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EEOC v. Jack of All Trades Personnel Services, Inc.

Judge Walter S. Smith

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EEOC v. Jack of All Trades Personnel Services, Inc.

Keywords

EEOC, Jack of All Trades Personnel Services Inc., WA:04-CV-157, Consent Decree, Disparate Treatment, Unlawful Medical Exam, Hiring, Service, Employment Law, ADA

inquiries and examinations and by unlawfully relying upon the results thereof as a basis to deny hire.

The EEOC and the Defendant agree to compromise and settle the differences embodied in the Complaint, and intend that the terms and conditions of the compromise and settlement be set forth in this Consent Decree ("Consent Decree"). It is understood and agreed that this Consent Decree is in compromise of disputed claims, and that this Consent Decree shall not in any way be construed as an admission by Defendant Jack of All Trades Personnel Services, Inc. of a violation of any federal, state, or local statute, law or regulation, or a violation of any right of the aggrieved individuals or any other person.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate and therefore, it is ORDERED, ADJUDGED AND DECREED that:

1. This Consent Decree resolves all issues raised in EEOC Charge No. 310 A0 8105. EEOC Charge No. 310 A0 8052 has been administratively closed. This Decree further resolves all issues in the Complaint filed by the EEOC in this civil action. The EEOC waives further claims and/or litigation on all issues raised in the above-referenced Charge and Complaint. The EEOC does not waive processing or litigating charges other than the above-referenced Charge.
2. Defendant agrees not to discriminate on the basis of disability with respect to recruitment, hiring, termination, or any other employment action, and Defendant further agrees not to retaliate in any way against any person because of opposition to any practice declared unlawful under the ADA or because of the filing of a charge, giving testimony, or assisting or participating in any manner in any investigation, proceeding or hearing.

3. Defendant agrees that its hiring and medical examination processes will comply with the provisions of the Americans with Disabilities Act. For purposes of this Consent Decree, an "offer" of employment occurs when the staffing firm or temporary employment agency worker is given an assignment for a particular date with a particular client. The "offer" is typically made after the staffing firm or temporary employment agency has obtained and evaluated all non-medical information reasonably necessary to its hiring and placement decision.

- a. Defendant agrees that it will not make disability-related inquiries of applicants or require applicants to submit to a medical examination prior to being offered an assignment.
- b. Defendant agrees that all disability-related inquiries or medical examinations shall be done or conducted: (1) as part of a non-discriminatory practice, applied to all employees or to all employees in a specific group that is not based on disability; or (2) if necessary, to determine whether an employee can perform the essential functions of a specific job with or without a reasonable accommodation.

Defendant agrees that disability-related inquiries and medical examinations will not be made or conducted of persons assigned to clerical positions, unless the job description for the specific clerical position has a lifting or other physical requirement.
- c. Defendant agrees that all medical examinations, which are to be conducted only after the employee has been offered an assignment, will be performed by a qualified professional.
- d. Defendant agrees that before an offer is withdrawn, based solely on the results of a

post-offer medical examination, it will ascertain that the exclusionary requirement is job-related and consistent with business necessity, and that no reasonable accommodation exists that would enable the employee to meet the assignment's requirements, without posing an undue hardship.

4. Defendant also agrees to comply with Section 102(d)(3)(B) of the Americans with Disabilities Act, which requires that information obtained regarding the medical condition or history of the employee should be maintained on separate forms and in separate medical files and treated as confidential medical information.

5. Defendant agrees that during the application process, it will provide a reasonable accommodation to any applicant with a disability who requests one unless to do so would impose an undue hardship.

6. Defendant agrees that during the year 2005, one or more of its managers shall attend a national training conference (such as Job Accommodation Network's Annual Conference or National ADA Symposium & Expo) that specifically includes training and information relating to employment of persons with disabilities and the Americans With Disabilities Act.

7. Defendant agrees to conduct annual training for those employees working in the JOAT office, including supervisors, managers and hourly workers, advising them of the requirements and prohibitions of the Americans with Disabilities Act. Specifically, the training will inform the employees of the proper procedure by which to request a reasonable accommodation, and will detail Defendant's obligation to provide the requested reasonable accommodation, providing an explanation and examples of undue hardship. The training will also inform the employees of the complaint procedure for those individuals who believe they have

experienced discrimination because of their disability. Further, the training will advise employees, including supervisors and managers, of the consequences of violating the ADA. The training shall be at least two hours in duration. No less than 10 days before the training is conducted.

