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Equal Employment Opportunity Commission, Plaintiff v. Ford Motor Company and Visteon Corporation, Defendants.

Judge Nancy Edmunds

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Equal Employment Opportunity Commission, Plaintiff v. Ford Motor Company and Visteon Corporation, Defendants.

Keywords

Equal Employment Opportunity Commission, Ford Motor Company, Visteon Corporation, 2:00-cv-74344-NGE, Consent decree / Settlement, Disparate Treatment, Unlawful Medical Exam, Hiring, Other physical impairment disability, Automotive, Employment Law, ADA

CLOSED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION)

Plaintiff)

v.)

FORD MOTOR COMPANY and)
VISTEON CORPORATION,)

Defendants)

Civil Action No. 00-74344

HONORABLE NANCY EDMUNDS



FILED

JUL 15 2002

CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN MICHIGAN

CONSENT DECREE

1. Plaintiff, the United States Equal Employment Opportunity Commission (the "Commission") commenced this action on September 29, 2000 in the United States District Court for the Eastern District of Michigan, Southern Division, alleging that the Defendants, Ford Motor Company ("Ford") and Visteon Corporation ("Visteon") made unlawful pre-employment medical inquiries of Charging Parties Karen Martin ("Martin"), Linda Crider ("Crider") and other similarly situated applicants, in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.* The Commission further alleged that Ford and Visteon subjected Crider and other similarly situated applicants to pre-employment medical examinations prior to extending an offer of employment, and that Ford failed to hire Martin and other similarly situated applicants based upon their disability, all in further violation of the ADA. Ford and Visteon denied these allegations.

2. As a result of settlement discussions, the Commission Ford and Visteon have resolved their differences and have agreed that this action should be settled by entry of this

Consent Decree. It is the intent of the parties that this Consent Decree be a final and binding settlement in full disposition of any and all claims alleged or which could have been alleged in the Complaint and Amended Complaint against Ford and Visteon or in the Charges of Discrimination filed by Martin and Crider, Charge Nos. 230-95-1914 and 230-99-0082, respectively.

STIPULATED FACTS

3. The Commission is the agency of the United States government authorized by the ADA to investigate allegations of unlawful employment discrimination based upon disability, to bring civil actions to prohibit unlawful employment practices, and to seek relief for individuals affected by such practices.

4. Ford is an employer engaged in an industry affecting commerce within the meaning of Section 101(5) of the ADA, 42 U.S.C. § 12111(2), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. § 2000e (g) and (h). Ford had at least 15 employees for 20 or more calendar weeks during the relevant period of time.

5. Visteon is an employer engaged in an industry affecting commerce within the meaning of Section 101(5) of the ADA, 42 U.S.C. § 12111(2), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. § 2000e (g) and (h). Visteon had at least 15 employees for 20 or more calendar weeks during the relevant period of time.

6. The actions of which the agency complained occurred at the Sterling Heights plant and the Sheldon Road plant. These two facilities are currently owned by Visteon. The current salaried and management employees at these two plants are employees of Visteon. The hourly employees are Ford employees doing work for Visteon pursuant to an agreement between Visteon and Ford.

6. Pursuant to the ADA, the parties acknowledge the jurisdiction of the United States District Court for the Eastern District of Michigan (Southern Division) over the subject matter and parties to this case for the purpose of entering this Decree, and if necessary, enforcing the provisions of this Decree.

7. Venue is appropriate in the Eastern District of Michigan (Southern Division). For purposes of this Decree and proceedings related to this Decree only, Ford and Visteon agree that all statutory conditions precedent to the institution of this lawsuit against Ford and Visteon have been fulfilled.

FINDINGS

8. Having examined the terms and provisions of the Consent Decree and based on the pleadings, records, and stipulations of the parties, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of this action against Ford and Visteon;
- b. The terms and provisions of this Consent Decree are fair, reasonable and just. The rights of Ford, Visteon, the Commission, and those for whom the Commission seeks relief are adequately protected by this Decree;
- c. The Consent Decree conforms with the Federal Rules of Civil Procedure and the ADA, and is not in derogation of the rights and privileges of any person. The entry of this Decree will further the objectives of the ADA and will be in the best interests of the parties and those for whom the Commission seeks relief

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

NON-ADMISSION

9. This Decree, being entered with the consent of the Commission, Ford and Visteon, shall not constitute an adjudication or finding on the merits of this case and shall not be construed as an admission by Ford or Visteon of any violation of the ADA or, any other law, rule or regulation dealing with or in connection with equal employment opportunity.

NON-DISCRIMINATION

10. Ford and Visteon, and their officers, agents, and employees, shall comply with the provisions of the ADA, *42 U. S.C. § 12101 et seq.*, with regard to disability discrimination.

11. Visteon, its officers, agents, and employees, shall make an individualized assessment of an applicant's ability in making hiring decisions. Visteon shall not automatically exclude from employment opportunities any individual based on a physical restriction code without first conducting an individualized assessment as to that individual's ability to perform the essential functions of the job, with or without reasonable accommodation. Visteon shall not make any medical inquiry or conduct any medical examination of an applicant prior to making an offer of employment.

