

IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF TENNESSEE
 WESTERN DIVISION

FILED BY AGJ D.C.
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Robert R. Di Trollo
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 W. D. OF TN, MEMPHIS

EQUAL EMPLOYMENT OPPORTUNITY)
 COMMISSION,)
)
 PLAINTIFF)
)
 v.)
)
 NORTHWEST AIRLINES, INC.)
)
)
 DEFENDANT.)

Civil Action No.
00-2916 G A
COMPLAINT
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 make whole Kevin Armstrong (hereinafter referred to as "Armstrong"). The Commission alleges that the Defendant Northwest Airlines, Inc., refused to hire Kevin Armstrong for an equipment service employee position because of his disability, diabetes.

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 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 pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The unlawful employment practices alleged below were and are now being committed in the Western District of Tennessee, Western Division.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission (the "Commission") is an 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 Sections 706(f)(1) of Title VII, 42 U.S.C. §2000e-5(f)(1).

4. At all relevant times, Defendant, Northwest Airlines, Inc., (hereinafter referred to as "Employer" or "Northwest Airlines") has been and is now a corporation doing business in the State of Tennessee and has continuously had and does now have at least fifteen (15) employees. Defendant employer is a commercial airline engaged in the business of providing passenger air transportation. It is one of the largest airlines in the world.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of §101(5) of the ADA, 42 U.S.C. §12111(5), and Section 107(7) of the ADA, 42 U.S.C. §12117(a),

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 Employer 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 (30) days prior to the institution of this lawsuit, Kevin Armstrong filed a charge with the Commission alleging a violation of Title I of the ADA by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. The Commission alleges that in January 1998, Kevin Armstrong applied for employment as an equipment service employee with Northwest Airlines. He was offered the position on January 29, 1998, based on his application and interview. The offer was contingent on Armstrong passing a pre-placement physical examination. Armstrong underwent the medical exam on May 13, 1998, at the Baptist Minor Medical Center in Memphis

9. During his physical, Armstrong reported his insulin-dependent diabetes. Based on that information, the results of his examination were forwarded to the Airport Medical Clinic (AMC), for further review. An AMC physician then requested additional medical history regarding Armstrong's diabetes.

10. In June 1998, the AMC physician submitted a recommendation to Northwest Airlines that Armstrong should be restricted from driving heavy equipment/vehicles or working at unprotected heights. The physician based his decision on a concern that Armstrong could experience sudden loss of consciousness or incapacitation. However, neither Armstrong nor his treating physician was consulted about the possibility of Armstrong experiencing such diabetes related symptoms.

11. After Northwest Airlines received the AMC report, a human resources representative advised Armstrong, in writing, of the restrictions and asked him to complete an Accommodation Request Form. By letter dated July 2, 1998, Armstrong responded that he did not need accommodations. He pointed out that he has been issued a valid driver's license, without restrictions. He also noted that he was working the same position with another airline.

12. In his letter, Armstrong assured the human resources representative that he could perform the essential job functions. He also requested reconsideration of his application. Shortly thereafter, Northwest Airlines withdrew its offer of employment.

13. Since at least June 1998, Defendant Employer has engaged in unlawful employment practices in violation of the ADA, Section 102(a), 42 U.S.C. §§12112(a), at its Memphis, Tennessee facility. These practices include but are not limited to refusing to hire Kevin Armstrong, a qualified individual with a disability

because of his disability, diabetes.

14. The effect of these practices complained of above has been to deprive Mr. Armstrong of equal employment opportunities and otherwise adversely affect his status as an employee because Defendant Employer refused to hire him because of his disability.

15. The unlawful employment practices complained of above were and are intentional.

16. Defendant Northwest Airlines, Inc., at all relevant times has been acting with malice or reckless indifference to the federally protected rights of Kevin Armstrong in violation of the ADA, 42 U.S.C. §12101 et seq.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully prays that this Court:

A. Grant a permanent injunction enjoining the Defendant Northwest Airlines, Inc., 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.

B. Order Defendant 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 past and present unlawful employment practices.

C. Order Defendant Northwest Airlines, Inc., to make whole Kevin Armstrong by providing him with appropriate back pay with

prejudgment interest, in amounts to be proved at trial, rightful place hiring, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Order Defendant Northwest Airlines, Inc., to make whole Kevin Armstrong by providing compensation for nonpecuniary losses, including emotional pain, suffering, inconvenience and mental anguish in amounts to be proven at trial.

E. Order Defendant Northwest Airlines, Inc., to pay punitive damages for its malicious and/or reckless conduct, in an amount to be determined at trial.

F. Grant such further relief as the Court deems necessary and proper; and,

G. Award the Commission its costs in this action.

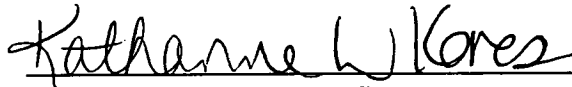
JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by the Complaint.

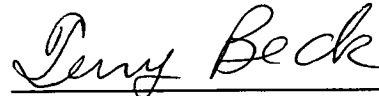
Respectfully submitted,

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