Charge No. 430-2024-01276
February 28, 2024
Page 3

Melissa Lail ("Ms. Lail"), to complete a Situation, Background, Assessment, Recommendation ("SBAR") and accident report. Ms. Kanupp refused to complete the documentation. Accordingly, Ms. Kanupp was given a First Written Warning by Mr. Phillips for her refusal of a direct order from management staff. During the meeting with Mr. Phillips, Ms. Kanupp became irate and told Mr. Phillips that she "would sue" him, Ms. Lail, and Gateway.

Due to Ms. Kanupp's inappropriate and insubordinate conduct during the meeting for her First Written Warning, Ms. Kanupp was terminated on July 25, 2023.

III. Gateway's Response to Ms. Kanupp's Allegations.

In her charge, Ms. Kanupp alleges Gateway discriminated and retaliated against her based on her alleged disability. Gateway denies Ms. Kanupp's allegations and will respond to each in turn.

Complainant was terminated on July 25, 2023 for requesting a reasonable accommodation due to medical issues that she was having regarding anxiety and depression.

This allegation is false. Ms. Kanupp was terminated for insubordination. On July 23, 2023, Ms. Kanupp refused a directive from Ms. Lail to complete an SBAR and accident report for a resident who fell while Ms. Kanupp was conducting a one-on-one assessment of the resident. Accordingly, Ms. Kanupp received a First Written Warning on that same day for refusing a direct order from management personnel. During her meeting with Mr. Phillips for this corrective action, Ms. Kanupp became irate and stated that she would "sue the shit out of" Gateway, Mr. Phillips, and Ms. Lail. Accordingly, Mr. Phillips terminated Ms. Kanupp for her insubordinate and unprofessional conduct.

On or about July 1, 2023, Complainant sent documentation to her employer notifying them of the medical issues and the request for accommodation came from her doctor.

On June 23, 2023, Ms. Kanupp provided a doctor's note to Gateway's HRC, Ms. Walker, which stated that "[d]ue to Ms. Kanupp's medical issues affecting mood, sleep, concentration and focus, it would be reasonable accommodations [sic] to allow her to maintain a 4-day, 40-hour work week." Prior to providing this doctor's note, Ms. Kanupp had requested a 4-day, 40-

DIAS

& Associates, P.A.
Attorneys At Law

5102 W. Laurel Street
Suite 700
Tampa, FL 33607
Phone: 813-769-6280
Fax: 813-769-6281

Arlene Glover
Re: EEOC Charge No. 430-2024-01276
February 28, 2024
Page 4

hour work week because she was working a second job, without notifying Gateway or receiving prior approval, and needed to report to the other facility at least once a week.

The employer never engaged in an interactive process and never responded to her about the accommodation.

Upon receipt of Ms. Kanupp's doctor's note, Ms. Walker reached out to Ms. Mahala to begin the interactive process under the ADA. Ms. Mahala explained to Ms. Walker that a Medical Certification would be required from Ms. Kanupp's doctor prior to being able to determine whether Gateway could accommodate Ms. Kanupp.

Complainant complained to management about the lack of response to her accommodation request. She still received no response.

The management team at Gateway denies this allegation.

On or about July 25, 2023 Complainant filed written request for FMLA regarding another medical issue related to her Achilles tendon.

On the morning of July 25, 2023, Ms. Kanupp submitted a request for leave under the Family Medical Leave Act ("FMLA").

Employer did not respond to the request. Employer notified her on or about July 25, 2023 that she was being terminated.

Ms. Kanupp was terminated on the afternoon of July 25, 2023, for insubordination resulting from her conduct and behavior during her First Written Warning corrective action meeting on July 23, 2023.

IV. Conclusion.

Jeneine Kanupp has not provided any evidence to substantiate her contention that Gateway discriminated or retaliated against her based on her alleged disability. Accordingly, Gateway respectfully requests that the Agency enter a no-cause determination in this matter and dismiss Ms. Kanupp's charge of discrimination.

