

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

FILED

2004 AUG 12 P 12: 21

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
TRI-STATE SECURITY AGENCY, INC.,)
)
)
Defendant.)
)

Civil Action No.
1:04-CV-219

AMENDED COMPLAINT
JURY TRIAL DEMANDED

U.S. DISTRICT COURT
EASTERN DISTRICT OF TENN.
MEMPHIS, TENN.

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 Rocky Dillard (hereinafter referred to as "Dillard"). The Commission alleges that the Defendant discharged Rocky Dillard because of his learning disabilities and a seizure disorder.

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 Eastern District of Tennessee, Southern 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, Tri-State Security Agency, Inc., (hereinafter referred to as "Employer" or "Tri-State Security Agency") 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 an agency engaged in the business of providing security to businesses in the Chattanooga area.

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, Rocky Dillard 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 Rocky Dillard was hit by a car when he was nine years

old. He was in a coma for 18 days and sustained permanent brain damage, that has resulted in, among other things, a seizure disorder and a diagnosis of learning disabilities. At age 36, he started working for Defendant. This placement was his first job.

9. Defendant hired Mr. Dillard on February 2, 2000, as a security guard. His duties involved, among other things, patrolling designated buildings. He also drove a company vehicle. During his tenure, he worked the evening and night shift. Early on, Defendant considered terminating Mr. Dillard because he learned slowly and needed more time to acquire the job skills. However, Mr. Dillard's sister, who was also employed by Defendant, became his supervisor. She and another employee, provided Mr. Dillard with the additional instruction and close supervision he needed to perform the essential functions of the job.

10. In late July of 2000, Defendant sought information about medications taken by employees. At that time, Defendant learned that Mr. Dillard was taking medication for a seizure disorder. Once Defendant learned about the medication, Mr. Dillard was terminated from his employment. Defendant determined that the it could not retain Mr. Dillard because of possible liability problems.

11. Since at least July 2000, Defendant Employer has engaged in unlawful employment practices in violation of the ADA, Section 102(a), 42 U.S.C. §§12112(a), at its Chattanooga, Tennessee facility. These practices include but are not limited to discharging Rocky Dillard, a qualified individual with a disability, because of his learning disability and a belief that Mr. Dillard was susceptible to seizures.

12. The effect of these practices complained of above has been to deprive Mr. Dillard of equal employment opportunities and otherwise adversely affect his status as an employee because

Defendant Employer discharged him because of his disability.

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

14. Defendant Tri-State Security Agency, Inc., at all relevant times has been acting with malice or reckless indifference to the federally protected rights of Rocky Dillard 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 Tri-State Security Agency, 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 Tri-State Security Agency, Inc., to make whole Rocky Dillard 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 Tri-State Security Agency, Inc., to make whole Rocky Dillard by providing compensation for nonpecuniary losses, including emotional pain, suffering, inconvenience and mental anguish in amounts to be proven at trial.

E. Order Defendant Tri-State Security Agency, 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

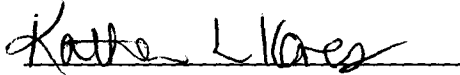
The Commission requests a jury trial on all questions of fact raised by the Complaint.

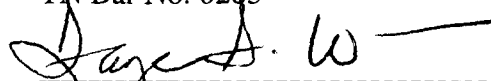
Respectfully submitted,


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