

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
10 S. Howard Street)	
Baltimore, Maryland 21201)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	
PJAX, INC.,)	<u>COMPLAINT AND JURY TRIAL</u>
6525 Washington Boulevard)	<u>DEMAND</u>
Elkridge, Maryland 21975)	
)	
Defendant.)	
)	

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 ("Title VII") and Title I of the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967 ("ADEA"), and the Americans with Disabilities Act of 1990 ("ADA"), to correct unlawful employment practices on the basis of sex, age, and disability, respectively, and the anti-retaliation prohibitions under each such statute, and to provide appropriate relief to Robert Fallon, Mary Kutchera, and a class of females who applied for the positions of driver and dockworker and who were rejected for employment because of their sex, and a class of applicants who applied for the positions of driver and dockworker and who were rejected for employment as a result of their responses to a pre-employment medical questionnaire.

As set forth in more detail below, the Commission alleges that Robert Fallon, Defendant's former Regional Operations Manager of its Baltimore terminal, was terminated by Defendant PJAX, Inc. in retaliation for his complaints of unlawful hiring practices committed by Defendant; specifically, for opposing Respondent's practices of refusing to hire drivers and dockworkers who were age 40 and over, who were female, or who had disabilities, and Respondent's practice of requiring applicants to complete a pre-employment medical questionnaire.

The Commission further alleges that Defendant PJAX, Inc. refused to hire Mary Kutchera for the position of driver because of her sex and age, 55.

The Commission further alleges that Defendant PJAX, Inc. engaged in a pattern or practice of refusing to hire females as a class for the positions of driver and dockworker because of sex.

The Commission further alleges that Defendant PJAX, Inc., as part of the application process, required each applicant to complete a medical questionnaire making inquiries as to whether the applicant is an individual with a disability or as to the nature or severity of such disability.

JURISDICTION AND VENUE

1. Title VII 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 Sections 706(f)(1) and (3) and 707 of Title VII.

2. ADEA 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 7(b) of the ADEA, which incorporates by reference Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 ("FLSA"), as amended, 29 U.S.C. §§ 216(c) and 217.

3. ADA 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 ADA, which incorporates by reference Sections 706(f)(1) and (3) and 707 of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3) and 2000e-6, and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

4. The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the District of Maryland.

PARTIES

5. 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 VII, the ADEA, and Title I of the ADA, and

- a. under Title VII, is expressly authorized to bring this action by Sections 706(f)(1) and (3) and 707, 42 U.S.C. §§ 2000e-5(f)(1) and (3) and 2000e-6;
- b. under ADEA, is expressly authorized to bring this action by Section 7(b), 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705; and
- c. under the ADA is expressly authorized to bring this action by Section 107(a), 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) and 707 of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3) and 2000e-6.

6. At all relevant times, Defendant, PJAX, Inc. (the "Employer"), has continuously been a Pennsylvania corporation doing business in the State of Maryland and the City of Baltimore, and has continuously had at least 15 employees.

7. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of

- a. Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h);
- b. Sections 11(b), (g) and (h) of the ADEA, 29 U.S.C.

§§ 630(b), (g) and (h); and

- c. 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).

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

CONCILIATION

9. Prior to institution of this lawsuit, the Commission's representatives attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance with the ADEA through informal methods of conciliation, conference and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

COUNT I

RETALIATORY DISCHARGE OF ROBERT FALLON

10. More than thirty days prior to the institution of this lawsuit, Robert Fallon filed a charge with the Commission alleging violations of Title VII, the ADEA, and the ADA by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

11. Since at least November 5, 1999, Defendant has engaged in unlawful employment practices at its Baltimore, Maryland terminal, in violation of

- a. Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a);
- b. Section 4(d) of the ADEA, 29 U.S.C. § 623(d);
- c. and Section 503 of Title I of the ADA, 42 U.S.C. §12203.

The practices include terminating Robert Fallon from his employment because he protested Defendant's unlawful hiring practices of 1) refusing to hire females for the positions of driver and dockworker; 2) refusing to hire drivers and dockworkers age 40 and over; 3) refusing to hire drivers and dockworkers who were disabled; and 4) insisting that applicants for employment complete a pre-employment medical questionnaire.

12. The effect of the practices complained of in paragraph 11 above has been to deprive Robert Fallon of equal employment opportunities and otherwise adversely affect his status as an employee because of his statutorily protected complaints to Defendant of its unlawful employment practices.

