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Equal Employment Opportunity Commission, Plaintiff, v. American Cyanamid Company, et al., Defendants.

Judge Mary Ann L. Medler

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Equal Employment Opportunity Commission, Plaintiff, v. American Cyanamid Company, et al., Defendants.

Keywords

Equal Employment Opportunity Commission, American Cyanamid Company, 2:01-cv-00110-MLM, Consent decree / Settlement, Disparate Treatment, Hiring, Diabetes, Manufacturing, Employment Law, ADA

RECEIVED

NOV 19 2002
U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

IN THE UNITED STATES DISTRICT COURT
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

FILED

NOV 20 2002

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)

Plaintiff,)

v.)

AMERICAN CYANAMID COMPANY, et al.,)

Defendants.)

Case No.: 2:01CV110MLM

CONSENT DECREE

The EEOC commenced this action on July 19, 2001, alleging that Defendant American Cyanamid Company ("Defendant AC") unlawfully withdrew offers of employment at a plant operated by Defendant AC at all relevant times in Palmyra, Missouri, near Hannibal, Missouri ("Hannibal plant"), to David Brian Fohey and Michael Ray Cox because of their disability, diabetes, in violation of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101, et seq. The EEOC has alleged that, had AC not unlawfully withdrawn such job offers, Fohey and Cox would have begun their employment as material handlers at the Hannibal plant, on or about October 28, 1998, for Fohey and on or about February 17, 1999, for Cox. On February 1, 2002, the EEOC joined two additional defendants, BASF Corporation ("BASF"), the successor owner-operator of the Hannibal plant, and the International Chemical Workers Union Council, Local 887C, of the United Food and Commercial Workers¹ ("Union"), for purposes of injunctive relief only.

¹The Union was joined as the International Chemical Workers Union/United Food and Commercial Workers Local 887-C, but its proper name is as set forth in this Consent Decree.

#59

Defendants AC, BASF and the Union deny any and all liability under the ADA.

Defendant AC specifically denies that it withdrew offers of employment to David Brian Fohey and Michael Ray Cox because of any disability in violation of the ADA.

THEREFORE, it is the finding of this Court, made on the pleadings and on the record as a whole, and upon the agreement of all the parties, that: (i) this Court has jurisdiction over the parties to and the subject matter of this action; (ii) the requirements of the ADA will be carried out by this Decree; (iii) this Decree is intended to and does resolve all matters in controversy in this lawsuit among the parties; and (iv) the terms of this Decree constitute a fair and equitable settlement of all issues in this lawsuit.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

I. General Provisions

1. This Decree, being entered with the consent of the parties for purposes of settlement, shall not constitute an adjudication on the merits of this lawsuit and shall not be construed as an admission by any or all of the Defendants of any violation of the ADA or of any executive order, law, rule or regulation dealing or issued in connection with disability discrimination in employment. Each Defendant specifically denies any liability and each Defendant is entering this Decree in order to avoid the expense, delay and burden of further litigation.

2. Defendant BASF has not discriminated and shall not discriminate with respect to any terms or conditions of employment at the Hannibal plant on the basis of disability.

3. Defendant BASF has not deprived and shall not deprive employees or job applicants of employment opportunities at the Hannibal plant on the basis of the actual or

perceived disability of Type-I diabetes without first determining whether such employee or applicant may be reasonably accommodated and/or poses a direct threat in the workplace.

4. Defendant BASF has not discriminated and shall not discriminate or take any adverse employment action against any person at the Hannibal plant because he or she: (a) has opposed any practices alleged in this lawsuit as unlawful under the ADA; (b) has participated in any investigation conducted under the ADA connected with or leading up to this lawsuit; (c) has participated in this lawsuit; or (d) has benefited or will benefit in any way as a result of this Consent Decree.

