

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

OCT 02 1998

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

V.

DSI TRANSPORTS, INC.,

Defendant.

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Michael N. Milby, Clerk

CIVIL ACTION NO. H-97-1580

CONSENT DECREE

The Equal Employment Opportunity Commission ("EEOC") instituted this lawsuit, alleging that DSI Transports, Inc. ("DSI") violated Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* ("ADA"), when it revoked offers of employment and/or refused to hire Pamela S. Sizemore, James Anderson and any similarly situated applicants for truck driver positions because it perceived them as disabled due to their back x-rays and/or other medical test results.

DSI denies the allegations and denies having discriminated against Pamela S. Sizemore, James Anderson or any similarly situated applicants in violation of the ADA.

The EEOC and DSI have agreed to settle this suit for the purpose of avoiding further costs and risks inherent in litigation. By so doing, DSI does not admit to, and expressly denies, any violation of the ADA and the Court makes no determination that any such violation has occurred. To avoid the burden and expense of protracted litigation, however, the parties stipulate to the jurisdiction of the Court, waive hearing and trial by jury on all issues and consent to the following decree.

SECTION I - SCOPE AND DURATION OF THE CONSENT DECREE

A. This Consent Decree fully and finally disposes of this lawsuit, Charge Nos. 330-94-0759 and 122-94-1019, and all claims under the ADA which were or could be asserted by the EEOC on behalf of fifty-one (51) individuals (identified in Exhibit A) who were denied employment by DSI, or which could have been asserted by the EEOC concerning any applicants not offered jobs on the basis of some physical condition at any time prior to the date which is 300 days prior to the effective date of this Consent Decree. Unless otherwise noted, all undertakings shall commence within thirty (30) days after entry of this Consent Decree, and DSI's specific responsibilities hereunder, other than general compliance with the law, shall terminate thirty (30) months from the date of entry of this Decree.

B. This Consent Decree expressly forecloses the EEOC's right to pursue ADA claims based on DSI's denial of employment to any job applicant on the basis of some physical condition, to the extent that such claims (whether known or unknown) relate to actions or omissions by DSI that occurred more than 300 days prior to the entry of this Consent Decree. The EEOC represents to the Court that as of September 23, 1998, its Houston District Office knows of no charges or claims alleging any violation of the ADA by DSI that could be timely filed under the ADA as of the date the EEOC signed this Consent Decree. DSI represents that it knows of no currently pending charges of discrimination that have been filed against it under the ADA, other than Sizemore's and Anderson's charges.

C. The parties agree that this Consent Decree and the procedures included herein are lawful under the ADA.

SECTION II - DSI'S STATUTORY AND/OR REGULATORY OBLIGATIONS ARE NOT AFFECTED BY THE CONSENT DECREE

A. DSI's fulfillment of its obligations under this Consent Decree shall not be interpreted to conflict with its legal obligations under the ADA or any other federal or state laws, regulations and rules. Nothing in the Consent Decree shall be construed to reduce DSI's obligation to comply fully with the ADA and the regulations promulgated pursuant thereto. However, in the event that DSI initially rejects an applicant and subsequently agrees to hire that applicant for the same position after any appeal by the applicant pursuant to the appeals provision of this Decree, the EEOC's Houston District office will not pursue any claim under the ADA on the applicant's behalf alleging a violation of the ADA in connection with the initial rejection. The Houston District Office of the EEOC will dismiss any such charge filed with it. In addition, within fifteen (15) days after the entry of this Consent Decree, the EEOC's Houston District Office will inform the EEOC's other offices of the entry of this Consent Decree, the appeals process it contains, the lawfulness under this Decree and the ADA of DSI's actions in reinstating a job offer pursuant to the appeals process hereunder, the Houston District Office's commitment to dismiss any charges of disability discrimination filed with the Houston District office by applicants who are initially rejected but subsequently offered positions with DSI under its appeals process, and recommend to all other EEOC District Offices that all such charges be dismissed. The commitment to dismiss the charges as set forth in this paragraph shall not apply to any applicant rejected by DSI with reckless disregard for that applicant's rights under the ADA.

B. Subject to Sections I and II.A. above, this Consent Decree shall not affect the EEOC's right to process other pending and future charges against DSI or to commence civil actions pursuant to the ADA and other statutes.

SECTION III - JURISDICTION

A. The Court shall retain jurisdiction over this action for the term of this Consent Decree solely for the purpose of enforcement in the event of any alleged violation of its terms.

SECTION IV - MONETARY RELIEF AND PAYMENT PROCEDURES

A. Subject to the provisions of this Section IV, DSI agrees initially to fund payments in the gross amount of two hundred thousand dollars (\$200,000.00) in full and final settlement of this lawsuit as allocated in Exhibit A.

B. Within ten (10) days after the entry of this Consent Decree, the EEOC shall notify in writing each of the class members identified in Exhibit A to advise them of the settlement of this litigation and the condition precedent to their receiving their allocation of the settlement proceeds.