NON-RETALIATION

12. Ford shall not take any action against any person which constitutes intimidation, retaliation, harassment, or interference with the exercise of such person's rights under the ADA because of the filing of Charges of Discrimination by Karen (Halucha) Martin and Linda Crider, which form the basis for the present case, or because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case under the ADA.

13. Visteon shall not take any action against any person which constitutes intimidation, retaliation, harassment, or interference with the exercise of such person's rights under the ADA because of the filing of Charges of Discrimination by Karen (Halucha) Martin and Linda Crider, which form the basis for the present case, or because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case under the ADA.

MONETARY COMPENSATION

14. On or before July 31, 2002, Visteon will pay monetary damages totaling \$415,000 to Martin, Crider and the other similarly situated claimants. The parties agree that damages do not include any compensation for back wages. The Commission will provide Visteon with a list of the similarly situated claimants and specific amounts to be paid to each individual. The specific individual amounts will be paid without deductions or withholdings and reported to each individual claimant on a Form 1099 in January, 2003. Visteon will mail the individual checks to the addressees provided by the EEOC on the attachment to this agreement. The checks will be sent by Certified Mail, Return Receipt Requested.

TRAINING AND/OR EDUCATIONAL PROGRAMS

15. Ford confirms that it is providing mandatory training to all human resources and medical personnel within Michigan facilities who participate in hiring and placement decisions. The training focuses on the Americans With Disabilities Act of 1990 (as amended) and includes discussion of the prohibition against making medical inquiries or examinations prior to issuance of a conditional offer of employment and the statutory requirements for fairly evaluating the abilities of individuals with disabilities in the hiring and placement process.

16. Visteon confirms that it is providing mandatory training to all human resources and medical personnel within Michigan facilities who participate in hiring and placement decisions. Visteon agrees that during the next five (5) years it will continue to provide training to its management, supervisory and lower level personnel at its Michigan facilities who participate in personnel decision making, which will focus on the requirements of the federal equal employment opportunity laws including the Americans with Disabilities Act of 1990, as amended. The training plan will include Visteon's hiring and medical personnel as a targeted

group, and will specifically consist of, without limitation, training on the requirements of the Americans with Disabilities Act relating to interviewing, hiring, and medical inquiries or examinations. The type, schedule and amount of training will be determined by Visteon, provided that (a) fair market value of the training during the five year period will be at least \$200,000.00 and (b) Visteon presents by May 1st of each year (2003, 2004, 2005 and 2006) to the EEOC a schedule showing the training conducted, the groups to whom the training was offered (specified by group type [e.g., supervision], and the approximate value of the training. The Commission will credit toward this amount all training conducted by Visteon during 2002 which was conducted prior to this Agreement being executed. Visteon is not required to provide further training as mandated herein once the fair market value of training provided exceeds \$200,000.00. Visteon agrees to provide copies of the list of attendees at its training sessions to the EEOC.

PRACTICES FOR MAKING JOB OFFERS

17. Visteon affirms that its current practice requires making and communicating real job offers to applicants prior to requiring applicants to submit to pre-employment physical examinations and that such practice will continue in compliance with applicable law. Specifically, Visteon's current practice provides that written job offers are given to applicants prior to pre-employment physical examinations. A copy of a sample offer letter is attached as Exhibit B. Visteon will maintain this practice in the same or substantially similar form, throughout the term of this Consent Decree.

POSTING OF NOTICE

18. Visteon agrees that it shall post a copy of the Notice attached as Exhibit A in a conspicuous location at all of its Michigan facilities where employee notices are posted. The

notice shall be posted for three (3) years from the date the Consent Decree is entered by the Court. Should the posted notice become defaced, marred or otherwise made unreadable, Visteon agrees to post a readable copy of the notice as soon as practical thereafter.

DURATION

19. This Consent Decree shall remain in effect for five (5) years from the date it is entered, and the Court shall retain jurisdiction of this action during the duration of this Decree to enforce compliance with the Decree.

REPORTING

20. Visteon's reports pursuant to this Consent Decree shall be submitted to: Adele Rapport, Regional Attorney, EEOC, Detroit District Office, 477 Michigan Avenue, Suite 865, Patrick V. McNamara Building, Detroit, Michigan 48226.

DISPUTE RESOLUTION AND COMPLIANCE

21. The Court will have all available equitable powers, including injunctive relief, to enforce this Decree. Upon motion of any party, the Court may schedule a hearing for the purpose of reviewing any party's compliance with this Decree and/or ordering appropriate relief to determine whether the parties have complied with the terms of this Decree. Prior to seeking review by the Court, the parties shall engage in a good faith effort to resolve any dispute concerning compliance with the Decree. Any party seeking court review of a mailer shall be required to give ten (10) days notice to the other parties before moving for such review.

COURT COSTS AND ATTORNEY FEES

22. Each party shall bear its own court costs and attorney fees.

MISCELLANEOUS

23. If any provision(s) of this Agreement is found to be unlawful, only the specific provision(s) in question shall be affected and the other provisions will remain in full force and effect.

