

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

John Steigauf,

Plaintiff,

v.

**COMPLAINT
(JURY TRIAL DEMANDED)**

United Parcel Service, Inc.,

Defendant.

Court File No.

Plaintiff, John Steigauf, for his complaint against Defendant United Parcel Service, Inc., states and alleges as follows:

PARTIES

1. Plaintiff, John Steigauf, is a resident of the City of Bloomington, State of Minnesota.
2. Defendant, United Parcel Service, Inc., is an Ohio corporation with offices located at 380 Jackson Street #700, St. Paul, Minnesota, 55101.

JURISDICTION & VENUE

3. This action arises under 42 U.S.C. § 12111, et seq. As such jurisdiction is conferred based on 28 U.S.C. § 1331 (2006).

4. Plaintiff also asserts claims under the Minnesota Human Rights Act, Minn. Stat. § 363.03A et seq., for which pendant jurisdiction is established under 28 U.S.C. § 1367 (2006).

5. Venue is proper in the District in Minnesota because the unlawful practices described hereinafter were committed in the State of Minnesota, pertinent employment records are maintained in Minnesota, and Defendant operates a business within Minnesota. Venue is therefore conferred based on 42 U.S.C. § 2000e-5(f)(3) (2006); 42 U.S.C. § 12117(a) (2006).

FACTUAL ALLEGATIONS

6. Plaintiff first began working for Defendant in April 1991 as a Mechanic Journeyman at Defendant's location in Minneapolis, Minnesota. During Plaintiff's tenure as a Mechanic Journeyman, he spent about 10% of his work time driving trucks. Approximately 90% of that time was spent driving trucks strictly on Defendant's property. Accordingly, about 1% of the time that Plaintiff was working, he drove a truck off of Defendant's property, but almost exclusively within the State of Minnesota. In at least the first 13 years, Plaintiff drove a truck across state lines one time, into Wisconsin, to retrieve another truck that had broken down. Even when Plaintiff drove trucks, he drove them without trailers attached.

7. Defendant's job description for a Mechanic Journeyman requires the employee to be Commercial Driver's License ("CDL") qualified and meet Department of Transportation ("DOT") requirements, as required by job assignment. The job description does not specify whether the DOT requirements are state or federal.

8. Plaintiff obtained a CDL and federal DOT card and worked as a Mechanic Journeyman for approximately 13 years.

9. In about 2002, Plaintiff was diagnosed with Type II diabetes. Plaintiff attempted to regulate his blood sugar with oral medications, exercise, and diet. During this time, he maintained his CDL and federal DOT medical card.

10. According to the Federal Motor Carrier Safety Administration, which administers the federal DOT medical card program, Plaintiff was required to undergo medical examinations every two years. At this time, the Federal Motor Carrier Safety Administration permitted diabetics to obtain DOT cards, but only if they were not required to use injectible medications to control the medical condition. Because Plaintiff was not required to use injectible medications in order to control his diabetes, he was able to keep his DOT card and continue working for Defendant as a Mechanic Journeyman.

11. In about 2004, Plaintiff began using daily injections of medication, as well as diet, exercise, and oral medications, in order to regulate his blood sugar level. The addition of injectible medications improved Plaintiff's ability to control his blood sugar level and improved his overall health.

12. On or about November 10, 2004, Plaintiff received a medical waiver from the Minnesota Department of Transportation ("MnDot") and received a MnDOT card.

13. At this time, the Federal Motor Carrier Safety Administration strictly prohibited people with diabetes who required injectible medications from obtaining or retaining a federal DOT card. Plaintiff lost his federal DOT card on or about December 9, 2004.

14. Plaintiff submitted paperwork to Defendant requesting reasonable accommodations for his disability. Specifically, Plaintiff requested that he be permitted to use his MnDOT card to continue to drive trucks within the State of Minnesota and, if the need arose to travel across state lines, that another employee be sent on that rare assignment. Plaintiff believed this was a reasonable accommodation, especially considering he had only crossed state lines on the job one time in about 13 years.

15. Although Plaintiff had obtained a MnDOT card, Defendant insisted that only a federal DOT card was acceptable. Defendant refused to make any reasonable accommodation for Plaintiff. Defendant would not allow Plaintiff to keep working after about December 9, 2004. Plaintiff received some disability benefits while he was not working.