C. As a condition precedent to payment to any class member set forth in Exhibit A, such class member must sign and not revoke a release in favor of DSI in the form of Exhibit B and complete a Form W-9 for tax purposes. All executed releases must be notarized. The EEOC shall inform DSI by 3:00 p.m. on each Friday after the Consent Decree is entered of any executed releases that have been obtained and are available in the Houston District Office. Within two business days, DSI will pick up any releases available. In the event of death or legal incapacity of any class member, the class member's estate, heirs, or guardian (as applicable) may obtain the payment set forth in Exhibit A by providing an appropriate release.

D. Within ten (10) business days after DSI receives a release executed by a class member listed on Exhibit A, DSI shall tender to that class member the monetary award amount reflected beside his or her name on Exhibit A, less any applicable withholding for federal taxes, and state and local taxes (if any). The checks shall be mailed to the class members at the addresses listed in Exhibit A by certified mail, return receipt requested unless DSI receives notice in writing from the

EEOC of a changed address. DSI shall simultaneously send a photocopy of the transmittal letter and check to the EEOC to document its tender of payment. DSI will provide a W-2 form to each class member who is paid pursuant to this paragraph.

E. If a class member rejects his or her monetary award, or he or she (or his or her estate, heirs or guardian, as applicable) has not provided an executed release to the EEOC within ninety (90) days after the effective date of this Consent Decree, the amount of the settlement fund attributable to such class member shall revert to DSI and shall no longer be owed under this Consent Decree. Provided, however, in no event shall the amount that reverts to DSI in accordance with the preceding sentence exceed twenty thousand dollars (\$20,000.00). In the event that sufficient class members reject their monetary awards or fail to provide releases within ninety (90) days after the effective date of this Consent Decree that the amount of the settlement fund attributable to such class members exceeds twenty thousand dollars (\$20,000), then the excess over twenty thousand dollars (\$20,000) shall be donated by DSI as a charitable contribution to the Texas Institute for Rehabilitation and Research Foundation ("TIRR") within 210 days of the entry of this Consent Decree, sent to the following address: TIRR Foundation, 5100 Travis Street, Houston, Texas 77002, Attention: Cindy Lucia. Any such donation shall be accompanied by a letter advising the TIRR that the donation is being made in connection with an agreement with the EEOC. On or about two hundred days following the entry of the Consent Decree, DSI shall provide the EEOC with a statement of the total amount of settlement funds not disbursed, and a list of the class members to whom that amount is attributable. In no event shall the total amount of all checks cashed or deposited by class members plus the amount of any contribution to TIRR exceed the final settlement amount set forth in Section IV.A as reduced by DSI's reversion under this paragraph (if any).

SECTION V - AFFIRMATIVE RELIEF

A. For a period of thirty (30) months, beginning within thirty (30) days from the date of entry of this Consent Decree by the Court, DSI shall post in a prominent area in each terminal and office facility a copy of the EEOC's poster concerning non-discrimination requirements under federal law.

B. In establishing the job duties of drivers, DSI will continue to consider mechanisms that may make the lifting component of its truck drivers' essential job functions less demanding. Each semi-annual report shall state any such considerations made during the preceding six months. Should any mechanisms be adopted, appropriate job description changes (if any) will be made. If the EEOC learns of any such mechanisms, it may advise the Management Liaison of same.

C. DSI has amended the job description for the position of truck driver that is currently in use so that it continues to describe accurately the lifting requirements for truck drivers and is consistent with DSI's Job Requirements Analysis form that describes the lifting requirements. DSI shall provide a copy of the revised job description and Job Requirements Analysis to the EEOC.

D. At least annually, DSI shall provide information to its terminal managers and other personnel who make hiring decisions on truck driver applicants which explains their responsibilities for compliance with the Americans with Disabilities Act. DSI shall provide the EEOC with copies of the relevant materials distributed at these training sessions. DSI shall provide to the EEOC the sign-in lists containing the typed names, signatures, and job titles of the attendees at each training session (if any) that is held during the preceding six-month period on a semi-annual basis pursuant to Section VI. below.

E. DSI shall inform applicants, through a written statement (in the form of Exhibit C) with all job applications and verbally, that their job offers are conditioned upon the results of the medical examination and that they will not be hired until DSI receives a satisfactory report from the physical examination.

F. DSI shall keep a list of all truck driver applicants to whom it has not offered employment because of any physical condition or impairment or any finding made during the physical examination. The list will include the name of the individual, his or her address (as reflected on the employment application), and social security number, the date he or she applied, and the reason for rejection. This list shall be supplied to the EEOC with the semi-annual report required under Section VI. below.

G. DSI shall inform the applicant of the reason for rejection and provide the applicant a copy of the job description for the position of truck driver, if requested. DSI shall provide rejected applicants a rejection letter in the form of Exhibit D, along with the appeals form attached thereto.