II. Relief for Michael Ray Cox and David Brian Fohey

1. In consideration of the dismissal of this lawsuit and the promises contained in the Settlement Agreement and Release signed by Michael Ray Cox, Defendant AC shall, within ten (10) days following the Court's entry of this Decree and the execution by Cox of the Settlement Agreement and Release, pay to Michael Ray Cox \$13,399.36 constituting back-pay, \$500.00 constituting interest and \$23,600.64 constituting compensatory damages, for a total of \$37,500.00, pursuant to the following instructions:

- a. The check constituting back pay shall be subject to applicable withholding for federal and state income taxes and the employee's portion of FICA, and Defendant AC shall issue a Form W-2 to Cox reflecting the gross amount of back-pay described above and all applicable withholdings, along with a statement of itemization of such withholdings. The check constituting interest shall be made payable in the gross amount described above. Defendant AC shall issue a Form 1099 to Cox reflecting the amount of such interest paid. The check constituting compensatory

damages shall be made payable in the gross amount of compensatory damages described above and Defendant AC shall issue a Form 1099 to Cox reflecting the gross amount of such compensatory damages.

- b. Defendant AC shall mail such checks, W-2, 1099s and itemization statement to Michael Ray Cox at his current home address, 905 Summer St., Hannibal, MO 63401, and shall contemporaneously mail copies of the same to Rebecca S. Stith, Senior Trial Attorney, Equal Employment Opportunity Commission, 1222 Spruce, Room 8.100, St. Louis, MO 63103.

2. Michael Ray Cox was advised and had a reasonable opportunity to consult with a private attorney prior to signing the Settlement Agreement and Release and Defendant AC agrees to pay Cox up to \$250.00 for such consultation, provided that Cox executes that Settlement Agreement and Release. Defendant AC shall make such payment within ten (10) days of Defendant AC's receipt of such private attorney's invoice or billing statement. Defendant AC shall mail a check for the invoiced amount up to a maximum of \$250.00 to Cox at his current home address, 905 Summer St., Hannibal, MO 63401. Cox shall be directly responsible for any fee due to the private attorney which exceeds \$250.00.

3. In consideration of the dismissal of this lawsuit and the promises contained in the Settlement Agreement and Release signed by David Brian Fohey, Defendant AC shall, within ten (10) days following the Court's entry of this Decree and the execution by Fohey of the Settlement Agreement and Release, pay to David Brian Fohey \$8,116.49 constituting back-pay, \$300.00 constituting interest and \$29,083.51 constituting compensatory damages, for a total of \$37,500.00, pursuant to the following instructions:

- a. The check constituting back pay shall be subject to applicable withholding for federal and state income taxes and the employee's portion of FICA, and Defendant AC shall issue a Form W-2 to Fohey reflecting the gross amount of back-pay described above and all applicable withholdings, along with a statement of itemization of such withholdings. The check constituting interest shall be made payable in the gross amount described above. Defendant AC shall issue a Form 1099 to Fohey reflecting the amount of such interest paid. The check constituting compensatory damages shall be made payable in the gross amount of compensatory damages described above and Defendant AC shall issue a Form 1099 to Fohey reflecting the gross amount of such compensatory damages.
- b. Defendant AC shall mail such checks, W-2, 1099s and itemization statement to David Brian Fohey at his current home address, 801 South Hayden, Hannibal, MO 63401, and shall contemporaneously mail copies of the same to Rebecca S. Stith, Senior Trial Attorney, Equal Employment Opportunity Commission, 1222 Spruce, Room 8.100, St. Louis, MO 63103.

4. David Brian Fohey was advised and had a reasonable opportunity to consult with a private attorney prior to signing the Settlement Agreement and Release and Defendant AC agrees to pay Fohey up to \$250.00 for such consultation. provided that Fohey executes that Settlement Agreement and Release. Defendant AC shall make such payment within ten (10) days of Defendant AC's receipt of such private attorney's invoice or billing statement. Defendant AC shall mail a check for the invoiced amount up to a maximum of \$250.00 to Fohey

at his current home address, 801 South Hayden, Hannibal, MO 63401. Fohey shall be directly responsible for any fee due to the private attorney which exceeds \$250.00.

