IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION

Equal Employment Opportunity Commission Plaintiff, and The Heil Company Defendant.	CIVIL ACTION NUMBER CV-97-S-0235-M

CONSENT DECREE

Title I of the Americans with Disabilities Act 42 U.S.C. 12101 et seq., guarantees workers that they will be free from employment discrimination on the basis of disability.

On January 29, 1997, the Equal Employment Opportunity Commission ("EEOC") filed suit in this Court against The Heil Company. The EEOC's Complaint alleged that The Heil Company had discriminated against Tracey Padgett by laying him off because of his perceived disability in violation of 42 U.S.C. §12101 et. Seq..

The Heil Company denies that it discriminated against Tracey Padgett.

I. GENERAL PROVISIONS

The Plaintiff and the Defendant being desirous of settling this action by Consent Decree, agree to the jurisdiction of this Court concerning questions of the employment practices of the Defendant as outlined above.

This Decree, being entered into with the consent of the EEOC and the Defendant, The Heil Company, shall not constitute an adjudication or finding on the merits of the case, and shall in no manner be construed as an admission by The Heil Company of any violation of the Americans With Disabilities Act or other applicable federal law.

This Decree is binding upon the EEOC and upon The Heil Company as to the issues resolved, as well as upon their successors and assigns and persons in privity. The issues resolved by this Decree are those which were alleged in the Charge of Discrimination numbered 130-93-2650 and asserted in the Complaint in the above styled lawsuit.

The Court being fully advised of the premises doth Order, Adjudge and Decree as follows:

II. SPECIFIC PROVISIONS

A. This Court has full jurisdiction to decide this controversy as to the EEOC and The Heil Company. This Court will

retain jurisdiction for the next two (2) years so that any dispute arising out of the administration of this Decree can be adjudicated.

B. The Heil Company will immediately post the Notice attached hereto as Exhibit "A" in a prominent and conspicuous place, visible to all employees, at its Fort Payne Alabama facility for a period of two years.

C. The Heil Company will pay the Charging Party, Tracey Padgett, the amount agreed to in the Mediation Agreement executed on May 13, 1998, as monetary settlement of this lawsuit and EEOC Charge #130-93-2650. The check is to be made payable to Tracey Padgett, and forwarded to him by certified mail by May 31, 1998. A copy of the check and the certified mail receipt evidencing payment will be mailed to Pamela K. Agee, Senior Trial Attorney, EEOC, Birmingham District Office, 1900 Third Avenue, North, Birmingham, Alabama 35203 no later than June 12, 1998. Tracey Padgett shall sign a Release releasing any and all claims asserted in EEOC Charge Number 130-93-2650 and this lawsuit.

D. The Defendant shall not retaliate in any manner against Tracey Padgett or any person who participated in this lawsuit or in the investigation of EEOC Charge of Discrimination #130-93-2650.

E. The Defendant will send notices of all available positions to anyone laid off because of disability/physical or mental impairment during the time that they have recall rights.

F. The Defendant will initiate a procedure for evaluating whether or not a physically or mentally impaired employee/

applicant is disabled and if so whether he/she can perform the essential functions of the job. That procedure shall include the following:

1) When an impairment is at issue regarding employment status the Defendant shall refer the employee/applicant to a medical doctor of its choosing for a medical examination.

2) The doctor shall report back to the Defendant whether there is a significant risk of substantial harm due to the impairment and in what ways the impairment affects the employee/applicant. The doctor shall also include any restrictions that he/she believes are necessary and shall state the basis for his/her opinion.

3) After receiving the report a task force shall meet and determine whether the employee/applicant is disabled, whether, if so, he/she can perform the essential functions of the job with or without a reasonable accommodation and if he/she poses a direct threat. The task force will consist, at a minimum, of the supervisor who would directly supervise the employee/applicant, the human resources manager or designee and the decision maker regarding employment status. The doctor who performed the examination may also be present. The committee shall base its determinations by reviewing the objective evidence available to it and by following the guidance of the EEOC Technical Assistance Manual.

4) If the task force determines that the employee/applicant cannot perform the essential functions of the job with or without a reasonable accommodation and/or poses a direct threat and that the employee/applicant cannot be accommodated in a manner to reduce the threat the task force shall so inform the employee/applicant. It shall further advise the employee/applicant of his/her right to seek additional medical opinions, at his/her own expense (if not covered by insurance).

5) If the employee/applicant chooses to seek additional medical opinions and those opinions appear to be at odds with the task force's determination, the task force shall seek a medical release from the employee/applicant. After receipt of such release the task force shall discuss the employee/applicant's medical condition, as regards employment, with the additional medical doctors. The Defendant shall ascertain on what the doctors base their opinions, advise the doctors of the essential functions of the job and explain whether the job is considered to be sedentary, light, medium, heavy or very heavy duty. If the additional medical doctors still maintain that the employee/applicant can perform the job functions, the task force shall reexamine its decision based upon **the most current medical knowledge and/or the best available objective evidence.**

6) All the above steps shall be documented, including the decision, in writing.

7) The written decision and the reasons therefore shall be sent to the employee/applicant.

G. The Heil Company will provide the EEOC with a copies of all the determinations outlined in Paragraph F above for two years after the entry of this Consent Decree. The determinations shall be sent to the EEOC on the six month, twelve month, eighteen month and twenty-four month anniversary of this Decree. Upon the receipt of each of the determinations, the EEOC shall have 30 days in which to analyze and, if necessary, investigate said documents. Said inspection may require the EEOC to inspect additional documents. If, before the end of the 30 day inspection period, the EEOC has any reservations about The Heil Company's compliance with this Decree, it shall notify The Heil Company in writing and specify the nature of the reservation of alleged compliance. The parties thereafter shall have a period of 30 days to attempt to resolve the disputes concerning compliance.

Said determinations are to be sent in care of Pamela K. Agee, Equal Employment Opportunity Commission, 1900 Third Avenue, North, Birmingham, AL 35203.

H. The Defendant shall provide Mr. Padgett with a positive reference for any future employers requesting a reference by sending a letter as outlined in Exhibit B to this Decree.

I. Each Party shall bear its own costs and attorney fees.

If the terms and conditions of this Decree are violated or breached, the parties may petition the Court for further Orders, adjudication and relief in this matter.

DONE and ORDERED this 28th day of May, 1998.

UNITED STATES DISTRICT COURT JUDGE

By Consent:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

C. Gregory Stewart
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THE HEIL COMPANY:

H. Edgar Howard
Ford and Associates
Post Office Box 388
Gadsden, AL 35902

N O T I C E

AS REQUIRED UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990

The Heil Company (Heil), in accordance with federal law 42 U.S.C. §12101 et. seq. and 42 U.S.C. §2000e-3(a) affirmatively states and agrees as follows:

1. Federal law requires that there be no discrimination against any employee or applicant for employment, because of such person's disability.

2. Heil supports and will comply with such federal laws in all respects and will not discriminate against any employee because of the person's disability.

3. Heil affirms that it is unlawful for an employer to discriminate against an employee by disability in job assignment and lay off. It further affirms that it is unlawful for an employer to in any manner retaliate against any individual who opposes or assists one in opposing disability discrimination in job assignment and layoff.

Signed this _____ day of _____, 1998.

_____
The Heil Company

EXHIBIT A

To Whom It May Concern:

Tracey Padgett was employed as a welder for The Heil Company from April 24, 1990 until April 4, 1993. During that time he was an exemplary employee, exhibiting a willingness to undertake all tasks assigned to him. In addition, he performed his tasks in a diligent manner. Mr. Padgett is well recommended to any employer.

EXHIBIT B