H. Within thirty (30) days of entry of this Consent Decree by the Court, DSI shall establish the following procedure by which applicants who are rejected on the basis of their physical examinations may appeal that rejection:

(1) All applicants who have completed the application process and have been rejected by DSI because of any physical condition or impairment or any finding made during the physical examination except a positive drug or alcohol screen, will, at the time of the rejection, be informed in writing of their right to appeal the negative hiring decision. An applicant wishing to appeal must do so in writing, within twenty (20) calendar days of receiving notice of rejection. The rejected applicant shall include in the appeal any additional information to be considered by DSI. DSI shall forward the appeal to its medical review officer.

(2) Within ten (10) calendar days after DSI receives the appeal request, if DSI has not offered the rejected applicant the same job for which he had received a conditional offer of employment, a second opinion shall be requested from an independent physician who shall be chosen by DSI in accordance with Section V. (H)(4) below to serve as the medical appeals officer for DSI applicants for a term not to exceed one year. The second opinion shall be based on the documentation of the applicant's physical examination for DSI and any x-rays and laboratory results obtained in connection with such examination and, if necessary in the opinion of the medical appeals officer, a second physical examination or additional x-rays or other testing of the applicant. Such second physical examination, and additional x-rays and testing (if any) shall occur at a location that is reasonably convenient for the applicant. The physician or facility conducting such second examination or additional x-rays or testing may, but need not be, the medical appeals officer or a facility affiliated with the medical appeals officer. Such physician or testing facility may be the physician or facility that provided the original physical examination to DSI. The physician's fees and any laboratory and testing fees for such second examination or additional x-rays or testing will be paid by DSI. DSI shall not be responsible for any other costs. If the applicant does not cooperate in scheduling such examination or additional x-rays or testing, within a reasonable and mutually agreeable time, or does not appear for examination or additional x-rays or testing, as scheduled, the applicant shall be considered to have withdrawn his or her application and appeal and DSI shall have no obligation to further process that appeal or hire that applicant. Further, DSI shall have no liability as a result of its failure to hire that applicant for employment.

(3) The medical appeals officer shall evaluate the applicant for employment as a truck driver at DSI, taking into account the requirements of the position and the results of the applicant's original physical examination and any x-rays and tests therefrom, as well as any second physical examination and/or x-rays or other test results obtained in connection with this appeals process. If the medical appeals officer concurs in the decision to reject the applicant, DSI shall have no obligation under law to hire the individual. If the medical appeals officer disagrees with the decision to reject the applicant, DSI shall determine in its sole discretion whether to reinstate the job offer to the applicant. Within ten (10) calendar days after receiving the recommendation of the medical appeals officer, DSI shall inform the applicant in writing as to whether or not his or her job offer has been reinstated based on the results of the medical appeals officer's recommendation. If a decision to reinstate the job offer is made, in the notice so informing the applicant, which shall be sent by regular and certified mail, DSI shall also provide the applicant information regarding who to contact to accept the offer and when the applicant must be available to begin work. Such notification letters shall be in the form of Exhibits E and F, as applicable.

(4) DSI shall choose the medical appeals officer from among the members of the American College of Occupational and Environmental Medicine, who practice in Houston; provided however, that DSI may not choose to serve as medical appeals officer any physician designated by it as an expert witness in this lawsuit or who has acted as an expert witness in other cases handled by its counsel, Douglas E. Hamel and Dorene B. Cohen, in this lawsuit. DSI shall inform the EEOC of the name of the person appointed as medical appeals officer. In the discretion of DSI management or the medical appeals officer, for special circumstances that may require additional expertise, the medical appeals officer may be board certified in another appropriate medical specialty. At such time as a medical appeals officer resigns or the term of appointment expires, another medical appeals

officer shall be chosen by DSI as provided above to serve succeeding terms not to exceed one year for the duration of this Consent Decree.

(5) On a semi-annual basis, DSI shall provide the EEOC with a report listing the names of individuals who have appealed negative hiring decisions and describing the results of the appeal. After the first report is made, the EEOC shall have the option of requiring that it be contemporaneously copied on subsequent correspondence informing applicants who have appealed but whose appeals have been rejected that DSI has decided not to hire them.

(6) Only applicants who have fully completed DSI's application process (including, but not limited to, if requested by the examining physician, any follow-up with the applicant's personal physician) and have been rejected by DSI have a right to appeal. Any applicant who does not complete or abandons DSI's application process shall have no right to appeal DSI's refusal to hire that individual and DSI shall have no obligation under law to hire such individual. Further, any applicant who does not comply with the requirements of the appeals process and make himself or herself available for a second examination or additional x-rays or testing (if any are required) so that his appeal may be timely and fully processed shall have his or her appeal denied by DSI and DSI shall be under no obligation to hire that individual.

I. Notwithstanding the appeals process set forth in Paragraph V.H., in no event shall DSI be required to hire or consider an appeal for any driver applicant who did not (i) obtain a medical examiner's certificate medically qualifying the applicant to drive a commercial motor vehicle under the Department of Transportation regulations or (ii) pass the respirator certification test pursuant to the Occupational Safety and Health Administration's personal protective equipment standard for respiratory protection (29 C.F.R. § 1910.134) and the applicable standards for proper respirator fit and function promulgated by the National Institute of Occupational Safety and Health.

