

The U.S. Equal Employment Opportunity Commission

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EEOC OBTAINS \$1.29 MILLION JURY VERDICT AGAINST DUPONT FOR DISABILITY DISCRIMINATION

NEW ORLEANS - In a major legal victory for the U.S. Equal Employment Opportunity Commission (EEOC), a jury in U.S. District Court for the Eastern District of Louisiana has awarded a former veteran employee of E.I. DuPont De Nemours & Co. (DuPont) \$1.29 million in an employment discrimination case filed by the EEOC under the Americans with Disabilities Act of 1990 (ADA). DuPont, based in Wilmington, Delaware, is an international science and chemical company operating in 70 countries with 55,000 employees worldwide and annual revenue of more than \$20 billion.

Following a two and one-half day trial in EEOC v. E. I. Du Pont De Nemours & Co. (Civil Action No. 03-1605), the jury awarded plaintiff Laura Barrios \$1 million in punitive damages, \$200,000 in front pay and \$91,000 in back pay. Testifying that she was made to feel like half a person and humiliated and embarrassed, Ms. Barrios, an 18-year employee of Dupont prior to her termination and forced placement on disability retirement, said: "All I wanted was to do my job."

EEOC's lawsuit, filed in June 2003, asserted that DuPont violated the ADA when it illegally required Ms. Barrios, who has severe physical impairments, to take a functional capacity exam (FCE) which was neither job-related nor consistent with business necessity. Moreover, the five to six hour test caused Ms. Barrios severe physical and emotional harm.

The FCE tested her performance of rigorous physical tasks such as climbing, standing for hours on end, lifting more than 20 pounds, straight leg lifts, and overhead work. Although Ms. Barrios passed the test - which indicated that she could adequately perform the essential functions of her position - DuPont used the test results as a pretext to (falsely) declare her as a direct threat to herself and others because DuPont ostensibly believed Ms. Barrios could not safely evacuate the plant in case of an emergency. DuPont then forced Ms. Barrios onto short term disability leave and then total permanent disability retirement which terminated her employment.

"The resolution of this case will benefit DuPont's employees, and it will vindicate the public interest," said EEOC General Counsel Eric Dreiband. "The Commission will continue its aggressive prosecution of claims of disability discrimination so that people with disabilities will be included in the workplace and

will be guaranteed equal employment opportunities. The jury's verdict should signal employers that they should abandon paternalistic and discriminatory ideas about people with disabilities. Employers should engage in dialogue with employees with disabilities so that their employees receive effective and reasonable accommodations."

EEOC Regional Attorney Keith Hill, who led the agency's litigation efforts, said: "The evidence we presented to the jury showed Ms. Barrios was qualified, ready, willing and able to perform her job and could safely evacuate the plant, even though she had substantial physical impairments. A goal of the ADA is to dispel myths, fears, and stereotypes related to one's disability. The message the jury sent to employers with this verdict is that disability does not mean inability."

Ms. Barrios, whose impairments severely limit her major life activities, successfully worked for DuPont from 1981 to 1999. During that time, she held positions as a lab operator, lab trainer, and lab clerk, with her most recent position being that of a secretarial employee – a sedentary job which required minimal physical exertion. At all times relevant, Ms. Barrios performed all of the essential functions of her positions, despite having severe scoliosis of the lumbar spine, lumbar disc disease with sciatica, lumbar spinal stenosis with compression neuropathy, neurogenic bladder, cervical spondylosis, previous cervical disc disease with surgical fusion, and reactive depression.

Gregory Juge, Senior Trial Attorney who tried the case for the Commission said, "The one million dollars in punitive damages awarded by the jury sends a message to DuPont and all employers that this type of illegal treatment of employees with disabilities will not be tolerated. We are pleased that the jury was guided by the evidence and their conscience to serve the interest of justice in this case."

As a result of her physical impairments, Ms. Barrios is substantially limited in walking and experiences severe pain on a chronic basis. She walks with a distinct limp and substantially slower than an average person. Her impairments also affect her ability to lift things; for example, she uses two hands to lift a gallon of milk. Despite these physical impairments, Ms. Barrios was able to perform the essential functions of her job.

Nevertheless, in 1996, a DuPont plant physician placed Ms. Barrios on extensive work restrictions, one of which limited her to eight-hour days, even though there was no medical evidence that Ms. Barrios needed such restrictions. Further, in 1997, DuPont changed Ms. Barrios's job position based on false pretense of attempting to accommodate her. Finally, in 1999, Ms. Barrios was required to take the painful functional capacity test which was not related to her job functions and ultimately resulted in her involuntary termination. DuPont received the results of Ms. Barrios's FCE on July 6, 1999, which rated her as capable of "light" work (more demanding than her sedentary job) but noted "significant instability" while walking heel- to-toe carrying a box of weights back and forth on a 100-foot long line. The very same day, DuPont judged that Ms. Barrios could not safely take one step on its premises. On July 7, 1999, the very next day, DuPont permanently banned her from the site. She never worked for DuPont again.

At trial, the terminating official testified that he decided to end Ms. Barrios's employment based on nothing other than the knowledge that she was restricted from walking anywhere on the site. To justify Ms. Barrios's termination, DuPont asserted that she was a "direct threat" because of being incapable of safely evacuating due to her inability to walk. However, DuPont's Human Resources Manager admitted under oath that Ms. Barrios is not a direct threat and is in fact capable of safely evacuating by walking. Noting that "I have really missed my job," Ms. Barrios said: "I tried to prove to them that I could safely evacuate the plant site, but they would not let me prove it. All I wanted was to do my job."

The ADA protects workers from being terminated because of a disability and prohibits any other employment practice which discriminates on the basis of disability. Further information about the Commission is available on the agency's web site at www.eeoc.gov.

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