

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA

EUGENIO D'OLIVEIRA	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO. 06-1971
vs.	)	
	)	
UNITED PARCEL SERVICE	)	
	)	<b>COMPLAINT IN INTERVENTION</b>
	)	
Defendant.	)	JURY TRIAL DEMANDED
_____	)	

**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 unlawful employment practices on the basis of disability and to provide appropriate relief to Plaintiff, Eugenio D'Oliveira, who was adversely affected by such practices. Plaintiff alleges that on or about July 30, 2004, Defendant, United Parcel Service discriminated against him because of his disability, when it terminated him from his position as a Sorter/Loader. Specifically, he contends that he was discriminated against when he was discharged after Defendant claimed that because of his disability, he was a direct threat to himself or others. In addition, Mr. D'Oliveira alleges that he was discriminated against when Defendant failed to explore whether any alleged risk of harm could be reduced by way of a reasonable accommodation in the form or reassignment, or job modification, instead of discharge. Because of the discriminatory discharge, Mr. D'Oliveira suffered severe emotional distress and back pay damages.

Finally, he alleges that he was subject to a hostile and harassing work environment on the basis of his disability, for which he also suffered damages.

### JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 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 Sections 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 Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981A.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania.

3. This Court has supplemental jurisdiction over plaintiff’s state law claim in that this claim arises under the same transaction or occurrence as plaintiff’s federal claim.

### PARTIES

4. Plaintiff, Eugenio D’Oliveira, is an adult, male resident of Philadelphia Pennsylvania.

5. At all relevant times, plaintiff has been, and continues to be a “qualified individual with a disability” as that term is defined by both the ADA and the Pennsylvania Human Relations Commission. In addition, plaintiff has a “record of” disability, and was “regarded as” disabled by defendant, United Parcel Service.

6. At all relevant times, Defendant, United Parcel Service, (the “Employer), a Pennsylvania corporation, has continuously been doing business in the Commonwealth of

Pennsylvania and the City of Horsham, and has continuously had at least fifteen employees.

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

#### FACTS

9. More than thirty days prior to the institution of this lawsuit, Eugenio D'Oliveira filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) alleging violations of Title I of the ADA, and the Pennsylvania Human Relations Act (PHRA) by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

10. Since at least on or about July 30, 2004, Defendant Employer has engaged in unlawful employment practices at its Horsham, Pennsylvania facility in violation of Section 102(a) of Title I of the ADA, 42 U.S.C. § 12112(a), by terminating plaintiff, a qualified individual with a disability, from his employment because of his disability. The alleged unlawful practices include, but are not limited to, the following:

(a) Plaintiff, Eugenio D'Oliveira began working for Defendant Employer in or about October 1987 as a Sorter/Loader.

(b) At all relevant times during his seventeen (17) years of employment with Defendant, Plaintiff satisfactorily performed in the position of Sorter/Loader, and never received any discipline or safety violation.

(c) In or about 1995, Plaintiff was diagnosed with Retinitis Pigmentosa, a permanent degenerative condition which substantially limits the major life activity of seeing. However, despite his impairment, at all relevant times, he successfully performed the essential functions of the Sorter/Loader position without any accommodation.

(d) Beginning in or around September of 2000, and continuing, plaintiff experienced harassment because of his disability. Specifically, plaintiff's then supervisor Steve Hackman would make comments in the workplace including but not limited to, "there's a blind bat coming into the area".

(e) In late November 2003, plaintiff was assigned a new supervisor, Terrence Jefferson. Within three (3) months, Jefferson complained to Defendant that Mr. D'Oliveira posed a safety risk to himself and his co-workers. At no time did Mr. D'Oliveira's supervisor document any incidents of alleged safety concerns, or issue any discipline to him for any alleged safety violations.

(f) On or about April 4, 2004, Defendant met with plaintiff and requested that he submit to a medical examination and submit medical documentation regarding his disability. During this meeting, Mr. D'Oliveira never requested or informed Defendant that he needed an accommodation to perform the Loader/Sorter position. However, at the conclusion of this meeting, Defendant suspended plaintiff from his position, concluding that his disability posed a direct threat to himself and/or others.

(g) On or about June 7, 2004, plaintiff's physician provided Defendant with Mr. D'Oliveira's medical information, as requested by Defendant on its Request for Medical Information Form.