5. Within ten (10) days of the Court's entry of this Decree, BASF shall place Michael Ray Cox on the collective bargaining unit seniority list for a position as a material handler at the plant in Hannibal, Missouri, with seniority, including all the rights and benefits incidental thereto and to which all other bargaining unit members on the seniority list have been entitled including recall from layoff, retroactive to February 17, 1999, except that Cox's eligibility for recall rights will not extend beyond the date to which he would have remained eligible had he originally been hired on February 17, 1999. Any such position shall be subject to the applicable limitations and provisions of the Collective Bargaining Agreement in place between BASF and the Union, at the time of the Court's entry of this Decree, or any subsequent modifications, amendments, or successors to that Collective Bargaining Agreement.

6. Within ten (10) days of the Court's entry of this Decree, BASF shall place David Brian Fohey on the collective bargaining unit seniority list for a position as a material handler at the plant in Hannibal, Missouri, with seniority, including all the rights and benefits incidental thereto and to which all other bargaining unit members on the seniority list have been entitled including recall from layoff, retroactive to October 28, 1998, except that Fohey's eligibility for recall rights will not extend beyond the date to which he would have remained eligible had he originally been hired on October 28, 1998. Any such position shall be subject to the applicable limitations and provisions of the Collective Bargaining Agreement in place between BASF and the Union, at the time of the Court's entry of this Decree, or any subsequent modifications, amendments, or successors to that Collective Bargaining Agreement.

III. Injunctive Relief by BASF

1. Within thirty (30) days of the Court's entry of this Decree, Defendant BASF shall post and cause to remain posted copies of the policy, "Notice to Employees," attached hereto as Exhibit A, on the four (4) official company bulletin boards located at its Hannibal plant. Such policy shall remain posted for a period of three (3) years starting from the date of the Court's entry of this Decree. Such policy shall be signed and dated by the plant manager of the Hannibal plant, with a copy of the signed and dated policy mailed to Rebecca S. Stith, Senior Trial Attorney, Equal Employment Opportunity Commission, 1222 Spruce, Room 8.100, St. Louis, MO 63103.

2. Within thirty (30) days of the Court's entry of this Decree, Defendant BASF shall post and cause to remain posted the notices required to be displayed in the workplace by EEOC regulation 29 C.F.R. §1601.30 on the Hannibal plant's four (4) official company bulletin boards.

3. Within thirty (30) days of the Court's entry of this Decree, Defendant BASF shall adopt and implement the "Policy on Disability Discrimination," attached hereto as Exhibit B.

4. During the three-year period following the Court's entry of this Decree, Defendant BASF shall disseminate the "Policy on Disability Discrimination," attached hereto as Exhibit B, as part of the orientation of all new employees at the Hannibal plant, and document such orientation and training in the respective personnel files of such employees.

IV. Injunctive Relief by the Union

1. Pursuant to the terms and provisions of the settlement agreement between the Plaintiff EEOC and Defendant Union, approved by the Court on May 3, 2002, Defendant Union

shall not oppose, or grieve on behalf of itself and/or any bargaining unit member, the placing on the seniority recall list or the hiring of David Brian Fohey and/or Michael Ray Cox to work as a material handler at the Hannibal plant, with all seniority and all rights and benefits incidental thereto, retroactive to October 28, 1998, for Fohey and to February 17, 1999, for Cox.

2. Pursuant to the terms and provisions of the settlement agreement between the Plaintiff EEOC and Defendant Union, approved by the Court on May 3, 2002, Defendant Union shall not oppose, or grieve on behalf of itself and/or any bargaining unit member, the injunctive relief described in Section III, above, but only so long as no bargaining unit member is required to take involuntary leave or involuntarily change shifts, or is otherwise penalized as part of BASF's compliance with the injunctive relief in Section III, above. By this Decree, the Union is not waiving its right to grieve any action by BASF which in the Union's view violates the applicable collective bargaining agreement. By this Decree, the Union has not accepted responsibility for seeing that the Decree is enforced.