16. On or about February 14, 2005, Plaintiff brought a charge against Defendant through the Equal Employment Opportunity Commission (“EEOC”) alleging disability discrimination. The charge was cross-filed with the Minnesota Department of Human Rights (“MDHR”).

17. In early Summer 2005, Defendant changed its policy so that someone like Plaintiff, without a federal DOT card, could work in certain jobs other than Mechanic Journeyman. On or about June 17, 2005, Plaintiff returned to work with Defendant as a trailer repairman at Defendant’s Eagan facility. This position paid less than a Mechanic Journeyman position. Defendant stated that this was not an accommodation for Plaintiff’s disability.

18. In about July 2005, a change in the federal rules provided Plaintiff an opportunity to apply for a diabetes exemption from the federal DOT card requirement. Plaintiff applied and received the card. He returned to work with Defendant as a Mechanic Journeyman on or about August 26, 2005.

19. Although Plaintiff obtained a federal DOT card, he must report annually to the program administrators in order to keep his card. People who do not have the waived/exempted version of the card only need report once every two years.

20. After reinstatement, Plaintiff exhausted the union's grievance policy in an attempt to recover his lost wages and benefits. He was unable to resolve the issue through that process.

21. On or about December 3, 2007, the EEOC issued a "reasonable cause" finding and a right-to-sue letter. On or about January 3, 2008, the MDHR issued a right-to-sue letter.

COUNT I

DISABILITY DISCRIMINATION – ADA, 42 U.S.C. § 12112(a)

22. All preceding Paragraphs are incorporated herein.

23. The Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq., prohibits a covered entity from discriminating "against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a).

24. Plaintiff is a qualified individual with a disability as defined by 42 U.S.C. § 12102(2) and 42 U.S.C. § 12111(8). At all relevant times, Plaintiff was Defendant's employee or applicant, as defined by 42 U.S.C. § 12111(4).

25. Defendant is a covered entity as defined by 42 U.S.C. § 12111(2).

26. Defendant discriminated against Plaintiff in regard to job application procedures, hiring, advancement, or discharge, compensation, job training, and/or other terms, conditions, and privileges of employment based on his disability, perceived disability, and/or record of disability.

27. As a result of Defendant's unlawful conduct, Plaintiff has suffered and will continue to suffer loss of past income and employee benefits, mental anguish, emotional distress, embarrassment and other damages. Plaintiff is also entitled to attorney's fees and costs incurred in connection with this claim.

COUNT II

DISABILITY DISCRIMINATION – ADA, 42 U.S.C. § 12112(d)(4)(A)

28. All preceding Paragraphs are incorporated herein.

29. 42 U.S.C. § 12112(d)(4)(A) prohibits a covered entity from requiring a medical examination or making "inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity."

30. Plaintiff is a qualified individual with a disability as defined by 42 U.S.C. § 12102(2) and 42 U.S.C. § 12111(8). At all relevant times, Plaintiff was Defendant's employee or applicant, as defined by 42 U.S.C. § 12111(4).

31. Defendant is a covered entity as defined by 42 U.S.C. § 12111(2).

32. Defendant required Plaintiff to undergo periodic medical examinations while he was employed by Defendant. These requirements are violations of the ADA.

33. Defendant required Plaintiff to undergo a pre-employment medical examination as a condition of employment. The requirement is a violation of the ADA.

34. As a result of Defendant's unlawful conduct, Plaintiff has suffered and will continue to suffer loss of past income and employee benefits, mental anguish, emotional distress, embarrassment and other damages. Plaintiff is also entitled to attorney's fees and costs incurred in connection with this claim.

COUNT III

DISABILITY DISCRIMINATION – ADA, 42 U.S.C. § 12112(b)(5)(A)

35. All preceding Paragraphs are incorporated herein.

36. The ADA requires a covered entity to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee." 42 U.S.C. § 12112(b)(5)(A).

37. Plaintiff is a qualified individual with a disability as defined by 42 U.S.C. § 12102(2) and 42 U.S.C. § 12111(8). At all relevant times, Plaintiff was Defendant's employee or applicant, as defined by 42 U.S.C. § 12111(4).

38. Defendant is a covered entity as defined by 42 U.S.C. § 12111(2).

39. In violation of the ADA, Defendant failed to make reasonable accommodations for Plaintiff.

40. As a result of Defendant's unlawful conduct, Plaintiff has suffered and will continue to suffer loss of past income and employee benefits, mental anguish, emotional distress, embarrassment and other damages. Plaintiff is also entitled to attorney's fees and costs incurred in connection with this claim.

