

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED  
AUSTIN DIVISION  
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EQUAL EMPLOYMENT OPPORTUNITY §  
COMMISSION §  
§  
V. §  
§  
AMPCO SYSTEM PARKING, INC., §  
A Subsidiary of American Building §  
Maintenance Industries, Inc. §

CIVIL NO. A-97-CA-766 ADA

**ORDER**

Came for consideration this date the Defendants' Motion for Summary Judgment filed November 5, 1998 (Clerk's Docket No. 51). The Plaintiff, the Equal Employment Opportunity Commission (EEOC) filed its Response on November 16, 1998 (Clerk's Docket No. 52). The Court conducted a hearing on all issues on December 15, 1998. The Order and Judgment follows:

**I. GENERAL BACKGROUND**

Defendant, AMPCO Parking System, Inc., obtained a contract to operate the parking system at the Austin Municipal Airport. Defendant interviewed potential employees to operate the booths that collect parking fees. One of the employees of the former parking lot operator, Shirley M. Dixon (Dixon), applied for a position with the Defendant. It is undisputed that the Defendant declined to hire Ms Dixon because of her speech impediment. The EEOC is proceeding pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq., (ADA).

Ms. Dixon, through Plaintiff-Intervenor Marsha Kochruek, Trustee for the Bankruptcy Estate of Shirley Marie Dixon, has resolved any legal dispute that she may have had against the Defendant. However, the EEOC continues to pursue this case, requesting injunctive relief that would require the Defendant to comply with the ADA, as well as affirmative steps such as disability

sensitivity training.

## II. DEFENDANT'S MOTION

Defendant contends that there is no legal basis for the Court to enter injunctive relief on the basis that the Defendant failed to hire Ms. Dixon. The Defendant emphasizes that they have resolved any legal dispute with Ms. Dixon and that no similar complaints have been filed against them. Thus, the Defendants ask the Court to enter summary judgment on their behalf and dismiss this cause of action.

## III. ANALYSIS

### A. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 2553-54, 91 L.Ed.2d 265 (1986). After a proper motion for summary judgment is made, the non-movant must set forth specific facts showing that there is a genuine issue for trial. *See Hanks v. Transcontinental Gas Pipe Line Corp.*, 953 F.2d 996, 997 (5th Cir.1992).

The Court begins its determination by consulting the applicable substantive law to determine what facts and issues are material. *See King v. Chide*, 974 F.2d 653, 655-56 (5th Cir.1992). It then reviews the evidence relating to those issues, viewing the facts and inferences in the light most favorable to the non-movant. *See id.* If the non-movant sets forth specific facts

in support of allegations essential to his claim, a genuine issue is presented. *See Brothers v. Klevenhagen*, 28 F.3d 452, 455 (5th Cir.1994).

**B. Americans with Disabilities Act**

The ADA provides that no covered employer may discriminate against "a qualified individual with a disability because of the disability of such individual" in any of the "terms conditions, and privileges of employment." 42 U.S.C. § 12112(a). In addition, the ADA imposes upon the employer the duty to provide reasonable accommodations for known disabilities unless doing so would result in undue hardship to the employer. 42 U.S.C. § 12112 (b)(5)(A).

To establish a prima facie case of discrimination under the ADA, the Plaintiff must establish that; (1) she has a disability; (2) she is a qualified individual for the job in question; and (3) that an adverse employment decision was made solely because of her disability. *Barber v. Nabors Drilling U.S.A., Inc.*, 130 F.3d 702, 706 (5<sup>th</sup> Cir. 1997); *Rizzo v. Children's World Learning Centers, Inc.*, 84 F.3d 758, 763 (5<sup>th</sup> Cir. 1996). For the purpose of this summary judgment motion it is undisputed that Ms. Dixon was disabled and that a single ADA violation occurred.