DIAS

& Associates, P.A.
Attorneys At Law

5102 W. Laurel Street
Suite 700
Tampa, FL 33607
Phone: 813-769-6280
Fax: 813-769-6281

Arlene Glover
Re: EEOC Charge No. 430-2024-01276
February 28, 2024
Page 5

If you have any questions or require any additional information, please do not hesitate to contact me.

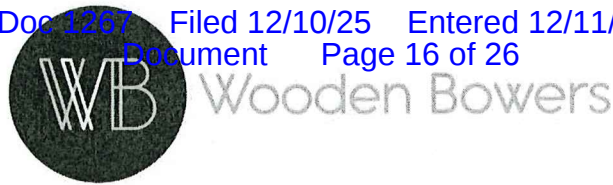
Sincerely,

/s/ Jennie L. Conrad

Jennie L. Conrad, Esq.

JLC/jmk

Office: 704-665-5838
Fax: 704-973-9380



*Denotes licensed in NC

10130 Mallard Creek Rd. Suite 300
Charlotte, NC 28262

Lawrence Wooden*
lwooden@wbvlaw.com

Walter Bowers*
wbowers@wbvlaw.com

June 13, 2024

Arlene Glover, Investigator
U.S. Equal Employment Opportunity Commission
Charlotte District Office
129 West Trade Street Suite 400
Charlotte, North Carolina 28202

**Re: Jeneine Kanupp v. Gateway HealthCare, LLC Charge No.
430-2024-01276**

Dear Ms. Glover,

Jeneine Kanupp ("Charging Party," "CP" or Ms. Kanupp") hereby reiterates her facts as set out in her EEOC Charge, as well as to further clarify and respond to Respondent's Position Statement dated February 28, 2024 and released to Charging Party on or around May 16, 2024 and received subsequently from the Equal Employment Opportunity Commission ("EEOC"), through Charging Party's Counsel. While headings may be used for convenience and reference, the information below, regardless of the order in which it appears, is to be taken into consideration by the Commission as part of its investigation and deemed responsive to Respondent's Position Statement.

Relevant information to the investigation may or may not be contained in a particular section of this response and Charging Party requests and reserves the right to make additional responses and/or be given the opportunity to respond, should the investigator need information not contained herein that is within Charging Party's knowledge.

Any relevant exhibits are attached, and/or are highlighted and will be provided in a separate submission within two days of this response, if not attached hereto. Charging Party disputes and/or corrects Respondent's statements as follows:

FACTS REGARDING EMPLOYMENT AT GATEWAY

Ms. Kanupp never attempted or did work another job that conflicted with her job at Gateway. Any additional jobs or work that Ms. Kanupp performed for other employers was done on her own time and was her own business. In early June of 2023, Ms. Kanupp made a verbal request to Ms Mcloed about working 4 days a week due to her health. She never received a response on that verbal request. Any denial that may or may not have been given, was not communicated to Ms. Kanupp. On or about June 23, 2023, Ms. Kanupp provided a doctor's note to Human Resources requesting an accommodation to work four 10 hour days. See Exhibit A. Ms. Kanupp never received a response to this request and she never received a request from anyone at Gateway for more information from

herself or her provider. Any internal discussions that may have occurred within Gateway did not include Ms. Kanupp.

On or about July 22, 2023, Ms. Kanupp was working as the Manager on Duty/Customer Liaison when she became aware of improper conduct between two residents. Another resident reported the conduct to Ms. Kanupp and Ms. Kanupp reported the incident to Mr. Phillips. Mr. Phillips stated that the team needed to have one-on-one with the accused resident. Another staff member had the one-on-one on July 22, 2023 and Ms. Kanupp had a one-on-one with the accused resident on July 23, 2023. During this one-on-one, Ms. Kanupp was sitting in the hallway, outside the resident's room when she heard bang. She walked in the resident's room and noticed he fell out of his chair. She immediately proceeded to go get that resident's attending nurse. When Ms. Kanupp and the attending nurse returned, the resident was back in his chair. The attending nurse stated that he was not injured and there was no reason to do an incident report.

