

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

Butterworth Industries, Inc.

Defendant.

CIVIL ACTION NO. 1:04-CV-300-WCL

COMPLAINT

JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Gail Bricker who was adversely affected by such practices. The Commission alleges that Defendant Butterworth Industries, Inc. failed to make a reasonable accommodation to the disability of Gail Bricker, a qualified individual with a disability, knee impairment and arthritis, and that Butterworth Industries, Inc. discharged her because of her disability. The Commission also alleges that Butterworth Industries, Inc. failed to maintain separate and confidential medical files on its employees, in violation of the ADA.

JURISDICTION AND VENUE

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 Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by reference Section 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 Northern District of Indiana, Fort Wayne Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), 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, Defendant, Butterworth Industries, Inc. (the "Employer"), has continuously been an Indiana Corporation doing business in the State of Indiana and the City of Gas City, and has continuously had at least fifteen employees.

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

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Gail Bricker filed a charge with the Commission alleging violations of Title I of the ADA by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least December 17, 2003, Defendant Employer has engaged in unlawful employment practices at its Gas City, Indiana facility, in violation of Section 102 of Title I of the ADA, 42 U.S.C. § 12112. The practices include:

- a. Defendant employer failed to make reasonable accommodation to the disability of Gail Bricker.
- b. Defendant employer discharged Gail Bricker because of her disability.
- c. Defendant employer failed to maintain separate confidential medical files on its employees.

9. The effect of the practices complained of in paragraph 8 above has been to deprive Gail Bricker of equal employment opportunities and otherwise adversely affect her status as an employee, because of her disability.

10. The unlawful employment practices complained of in paragraph 8 above are and were intentional.

11. The unlawful employment practices complained of in paragraph 8 above are and were done with malice or with reckless indifference to the federally protected rights of Gail Bricker.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with it, from failing to accommodate the disabilities of qualified individuals with disabilities, from discharging qualified individuals with disabilities because of their disabilities, from failing to maintain separate and confidential medical files on its employees, and any other employment practice which discriminates on the basis of disability.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices. Order Defendant Employer to maintain any medical records of employees in separate and confidential medical files.

C. Order Defendant to make whole Gail Bricker, by providing appropriate backpay with prejudgment 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 rightful place reinstatement of Gail Bricker.

D. Order Defendant Employer to make whole Gail Bricker by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 8 above, including job search expenses, in amounts to be determined at trial.

E. Order Defendant Employer to make whole Gail Bricker by providing

compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 8 above, including emotional pain, suffering, inconvenience and humiliation, in amounts to be determined at trial.

F. Order Defendant Employer to pay Gail Bricker punitive damages for its malicious and reckless conduct, as described in paragraph 8 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 Commission its costs of this action.

JURY TRIAL DEMAND

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

Respectfully submitted,

ERIC S. DREIBAND
General Counsel

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

s/Laurie A. Young
LAURIE A. YOUNG, #11480-49
Regional Attorney

s/Michelle Eisele
MICHELLE EISELE, #12070-49
Supervisory Trial Attorney

s/Jo Ann Farnsworth
JO ANN FARNSWORTH, #8364-49
Senior Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Indianapolis District Office

101 W. Ohio Street, Suite 1900

Indianapolis IN 46204

Tel. No. (317) 226-7949

FAX No. (317) 226-5571

Email: joann.farnsworth@eeoc.gov