

Stowers
ISSUED
Jan
SEP 29 2000

FILED
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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

THE ESAB GROUP, INC. dba ESAB
WELDING AND CUTTING PRODUCTS

Defendant,

and

UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW), LOCAL 1834

Rule 19 Defendant

1:00CV 2497

CIVIL ACTION NO.
JUDGE GAUGHAN

COMPLAINT
JURY TRIAL DEMAND

MAG. JUDGE PERELMAN

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct continuing unlawful employment practices on the basis of disability and to provide appropriate relief to Ivan H. Stowers, Jr., and similarly situated persons, who were adversely affected by such practices. The practices include, without limitation, the continuing publication and failure to keep confidential the medical condition and history of Ivan H. Stowers, Jr. and other similarly situated persons.

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. § 2000(e)-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 being committed within the jurisdiction of the United States District Court for the Northern District of Ohio, Eastern Division.

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, The ESAB Group, Inc., dba ESAB Welding & Cutting Products (the "Employer"), has continuously been an Ohio corporation doing business in the State of Ohio and the City of Ashtabula, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged 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 Section 701(g) and (h) of Title VII, 42 U.S.C. § 2000e (g) and (h).

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

7. Defendant United Automobile Aerospace and Agricultural Implement Workers of America (UAW), Local 1834 (the "Union"), is a party to a collective bargaining agreement with the Defendant Employer and is therefore named as a party pursuant to Rule 19(a) of the Federal Rules of Civil Procedure in that, in its absence, complete relief cannot be accorded among those already parties and it has an interest in the subject of this action.

STATEMENT OF CLAIMS

8. More than thirty days prior to the institution of this lawsuit, Ivan H. Stowers, Jr. filed a charge with the Commission alleging violations of Title I of the ADA by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

9. Since at least May 1, 1996, Defendant Employer has engaged in continuing unlawful employment practices at its Ashtabula, Ohio facility, in violation of Section 102(d) of Title I of the ADA, 42 U.S.C. §§12112(a). The practices include, without limitation, publishing and failing to confidentially maintain the medical condition or history of Ivan H. Stowers, Jr., and other applicants and employees by:

- (A) failing to maintain information obtained regarding the medical condition or history of applicants and employees on separate forms and in separate medical files;

- (B) failing to treat information obtained regarding the medical condition or history of applicants and employees as a confidential medical record;
- (C) failing to use information obtained regarding the medical condition or history of an applicant or employee only in accordance with §102 of the ADA

10 The effect of the practices complained of in paragraph 9. has been to deprive Ivan H. Stowers, Jr., and similarly situated persons, of equal employment opportunities and otherwise adversely affect their status as applicants and employees because of their disabilities.

11. The unlawful employment practices complained of in paragraphs 9 and 10, above, were intentional.

12. The unlawful employment practices complained of in paragraphs 9 and 10, above, were done with malice or with reckless indifference to the federally protected rights of Ivan H. Stowers, Jr., and similarly situated persons.

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 engaging in (1) the publication and failure to confidentially maintain the medical condition or history of applicants, (2) the failure to treat information obtained regarding the medical condition or history of applicants and employees as a confidential medical record, and (3) the failure to use information obtained regarding the medical condition or history of an applicant or

employee only in accordance with §102 of the ADA, and any other employment practice which discriminates on the basis of disability.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices; and further order Defendant Employer to maintain as confidential and on separate forms and in separate medical files, the medical condition and history of applicants and employees and that such information be used only in accordance with § 102 of the ADA.

C. Order Defendant Employer to make whole Ivan H. Stowers, Jr., and similarly situated persons, by providing appropriate affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Order Defendant Employer to make whole Ivan H. Stowers, Jr., and similarly situated persons, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 9 and 10, above, including past and future out-of-pocket losses in amounts to be determined at trial.

E. Order Defendant Employer to make whole Ivan H. Stowers, Jr., and similarly situated persons, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 8 and 9, above, including emotional pain, suffering, inconvenience, loss of enjoyment of life and humiliation, in amounts to be determined at trial.

F. Order Defendant Employer to pay Ivan H. Stowers, Jr., and similarly situated

persons, punitive damages for its malicious and reckless conduct, as described in paragraphs 9 and 10, 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 of this action.

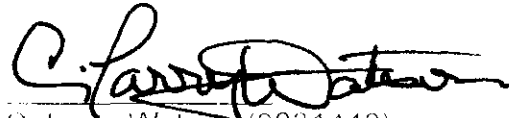
JURY TRIAL DEMAND

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

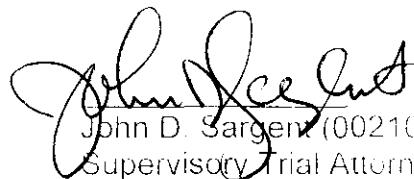
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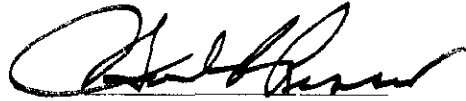
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