

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FILED

AUG 24 2006

MICHAEL N. LLOYD, CLERK OF COURT

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

LYONDELL-CITGO REFINING, L.P.

Defendant.

H-06-2738

CIVIL ACTION NO.

JURY TRIAL DEMANDED

COMPLAINT

This is an action under Title I of the Americans with Disabilities Act of 1990 ("ADA"), 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 Steve Aleman, who was adversely affected by Defendant Lyondell-Citgo Refining, L.P.'s unlawful hiring practices. As alleged with greater particularity below, Lyondell-Citgo Refining, L.P. ("LCR"), unlawfully refused to hire Mr. Aleman because it regarded him as disabled and because of his record of disability.

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. §2000e-5(f)(1) and (3), and pursuant to § 102 of the Civil Rights of 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 Southern District of Texas, Houston Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the “Commission” or “EEOC”), 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 Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. Defendant LCR is a Delaware limited partnership. At all relevant times, LCR has been doing business in the State of Texas and the City of Houston, and has continuously had at least 15 employees. LCR may be served by serving its registered agent for service of process, CT Corporation System, 1021 Main Street, Suite 1150, Houston, Texas 77002.

5. At all relevant times, Defendant LCR 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 Sections 701(g) and (h) of Title VII, 42 U.S.C. § 2000e(g) and (h).

6. At all relevant times, Defendant LCR 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 days prior to the institution of this lawsuit, Aleman filed a charge with the Commission alleging violations of Title I of the ADA by Defendant LCR. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least December 2004, Defendant LCR has engaged in unlawful employment practices directed from LCR's Houston, Texas location, in violation of Sections 101 et. seq. of Title I of the ADA, 42 U.S.C. § 12101 et seq.

9. On or about October 13, 2004, Aleman applied for an LCR Operator Trainee position to work at LCR's Houston, Texas worksite located at 12000 Lawndale.

10. LCR contracted with Certified Personnel Resources ("CPR") to identify candidates for the Operator Trainee position. Aleman was identified as a candidate for the position by CPR.

11. On or about December 16, 2004, LCR sent Aleman to Work Ready Rehabilitation Center ("WRRC") for a physical strength test and functional capacity evaluation.

12. The WRRC evaluator noted on one of Aleman's evaluation forms "brain surgery" which "affect[s] right side of body...reports right leg fatigue causes limp."

13. While at Work Ready, Aleman successfully demonstrated his ability to perform all essential functions for the "Operator" position, including successfully passing all flexibility and strength tests.

14. On or about December 16, 2004, Aleman successfully demonstrated his ability to climb a designated tower at the LCR worksite within a prescribed amount of time.

15. On or about December 23, 2004, Aleman received a written offer of employment from LCR. The letter stated that employment was to begin January 10, 2005.

16. On or about December 29, 2004, LCR sent Aleman to its third-party medical provider, Memorial Hermann Hospital ("Memorial Hermann"), which operated a clinic onsite at LCR through a Memorial Hermann occupational health service program called *WorkLink*. At

the *WorkLink* clinic Aleman completed several written questionnaires and underwent a medical examination by Dr. Martha Armstrong. Aleman revealed his right side weakness, previous head injury and history of seizures.

17. Aleman successfully passed each exam administered by Dr. Martha Armstrong.

18. On or about January 7, 2005, physician's assistant Dan Hennington phoned Aleman and inquired about Aleman's right side weakness, previous head injury and history of seizures.

19. On or about January 7, 2005, Aleman was informed by CPR that the date he was to start employment with LCR was moved from January 10 to January 24, 2005.

20. On or about January 10, 2005, Dr. George Hancock, Medical Director, *WorkLink*, determined that in his opinion Aleman could not safely perform the essential functions of the Operator Trainee position.

21. Based on Dr. Hancock's recommendation that Aleman was unable to perform the job, LCR withdrew the offer of employment on or about January 10, 2005.

22. On or about on or about January 10, 2005, Aleman phoned Dan Hennington and Mr. Hennington told Aleman there were concerns Aleman "would not be 100% because of [his] medical history."

23. LCR discriminated against Aleman by refusing to hire him purportedly based on the third-party medical provider's recommendation that Aleman was unable to perform the job in violation of Section 102 of Title I of the ADA, 42 U.S.C. § 12112(a).

24. The effect of the unlawful employment practices complained of above has been to deprive Aleman of equal employment opportunities and otherwise adversely affected his status

as an applicant for employment because he was regarded as disabled and had a record of disability.

25. The unlawful employment practices complained of in the paragraphs above were intentional.

26. The unlawful employment practices complained of in the paragraphs above were done with malice or with reckless indifference to the federally protected rights of Aleman.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant LCR, its officers, successors, assigns, and all persons in active concert or participation with it, from refusing to hire qualified individuals with disabilities or from engaging in any other employment practice which discriminates on the basis of disability.

B. Order Defendant LCR 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

C. Order Defendant LCR to make Aleman whole, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement of Aleman or order an award of front pay in an amount to be proved at trial if reinstatement is impractical.

D. Order Defendant LCR to make whole Aleman by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in

the paragraphs above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, humiliation, and job search expenses in amounts to be determined at trial.

E. Order Defendant LCR to pay Aleman punitive damages for its malicious and reckless conduct, as described above, in an amount to be determined at trial.

F. Grant such further relief as the Court deems necessary and proper in the public interest.

G. 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.

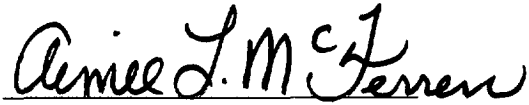
Respectfully submitted,

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

RONALD S. COOPER
General Counsel

JAMES LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel
1801 L. Street, N.W.
Washington, D.C. 20507



Aimee L. McFerren
Trial Attorney
Attorney-in-Charge
Kentucky Bar No.: 89912
Southern District No.: 36953
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
1919 Smith Street, 7th Floor
Houston, Texas 77002-8049
(713) 209-3390
Fax: (713) 209-3402

OF COUNSEL:

Jim Sacher
Regional Attorney

Rose Adewale-Mendes
Supervisory Trial Attorney
Equal Employment Opportunity Commission
1919 Smith Street, 7th Floor
Houston, Texas 77002