

APPEALS COURT UPHOLDS VERDICT ON DISCRIMINATION AGAINST DEAF APPLICANT



The U.S. Court of Appeals for the Fifth Circuit recently upheld a jury's verdict against Service Temps, Inc. regarding disability discrimination. The original lawsuit had been filed by the U.S. Equal Employment Opportunity Commission (EEOC) on behalf of an applicant who is deaf. Service Temps, doing business as Smith Personnel Solutions, had refused to hire a female applicant for a stock clerk position when learning that she is deaf. The woman explained via a sign-language interpreter that she was qualified for the job and had several years of store clerk experience, but the company would neither conduct an interview nor consider her for the position. A manager at Service Temps explicitly said that the woman would not be hired because she could not hear. The EEOC's suit, filed in a Texas district court, alleged a violation of the Americans with Disabilities Act (ADA), which prohibits disability discrimination and requires employers to make reasonable accommodations to disabled employees and applicants as long as it does not pose an "undue hardship." A pre-litigation settlement could not be reached. In September 2010, a jury ruled that the company had violated the ADA. The woman was awarded 103,200 dollars, plus interest, in damages due to lost wages, emotional harm and punitive damages. The EEOC's motion for an injunction was also granted by the district court, and Smith Personnel was prohibited from discriminating against persons who are disabled, regarded as disabled or have a record of a disability. A little more than a year after the award for damages, the appeals court issued a ruling that rejected all of the company's arguments on appeal. The higher court likewise rejected Smith Personnel's arguments and concluded that "misapplication" of a claimed company policy by one of its



employees may not subvert the notion that the employee acted within the scope of his employment. The appeals court also cited the EEOC's presentation of evidence at trial which demonstrated that Smith Personnel's manager, who had the authority to hire, was employed in a managerial capacity and was acting within the scope of his employment when he refused to allow the woman to apply for a job – even when considering that his action was allegedly in violation of a company policy. EEOC Senior Trial Attorney Joel Clark, one of the EEOC attorneys who, along with Supervisory Trial Attorney Suzanne Anderson, tried the case to the jury, stated that the woman "demonstrated a great deal [of] courage by coming forward to report what happened to her." He added, "We hope the jury's verdict and the Fifth Circuit's support of it will play a part in breaking down the barriers that deaf applicants face in applying for employment." "The Fifth Circuit's decision acknowledges the diligent work of the jury at this trial," said EEOC Regional Attorney Robert Canino. "We are very pleased that [the woman] can now close this chapter in her life and move forward."