

EEOC v. UNITED PARCEL SERVS.

United States District Court for the Northern District of California

December 12, 2000, Decided ; December 12, 2000, Filed

No. C 97-00961 WHA

Reporter: 2000 U.S. Dist. LEXIS 18986

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, SHAWN HOGYA, JAMES FRANCIS, JAMES AIKENS and CHRIS WILSON, Intervenors, v. UNITED PARCEL SERVICES, INC., Defendant.

Subsequent History: Injunction granted at, Claim dismissed by, Judgment entered by, Stay granted by EEOC v. UPS, 149 F. Supp. 2d 1115, 2000 U.S. Dist. LEXIS 18973 (N.D. Cal., 2000)

Disposition: [*1] UPS's motion for summary judgment (Exh. W to Ordonio-Dixon Decl.) GRANTED in favor of defendant with regard to these 102 individuals.

Counsel: For EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff: Jonathan T. Peck, David T. Kelley, William R. Tamayo, San Francisco District Office, San Francisco, CA.

For EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff: C. Larry Watson, Charles E. Guerrier, Cleveland District Office, Cleveland, OH.

For JAMES AIKENS, JAMES FRANCIS, CHRIS WILSON, Intervenors: John J. Mavredakis, Ernst & Mavredakis, Santa Rosa, CA.

For SHAWN HOGYA, Intervenor: John J. Mavredakis, Law Office of John J Mavredakis, Santa Rosa, CA.

For UNITED PARCEL SERVICE, defendant: Patricia S. Radez, Steven S. Kimball, Pamela L. Hemminger, Gibson Dunn & Crutcher LLP, San Francisco, CA.

Judges: WILLIAM ALSUP, UNITED STATES DISTRICT JUDGE.

Opinion by: WILLIAM ALSUP

Opinion

ORDER GRANTING IN PART DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

In its opposition to defendant's motion for summary judgment, the EEOC pointed to no evidence whatever that 102 individuals were substantially limited in the major life activities of seeing or working, or that they were regarded as having or have [*2] a record of a physical or mental impairment substantially limiting one or more major life activities. Their names were merely listed on a chart submitted in support of the EEOC's opposition to UPS's motion for summary judgment (Exh. W to Ordonio-Dixon Decl.) These individuals were: Wilbert Anderson, Jr., Keith Arnold, Michael Arondowski, James Atnip, Gregory Aulisio, Mike Aull, Wade Becker, Robert Belles, Jr., Timothy Brennan, Larry Bryan, Lila Calfee, Jay Case, Dean Ciampi, Harry Clark, Karen Clark, David Cole, James Collum, Lawrence Cones, William Cooper, John Cope, Jim Cox, Terry Curry, Carl Dahms, Dan Dexter, Rhonda Devinney, Jack Eannarelli, Tom Earlywine, Mike Eckhart, Donny Everet, Jr., Ken Farmer, Jack Foster, Pat Frost, Donna Fuchs, Dan Gardner, Keith Garner, Johnny German, Kevin Gipson, Ronald Glover, Paul Gnacinski, Brian Godee, James Goodwin, Mark Greengard, Tommy Gregory, Joseph Hamilton, Tim Hancock, Steve Harris, Gilbert Harvey, Donald Heffner, Phil Henderson, Dennis Henderson, Tommy Wayne Herbert, Roger Heyser, Brian Hubbel, Alyce Hudnell, Michael Huestis, Larry Hulse, Carol James, Darrold Johnson, Keith B. Johnson, Arthur Jones, Conrad Labbe, George Lewis, Alan Lightfoot, [*3] Randy Logan, John Lopez, Carl Lohrbach, Mike Loughray, David Magruder, Duane Massey, Michael McClelland, James McCarthy, Tom Moriarty, Eric Morro ¹, Bryon Nimmo, Ron Page, Walter Paitsel, David Parsons, William Pavlick, Colina (Chip) Poole, Sherri Reid (aka Waite), Amy Robbins, Henry Rone, John Russel, John Sardina, Eric Sellers, George Senic, Randy Sifton, David Smith, Ann Smothers, Dorris Sparks, Scott Spotten, Robert Stottlemeyer, Gerald Strasser, Robin Sullivan, James Sylvester, Greg Tallman, Tom Tewell, Ignacio Torres, James Waldon, Terry Walker, Robert Winstead, Patricia Worthham, and Richard Young.

At the time of the summary judgment hearing, the Court expressed concern over that gap in evidence and expressly reserved ruling on summary judgment [*4] as to those individuals. Months later the EEOC tried to cure the defect

¹ It is possible that there is a Visual Impairment Evaluation Program form for Mr. Morro, based on its placement in the exhibit, but the name is illegible on the form. Regardless, that the individual passed the vision test. Summary adjudication remains appropriate.

by submitting declarations. The declarations were far too late. Summary adjudication is now GRANTED in favor of defendant with regard to these 102 individuals. The EEOC did not timely submit evidence raising triable issues of fact as to numerous other individuals (not named above), and summary judgment is not appropriate as to them.

Dated: December 12, 2000.

WILLIAM ALSUP

UNITED STATES DISTRICT JUDGE

IT IS SO ORDERED.