13. The unlawful employment practices complained of in paragraph 11 above were intentional.

14. The unlawful employment practices complained of in

paragraph 11 above were done with malice or with reckless indifference to the federally protected rights of Robert Fallon.

15. The unlawful employment practices complained of in paragraph 11 above were willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

COUNT II

FAILURE TO HIRE MARY KUTCHERA

16. Plaintiff re-alleges and incorporates the allegations contained in paragraphs 1 through 15.

17. More than thirty days prior to the institution of this lawsuit, Mary Kutchera filed a charge with the Commission alleging violations of Title VII and the ADEA by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

18. Since at least April 24, 2000, Defendant engaged in unlawful employment practices in violation of Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a) and Section 4(a)(1) of the ADEA, 29 U.S.C. §623(a)(1). The practices include refusing to hire Mary Kutchera, a qualified female applicant, age 55, who applied for the position of driver at Defendant's Cleveland, Ohio terminal.

19. The effect of the practices complained of in paragraph 18 above has been to deprive Mary Kutchera of equal employment opportunities and otherwise adversely affect her status as an

applicant for employment because of her sex and age.

20. The unlawful employment practices complained of in paragraph 18 above were intentional.

21. The unlawful employment practices complained of in paragraph 18 above were done with malice or with reckless indifference to the federally protected rights of Mary Kutchera.

22. The unlawful employment practices complained of in paragraph 18 above were willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

COUNT III

FAILURE TO HIRE FEMALES AS A CLASS

23. Plaintiff re-alleges and incorporates the allegations contained in paragraphs 1 through 22.

24. Since at least January 1, 1997, Defendant Employer has engaged in unlawful employment practices throughout its terminals, including its Baltimore, Maryland terminal, in violation of Sections 703(a) and 707(a) of Title VII, 42 U.S.C. §§ 2000e-2(a), 2000e-6. The practices include:

- a. refusing to hire females as a class for the position of driver; and
- b. refusing to hire females as a class for the position of dockworker.

25. The effect of the practices complained of in paragraph

24 above has been to deprive females of equal employment opportunities and otherwise adversely affect their status as applicants because of their sex.

26. The unlawful employment practices complained of in paragraph 24 above were intentional.

27. The unlawful employment practices complained of in paragraph 24 above were done with malice or with reckless indifference to the federally protected rights of the female class members.

COUNT IV

DISABILITY DISCRIMINATION AGAINST APPLICANTS

28. Plaintiff re-alleges and incorporates the allegations contained in paragraphs 1 through 27.

29. Since at least January 1, 1997, Defendant Employer has engaged in unlawful employment practices throughout its terminals, including its Baltimore, Maryland terminal, in violation of Sections 102(a), (d)(2)(A) of the ADA, 42 U.S.C. § 12112(a), (d)(2)(A). The practices include requiring each applicant to complete a pre-employment medical questionnaire making inquiries as to whether the applicant is an individual with a disability or as to the nature or severity of such disability.

30. The effect of the practices complained of in paragraph

29 above has been to deprive applicants of equal employment opportunities and otherwise adversely affect their status as applicants based on their responses to the pre-employment medical questionnaire.

31. The unlawful employment practices complained of in paragraph 29 above were intentional.

32. The unlawful employment practices complained of in paragraph 29 above were done with malice or with reckless indifference to the federally protected rights of the applicants who were rejected from employment based on their responses to the pre-employment medical questionnaire.

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 retaliating against any employee who complains of unlawful employment practices.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for employees who complain of discriminatory practices, and which eradicate the effects of its past and present unlawful retaliatory practices.

C. Order Defendant Employer to make whole Robert Fallon, by providing appropriate back pay 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 rightful place reinstatement and front pay.

D. Order Defendant Employer to make whole Robert Fallon, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 11 above, including job search expenses and out-of-pocket medical expenses, in amounts to be determined at trial.

E. Order Defendant Employer to make whole Robert Fallon by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 11 above, including pain, suffering, humiliation, embarrassment, frustration, and devastation in amounts to be determined at trial.

F. Order Defendant Employer to pay to Robert Fallon punitive damages for its malicious and reckless conduct described in paragraph 11 above, in amounts to be determined at trial.