Defendant agrees to give written notice to the EEOC as to the date and location of the training, the name of the person providing the training and the substance of the training.

8. Defendant agrees to forward to the EEOC copies of all complaints alleging discrimination on the basis of disability, either against Defendant or any of Defendant's client-employers, which are made by JOAT employees and received by JOAT, including a report evidencing Defendant's investigation of the complaints and the remedial action taken, if any.

9. Defendant agrees to provide the EEOC with a list of all persons rejected for placement in any temporary position based on a medical screening or examination but not including a drug test, during the one-year period from the date this Consent Decree is signed by the Judge. For each person identified, Defendant agrees to provide: (a) the person's application; (b) all JOAT documents relating to the person's application, interview or hiring process at JOAT; (c) a list of all positions for which each person was rejected; and (d) any and all reasons why the person was rejected for hire for each position.

10. Defendant authorizes the EEOC to review any and all employment application materials received within two years from the date of this Consent Decree.

11. Within ten (10) days after the date of this Consent Decree, Defendant shall post a notice, attached as Attachment A in prominent and conspicuous locations throughout its facility, informing its employees and applicants of their employment rights pursuant to the Americans with Disabilities Act. Defendant will thereafter report to the Commission that it has complied with

this requirement within fourteen (14) days after posting the notice. The notice shall also inform employees where to report if a reasonable accommodation is needed, and where to report violations of the Americans with Disabilities Act, the name of the designated company official to whom they should report said requests for reasonable accommodation and violations, along with the address and telephone number of the Dallas District Office of the EEOC. The notice shall remain posted for two years from the date of this Consent Decree.

12. Defendant agrees to distribute a copy of the Notice within 60 days of the date of this Consent Decree to each of the temporary employees on its payroll, as an attachment to the employees' paycheck. Defendant further agrees to include the Notice as part of its application paperwork packet for both new applicants and those employees returning to update their application information for two years from the date of this Consent Decree.

13. Defendant agrees to pay the gross sum of \$154,224.00 to resolve all claims for all damages. From this gross payment, Marci Cudmore and each of the identified aggrieved individual will receive \$ 8568.00, of which \$1125.60 will be considered as back pay damages and \$7442.40 will be considered as compensatory damages. Within twenty-one (21) days of the entry of this Consent Decree, Marci Cudmore and each of the identified aggrieved individuals will submit a current IRS Form W-4 to Defendant. Within twenty-one (21) days of Defendant's receipt of the completed W-4 Form, Defendant will issue a check, made payable to each aggrieved individual, in the above-referenced amounts, less required withholdings.

14. The payments referenced above, shall be made by check with a copy of the checks sent to EEOC attorney Ronetta J. Francis, 207 S. Houston Street, Third Floor, Dallas, Texas 75202.

15. All reports to the EEOC required by this Decree shall be sent to Ronetta J. Francis, Senior Trial Attorney, EEOC, 207 S. Houston, Third Floor, Dallas, Texas 75202.

16. If Defendant fails to tender payment or otherwise fails to timely comply with the terms above, Defendant shall:

- a. Pay interest at the rate calculated pursuant to 26 U.S.C. Section 6621(b) on any untimely or unpaid amounts from date of non-compliance; and
- b. Bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the Defendant.

17. Neither the EEOC, nor the Defendant shall contest the validity of this Consent Decree nor the jurisdiction of the federal district court to enforce this Consent Decree and its terms or the right of either party to the Consent Decree to bring an enforcement action upon breach of any term of this Consent Decree by either such party. Nothing in this Decree shall be construed to preclude the EEOC from enforcing this Decree in the event that Defendant Jack of All Trades Personnel Services, Inc. fails to perform the promises and representations contained herein. The EEOC shall be authorized to seek compliance with the Consent Decree through civil action in the United States District Court.

18. The term of this Decree shall be for three (3) years.

19. The parties to this Consent Decree agree to bear their own attorney's fees and costs associated with the above-referenced Complaint.

SO ORDERED, ADJUDGED AND DECREED this 9th day of February, 2005.

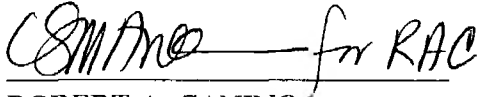


U.S. DISTRICT COURT JUDGE

AGREED AS TO FORM AND SUBSTANCE:

Signed this 3rd day of February, 2005.