V. Reporting, Record-keeping, and Access by BASF

1. Within forty-five (45) days of the Court's entry of this Decree, BASF shall submit to Rebecca S. Stith, Senior Trial Attorney, Equal Employment Opportunity Commission, 1222 Spruce, Room 8.100, St. Louis, MO 63103, a letter affirming that BASF has met the respective requirements set forth in paragraph 1, 2 and 3 of Section III, above.

2. During the three-year period following the Court's entry of this Decree, BASF shall, within thirty (30) days of the filing of any formal report or complaint by an employee alleging disability discrimination on the basis of the medical condition diabetes, submit to Rebecca S. Stith, Senior Trial Attorney, Equal Employment Opportunity Commission, 1222 Spruce, Room 8.100, St. Louis, MO 63103, a letter stating the name of the employee, the nature

of the report or complaint, and the action taken by BASF in response to such report or complaint.

3. During the three-year period following the Court's entry of this Decree, BASF shall permit the EEOC to visit and inspect the Hannibal plant once per year on a mutually agreeable date to ensure compliance with paragraphs 1, 2, 3 and 4 of Section III, above.

VI. Term and Effect of Decree

1. Upon the Court's entry of this Decree, the Decree shall be in effect for a period of three (3) years and can be extended only for good cause shown.

2. During the Decree's term, the Court shall retain jurisdiction of this cause for purposes of enforcement of the provisions of this Decree. In all other respects, the cause is dismissed with prejudice.

3. By entering into this Decree, the parties do not intend to resolve any charges of discrimination currently pending before the EEOC other than the charge that created the procedural foundations for the Complaint and First Amended Complaint in this case.

4. BASF shall affirmatively notify any prospective purchasers of the obligations of such Decree prior to any sale of the Hannibal plant which may take place during the three-year period following the Court's entry of this Decree.

5. This Decree shall be binding upon the parties hereto, their successors, agents and assigns.

6. Each party shall bear its own costs and attorneys' fees.

7. Cox and Fohey shall each execute his respective Settlement Agreement and Release.

DATED:

November 20, 2002


Nancy Green L. Wheeler
UNITED STATES MAGISTRATE JUDGE


BY CONSENT:

Respectfully submitted,

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

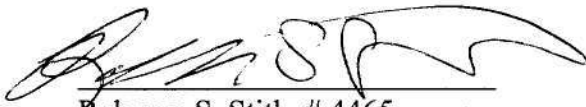
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Attorneys for Plaintiff EEOC

UNITED FOOD AND COMMERCIAL WORKERS

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A. Randall Vekar 10/18/02

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Attorneys for Defendant International Chemical
Workers Union Council, Local 887C, of the
United Food and Commercial Workers

BASF CORPORATION

A handwritten signature in black ink, reading "Roland DeLoach", is written over a solid horizontal line.

Roland DeLoach

Manager, Corporate EEO

3000 Continental Dr., N

973-426-2123

973-426-2122

(BASF CORPORATION letterhead)

NOTICE TO EMPLOYEES

This Notice is being posted as part of a remedy agreed to pursuant to a Consent Decree entered in the case of Equal Employment Opportunity Commission (EEOC) v. American Cyanamid Company, et al., Cause No. 2:01CV110 MLM, on file in the Federal District Court for the Eastern District of Missouri, Northern Division.

Federal law prohibits discrimination against any employee or applicant for employment because of the individual's race, national origin, color, religion, sex, disability or age (forty and over) with respect to hiring, promotion, firing, compensation, or other terms, conditions or privileges of employment. Specifically, Defendants shall not deprive employees or job applicants of equal employment opportunities on the basis of the actual or perceived disability of Type-I diabetes without first determining whether such employee or applicant may be reasonably accommodated or poses a direct threat in the workplace.