J. Upon request by a physician who subsequently treats or examines any rejected truck driver applicant, DSI's medical review officer (and the appeals officer, if applicable) shall make available to such requesting physician any medical information regarding the applicant obtained during the application process.

K. DSI shall provide written training material regarding the ADA to its medical review officer and each of the examining physicians and medical clinics who are regularly engaged by DSI to perform pre-employment physical examinations. Upon the request of any other physician who was identified and chosen by any job applicant, DSI shall immediately provide such materials to the physician at no cost. These training materials shall routinely include a copy of the EEOC's ADA regulations.

L. DSI shall provide to its medical review officer, medical clinics and examining physicians current job descriptions for each of the positions for which they will be examining/reviewing applicants. These job descriptions will be developed in accordance with Paragraph V.C. above. The medical review officer/physicians will be instructed to read these descriptions and to make their assessments of applicants in light of the specific requirements of each job. In addition, the medical review officer/physicians will be instructed to complete the DOT medical examination certificates on all applicants (by indicating whether or not the applicant has passed his or her DOT examination) even if the applicant does not meet DSI's additional physical requirements.

M. As a condition precedent to appointment, the medical review officer shall tour a DSI terminal and observe the duties of its over-the-road truck drivers, and have the opportunity to discuss job duties with such drivers outside the presence of DSI management, in order to understand the range of tasks for which he or she is examining/certifying applicants.

N. DSI shall require its medical review officer to state in writing the medical condition of the applicant on which he or she bases any recommendation that the applicant for employment be rejected. Compliance with this paragraph may be accomplished by legible notation in the recommendation section of DSI's physical examination form.

O. DSI shall instruct any physician who advises an examinee to consult with another physician, to receive any medical treatment, or to provide any additional information to the examining physician, to keep a record of such advice and the information subsequently provided. A copy of such record (which may be a legible notation on the physical examination form) will be sent to DSI's Management Liaison, as described in the Section VI. B. below, for retention. DSI shall not be deemed in violation of this Consent Decree in the event that a physician fails to keep or forward such record.

P. The examining physician shall inform each female applicant that she must take a pregnancy test prior to undergoing any back x-ray and that a back x-ray is a required part of DSI's pre-employment physical examination. If the applicant refuses to submit to a pregnancy test, as a condition of proceeding with the physical, she must sign a release holding DSI harmless from any injury to her fetus (if any) that may result from the x-ray. DSI will not take a back x-ray of any woman who is pregnant or who refuses a pregnancy test and will not sign a release. In either case, DSI will have no further obligation to consider the applicant for employment. Pregnancy tests results will not be reported to DSI.

Q. DSI shall designate a management level employee who is authorized to review each instance in which the medical review officer and/or a physician conducting a pre-employment medical examination recommended against the hiring of an applicant to insure that following the recommendation would be consistent with the ADA and federal and state law and regulations. This employee shall have authority to overrule an examining physician's/medical review officer's recommendation that an applicant not be hired due to a disability or physical impairment, whether in connection with the initial examination and/or the appeals process. Any decision to overrule a negative hiring recommendation will be communicated to the examining physician/medical review officer. If the management official believes that the physician's/medical review officer's recommendation is inconsistent with the requirements of the ADA, the manager may hire the individual or may send the applicant to another physician for a second opinion even if the applicant does not invoke the appeal process. The doctor rendering the second opinion may not be professionally associated with the initial examining physician or the medical review officer, and may but need not be the medical appeals officer specified in Section V.H. DSI initially designates Terry Collins, DSI's Director of Human Resources, as the management level employee (hereinafter "Management Liaison") who will have the above-described responsibility of monitoring compliance with the Americans With Disabilities Act and this Consent Decree. DSI agrees to inform the EEOC's Regional Attorney if, while this Consent Decree is in effect, it appoints a different management level employee to fulfill the above-described tasks.

SECTION VI - REPORTING OBLIGATION AND SCHEDULE

A. The Management Liaison shall submit semi-annual reports to the EEOC with a copy to DSI's President pursuant to the reporting provisions of the Consent Decree. These reports shall contain the information required in Section V, paragraphs B, D, F, H(4), H(5) of this Consent Decree and shall state whether DSI is complying with the terms of the Consent Decree. The first report certifying compliance with Section V, paragraphs B, C, F, H(4), shall be due forty-five (45) days after entry of the Consent Decree by the Court. The last report shall be submitted six (6) weeks prior to expiration of this Consent Decree. The Management Liaison has an affirmative duty to certify that the reports are filed accurately, to insure that they are filed timely and to disclose any non-compliance with the terms of the Consent Decree. The Management Liaison may insure that the reports are timely filed by mailing such report, on or before the date due, to Jim Sacher, Regional Attorney, Equal Employment Opportunity EEOC, Houston District Office, at the address set forth in Section IX.A., via certified mail, return receipt requested.