(h) After reviewing the brief medical comments provided by Mr. D'Oliveira's physician, Defendant concluded that Mr. D'Oliveira was unable to perform the essential functions of the Sorter/Loader position.

(i) At no time did Defendant confer with Mr. D'Oliveira's physician to verify that Mr. D'Oliveira was unable to perform the essential functions of the Sorter/Loader position. Rather, without any objective medical or factual evidence, Defendant simply incorrectly concluded the Mr. D'Oliveira was a direct threat to himself or others.

(j) Although Mr. D'Oliveira never requested an accommodation during his employment, and although he could perform the functions of his position without an accommodation, on or about July 16, 2004, Defendant met with Mr. D'Oliveira to discuss his need for an accommodation. During this meeting, Defendant requested that Mr. D'Oliveira complete a checklist identifying his limitations and desired accommodations. Mr. D'Oliveira was compelled by Defendant to identify some type of accommodation, and informed Defendant that he desired brighter lighting in some areas of the facility, and suggested that Defendant allow him to unload certain trucks.

(k) Although Defendant contends that plaintiff's disability caused a direct threat to himself or others, Defendant failed to carry its burden to attempt to reduce any alleged risk by way of a reasonable accommodation in the form of re-assignment or job modification.

COUNT I  
Americans with Disabilities Act (ADA)  
42 U.S.C. § 12101 et seq.  
(Discrimination and hostile environment on the basis of disability)

11. Plaintiff incorporates by reference paragraphs 1-10 above as though each were set forth in their entirety.

12. On or about July 30, 2004, in violation of the ADA, and after incorrectly concluding that plaintiff could not perform the essential functions of his job, concluding that he was a direct threat to himself or others due to his disability, and failing to determine whether any alleged risk could be reduced to an acceptable level by way of reasonable accommodation, Defendant terminated Mr. D'Oliveira's employment.

13. The effect of the practices complained of in Paragraph 10(a) through (k) above has been to deprive plaintiff of equal employment opportunities and otherwise adversely affect his status as an employee because of his disability, Retinitis Pigmentosa.

14. The effect of the unlawful employment practices complained of in Paragraph 10(d) above has been to subject plaintiff to harassment and a hostile work environment on the basis of disability.

15. The unlawful employment practices complained of in Paragraph 10(a) through (k) above were intentional.

16. The unlawful employment practices complained of in Paragraph 10(a) through (k) above were done with malice or with reckless indifference to the federally protected rights of plaintiff.

17. As a result of defendant's unlawful conduct complained of above, plaintiff has suffered, and will continue to suffer damages, including but not limited to, loss of wages and benefits, humiliation, embarrassment and emotional distress.

COUNT II  
Pennsylvania Human Relations Act (PHRA)  
43 P.S. § 951 et seq.

18. Plaintiff incorporates by reference paragraphs 1-17 above as though each were set forth in their entirety.

19. Defendant, through the acts set forth above, discriminated against plaintiff on the basis of his disability, in violation of the Pennsylvania Human Relations Act, 43 P.S. §954.

20. The effect of the practices complained of above has been to deprive plaintiff of equal employment opportunities and to otherwise adversely affect his status as an employee because of his disability.

21. The unlawful employment practices complained of above were committed with malice or reckless indifference to plaintiff's rights under the PHRA.

22. As a direct and proximate result of these violations of plaintiff's rights under the PHRA, he has suffered both pecuniary and non-pecuniary damages in the form of past and future wage loss, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of work, and humiliation.

**WHEREFORE**, plaintiff respectfully requests that this Court enter judgment in his favor and against the defendant and award the following:

- a. a declaration and finding by this Court that the defendant has violated the plaintiff's rights secured by the Americans with Disabilities Act and the Pennsylvania Human Relations Act;

- b. reinstatement to his former position with all of the rights and benefits of that position as though his employment had not been terminated;
- c. an order compelling defendant to accommodate plaintiff's disability;
- d. an award to plaintiff of the wages and benefits, both past and future, that he would have earned and continued to earn had he not been terminated;
- e. an award to compensatory and punitive damages in an amount to be determined at trial;
- f. an award of reasonable attorney fees and costs associated with this action; and
- g. an award to plaintiff of other such relief as this Court may deem just and equitable.

JURY TRIAL DEMAND

Plaintiff requests a jury trial on all issues so triable.

Respectfully submitted,

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Dated: July 25, 2006