Mr. Phillips was informed of what happened with the resident. Mr. Phillips told Ms. Kanupp that she needed to complete an incident report. However, Ms. Kanupp is not trained on how to properly complete incident reports and she is not treating nurse. Ms. Kanupp informed Mr. Phillips that this was not something she knew how to do or was trained to do and was not something that was part of her normal duties. While discussing this with Mr. Phillips, the assistant director of nursing informed Ms. Kanupp that she would complete it. On the morning of July 25, 2023, Ms. Kanupp requested intermittent FMLA due to her Achilles. Respondent didn't respond to her request. In the afternoon, of July 25, 2023, Ms. Kanupp was informed that she was terminated.

TERMINATION IN VIOLATION OF ADA

Ms. Kanupp's termination is causally related to her request for an accommodation and her intermittent FMLA request. Respondent admits that they never engaged in an interactive process with Ms. Kanupp prior to termination. They only admit to discussing her request internally about more information, even though the letter from her doctor is fairly clear about what is needed, four 10 hour work days every week. The company provides custom schedules to employees regularly and yet failed to even respond to Ms. Kanupp's request. They never had a meeting with her to discuss the days and or times she would work, they never requested any additional information from her or her doctor, they never discussed how she would be able to perform her task. They never even discussed if it would be an undue hardship, which Ms. Kanupp would argue it would not because the Respondent allows variations in schedules to other employees. Ms. Knaupp had a substantial disability that affected a major life activity. Prior to this, Ms. Kanupp had a satisfactory performance. Respondent attempts to tie Ms. Kanupp not completing documents that are not part of her job description and something that she is not trained on how to complete. This does not reconcile with her prior performance and the only changes that occurred in the last month was her request for an accommodation.

It is clear based on the record and Respondent's own position statement that they failed to engage in an interactive process and thus violated the ADA by failing to provide a reasonable accommodation to Ms. Kanupp. Their reasoning is pretext for their discriminatory conduct which was intentional and done with malice and harmed Ms. Kanupp financially and emotionally.

CONCLUSION

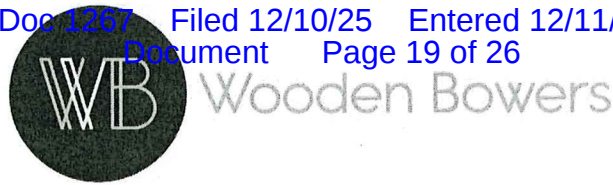
For the aforementioned reasons, Ms. Kanupp concludes by saying that Respondent has not met its burden to show a legitimate reason for denying her request for reasonable accommodation based on the facts, she was wrongfully deprived of a job on the basis of her disability and for that she seeks a for cause with merit determination.

Respectfully,

Lawrence Wooden

Lawrence D. Wooden, Esq.
Wooden Bowers PLLC

Office: 704-665-5838
Fax: 704-973-9380



*Denotes licensed in NC

10130 Mallard Creek Rd. Suite 300
Charlotte, NC 28262

Lawrence Wooden*
lwooden@wbvlaw.com

Walter Bowers*
wbowers@wbvlaw.com

July 2, 2024

Jennifer Conrad
DIAS & Associates
5102 West Laurel St.
Suite 700
Tampa, FL 33607

Re: Jeneine Kanupp– SUBJECT TO RULE 408 CONFIDENTIAL FOR SETTLEMENT PURPOSES ONLY

Attorney Conrad

Please be advised that our law firm has been retained by Jeneine Kanupp (hereinafter collectively referred to as “Ms. Kanupp”) to represent her with respect to all matters arising out of her employment with Consulate Healthcare Services DBA Gateway Health and Rehab Center (Consulate). As you may be aware, Ms. Kanupp was terminated in July 2023. After reviewing the facts surrounding Ms. Kanupp, we believe that the decision to terminate Ms. Kanupp was not based on business and performance reasons but it was based on discriminatory and retaliatory reasons. Specifically, we believe that Ms. Kanupp’s termination was a direct result of discriminatory and retaliatory conduct by the management of Gateway Health and Rehab Center.