Federal law also prohibits retaliation against employees or applicants because they have opposed practices that they reasonably believe discriminate on the basis of race, national origin, color, religion, sex, disability or age (forty and over) or because they have filed charges with the EEOC and/or cooperated with an EEOC investigation. BASF CORPORATION supports compliance with such Federal law in all respects and will not take any action against employees or applicants because they have exercised their rights under the law. BASF CORPORATION will not retaliate against any employee or applicant because such individual reports, protests or opposes any employment practice which such individual reasonably believes to be unlawful under Federal law.

In particular, BASF CORPORATION will not tolerate the denial of equal employment opportunities on the basis of actual or perceived disabilities. Applicants and employees are free to report instances of possible disability discrimination to any member of management at any time. BASF CORPORATION has established policies and procedures to investigate promptly any such reports and to protect the applicant or employee making such report from retaliation. Regardless whether an applicant or employee has filed an internal complaint with management, such applicant or employee is free to file a charge alleging disability discrimination, retaliation or any other possible employment discrimination with the Equal Employment Opportunity Commission, St. Louis District Office, 1222 Spruce, Room 8.100, St. Louis Missouri, 63103, (314) 539-7800.

Exhibit A

(BASF CORPORATION letterhead)

POLICY STATEMENT ON DISABILITY DISCRIMINATION

Pursuant to the Americans with Disabilities Act of 1990, as amended (“the ADA”), it is unlawful for an employer to make any employment decision based in whole or in part on the disability of an applicant or employee. It is also unlawful for an employer to retaliate against an applicant or employee because the applicant or employee opposed or otherwise protested an employment practice which he or she reasonably believed to be unlawful under the ADA.

It is the policy of BASF CORPORATION to prohibit all disability discrimination, including any denial of an employment opportunity on the basis of an actual or perceived disability, in strict compliance with the standards set forth in the ADA. All persons, including managers, supervisors, officers, and owners, who engage in or are otherwise responsible for prohibited conduct shall be subject to appropriate discipline, up to and including termination.

Applicants and employees should be aware:

- 1) That disability discrimination against applicants and employees is unlawful;
- 2) That all inquiries about an applicant's medical condition and/or disability, prior to a bona fide offer of employment, is unlawful;
- 3) That such unlawful conduct will not be tolerated or condoned by this company;
- 4) That any applicant or employee subjected to such discrimination or retaliation may complain to anyone in management, and that BASF will commence a full investigation within ten (10) days after receipt of the complaint and complete its investigation within 30 days after receipt of the complaint;
- 5) That, regardless whether an internal complaint is filed with management, such applicant or employee may file a charge with Equal Employment Opportunity Commission, St. Louis District Office, 1222 Spruce, Room 8.100, St. Louis Missouri, 63103, (314) 539-7800; and
- 6) That any applicant or employee who makes an internal complaint or files a charge with the EEOC shall not be subjected to any retaliation or other adverse action as a result of such applicant's or employee's complaint or charge.

Exhibit B

AN ORDER, JUDGMENT OR ENDORSEMENT WAS SCANNED, FAXED AND/OR MAILED TO THE FOLLOWING INDIVIDUALS ON 11/20/02 by aluisett
2:01cv110 EEOC vs American Cyanamid Co

42:12101 Americans with Disabilities Act

Dennis Donnelly - 2995	Fax: 314-259-2020
Clifford Godiner - 3225	Fax: 314-552-7433
Anne Gusewelle -	Fax: 314-539-7895
Rodney Harrison - 83160	Fax: 314-552-7451
Robert Johnson - 10511	Fax: 314-539-7895
Timothy Mooney - 85574	Fax: 314-259-2020
Barbara Seely - 10607	Fax: 314-539-7895
Rebecca Stith - 4465	Fax: 314-539-7895

SCANNED & FAXED BY

NOV 21 2002

S A