**C. Injunctive Relief**

While the Court is aware of its ability, if not duty, to enter injunctive relief in an instance in which someone's statutory rights have been violated, the Court is reluctant to enter an order that is tantamount to requiring an employer to hire someone in the absence of any proof that they desire to be rehired. To obtain standing for injunctive relief, a plaintiff must show that there is reason to believe that they would directly benefit from the equitable relief sought. *Plumley v. Landmark Chevrelot, Inc.*, 122 F.3d 308, 312 (5<sup>th</sup> Cir. 1997)(citing *Hoepfl v. Barlow*, 906 F.Supp. 317, 321 (E.D.Va.1995)). Dixon apparently could have pursued her claim with respect to the Defendants'

decision not to hire her, and could have requested a Court to order that she be hired, but elected not to do so. Although the EEOC has the authority to bring a civil action that is broader in scope than the original complaint, it has failed to meet its burden for injunctive relief. *EEOC v. Huttig Sash & Door Co.*, 511 F.2d 453, 455 (5<sup>th</sup> Cir. 1975). To avoid summary judgment, the non-movant must adduce evidence which creates a material fact issue concerning each of the essential elements of its case for which it will bear the burden at trial. *Celotex Corp.*, 477 U.S. at 322-23, 106 S. Ct. at 2552-53 (1986).

Because the EEOC seeks injunctive relief, it bears the burden of proving it is entitled to such relief. A party seeking injunctive relief based on past wrongs must show that there is a real or immediate threat that they will be wronged again. *City of Los Angeles v. Lyons*, 461 U.S. 95, 111, 103 S. Ct. 1660, 1669 (1983). The EEOC fails to present any evidence to raise a material fact as to whether there is a reasonable likelihood of a repeated incident of discrimination. Summary judgment is proper where there is a showing that there is a lack of evidence on a material element of the non-movants case. *Celotex*, 477 U.S. at 325, 106 S.Ct. at 2553-54 (1986). There is no summary judgment evidence that, absent intervention by the Court, the Defendants would discriminate against Dixon or even be given an opportunity to do so since there is no evidence that Ms. Dixon has any interest in reapplying for a job with the Defendant. There is certainly no evidence that persuades this Court to use its power in equity to fashion an injunctive order that Ms. Dixon appears to have no interest in.

**D. Actual Claim or Controversy**

The Court also finds that the Plaintiff has failed to provide competent summary judgment evidence that an actual claim or controversy exist. In its First Amended Complaint, the EEOC

pleads a single incident of discrimination which occurred five years ago. As already noted, Ms. Dixon settled all her claims against the Defendant. Defendant contends there is no evidence that Ms. Dixon wishes to reapply for employment with AMPCO or if she did that her rights would be violated. In support of its contention, Defendants point to its hiring record. Since the Dixon incident there has not been a credible failure to hire ADA filing with the EEOC.<sup>1</sup> To the extent that the EEOC argues that it needs injunctive relief on behalf of Dixon or other similar situated persons, the Court finds that there is no evidence showing an actual claim or controversy exists which deems such relief is necessary or appropriate.

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<sup>1</sup> The only "failure to hire" charge listed in Plaintiff's Exhibit J is where AMPCO was the contractor who lost an airport parking contract, and one of its employees was not hired by the subsequent parking contractor. *Defendant's Motion in Opposition of EEOC Motion to Strike, Objection to EEOC Summary Judgment Evidence and Reply in Support of Summary Judgment*, p. 6. (Clerk's Docket No. 52).

#### IV. CONCLUSION

The EEOC has alleged only a single, past statutory violation and does not adequately assert a reasonable likelihood that Ms. Dixon or any other potential employee will be subjected to a similar violation in the future. Ms. Dixon has not indicated that she plans to seek employment with the Defendant again nor has the EEOC presented credible summary judgment evidence showing a pattern of failure to hire claims against the Defendant. The Court finds that the Plaintiff's allegations are clearly insufficient under well-established law to support a right to an injunction. Therefore, the Court **GRANTS** the Defendant's Motion for Summary Judgment.

SIGNED this the <sup>a</sup>4th day of January 1999.

  
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ALAN D ALBRIGHT  
UNITED STATES MAGISTRATE JUDGE