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FILED

APR 21 2003

Kenneth J. Murphy, Clerk
Columbus, Ohio

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
)
OVERNITE TRANSPORTATION, INC.,)
)
Defendant.)
_____)

CIVIL ACTION NO.
C-2-02-591

A M E N D E D
C O M P L A I N T

JURY TRIAL DEMAND

Judge Graham

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Jeff Bowman and a class of similarly situated persons who were adversely affected by such practices. The Commission alleges that Defendant, Overnite Transportation, Inc., refused to hire Jeff Bowman and a class of similarly situated persons because of their disability and that such practice was followed by Defendant on a nationwide basis.

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JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-5(f)(1) and (3) and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the Southern District of Ohio, Eastern Division, this is a nationwide action seeking to remedy unlawful practices of Defendant wherever located.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 20003-5(f)(1) and (3).

4. At all relevant times, Defendant, Overnite Transportation, Inc. (the "Employer"), has continuously been an Ohio Corporation doing business in the State of Ohio and the City of Columbus, and has continuously had at least 15 employees. On

information and belief, Defendant has facilities in most States and this action is intended to remedy unlawful practices at all facilities.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Section 701(g) and (h) of Title VII, 42 U.S.C. § 2000e(g) and (h).

6. At all relevant times, Defendant Employer has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2)

7. More than thirty days prior to the institution of this lawsuit, Jeff Bowman filed a charge with the Commission alleging violations of Title I of the ADA by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least on or about September 23, 1993, Defendant Employer has engaged in unlawful employment practices at its facilities nationwide, in violation of §102(a) of Title I of the ADA, 42 U.S.C. 12111(a) by discriminating against individuals with disabilities as defined in 42 U.S.C. 12101(2)(A)-(C). The practices include the following:

- a. rejecting qualified individuals with a medical history or clinical diagnosis of epilepsy and/or diabetes mellitus

for employment based upon a generalized or blanket exclusion without individually assessing the individual's ability to perform the essential functions of the job with or without a reasonable accommodation;

- b. failing and refusing to hire qualified individuals with a medical history or clinical diagnosis of epilepsy and/or diabetes mellitus into any position (not including commercial motor vehicle operation) involving the operation of tow motors and/or forklifts and/or which is performed at, near or around heavy equipment, including without limitation the position of dockworker; and,
- c. based upon reference to standards established by the U.S. Department of Transportation for drivers of commercial motor vehicles, rejecting individuals for employment because the individual was regarded as not suitable for employment in a position which requires the operation of a forklift (or similar motorized vehicle), and/or was regarded as not suitable for employment in a job position which requires the performance of work at or around heavy machinery because the individual has a medical history or clinical diagnosis of epilepsy or diabetes mellitus.

9. The effect of the practices complained of in paragraph 8 above has been to deprive Jeff Bowman and similarly situated persons of equal employment opportunities and otherwise adversely affect Jeff Bowman and similarly situated persons their status as

applicants and employees, because of their disabilities.

10. The unlawful employment practices complained of in paragraphs 8 and 9 above were and are intentional.

11. The unlawful employment practices complained of in paragraphs 8 and 9 above were and are done with malice or with reckless indifference to the federally protected rights of Jeff Bowman and similarly situated individuals.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with it, from failing and refusing to employ qualified individuals with disabilities and any other employment practice which discriminates on the basis of disability.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make whole Jeff Bowman and similarly situated individuals, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to the

rightful place hiring of Jeff Bowman and other similarly situated individuals.

D. Order Defendant Employer to make whole Jeff Bowman and similarly situated individuals by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 8 and 9 above, including past and future out-of-pocket losses suffered by the aggrieved individual(s) and not recovered as equitable relief under the ADA, in amounts to be determined at trial.

E. Order Defendant Employer to make whole Jeff Bowman and similarly situated individuals by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 8 and 9 above, including nonpecuniary losses suffered by the aggrieved individuals, such as emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

f. Order Defendant Employer to pay Jeff Bowman and similarly situated individuals punitive damages for its malicious and reckless conduct, as described in paragraphs 8 and 9 above, in amounts to be determined at trial.

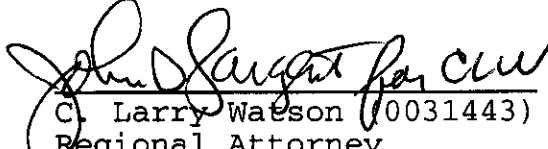
G. Grant such further relief as the Court deems necessary and proper in the public interest.

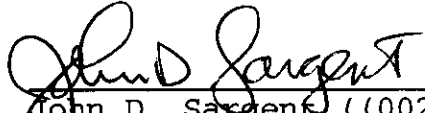
H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

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