COUNT IV

DISABILITY DISCRIMINATION – MINNESOTA HUMAN RIGHTS ACT,

Minn. Stat. § 363A.08, subd. 2

41. All preceding Paragraphs are incorporated herein.

42. The Minnesota Human Rights Act ("MHRA"), Minn. Stat. § 363A.01, et seq., prohibits an employer from "(1) refus[ing] to hire or to maintain a system of employment which unreasonably excludes a person seeking employment; or (2) discharg[ing] an employee; or discriminat[ing] against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment" on the basis of disability. Minn. Stat. § 363A.08, subd. 2.

43. Plaintiff is a qualified disabled person as defined by Minn. Stat. § 363A.03, subd. 36.

44. Defendant is an employer as defined by Minn. Stat. § 363A.03, subd. 16.

45. Defendant discriminated against Plaintiff by refusing to hire or to maintain a system of employment which unreasonably excludes a person seeking employment and/or discharging him, or discriminating against him with respect to hiring, tenure,

compensation, terms, upgrading, conditions, facilities, or privileges of employment on the basis of his disability, perceived disability, and/or record of disability.

46. As a result of Defendant's unlawful conduct, Plaintiff has suffered and will continue to suffer loss of past income and employee benefits, mental anguish, emotional distress, embarrassment and other damages. Plaintiff is also entitled to attorney's fees and costs incurred in connection with this claim.

COUNT V

DISABILITY DISCRIMINATION – MHRA, Minn. Stat. § 363A.20, subd. 8

47. All preceding Paragraphs are incorporated herein.

48. The MHRA permits employers to require only certain medical examinations of its employees and applicants. Minn. Stat. § 363A.20, subd. 8.

49. Defendant is an employer as defined by Minn. Stat. § 363A.03, subd. 16.

50. At all relevant times, Plaintiff was an employee or applicant as defined by Minn. Stat. § 363A.03, subd. 15.

51. Defendant required Plaintiff to undergo periodic medical examinations while he was employed by Defendant. These requirements are violations of the MHRA.

52. Defendant required Plaintiff to undergo a pre-employment medical examination as a condition of employment. The requirement is a violation of the MHRA.

53. Defendant made hiring and placement decisions based on the outcome of the examinations.

54. The examinations are not job-related or business necessities.

55. As a result of Defendant's unlawful conduct, Plaintiff has suffered and will continue to suffer loss of past income and employee benefits, mental anguish, emotional distress, embarrassment, and other damages. Plaintiff is also entitled to attorney's fees and costs incurred in connection with this claim.

COUNT VI

DISABILITY DISCRIMINATION – MHRA, Minn. Stat. § 363A.08, subd. 6

56. All preceding Paragraphs are incorporated herein.

57. The MHRA prohibits a covered entity from failing to make "reasonable accommodation to the known physical or mental limitations of a qualified disabled person." Minn. Stat. § 363A.08, subd. 6.

58. Plaintiff is a qualified disabled person as defined by Minn. Stat. § 363A.03, subd. 36. Defendant knew that Plaintiff is disabled, regarded him as disabled, and/or knew that Plaintiff had a record of disability.

59. Defendant is an employer and covered entity as defined by Minn. Stat. § 363A.03, subd. 16, and Minn. Stat. § 363A.08, subd. 6.

60. In violation of the MHRA, Defendant failed to provide Plaintiff with a reasonable accommodation.

61. As a result of Defendant's unlawful conduct, Plaintiff has suffered and will continue to suffer loss of past income and employee benefits, mental anguish, emotional distress, embarrassment, and other damages. Plaintiff is also entitled to attorney's fees and costs incurred in connection with this claim.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For compensatory damages for loss of income, emotional distress, and all other damages available under the ADA and the MHRA;
2. For treble damages as allowed by Minn. Stat. § 363A.29 subd. 4;
3. For attorney's fees, costs and disbursements incurred herein;
4. For assessment of a civil penalty, payable to the State of Minnesota, pursuant to the Minnesota Human Rights Act;
5. For injunctive relief;
6. For leave to amend the Complaint to include a claim for punitive damages; and
7. For such further and other relief as the court deems fit.

NICHOLS KASTER & ANDERSON, PLLP

Date: February 14, 2008

s/ Amy S. York

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