B. DSI shall maintain such records as are necessary to demonstrate its compliance with the provisions of the Consent Decree and to verify any reports it is required to submit pursuant to the terms of the Decree. Upon reasonable request, these records shall be submitted or made available to the EEOC by DSI at the company's expense. The requirement that these specific documents be retained does not serve to abrogate any other legal obligation(s) that DSI may have to maintain these or any other records. Should the EEOC need additional relevant records or documents, the EEOC shall make such requests in writing. These records shall be submitted or made available to the EEOC by DSI upon twenty (20) business days advance notice at DSI's expense.

SECTION VII - COSTS

A. The parties shall bear their own costs and attorney's fees.

SECTION VIII - CERTIFICATION

A. The signatories certify that they are authorized to execute the Consent Decree on behalf of their respective parties.

SECTION IX - NOTICES

A. All documents required to be forwarded to the parties or their counsel shall be mailed, delivered or telefaxed to counsel at the addresses shown below:

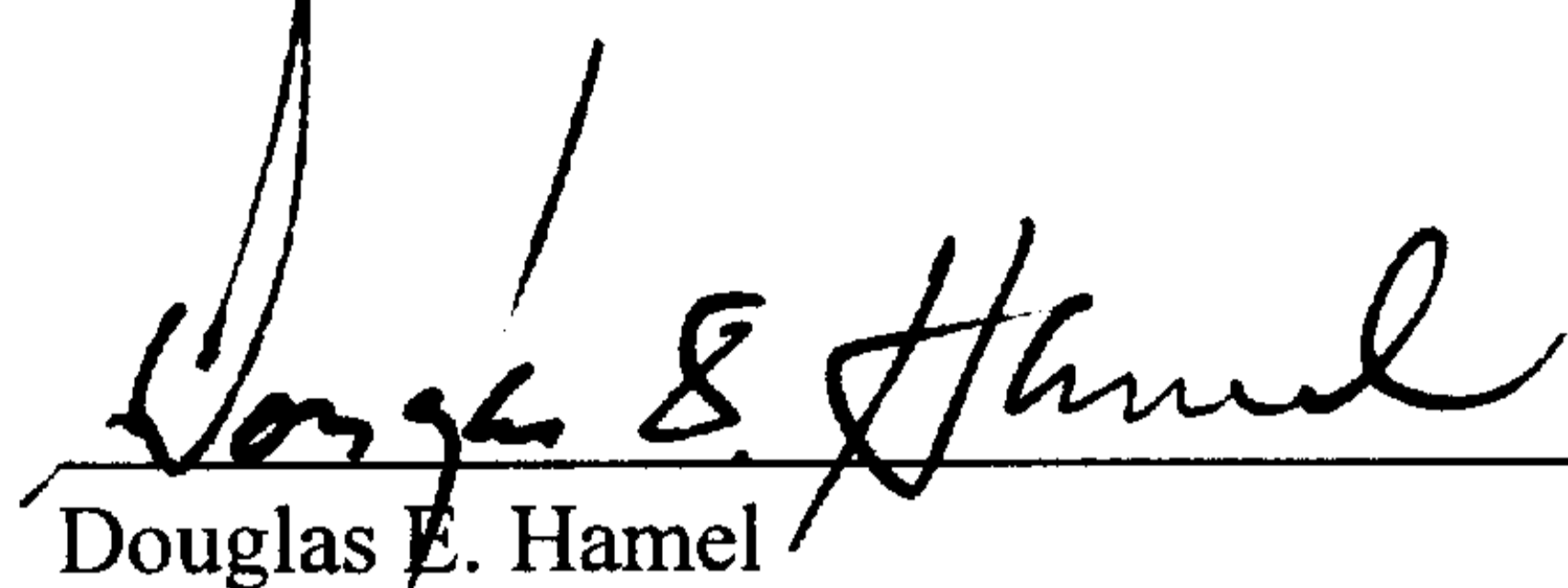
ATTORNEY FOR PLAINTIFF EEOC:

Jim Sacher
Regional Attorney
Houston District Office
Equal Employment Opportunity Commission
1919 Smith Street, 7th Floor
Houston, Texas 77002
(713) 209-3398
(713) 209-3402 (facsimile)

ATTORNEY FOR DEFENDANT DSI TRANSPORTS, INC.

Douglas E. Hamel
Vinson & Elkins
2300 First City Tower
1001 Fannin Street
Houston, Texas 77002-6760
(713) 758-2036
(713) 615-5388 (facsimile)

APPROVED FOR DSI TRANSPORTS, INC.



Douglas E. Hamel

Attorney-in-Charge

Fed. I.D. No.