You have received the EEOC charge and filed the position statement. Ms. Kanupp has filed her response. I am sure we disagree on some of the facts and whether those facts rise to the level of discriminatory and retaliatory conduct in violation of Title VII and the ADA. With that said I am sending this letter to engage on dialogue about settlement options. The description of facts contained herein are not intended to be exhaustive and we hereby specifically reserve the right to supplement and/or modify the facts as further investigation dictates. Please understand that this letter has been prepared and sent for the sole purpose of encouraging settlement discussions. I therefore consider its contents, and any related communications, to be privileged and confidential. I am writing in an effort to resolve this matter without expending significantly more time or legal expense for any party. While companies have a history of establishing their own workplace policies, a number of large companies have found themselves in the middle of litigation regarding policies that violate the law.

Ms. Kanupp had been employed at Gateway Health and Rehab Center in Lenoir, NC for about a year. Ms. Kanupp was a minimum data set nurse and had over 20 years of experience as a nurse and over 15 years of experience as a minimum data set nurse. On or about May 3, 2023, Ms. Kanupp was working as a night nurse. She was supposed to be joined on duty with a medical aide and another nurse. One of the nurses did not show that night. So the only individuals working was Ms. Kanupp, the Director of Nursing, and a medical aide. At around 5 am, the Director of Nursing, Missy Lail, informed Ms. Kanupp that she was leaving and attempted to assign all of her carts and residents to Ms. Kanupp. Ms. Kanupp indicated to her that was not proper as she would have been the only nurse in the building and it would have been a violation of code to be the only nurse with that many residents. Missy left anyway and Ms. Kanupp was left as the only nurse in the building. The Director of Nursing had abandoned her assignment by not counting the narcotics or giving report with Ms. Kanupp. After her shift, Ms. Kanupp contacted corporate compliance and reported what happened and was given a case number.

After filing the report with corporate compliance, Ms. Kanupp began getting written up for incidents that were not her fault. On or about the weekend of July 22, 2023, Ms. Kanupp was working as a customer liaison or manager on duty. A resident inappropriately touched another resident. When this occurs staff members are supposed to remain with the offending resident at all times. While this is not Ms. Kanupp's normal duties, she was told she needed to remain with the resident. This resident was alert and self sufficient so Ms. Kanupp sat outside of his room. She heard a loud bang and went into his room. She noticed he was on the floor. Ms. Kanupp went and got another nurse, Wayne, to assist her to help the resident off the floor. When they returned to his room, the resident was in his chair. Per company policy, an incident report should be completed any time there is an incident with the resident. Wayne informed Ms. Kanupp that an incident report was not needed in that situation. Short time later the Director of Nursing was informed that Ms. Kanupp refused to do an incident report. This was not true as the completion of the incident report was Wayne's responsibility and Wayne informed Ms. Kanupp that one was not needed. The next day Ms. Kanupp received a written reprimand for not completing the incident report, even though it was not her responsibility, and she was told one was not needed. This was clear retaliation by the Director of Nursing to Ms. Kanupp because Ms. Kanupp complained about her abandoning her job duties.

On or about June 23, 2023, Ms. Kanupp requested an accommodation to work four 10 hour days per week instead of five, 8 hour days. Ms. Kanupp attached a doctor's note with the request. Ms. Kanupp's request was ignored as she never received a response from Human Resources or her immediate supervisor.

