

CLOSED

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED
JUL 11 2005
CLERK'S OFFICE
DETROIT

9



EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

Case No.

05 - 72583

V

JUDGE MARIANNE O. BATTANI

THE PEPSI BOTTLING GROUP, INC.

MAGISTRATE JUDGE KOMVES

Defendant

ADELE RAPPORT (P44833)
ROBERT DAWKINS (P382389)
TAMMY KLEIN (P50256)
Equal Employment Opportunity
Commission
477 Michigan Ave., Room 865
Detroit, MI 48226
(313) 226-5673

HUNTER R. HUGHES
DANIEL D. ZEGURA
Rogers & Hardin LLP
2700 International Tower, Peachtree Center
229 Peachtree Street, N.E.
Atlanta, Georgia 30303-1601
(404) 522-4700

ERIC J. PELTON
Kienbaum, Opperwall, Harding & Pelton
325 S. Old Woodward Avenue
Birmingham, MI 48007
(248) 645-0000

RECEIVED
JUN 29 2005

CONSENT DECREE

CLERK'S OFFICE, DETROIT-PSG
U.S. DISTRICT COURT

On June 30, 2005, the United States Equal Employment Opportunity Commission, ("EEOC" or the "Commission") commenced this action in the United States District Court for the Eastern District of Michigan, Southern Division, against the Defendant, The Pepsi Bottling Group, Inc. ("Defendant" or "PBG"). The Commission alleged in its Complaint that Charging

Party, Joe Golson, ("Charging Party" or "Golson") was denied the position of Warehouse Loader because of his disability, insulin dependant diabetes. Additionally, the Commission alleged that Mr. Golson had been subjected to a Physical Abilities Test that was not job related and consistent with business necessity, in violation of Title I of the Americans with Disabilities Act of 1990, as amended, ("ADA").

PBG denies the allegations in the Complaint, and specifically denies that Mr. Golson is disabled under the ADA or that it denied him any employment opportunities on the basis of any actual or perceived disability. PBG specifically avers that the Physical Abilities Test Mr. Golson took for the Warehouse Loader position is lawful, non-discriminatory, job related and consistent with business necessity.

FINAL DISPOSITION

1. Through this Consent Decree ("Decree"), the Commission, on behalf of Joe Golson, and PBG desire to forever resolve all issues raised, presented or joined in this Civil Action and in EEOC Charge Number 230-A20-1740, without the burden, expense and potential delay of further litigation of all issues set forth in this lawsuit, and agree to be bound by the promises made herein.

STIPULATED FACTS

2. The Parties stipulate and agree that the EEOC is the agency of the United States government authorized to investigate allegations of unlawful employment discrimination, to bring civil actions to prohibit unlawful employment practices and to seek relief for individuals affected by the practices complained of in this lawsuit.

3. PBG is an employer engaged in an industry affecting commerce within the meaning

of Section 701(g) and (h) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e(g) and (h). PBG had at least twenty (20) employees for twenty (20) or more calendar weeks during the relevant time period.

4. Pursuant to The ADA, the Parties acknowledge the jurisdiction of the United States District Court for the Eastern District of Michigan over the subject matter and Parties to this case for the purpose of entering this Decree, and, if necessary, enforcing the provisions of this Decree.

5. Venue is appropriate in the Eastern District of Michigan, Southern Division. For purposes of this Decree and proceedings related to this Decree only, PBG agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

MONETARY RELIEF

6. PBG agrees to pay Golson monetary relief in the amount of Seventy-Five Thousand Dollars (\$75,000.00), subject to all applicable payroll withholding and deductions, within twenty (20) days of the later of: (1) the entry of this Decree; and (2) the expiration of the revocation period under the separate General Release executed by Mr. Golson in conjunction with this Decree. A copy of the check shall be sent to Adele Rapport, Regional Attorney, Equal Employment Opportunity Commission, 477 Michigan Avenue, Room 865, Detroit, Michigan 48226, within ten (10) days of issuance.