Texas Bar No. 08818300

Date: September 28, 1998

Vinson & Elkins


2300 First City Tower

1001 Fannin Street

Houston, Texas 77002-6760

(713) 758-2036

APPROVED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION



James Sacher

Regional Attorney

Fed. I.-D. No. 13536

Texas Bar No. 17503300

Date: September 28, 1998

Equal Employment Opportunity Commission

Houston District Office

1919 Smith Street, 7th Floor

Houston, Texas 77002

(713) 209-3401

SIGNED ON Sept 30, 1998 AT HOUSTON, TEXAS.



DAVID HITTNER

UNITED STATES DISTRICT JUDGE

EXHIBIT A

ADDRESSES	AMOUNTS	ADDRESSES	AMOUNTS
Timothy H. Adkins 200 Crystal Longview, TX 75604	\$0	Edward Bujan 315 Daniel Freeport, TX 77541	\$6,500
Bobby Amoss P. O. Box 143 Lone Star, TX 75668	\$4,000	Otis E. Burnett 787 Cavins Road Woodruff, SC 29388	\$2,250
James C. Anderson 11 North Court St. Windsor, VA 23487	\$15,000	Archie R. Cline 323 Inwood Dr. Bullard, TX 75757	\$2,250
Charles Michael Antilla 23095 Enchanted Avenue Pass Christian, MS 39571	-0-	Mourad G. Collier P. O. Box 1522 Silsbee, TX 77656	\$4,000
Walter Norris Bach, Sr. P. O. Box 14 Watertown, NY 13601	\$6,500	Durwood Daughtrey 1520 March Circle Savannah, GA 31406	\$2,250
Juan Barboza, Sr. 3802 Caravelle Parkway Corpus Christi, TX 78415	\$4,000	Marcus Dixon 905 Campus Ave., Apt. 107 Beaumont, TX 77705	\$2,250
Lloyd E. Bloodworth 521 Paschal Trumann, AR 72472	\$0	John L. Dugas 574 Highway 182 Sunset, LA 70584	\$2,250
Richard T. Boitnott 5857 Plantation Circle Roanoke, VA 24019	\$4,000	Joseph Fausone 3600 Avondale Blvd. Avondale, CO 81022	\$4,000
Charles Bozeman 1012 College South Cove Brandon, MI 39047	-0-	Louis Goss 3630 Wilma Avenue Fort Smith, AR 72904	\$2,250
Robert E. Briley 230 Magnolia St. Opelousas, LA 70570	\$6,500	Clifton L. Hagan 2111 Trailer Lot #33 Sulphur, LA 70663	\$2,250
Charles W. Headley 68 Lindsey Lane Elmore, AL 36025	\$4,000	Ronald Nunez 450 Judson St., Space 96 Redlands, CA 92374	\$6,500

Charles L. Hudson 7878 Spencer Hwy., #1129 Pasadena, TX 77505	\$2,250	Keith Pace P. O. Box 470 DeBerry, TX 75639	-0-
James F. Irwin 61227 Ruth Holton Road Amite, LA 70422	\$2,250	Teresa D. Phielschiefter P. O. Box 344 Bronson, TX 75930	\$4,000
Ruben Jaquez 4517 St. Nazaire Road Pensacola, FL 32505	\$2,250	Karl Davis Phillips 306 Kingsworth Lane South East Leland, NC 28451	\$4,000
Clyde W. Jones P. O. Box 715 Crockett, TX 75835	\$2,250	James Pizzolato 23947 Florence Dr. Plaquemine, LA	\$2,250
Terry K. Kelly P. O. Box 1564 Buna, TX 77612	\$4,000	Jack C. Post, II P. O. Box 1621 Rockwall, TX 75087	\$2,250
Alton R. Kibodeaux P. O. Box 1794 Buna, TX 77612	\$4,000	Pamela Sizemore P. O. Box 166 Thicket, TX 77374	\$40,000
John D. Lamar 421 Wilshire St. Vidor, TX 77662-4233	\$2,250	Michael J. Skeens 1774 Bixby Rd. Lockbourne, OH 43137	\$2,250
Lee Mazzarini 5685 Aiken Road McKees Rocks, PA 15136	\$0	Jimmy Skinner 714 Harrison St. Jerseyville, IL 62052-1481	\$0
Vernon Miller 719 East Main St. Grayson, KY 41135	\$4,000	James E. Smith P.O. Box 268 Norwood, LA 70761	\$2,250
Robert Montgomery 3935 Creole St. Lake Charles, LA 70605	\$4,000	Bobby J. Tate 3702 Parkway St. Ringgold, LA 71068	\$2,250
Dudley Touchet, Jr. P.O. Box 253 Sour Lake, TX 77659	\$4,000	Estate of Lee E. Turnbow P. O. Box 1041 Buna, TX 77612	\$2,250
Roger T. Weathers 650 Cottonwood Creek Rd. Plains, MT 59589	\$4,000		

Alexander Z. Webb 1023 Irby Dr. Richmond, VA 23225	\$4,000		
Henry O. White 11642 Big Sky Circle Thonotosassa, FL 33592	\$4,000		
Razz L. Williams 5539 Elmlawn Houston, TX 77033	\$6,500		
George Woods 2309 Ottawa Butte, MT 59701	\$4,000		
David A. Worley 6453 Cosmic Road Richmond, VA 23234	\$4,000		
Linford L. Wright 807 Siggins Coffeyville, KS 67337	-0-		