On the morning of July 25, 2023, Ms. Kanupp submitted a written request for FMLA so that she could have surgery on her Achilles tendon. After submitting this request, the Administrator informed her that she was being terminated. This termination was a violation of Ms. Kanupp's rights to make complaints about wrongdoing of upper management within the facility. The company also violated her rights by terminating her after she put the company on notice of her request for FMLA. Gateway also violated Ms. Kanupp's rights under Title VII and ADA for failing to accommodate.

I find that it is often in the best interests of all parties to make sincere efforts to explore the possibility of an informal and confidential resolution of their disputes prior to invoking the litigation process. Consulate's actions have caused Ms. Kanupp financial and emotional harm. Ms. Kanupp is requesting \$95,000 to resolve this matter.

Please let me know if you would like to discuss resolution of this matter.

Sincerely,

Lawrence Wooden

Lawrence D. Wooden, Esq.
Wooden Bowers PLLC

Lawrence Wooden

From: JAMILAH MARTIN
Sent: Friday, August 1, 2025 1:10 PM
To: Lawrence Wooden
Subject: RE: 430-2024-01276 JKanupp v Consulate Management

Good day,

Thank you for your email. Please provide a date and time to interview Ms. Kanupp next week. I am available between 9 AM and 3PM Monday (8/4/25), Tuesday (8/5/25), and Wednesday (8/6/25) and from Noon to 3 PM on Thursday (8/7/25). I look forward to hearing from you soon,

Best Regards,

Jamilah

Jamilah Martin | Federal Investigator

U.S. Equal Employment Opportunity Commission
Charlotte District Office | 129 W. Trade St., Ste. 400, Charlotte, NC 28202
Direct: (704) 909-5627 | Fax: (704) 954-6410 | www.eeoc.gov

Respondent Portal | Public Portal

Requesting EEOC Records

If you are experiencing system or log in issues with the EEOC Digital Charge System or Online Portal, please contact our Digital Support Desk with questions or concerns at digitalsupport@eeoc.gov or call the Help Desk at 1-800-569-7118.

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute, or take action in reliance upon this message. Be aware that any unauthorized disclosure, copying, distribution or use of this email or any attachments is prohibited. If you have received this email in error, please notify me immediately and delete the email and any attachments from your computer system. We do not waive any deliberative process or attorney-client privilege, nor do we waive any rights to non-disclosure of our work product by the transmission of this message. Thank you.



From: Lawrence Wooden <lwooden@wbvlaw.com>
Sent: Monday, July 14, 2025 12:15 PM
To: JAMILAH MARTIN <JAMILAH.MARTIN@EEOC.GOV>
Subject: RE: 430-2024-01276 JKanupp v Consulate Management

CAUTION: The sender of this message is external to the EEOC network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to phishing@eeoc.gov.

Ms. Martin,

Pursuant to your requests, see below:

“Ms. Kanupp’s termination is causally related to her request for an accommodation and her intermittent FMLA request. Respondent admits that they never engaged in an interactive process with Ms. Kanupp prior to termination. They only admit to discussing her request internally about more information, even though the letter from her doctor is fairly clear about what is needed, four 10 hour work days every week. The company provides custom schedules to employees regularly and yet failed to even respond to Ms. Kanupp’s request. They never had a meeting with her to discuss the days and or times she would work, they never requested any additional information from her or her doctor, they never discussed how she would be able to perform her task. They never even discussed if it would be an undue hardship, which Ms. Kanupp would argue it would not because the Respondent allows variations in schedules to other employees. Ms. Knaupp had a substantial disability that affected a major life activity. Prior to this, Ms. Kanupp had a satisfactory performance. Respondent attempts to tie Ms. Kanupp not completing documents that are not part of her job description and something that she is not trained on how to complete. This does not reconcile with her prior performance and the only changes that occurred in the last month was her request for an accommodation.

