

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,) Civil Action No. _____
v.)
)
SCHNEIDER NATIONAL, INC.,) **COMPLAINT**
) (Jury Trial Demand)
Defendant.)
)

This is an action under Title I of the Americans with Disabilities Act of 1990 (“ADA”) and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Jerome T. Hoefner, who was adversely affected by such practices. As alleged with greater particularity in Paragraph 9 below, the Equal Employment Opportunity Commission alleges that on or about May 12, 2003, defendant Schneider National, Inc. violated the ADA when it terminated Hoefner’s employment on the basis of disability after he asked to return to work following a medical leave.

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were and are now being committed

within the jurisdiction of the United States District Court for the Eastern District of Wisconsin.

PARTIES

3. The plaintiff, the Equal Employment Opportunity Commission (“EEOC”), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, the defendant, Schneider National, Inc. (hereinafter “Schneider”), has continuously been a Wisconsin corporation doing business in the State of Wisconsin and the Cities of Green Bay and Racine, and has continuously had at least 15 employees.

5. At all relevant times, Schneider has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

6. At all relevant times, Schneider has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

STATEMENT OF CLAIMS

7. More than 30 days prior to the institution of this lawsuit, Jerome T. Hoefner (“Hoefner”) filed a charge with the EEOC alleging violations of Title I of the ADA by Schneider. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. During the time period relevant to this lawsuit, Hoefner experienced an isolated episode of fainting, which caused Schneider to regard him as disabled within the meaning of the

ADA. At all times relevant to this lawsuit, Hoefner has been qualified to perform the essential functions of the over-the-road truck driver position that he held while employed at Schneider.

9. Since at least on or about November 6, 2002, Schneider has engaged in unlawful employment practices at its Green Bay and Racine, Wisconsin, facilities in violation of Section 102(b) of the ADA, 42 U.S.C. § 12112(b), as follows: After learning that Hoefner had fainted on October 6, 2002, Schneider refused to return him to work in the over-the-road truck driver position from which he had been on medical leave, and further violated the ADA on or about May 12, 2003, when it terminated Hoefner's employment on the basis of perceived disability.

10. The effect of the practices complained of in Paragraph 9 above has been to deprive Hoefner of equal employment opportunities because of disability.

11. The unlawful employment practices complained of in Paragraph 9 above were and are intentional.

12. The unlawful employment practices complained of in Paragraph 9 above were and are done with malice or with reckless indifference to Hoefner's federally-protected rights.

PRAYER FOR RELIEF

Wherefore, the EEOC respectfully requests that this Court:

A. Grant a permanent injunction enjoining Schneider and its officers, successors, and assigns, and all persons in active concert or participation with them, from failing and refusing to employ disabled individuals such as Hoefner in positions for which they are qualified.

B. Order Schneider to institute and carry out policies, practices, and programs that provide equal employment opportunities for qualified individuals with disabilities, and that eradicate the effects of its past and present unlawful employment practices.

C. Order Schneider to make Hoefner whole by providing appropriate backpay with pre-judgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including (but not limited to) reinstatement of Hoefner into a position in which he can perform the essential functions of the position with or without reasonable accommodation.

D. Order Schneider to make Hoefner whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in Paragraph 10 above, including (but not limited to) job search expenses and medical expenses.

E. Order Schneider to make Hoefner whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in Paragraph 10 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation.

F. Order Schneider to pay Hoefner punitive damages for its malicious and reckless conduct, as described in Paragraph 9 above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the EEOC its costs of this action.

JURY TRIAL DEMAND

The EEOC requests a jury trial on all questions of fact raised by its complaint.

Eric Dreiband
General Counsel

James L. Lee
Deputy General Counsel

Gwendolyn Young Reams

Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1801 "L" Street, N.W.
Washington, D.C. 20507

Dated: September ____, 2004

Jean P. Kamp (Illinois Bar No. 1390635)
Regional Attorney

Dated: September ____, 2004

Rosemary Fox (Wisconsin Bar No. 1012729)
Supervisory Trial Attorney

Dated: September ____, 2004

Dennis R. McBride (Wisconsin Bar No. 1000430)
Senior Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Milwaukee District Office
310 West Wisconsin Avenue - Suite 800
Milwaukee, WI 53203-2292
Telephone: (414) 297-4188 *Fax:* (414) 297-3146
E-mail: dennis.mcbride@eeoc.gov