EXHIBIT B

RELEASE AGREEMENT

STATE OF _____
COUNTY OF _____

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KNOW ALL MEN BY THESE PRESENTS:

This Release Agreement ("Agreement") is made and entered into between _____ ("Applicant"), and DSI Transports, Inc. ("DSI") pursuant to the Consent Decree (the "Decree") entered by the Court in the lawsuit styled *Equal Employment Opportunity Commission v. DSI Transports, Inc.*, Civil Action No. H-97-1580, in the United States District Court for the Southern District of Texas, Houston Division (the "Lawsuit"). DSI and Applicant agree as follows:

1. Within ten days after DSI receives this release signed by Applicant, DSI will mail to the address set forth in the Decree a check made payable to Applicant in the amount of \$_____, less applicable withholding taxes, as consideration for Applicant's release of any and all claims under the Americans With Disabilities Act ("ADA") and any state statute providing similar protections, he has asserted or could assert against DSI, its parents, subsidiaries, affiliates, and each of their respective present or former officers, directors, shareholders, employees and agents (the "Released Parties"), arising from his application for employment with DSI and DSI's refusal to hire him on or before the date of this Agreement.

2. Applicant, on behalf of himself and his successors, heirs, assigns, attorneys, and any other person claiming through him, hereby unconditionally and forever releases, acquits, and discharges the Released Parties from any and all claims, causes of action, rights, damages, losses, liabilities, and demands which he now has or may have, whether now known or unknown, including, but not limited to, any claim for salary, compensation, benefits, expenses, actual, compensatory, and exemplary damages, interest, attorneys' fees, costs, present or future employment, and any form of declaratory or injunctive relief, to the extent same arise under the ADA (or a state statute providing similar protections) and which have accrued on or before the date of this Agreement. Applicant represents that, other than his participation in the Lawsuit [add charge references for Sizemore and Anderson] he has brought no claims against any of the Released Parties.

3. Applicant agrees that in the future he will not apply for employment with DSI or any employer which succeeds to its interests.

4. Applicant acknowledges that by entering into this Agreement, DSI does not admit to any wrongdoing in connection with the claims alleged by him or on his behalf, and, in fact, expressly denies any wrongdoing. This Agreement is intended to settle disputed claims and to buy peace.

5. This Agreement and its terms shall be maintained by Applicant in strict confidence. Applicant agrees that he will not disclose, directly or indirectly, the terms of this Agreement, any communications concerning its negotiation, or the claims made the basis of the Lawsuit to any person (outside his or her immediate family or tax advisors and only on the condition that they agree to keep the terms of this Agreement confidential), including, but not limited to, any former or current employees of DSI.

6. Applicant acknowledges and agrees that he has carefully read this Agreement. Applicant understands that it is a release of all claims, known and unknown, past or present, under the ADA (or similar state statute) which accrued on or before the date of this Agreement. Applicant further acknowledges and agrees that he executes this Agreement voluntarily and without reliance on any representations of any kind or character not expressly set forth herein. Finally, Applicant executes this Agreement fully knowing its effect and voluntarily for the consideration stated above.

Dated: _____

APPLICANT

Name: _____

Social Security Number: _____

DSI TRANSPORTS, INC.

Dated: _____

By: _____

Name: _____

Title: _____

STATE OF _____

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COUNTY OF _____

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BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 1998.

Notary Public in and for the State of _____
My Commission Expires _____

EXHIBIT C

DSI TRANSPORTS, INC.

Language for Job Application and/or Handout in Application Materials Containing Warning Regarding Conditional Nature of Job Offer

Obtaining an offer of employment with DSI Transports, Inc. is conditioned on satisfactory completion of the application process, including but not limited to satisfactory results of the following: (1) check of prior employment references, and (2) check of motor vehicle department driving records.

If you have received a job offer from DSI after these checks, you will be required to undergo a physical examination. Even though you will have been offered employment, the offer is conditioned upon satisfactory results of your physical examination. The physical examination requirements for DSI are more strict than the Department of Transportation Requirements, and no applicant is assured employment even if he or she currently possesses a DOT card. Please be aware that DSI Transports, Inc. will not hire any person who does not pass its physical examination. No employee of DSI has the authority to hire any applicant, or represent that DSI will hire any applicant, who does not satisfy these conditions.

EXHIBIT D

[DSI INITIAL REJECTION BASED ON MEDICAL CONDITION]

**DSI TRANSPORTS, INC.
15600 JFK Boulevard, Suite 600
Houston, Texas 77032**

[DATE]

[Applicant Name and Address]

Dear [Applicant]:

We are writing to inform you that DSI Transports, Inc. has considered your application for employment for the position of truck driver and has decided not to offer you a position. This decision is based on the results of your physical examination which indicate that you have the following medical condition: _____.