It is clear based on the record and Respondent’s own position statement that they failed to engage in an interactive process and thus violated the ADA by failing to provide a reasonable accommodation to Ms. Kanupp. Their reasoning is pretext for their discriminatory conduct which was intentional and done with malice and harmed Ms. Kanupp financially and emotionally.

In addition to this, the work that the Respondent asked Ms. Kanupp to perform is something that she was never trained to perform and was directly part of her job description. This is why the termination for insubordination was pretext, because they were asking her to do tasks that were not part of her role and penalizing her for not being able to perform the tasks. “

Ms. Kanupp would love to meet with you if you have some time to discuss more in detail. Please let me know if you would like to schedule that.

Thanks,

Lawrence Wooden
Attorney/Partner
HW Legal Group
10130 Mallard Creek Rd.
Suite 300
Charlotte, NC 28262
704-954-8094

From: JAMILAH MARTIN <JAMILAH.MARTIN@EEOC.GOV>
Sent: Tuesday, June 17, 2025 3:13 PM
To: Lawrence Wooden <lwooden@wbvlaw.com>
Subject: 430-2024-01276 JKanupp v Consulate Management

Good afternoon,

It was a pleasure speaking with you today. As discussed, please see the attached copy of the Bankruptcy Notice received by the Commission for the Respondent.

During our conversation we briefly discussed the evidence presented in this case. Upon further review, it appears that the evidence obtained in this is not enough to establish a violation of our laws. The evidence supports that the Respondent had a legitimate, nondiscriminatory reason for ending your client's employment which were unrelated to her medical condition. Evidence shows your client was discharged for insubordination after refusing a directive from a manager to complete an incident report. There is no evidence from which we can infer that Respondent's stated reason(s) for its actions were a pretext for any discriminatory or retaliatory motive.

In view of these facts, it is unlikely that further investigation of the charge will result in a finding that a violation of the law(s) under which the charge was filed, has occurred. Therefore, this email is a notice to you that unless we receive new information by June 30, 2025, we will dismiss the above-referenced charge and issue a Notice of Right to Sue. Upon receive, you will have 90 days to file a lawsuit in federal court. This 90-day period for filing a private lawsuit in federal court cannot be waived, extended, or restored by EEOC.

Best Regards,

Jamilah

Jamilah Martin | Federal Investigator

U.S. Equal Employment Opportunity Commission

Charlotte District Office | 129 W. Trade St., Ste. 400, Charlotte, NC 28202

Direct: (704) 909-5627 | Fax: (704) 954-6410 | www.eeoc.gov

[Respondent Portal](#) | [Public Portal](#)

[Requesting EEOC Records](#)

If you are experiencing system or log in issues with the EEOC Digital Charge System or Online Portal, please contact our Digital Support Desk with questions or concerns at digitalsupport@eeoc.gov or call the Help Desk at 1-800-569-7118.

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute, or take action in reliance upon this message. Be aware that any unauthorized disclosure, copying, distribution or use of this email or any attachments is prohibited. If you have received this email in error, please notify me immediately and delete the email and any attachments from your computer system. We do not waive any deliberative process or attorney-client privilege, nor do we waive any rights to non-disclosure of our work product by the transmission of this message. Thank you.



Lawrence Wooden

From: Lawrence Wooden <lwooden@wbvlaw.com>
Sent: Wednesday, August 27, 2025 12:47 PM
To: JAMILAH MARTIN
Subject: RE: 430-2024-01276 JKanupp v Consulate Management
Attachments: Exhibit A.pdf

Ms. Martin,

Thanks for the call and I appreciate your willingness to give this an additional review. Please see attached doctor's note. Do you need me to upload this to the portal?

