

- ***EEOC v. Woodbridge Corp.***

No. 01-1045 (8th Cir.)

Brief as Appellant

Petition for Reh'g and Suggestion for Reh'g En Banc.

Filed October 5, 2001

In 1994, Woodbridge, concerned about the increased incidence of carpal tunnel syndrome (CTS) among its production workers, added a "neurometry" test to its pre-employment medical examination in an effort to screen applicants for the presence or propensity to develop CTS. Although the company had been advised that the neurometry test is an unreliable screening tool for CTS, it used the test until April 1997.

Based on the test results, Woodbridge withdrew employment offers from applicants with abnormal neurometry scores. The Commission sought relief for 19 applicants on the theory that the company regarded them as substantially limited in working. Agreeing with the company, the district court granted summary judgment finding the claimants did not have a disability because Woodbridge did not regard them as substantially limited in working. The claimants were not perceived as precluded from a broad range or class of jobs; only the Woodbridge manufacturing jobs which the court deemed "unique."

On appeal, the panel looked at the jobs for which the test was used and held that the applicants were only regarded as precluded from those jobs. Thus, the company did not regard them as substantially limited in working.

Urging the court to rehear the case, the Commission argued that to determine whether an employer regards an individual as substantially limited in working, a court should consider all the evidence about the limitations that would flow from the perceived impairment. Here, the court should have considered: (1) the testimony of company officials that they believed the claimants could not perform jobs with high levels of repetitive motion; (2) the report of the Commission's vocational expert indicating that between 57% and 99% of the other jobs in the Kansas City area for which the rejected applicants were otherwise qualified had comparable levels of repetitive hand and wrist motion; and (3) testimony of doctors that persons with CTS would potentially be precluded from a broad range of jobs in the Kansas City area. This evidence supports a finding that the company regarded the applicants as substantially limited in working.