24. The terms of this Decree shall be binding upon the present and future owners, officers, directors, employees, creditors, agents, trustees, administrators, successors, representatives, and assigns of Ford.

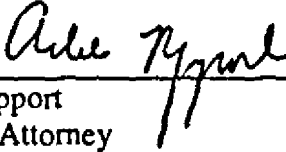
25. The terms of this Decree shall be binding upon the present and future owners, officers, directors, employees, creditors, agents, trustees, administrators, successors, representatives, and assigns of Visteon.

26. This Agreement constitutes the entire agreement and commitments of the parties. Any modifications to this Decree must be mutually agreed upon and memorialized in a writing signed by Ford, Visteon and the Commission.

27. When this Decree requires or permits the submission of any documents by Ford and/or Visteon to the Commission, if not otherwise indicated in the Decree, they shall be mailed to Adele Rapport, Regional Attorney, EEOC, Detroit District Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Room 865, Detroit, MI 48226.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Gwendolyn Young Reams
Associate General Counsel


Adele Rapport
Regional Attorney

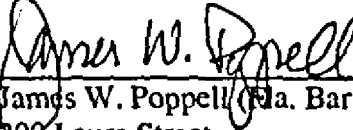
Robert Dawkins
Supervisory Trial Attorney

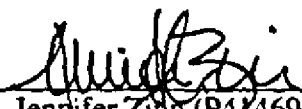
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FORD MOTOR COMPANY and
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SO ORDERED

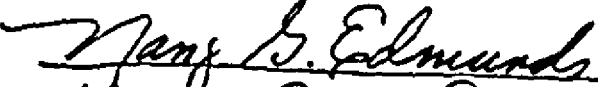

Nancy B. Edmunds
UNITED STATES DISTRICT JUDGE
July 15, 2002

EXHIBIT A

NOTICE

This notice is being posted as part of the remedy agreed to by the United States Equal Employment Opportunity Commission, Ford Motor Company, and Visteon Corporation pursuant to a Consent Decree, and to inform you of your rights guaranteed by the federal law under the Americans With Disabilities Act, 42 U.S. C. § 12101 *et. seq.* ("ADA"). The ADA prohibits discrimination against any employee on the basis of disability with regard to any term or condition of employment including hiring, layoff, recall, promotion, discharge, pay and fringe benefits or in retaliation for the opposition to unlawful employment practices.

The United States Equal Employment Opportunity Commission is the federal agency which investigates charges of unlawful employment discrimination and, if necessary, brings lawsuits in federal court to enforce Title I (the employment provision) of the ADA.

Visteon Corporation supports and will comply with this federal law in all respects. Visteon Corporation further agrees that it will conduct an individual assessment of all applicants' ability to perform the essential functions of the job, with or without reasonable accommodation, before disqualifying any applicant from employment.

Dated: July 1, 2002


Denise Powers
VISTEON CORPORATION

**Offer of Employment
for
Hourly Positions**

Dear _____:

Congratulations! We are pleased to offer you a position as a production employee with Visteon _____. Your initial rate of pay will be determined by the position in which you are placed under the terms of the collective bargaining agreement (if applicable).

This offer is subject to the following conditions:

(1) This offer is given to fill reasonably anticipated openings. Our experience has shown that we must give more offers than the number of reasonably anticipated openings because a certain percentage of the persons offered positions will either be disqualified or will voluntarily withdraw from consideration. If we have more persons qualified than there are actual openings and you are not hired, you will be offered a job again when the next openings become available.

- (2) Successful completion of a drug screen.
- (3) Successful completion of a routine post-offer employment physical examination.
- (4) Proof of identification and valid U.S. work authorization.
- (5) Verification of the data contained in your employment application/background investigation.

Visteon will notify you (orally or in writing) if your placement into an actual vacancy is in any way adversely affected by the results of your drug screen or medical examination.

The offer of employment remains in effect until _____. If you have any questions or require additional information, please contact _____, your Visteon Labor Relations Representative, at (____) ____-____. We hope you will give our offer favorable consideration.

Name

Title

I, _____ accept the terms of this offer.
Candidate's Name

Ford/Visteon Monetary Distribution

| <u>Class Member</u> | <u>Back Pay Amount</u> | <u>Additional Amount</u> |
|----------------------------|-------------------------------|---------------------------------|
| Karen Martin | \$87,619 | \$5,000 |
| Linda Crider | \$73,903 | \$5,000 |
| Dorman Ray | \$60,687 | \$5,000 |
| Anthony Delegato | \$15,342 | \$5,000 |
| Jason Gustafson | \$40,878 | \$5,000 |
| Jason Moses | \$36,707 | \$5,000 |
| Marc Perkola | \$27,479 | \$5,000 |
| Jonathan Robinson | \$17,385 | \$5,000 |
| Tammy Valdez | \$0 | \$5,000 |
| Brian Nickerson | \$0 | \$5,000 |
| Jeffrey Young | \$0 | \$5,000 |