NON-MONETARY RELIEF

7. PBG has offered Golson on several occasions the opportunity to return to work in the position of Warehouse Loader, with a seniority date of November, 2002, at the rate of pay currently prescribed through its Collective Bargaining Agreement ("CBA"). Under PBG's unconditional

offer, Golson was not required to take the Physical Abilities Test before returning to work, nor was he required to take the Physical Abilities Test so long as he remained employed by PBG. The EEOC acknowledges and informs the Court that Mr. Golson has declined PBG's unconditional offer.

8. PBG shall assist Golson, in good faith, in Golson's efforts to obtain a waiver from the Department of Transportation ("DOT"), though PBG shall have no liability if the DOT does not grant such a waiver to Mr. Golson. Subject to its obligations under any applicable Collective Bargaining Agreements, PBG agrees that it will consider Mr. Golson for a driver position at the Detroit Warehouse if Mr. Golson applies for such a position after he obtains a DOT waiver, if he is otherwise qualified for such a position, and if PBG has such a position available at its Detroit Warehouse at the time Mr. Golson obtains such a waiver.

9. PBG agrees that the Physical Abilities Test shall not be given to any current employee of PBG who is seeking to transfer to a position of Loader, Route Salesman or Merchandiser, if and only in the event that PBG reasonably determines that the employee has safely and adequately performed in the previous position and the previous position held by that employee is equally or more physically demanding than the new position sought.

10. The Commission acknowledges that PBG has been in a hiring freeze for the Loader position in the Detroit Warehouse. PBG agrees during the term of this Decree to provide written notice to the Detroit Regional Attorney of the EEOC within 30 days of hiring the first full-time permanent new entry hire for any of the position of Loader and/or Merchandiser.

11. PBG shall also contact AEI within thirty (30) days of the entry of this Decree and request that AEI to discuss in good faith possible accommodations with the Regional Attorney,

Detroit District Office, Equal Employment Opportunity Commission, that may allow individuals with disabilities to take, perform and complete the Physical Abilities Test. PBG shall request that AEI discuss, in good faith, possible accommodations with the Regional Attorney, Detroit District Office, Equal Employment Opportunity Commission, that will allow disabled employees to perform the essential functions of the positions of Loader, Route Salesman and Merchandiser. PBG shall consider implementing any recommendations from AEI resulting from its discussions with the EEOC, including but not limited to suspending or waiving the Physical Abilities Test, if appropriate.

NON-DISCRIMINATION

12. PBG, its officers, agents, employees, successors, assigns and all persons in active concert or participation with it, shall comply with the provisions of the Americans With Disabilities Act of 1990, as amended, and PBG agrees that it will not unlawfully discriminate against any and all individuals who work for PBG.

NON-RETALIATION

13. PBG, through its directors, officers, agents, successors, assigns and employees, will not unlawfully retaliate against any person known to it who participated or cooperated in the investigation and civil action by the EEOC of Charge of Discrimination No: 230-A20-1740, filed under the Americans with Disabilities Act of 1990, as amended.

DISPUTE RESOLUTION AND COMPLIANCE

14. This Decree finally resolves all claims arising out of EEOC Charge No. 230-A20-

1740 and all claims presented by the EEOC Complaint. The Decree in no way affects the EEOC's rights to process any future charges that may be filed against PBG. The EEOC reserves all rights to proceed with respect to matters like and related to this matter but not covered by this Consent Decree and to secure relief on behalf of aggrieved persons not covered by the terms of this Consent Decree.

15. The Parties agree that this Court shall retain jurisdiction and will have all available equitable powers, including injunctive relief, to enforce this Decree. Upon motion of either Party, the Court may schedule a hearing for the purpose of reviewing compliance of this Decree. The Parties shall engage in a good faith effort to resolve any dispute as to compliance prior to seeking review by the Court, and shall be required to give notice to each other ten (10) business days before moving for such review. If such review is deemed necessary by either Party, discovery will be conducted in an expedited fashion. More specifically, documents and other discovery materials shall be exchanged amongst the Parties within five (5) business days of Notice.