FOR THE PLAINTIFF:

 for RAC

ROBERT A. CANINO

Regional Attorney

Oklahoma State Bar No. 011782

SUZANNE M. ANDERSON

Supervisory Trial Attorney

Texas Bar No. 14009470



RONETTA J. FRANCIS

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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Dallas District Office

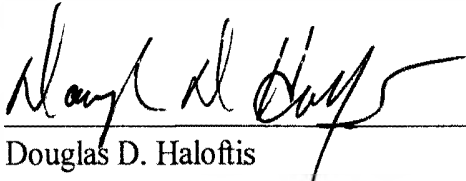
207 South Houston Street Third Floor

Dallas, Texas 75202

Tel No. (214) 253-2746

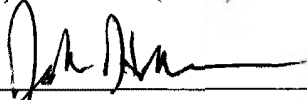
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FOR THE DEFENDANTS:



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(254) 755-4100
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**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Dallas District Office**

207 S. Houston Street, 3rd Floor
Dallas, TX 75202-4726
(214) 253-2700
TTY (214) 253-2710
FAX (214) 253-2720
EEOC Website: www.eeoc.gov

**NOTICE OF EMPLOYEE RIGHTS UNDER
THE AMERICANS WITH DISABILITIES ACT**

This notice is being posted pursuant to a Consent Decree entered into between Jack of All Trades Personnel Services, Inc. ("JOAT"), and the Equal Employment Opportunity Commission, based upon a Charge of Discrimination alleging disability discrimination under the Americans with Disabilities Act ("ADA").

An employer cannot discriminate against qualified applicants and employees on the basis of disability. Under the Americans With Disabilities Act, an individual with a disability is a person who has (a) a physical or mental impairment that substantially limits one or more major life activities; (b) a record of an impairment or (c) is regarded as having such an impairment. The ADA also prohibits discrimination against a person because of their association or relationship with an individual with a known disability. This prohibition covers all aspects of the employment process, including:

- | | |
|------------------------|------------------------|
| * application | * promotion |
| * testing | * medical examinations |
| * hiring | * layoff/recall |
| * assignments | * termination |
| * evaluation | * compensation |
| * disciplinary actions | * leave |

JOAT states that it will comply with the Americans with Disabilities Act by not making disability-related inquiries of applicants or requiring applicants to submit to a medical examination prior to being offered an assignment. JOAT represents that all disability-related inquiries or medical examinations, will be conducted only after the employee has been offered an assignment. JOAT agrees that the disability-related inquiries or medical examinations must be administered to all entering employees in the same job category.

- JOAT agrees that all medical examinations, conducted after the employee has been offered an assignment, must be conducted by a qualified professional.
- JOAT agrees that before an offer of employment is withdrawn, based solely on the results of a post-offer medical examination, it will ascertain that the exclusionary requirement is job-related and consistent with business necessity, and that no reasonable accommodation exists that would enable the employee to meet the assignment's requirements, without posing an undue hardship.

Further, under the ADA, an employer must make a reasonable accommodation to the known

physical or mental limitations of a qualified applicant or employee with a disability unless it can show that the accommodation would cause an undue hardship on the operation of its business. Some examples of reasonable accommodation include:

- making existing facilities used by employees readily accessible to, and usable by, an individual with a disability;
- job restructuring;
- modifying work schedules;
- reassignment to a vacant position;
- acquiring or modifying equipment or devices; or
- providing qualified readers or sign language interpreters

Each supervisor has a responsibility to maintain a workplace free of discrimination. This duty includes notifying all employees of the JOAT EEO policy and assuring them that they are not to endure unequal treatment because of their race, color, sex, national origin, religion, age or disability, and reporting incidents involving discrimination. Retaliation against individuals who raise concerns of discrimination is strictly prohibited.

An employee has the right, and is encouraged to exercise that right to report allegations of discrimination in the workplace. An employee may do so by notifying either Owner/Proprietor Helen Underwood or the Account Manager Joyce Smith at (254) 754-7997. Supervisors and managers who are informed of a complaint or allegation of discrimination must immediately notify either Owner/Proprietor Helen Underwood or the Account Manager Joyce Smith.

Any report of discrimination will be thoroughly investigated, with appropriate disciplinary action, up to and including termination, be taken against any person(s) found to have engaged in such conduct.

An employee, either alternatively or in addition to reporting such an allegation to JOAT officials, may contact the Equal Employment Opportunity Commission for the purposes of filing a charge of employment discrimination. The address and telephone number of the nearest EEOC office is 207 South Houston Street, Third Floor, Dallas, Texas 75202; (214) 253-2700.

2-3-05
Date

Joyce Smith
Jack of All Trades Personnel Services, Inc.