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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
J. H. ROUTH PACKING COMPANY,)
)
Defendant.)

CASE NO. **3 : 98CV7731**

JUDGE JUDGE DAVID A. KATZ

COMPLAINT

WITH JURY DEMAND

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 make whole Jason Polak, a qualified individual with a disability, and all other similarly situated qualified individuals with disabilities. Defendant has maintained a policy or practice of discriminating against qualified individuals with seizure disorders in the terms, conditions, and privileges of employment.

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 committed within the jurisdiction of the United States District Court for the Northern District of Ohio, Western Division.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission (the "Commission"), is an 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 of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) of Title VII, 42 U.S.C. § 2000e-5 (5)(1).

4. At all relevant times, Defendant, J. H. Routh Packing Company, ("Employer"), has continuously been an Ohio corporation doing business in the State of Ohio, the City

of Sandusky, and has continuously had at least twenty-five employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of 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 Sections 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 within the meaning of Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

STATEMENT OF CLAIMS

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

8. At all times relevant to the events alleged in this complaint Mr. Polak was a qualified individual with a disability (epilepsy or seizure disorder) who, with or without an accommodation, could perform the essential functions of the job of meat cutter/trimmer for Defendant.

9. On April 10, 1995, Jason Polak, a twenty-five year old male, was interviewed by Employer and offered a job as meat cutter/trimmer. Mr. Polak's offer of employment was conditional upon passing a physical examination.

10. While completing a health questionnaire and inventory required by Defendant as part of its physical examination, Mr. Polak disclosed that he had a history of epilepsy which was controlled with medication. At the time he completed these documents Mr.

Polak was treating his epilepsy with Tegretol and neurontin. He also indicated that he had had a seizure within the last two months.

11. Mr. Polak has taken medication for his epilepsy since he was a child. During the times relevant to this complaint Mr. Polak would experience petit mal seizures approximately six times each year with each seizure lasting ten to thirty seconds. Prior to the onset of each seizure Mr. Polak has a warning or "aura". As a result he is often able to fight off a seizure. If he cannot overcome the event, he will sit down for approximately one minute until the seizure passes. During a seizure his ability to talk and to chew are affected. He is conscious and fully aware of what is happening to him. After resting for a few minutes the seizure will pass and Mr. Polak is able to continue doing what he was doing prior to the event.

12. As an adult Mr. Polak does not experience grand mal seizures.

13. Mr. Polak has a record of working in jobs involving the use of knives, vegetable chunkers, box openers, and sharp instruments. He has never suffered an injury as a result of his epilepsy while working with these instruments.

14. Upon learning that Mr. Polak had epilepsy, Defendant terminated his employment. The reason stated for Mr. Polak's termination was that he had had a seizure within the past two months. Defendant advised Mr. Polak that he must be seizure-free for at least six months before he could be considered for employment.

15. In deciding to terminate Mr. Polak's employment, Defendant acted on the basis of stereotypes associated with epilepsy. Defendant's decision was not based upon an individualized assessment of Mr. Polak's ability safely to perform the essential functions

of the job of meat cutter/trimmer with or without a reasonable accommodation.

16. Mr. Polak does not represent a direct threat to the health or safety of other individuals in the workplace.

17. Defendant's decision to terminate Jason Polak is in violation of the Americans With Disabilities Act, 42 U.S.C. Section 12112.

18. Defendant has maintained a policy or practice of refusing to employ any individual with a record of seizure disorders unless that individual can demonstrate that he or she has been seizure free for a specific period of time, e.g. six months. Said policy discriminates against qualified individuals with epilepsy in violation of the Americans With Disabilities Act, 42 U.S.C. Section 12112.

19. The effect of the practices complained of above has been to deprive Jason Polak and others of equal employment opportunities and otherwise adversely affect their status as employees, because of disability.

20. The unlawful practices complained of above were intentional.

21. Defendant employer at all relevant times has been acting with malice or reckless indifference to the federally protected rights of Jason Polak and others, in violation of the ADA, 42 U.S.C. § 12101 et seq.

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 maintaining its policy of refusing to employ individuals with seizure disorders unless they

have been seizure free for six months.

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, including the requirement that Defendant adopt a policy which provides for an individualized assessment of an individual's ability safely to perform the job for which he or she is hired.

C. Grant a judgment requiring the Defendant Employer to make whole Jason Polak and each other individual adversely affected by its policies or practices, by providing appropriate back wages with prejudgment interest in amounts to be proved at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to an offer of employment to the positions from which these individuals were terminated, with all the benefits they would have enjoyed had they not been terminated by Defendant.

D. Order Defendant Employer to make whole Jason Polak and each other similarly situated individual by providing compensation for non-pecuniary losses, including but not limited to damages for embarrassment, humiliation and injury to dignity, in amounts to be proven at trial.

F. Order Defendant Employer to pay Jason Polak and each other similarly situated individual punitive damages for its malicious and/or reckless conduct, in an amount to be proven at trial.

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

H. Award the Commission its costs in this action.

JURY TRIAL DEMAND

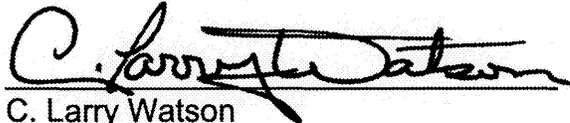
The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

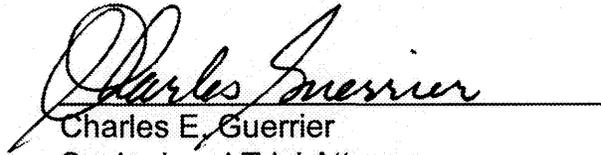
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