

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 99-cv-2077-JLK

MARK E. SHEPHERD, SR.,

Plaintiff,

v.

UNITED STATES OLYMPIC COMMITTEE, et al.,

Defendants.

DIRECTION OF FINAL JUDGMENT PURSUANT TO F.R.C.P. RULE 54(b)

This matter comes before the Court on Plaintiff's unopposed request that the Court enter final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Formalizing rulings and orders made on the record at the January 4, 2006 status conference, I GRANT the request based on the following findings:

1. Plaintiff Mark Shepherd is a Paralympic athlete. He brought claims against Defendant United States Olympic Committee ("USOC") under title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12181 *et seq.*, and section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (the "Athlete Claims"). The Athlete Claims allege that the USOC's disparate funding and support for Paralympic athletes in contrast to Olympic athletes constitutes discrimination against Mr. Shepherd in violation of the ADA and the Rehabilitation Act.

2. Mr. Shepherd also brought claims against the USOC for violation of Title I of the ADA, 42 U.S.C. §§ 12111 *et seq.*, for wrongful discharge in violation of public policy, and for

willful breach of employment contract or, in the alternative, promissory estoppel (the “Employment Claims”). The Employment Claims arise out of Mr. Shepherd’s employment relationship with the USOC. In them, he alleges, among other things, that the USOC discriminated against him in whole or in part on the basis of his disability by treating him differently from nondisabled employees and by terminating him, and that the USOC breached its contract and/or promises to him in connection with that employment, and discharged him in whole or in part because of his objections to and refusal to participate in acts in derogation of federal law and clearly expressed policy.

3. As such, this case involves multiple claims and multiple parties.

4. On November 16, 2006, this Court dismissed Mr. Shepherd’s Athlete Claims. (See Mem. Op. and Order Granting Defs.’ Dispositive Mots. re Athlete Claims (“November 16 Order”).)

5. Mr. Shepherd’s Employment Claims are still pending.

6. The Tenth Circuit requires this Court to make two express determinations under Rule 54(b): that the November 16 Order is a final order; and that there is no just reason to delay review of the final order until it has conclusively ruled on all claims in the case. Oklahoma Turnpike Auth. v. Bruner, 259 F.3d 1236, 1242 (10th Cir. 2001).

7. With respect to the Title III and Rehabilitation Act claims, the November 16 Order was ““an ultimate disposition of [these] individual claim[s] entered in the course of a multiple claims action.”” See id. (quoting Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1, 7 (1980)).

8. The Court therefore determines that the judgment was final as that term is used in Rule 54(b).

9. The question whether there is no just reason for delay is within this Court's discretion; the Supreme Court has stated that it is reluctant to fix or sanction narrow guidelines for district courts to follow. Curtiss-Wright Corp., 446 U.S. at 8, 10-11.

10. Resolution of the Employment Claims will not raise, on appeal, any of the issues presented by the Athlete Claims. That is, the “nature of the claims already determined [are] such that no appellate court would have to decide the same issues more than once even if there were subsequent appeals.” Stockman's Water Co., LLC v. Vaca Partners, LP, 425 F.3d 1263, 1265 (10th Cir. 2005) (quoting Curtiss-Wright Corp., 446 U.S. at 8).

11. This Court thus determines that there is no just cause for delay of the appeal of the Athlete Claims.

12. Based on the above, this Court directs that judgment be entered on Counts II and III of the of the Third Amended Complaint.

DATED: January 10, 2007.

s/John L. Kane
SENIOR U.S. DISTRICT JUDGE