Thank,

Lawrence Wooden
Attorney/Partner
HW Legal Group
10130 Mallard Creek Rd.
Suite 300
Charlotte, NC 28262
704-954-8094

From: JAMILAH MARTIN <JAMILAH.MARTIN@EEOC.GOV>
Sent: Tuesday, August 26, 2025 8:35 AM
To: Lawrence Wooden <lwooden@wbvlaw.com>
Subject: RE: 430-2024-01276 JKanupp v Consulate Management

Good day,

Thank you for your response. The interview has been scheduled for Wednesday, August 27, 2025. Please confirm the calendar invitation. Please feel free to contact me if you have any additional questions or concerns.

Best Regards,

Jamilah

Jamilah Martin | Federal Investigator
U.S. Equal Employment Opportunity Commission
Charlotte District Office | 129 W. Trade St., Ste. 400, Charlotte, NC 28202
Direct: (704) 909-5627 | Fax: (704) 954-6410 | www.eeoc.gov

[Respondent Portal](#) | [Public Portal](#)

[Requesting EEOC Records](#)

If you are experiencing system or log in issues with the EEOC Digital Charge System or Online Portal, please contact our Digital Support Desk with questions or concerns at digitalsupport@eeoc.gov or call the Help Desk at 1-800-569-7118.

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute, or take action in reliance upon this message. Be aware that any unauthorized disclosure, copying, distribution or use of this email or any attachments is prohibited. If you have received this email in error, please notify me immediately and delete the email and any attachments from your computer system. We do not waive any deliberative process or attorney-client privilege, nor do we waive any rights to non-disclosure of our work product by the transmission of this message. Thank you.



From: Lawrence Wooden <lwooden@wbvlaw.com>
Sent: Monday, August 25, 2025 8:28 AM
To: JAMILAH MARTIN <JAMILAH.MARTIN@EEOC.GOV>
Subject: Re: 430-2024-01276 JKanupp v Consulate Management

CAUTION: The sender of this message is external to the EEOC network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to phishing@eeoc.gov.

Apologize for any delay. My wife was in the hospital so have been a bit behind. But please let me know when you have some time to speak with Ms. Kanupp.

[Get Outlook for Android](#)

From: Lawrence Wooden <lwooden@wbvlaw.com>
Sent: Monday, August 25, 2025 8:18:28 AM
To: JAMILAH MARTIN <JAMILAH.MARTIN@EEOC.GOV>
Subject: Re: 430-2024-01276 JKanupp v Consulate Management

Ms. Martin

We can be available this week anyday and anytime before 230pm.

[Get Outlook for Android](#)

From: JAMILAH MARTIN <JAMILAH.MARTIN@EEOC.GOV>
Sent: Wednesday, August 20, 2025 10:51:15 AM
To: Lawrence Wooden <lwooden@wbvlaw.com>
Subject: 430-2024-01276 JKanupp v Consulate Management

Good day,

It was a pleasure speaking with you today. As discussed, please provide your client's availability to be interviewed on next week. Please provide a response by no later than August 22, 2025. If I do not hear back from you, I will

assume you have no additional information to provide to this investigation and will proceed with issuing the Notice of Right to Sue as previously stated.

Please feel free to contact me if you have any questions or concerns.

Best Regards,

Jamilah

Jamilah Martin | Federal Investigator

U.S. Equal Employment Opportunity Commission

Charlotte District Office | 129 W. Trade St., Ste. 400, Charlotte, NC 28202

Direct: (704) 909-5627 | Fax: (704) 954-6410 | www.eeoc.gov

[Respondent Portal](#) | [Public Portal](#)

Requesting EEOC Records

If you are experiencing system or log in issues with the EEOC Digital Charge System or Online Portal, please contact our Digital Support Desk with questions or concerns at digitalsupport@eeoc.gov or call the Help Desk at 1-800-569-7118.

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute, or take action in reliance upon this message. Be aware that any unauthorized disclosure, copying, distribution or use of this email or any attachments is prohibited. If you have received this email in error, please notify me immediately and delete the email and any attachments from your computer system. We do not waive any deliberative process or attorney-client privilege, nor do we waive any rights to non-disclosure of our work product by the transmission of this message. Thank you.