G. Grant a judgment requiring Defendant Employer to pay appropriate back wages in an amount to be determined at trial, an equal sum as liquidated damages, and prejudgment interest to

Robert Fallon and any other individual whose wages are being unlawfully withheld as a result of the acts complained of above.

H. Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with it, from maintaining hiring practices which exclude applicants from the position of driver and/or dockworker based on sex, age, and disability, and any other employment practice which discriminates on the basis of sex and age.

I. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for females and individuals age 40 and over and individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices.

J. Order Defendant Employer to make whole Mary Kutchera, by providing appropriate back pay 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 rightful place hiring and front pay.

K. Order Defendant Employer to make whole Mary Kutchera by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in

paragraph 18 above, including job search expenses and out-of-pocket medical expenses, in amounts to be determined at trial.

L. Order Defendant Employer to make whole Mary Kutchera by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 18 above, including pain, suffering, humiliation, embarrassment, frustration, and devastation, in amounts to be determined at trial.

M. Order Defendant Employer to pay to Mary Kutchera punitive damages for its malicious and reckless conduct described in paragraph 18 above, in amounts to be determined at trial.

N. Grant a judgment requiring Defendant Employer to pay appropriate back wages in an amount to be determined at trial, an equal sum as liquidated damages, and prejudgment interest to Mary Kutchera and any other individual whose wages are being unlawfully withheld as a result of the acts complained of above.

O. Order Defendant Employer to make whole all female applicants for the position of driver and dockworker who were denied employment because of their sex, by providing appropriate back pay 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 rightful place hiring and front pay.

P. Order Defendant Employer to make whole all female applicants for the position of driver and dockworker who were denied employment because of their sex, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 24 above, including job search expenses and out-of-pocket medical expenses, in amounts to be determined at trial.

Q. Order Defendant Employer to make whole all female applicants for the position of driver and dockworker who were denied employment because of their sex, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 24 above, including pain, suffering, humiliation, embarrassment, frustration, and devastation, in amounts to be determined at trial.

R. Order Defendant Employer to pay to all female applicants for the position of driver and dockworker who were denied employment because of their sex punitive damages for its malicious and reckless conduct described in paragraph 24 above, in amounts to be determined at trial.

S. Issue a declaratory judgment finding that Defendant's practice of requiring each job applicant to complete a pre-employment medical questionnaire making inquiries as to whether the applicant is an individual with a disability or as to the

nature or severity of such disability violates the ADA.

T. Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with it, from requiring each job applicant to complete a pre-employment medical questionnaire making inquiries as to whether the applicant is an individual with a disability or as to the nature or severity of such disability.

U. Order Defendant Employer to institute and carry out policies, practices and programs which provide equal employment opportunities for each applicant required to complete a medical questionnaire making inquiries as to whether the applicant is an individual with a disability or as to the nature or severity of such disability and which eradicate the effects of its past and present unlawful employment practices.

V. Order Defendant Employer to make whole each applicant required to complete a pre-employment medical questionnaire making inquiries as to whether the applicant is an individual with a disability or as to the nature or severity of such disability and who was denied employment because of his responses, by providing appropriate back pay 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 rightful place hiring and front pay.

W. Order Defendant Employer to make whole each applicant required to complete a pre-employment medical questionnaire making inquiries as to whether the applicant is an individual with a disability or as to the nature or severity of such disability and who was denied employment because of his responses, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 29 above, including job search expenses and out-of-pocket medical expenses, in amounts to be determined at trial.

X. Order Defendant Employer to make whole each applicant who was required to complete a pre-employment medical questionnaire making inquiries as to whether the applicant is an individual with a disability or as to the nature or severity of such disability and who was denied employment because of his responses, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 29 above, including pain, suffering, humiliation, embarrassment, frustration, and devastation, in amounts to be determined at trial.

Y. Order Defendant Employer to pay to each applicant

required to complete a pre-employment medical questionnaire making inquiries as to whether the applicant is an individual with a disability or as to the nature or severity of such disability and who was denied employment because of his responses, punitive damages for its malicious and reckless conduct described in paragraph 29 above, in amounts to be determined at trial.

Z. Grant such further relief as the Court deems necessary and proper in the public interest, including an award to the Commission of its costs of this action.

JURY TRIAL DEMAND

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

Respectfully submitted,

/s/

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Regional Attorney

/s/

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