

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

#1

97 -CV- 1396

TJM DNH

-----X  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

-against-

ALLIED SYSTEMS, INC.,

Defendant,  
-----X

Civil Action No.

COMPLAINT  
AND  
JURY TRIAL DEMAND

U. S. DISTRICT COURT  
N.D. OF N.Y.  
FILED *WZ*

SEP 26 1997  
*No fee.*  
LAWRENCE K. BAERMAN, CLERK  
ALBANY

NATURE OF THE ACTION

This is an action under Title I of the Americans With Disabilities Act of 1990, as well as Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Joseph J. Eissing and other aggrieved individuals who were adversely affected by such practices. As alleged with greater particularity below, Joseph J. Eissing was not permitted to return to his position with Allied Systems, Inc. because of his perceived disability. Additionally, Allied Systems, Inc. has perpetuated a policy of denying employment to individuals with work restrictions which is discriminatory towards qualified individuals with disabilities needing reasonable accommodations.

## 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 and are currently being committed within the jurisdiction of the United States District Court for the Northern District of New York.

## PARTIES

3. 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 I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. §12117(a), which incorporates by reference Section 706 (f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1).

4. At all relevant times, Defendant Allied Systems, Inc. (the "Employer") has continuously been a New York corporation doing

business in the State of New York, 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 in an industry affecting commerce under 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 has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. §12111(2).

#### **STATEMENT OF CLAIMS**

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

8. Since at least April 19, 1993, Defendant has engaged in unlawful employment practices in violation of Section 102 of Title I of the ADA, 42 U.S.C. § 12101 et seq. which are outlined below.

a. Joseph Eissing was released as of April 19, 1993 by his physician to return to work with restrictions after a work-related back injury. However, Defendant Employer refused to allow Mr. Eissing to return to work.

b. Defendant Employer's own physician performed a Functional Capacity Exam on Mr. Eissing on June 3, 1993, the

results of which indicated that he could return to work without restrictions. Defendant refused to permit him to return to work.

c. Defendant Employer's physician, on July 9, 1993, refused to release Mr. Eissing to return to work due to "the risk of future injury".

d. Mr. Eissing's physician recommended that Eissing could return to work without restrictions as of July 13, 1993. Defendant refused to reinstate him.

e. Defendant Employer's third-party physician admitted that Eissing could return to work as a car transporter, but expressed concern over a future risk of injury. Defendant did not reinstate him.

f. After being denied reinstatement, Mr. Eissing secured a job with another company in the same position of car transporter in June 1994. He performed his job with no further injury.

g. Mr. Eissing was eventually reinstated by Defendant Employer on or about July 5, 1996.

h. Defendant Employer maintained, at all relevant times, a policy prohibiting employees from returning to work with any type of work restrictions. This policy foreclosed qualified individuals with disabilities, needing a reasonable accommodation, from employment.

9. The effect of the practices complained of above has been to deprive Joseph J. Eissing, and similarly situated individuals with disabilities or who are regarded as having disabilities, of

equal employment opportunities and otherwise adversely affect their status as employees because of their disability.

10. The effect of the practices complained of above has been to inflict emotional pain, suffering and inconvenience upon Eissing and those individuals whom Defendant Employer has deprived of equal employment opportunities based on their disabilities or perceived disabilities.

11. The unlawful employment practices complained of in paragraph 8 above were and are intentional.

12. The unlawful employment practices complained of in paragraph 8 above were done with malice or reckless indifference to the federally protected rights of Joseph J. Eissing, and other similarly situated individuals, 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, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in any employment practice which discriminates on the basis of disability or perceived disability.

B. Order Defendant to employ or reinstate all qualified individuals who have been denied employment based on disability or perceived disability.

C. Order Defendant to institute and carry out policies, practices and programs which provide equal employment opportunities for qualified individuals with disabilities, and which provide affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to modifying its discriminatory policy of refusing to employ qualified individuals if they have work restrictions, and to provide reasonable accommodations to all such qualified individuals.

D. Order Defendant to make whole Joseph J. Eissing and all other persons who have been unlawfully denied employment because of disability or perceived disability by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 8 through 12 above, including but not limited to appropriate back pay with prejudgment interest and job search expenses, in amounts to be determined at trial.

E. Order Defendant to make whole Joseph J. Eissing and all other persons who have been unlawfully denied employment based on disability or perceived disability by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices described in paragraphs 8 through 12 above, including but not limited to emotional pain, suffering and inconvenience, in amounts to be determined at trial.

F. Order Defendant to pay all persons who have been unlawfully denied employment based on disability or perceived disability punitive damages for its malicious and reckless conduct

described in paragraphs 8 through 12 above, in amounts to be determined at trial.

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

H. Award the Commission its costs in this action.

**JURY TRIAL DEMAND**

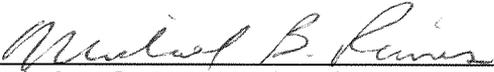
The Commission requests a jury trial on all questions of fact raised by its complaint.

Dated: September 25, 1997  
New York, New York

Respectfully submitted,

James L. Lee  
Regional Attorney

Delner Franklin-Thomas  
Supervisory Trial Attorney

  
Michael B. Ranis (#3757)  
Trial Attorney

New York District Office  
7 World Trade Center, 18th Floor  
New York, New York 10048-1102  
(212) 748-8538