POSTING OF NOTICE

16. PBG shall post a mutually agreeable Notice, attached as Attachment A, in at least one (1) conspicuous location at its Detroit, Michigan Warehouse for a period not to exceed eighteen (18) months. In addition, PBG will continue to post all employment discrimination Notices as required by applicable law at all times in one (1) conspicuous place at its Detroit, Michigan location.

NON-ADMISSION OF LIABILITY

17. PBG has denied all allegations set forth in the EEOC's Complaint and those in Charge Number 230-A20-1740 along with any and all inferences of wrongdoing, and neither its

consent to the entry of this Decree, nor any of the terms or conditions set forth herein, shall constitute an adjudication or finding on the merits of the case or be construed as an admission of liability, wrongdoing, guilt, and/or violation of federal law, which PBG expressly denies.

ALLOCATION OF COST

18. The Parties agree to pay their respective costs and attorneys fees associated with the drafting and enforcement of this Decree.

SEVERABILITY CLAUSE

19. If any provision of this Decree is found to be unenforceable by a Court, only the specific provision in question shall be affected and the other enforceable provisions shall remain in full force.

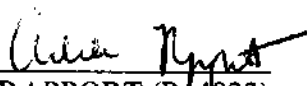
TRAINING

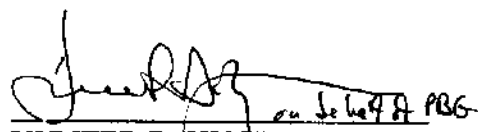
20. Within ninety (90) days of this Decree, PBG will provide to the EEOC the materials PBG has prepared to advise applicants who may have disabilities of their right to seek reasonable accommodation in taking the Physical Abilities Test. PBG will consider in good faith any comments and recommendations received from the EEOC with respect to said materials. During the term of this Decree, PBG shall also provide: (a) no less than two (2) hours of training to its officers, directors, supervisors, and managers located at the Detroit Warehouse on federal civil rights laws and equal employment responsibilities, including the Americans With Disabilities Act; and (b) no less than one (1) hour of diversity training to all permanent employees at the Detroit Warehouse.

DURATION

21. The Parties agree that the duration of this Decree shall be for a period of eighteen (18) months.

Respectfully submitted,


ADELE RAPPORT (P44833)
ROBERT DAWKINS (P382389)
TAMMY KLEIN (P50256)
Equal Employment Opportunity
Commission
477 Michigan Ave., Room 865
Detroit, MI 48226
(313) 226-5673


HUNTER R. HUGHES
DANIEL D. ZEGURA
Rogers & Hardin LLP
2700 International Tower, Peachtree Center
229 Peachtree Street, N.E.
Atlanta, Georgia 30303-1601
(404) 522-4700

ERIC J. PELTON
Kienbaum, Opperwall, Harding & Pelton
325 S. Old Woodward Avenue
Birmingham, MI 48007
(248) 645-0000

Attorneys for The Pepsi Bottling Group, Inc.

IT IS SO ORDERED:


U.S. District Court Judge

JUL 11 2005
DATE

EXHIBIT A

NOTICE TO ALL EMPLOYEES

This notice is being posted pursuant to *Equal Employment Opportunity Commission v. The Pepsi Bottling Group, Inc.*, Civil Action Number _____ filed in the United States District Court for the Eastern District of Michigan and resolved through a Consent Decree signed by both The Pepsi Bottling Group ("PBG") and the Commission.

This notice is designed to inform employees of their rights guaranteed by federal law under the Americans with Disabilities Act of 1990, as amended ("ADA"). The ADA prohibits an employer from discriminating against a qualified individual with a disability because of the individual's disability. The ADA further prohibits harassment of employees on the basis of disability. The ADA also mandates that an employer provide an employee with a disability with a reasonable accommodation to help them to perform the essential functions of their job provided that the employer will not suffer an undue hardship.

PBG agrees that it will comply with the mandates of the ADA. If, however, PBG does not solve an employee's concerns within a timely manner, an employee has the right to file a Charge of Discrimination with the Equal Employment Opportunity Commission. Information on the EEOC can be obtained at its website at www.eeoc.gov