You may appeal DSI's decision by completing the enclosed appeal form or writing DSI a letter and sending either the form or the letter to Terry Collins, Director of Human Resources, DSI Transports, Inc., at 15600 JFK Boulevard, Suite 600, Houston, Texas 77032, within 20 calendar days after receiving this notice. If you have any additional information that you wish to be considered, you must include it with your appeal. If you have no additional information or if the additional information you submit does not result in DSI's offering a truck driver position to you within 10 calendar days after DSI receives your appeal letter, DSI will request a second opinion from an independent medical appeals officer who is appointed through the Texas Occupational Medical Association. If required by the medical appeals officer, you may be requested to have another physical examination and/or additional x-rays or testing. The cost of physician's fees for any such examination, and laboratory and testing fees necessitated by your appeal will be paid by DSI. Your cooperation in obtaining any additional examination, x-rays or testing is an essential part of the appeals process.

As you are aware, among his or her many functions, a DSI truck driver is required to lift hoses which may weigh up to 100 pounds, climb up on top of cargo tanks, bend, stoop, and squat. These functions require our drivers to have strength, agility, good respiratory function, and good overall physical health. DSI's physical requirements are based on the essential functions expected to be performed by the DSI driver, which include physical requirements not used by other companies. Therefore, although DSI has determined that you are not medically qualified, based on the physically demanding nature of its truck driving position, you should not assume that the medical condition that has been identified during your physical examination would prevent you from obtaining any other job, including a job as a truck driver with another company.

DSI appreciates your interest in seeking employment with it. If you wish to appeal, you must send your appeal within 20 calendar days after receipt of this letter, at the address stated above. If you do appeal, you will receive a response from DSI in the coming weeks.

Very truly yours,

DSI TRANSPORTS, INC.

APPEALS FORM
DSI TRANSPORTS, INC.

1. Name and Address: _____
2. Social Security Number: _____
3. Date of DSI letter advising of rejection: _____
4. Medical conditions stated to be the basis of rejection: _____

5. Before you received your rejection letter from DSI, were you aware that you had the above-described medical condition?
_____ Yes _____ No. If no, skip to number 7 below.
6. Explain any impact that such condition(s) have had in the past on your ability to perform prior truck driving jobs:

7. List all physicians you have been treated or examined by in the preceding two (2) years and provide the physician's address and telephone number:

8. State any additional information you believe DSI should know in connection with evaluating this Appeal:

9. State the name, address and telephone number of any physician who has treated you since the date of your DSI physical examination: _____

10. State whether you have ever received any waiver of any Department of Transportation physical requirements and, if so, state when and for what requirement?

11. Provide contact information including address and telephone numbers at which you may be reached during the next four (4) weeks:

12. Please state when you will be available during the next four (4) weeks for a second physical examination (if necessary).

I understand that the information submitted with this appeal is subject to the same terms and conditions set forth in my application for employment with DSI.

Applicant's Signature

Date: _____

EXHIBIT E

[DSI NOTIFICATION OF REJECTION AFTER APPEAL]

**DSI TRANSPORTS, INC.
15600 JFK Boulevard, Suite 600
Houston, Texas 77032**

[DATE]

[Applicant Name and Address]

Dear [Applicant]:

We are writing to inform you that DSI Transports, Inc. has considered your appeal of its decision not to offer you employment in the position of truck driver based on your medical condition. DSI has considered your appeal and the second opinion that was obtained (if any), however, DSI has decided to affirm its decision not to hire you. Therefore, based on your medical condition, DSI will not be able to offer you employment as a truck driver.

As previously communicated to you, although DSI has determined that you are not medically qualified, based on the physically demanding nature of its truck driving position, you should not assume that the medical condition that has been identified during your physical examination would prevent you from obtaining any other job, including a job as a truck driver with another company.

DSI appreciates your interest in seeking employment with it and wishes you luck in the future.

Very truly yours,

DSI TRANSPORTS, INC.

EXHIBIT F

[DSI JOB OFFER REINSTATEMENT LETTER]

**DSI TRANSPORTS, INC.
15600 JFK Boulevard, Suite 600
Houston, Texas 77032**

[DATE]

[Applicant Name and Address]

Dear [Applicant]:

We are writing to inform you that DSI Transports, Inc. has considered your appeal of its decision not to offer you employment in the position of truck driver based on your medical condition. DSI has considered the information you submitted and the second opinion that was obtained (if any). Based on this information, DSI has decided to offer you employment in the position of truck driver at its _____ Terminal, located at : _____ [address]. You will be expected to report for work at DSI no later than two weeks from the date you accept employment.

If you decide to accept this offer, please contact _____ [Terminal Manager] at _____ [phone number] within five calendar days of receipt of this letter by certified mail. Mr. _____ will have details for you concerning rates of pay, scheduled hours, training, benefits, and other details concerning your employment.

We look forward to hearing from you and having you join the DSI team.

Very truly yours,

DSI TRANSPORTS, INC.