



In the Matter of:

**OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,**

ARB CASE NO. 96-088

ALJ CASE NO. 94-OFC-8

PLAINTIFF

DATE: September 28, 1999

v.

DELTA AIRLINES, INC.,

DEFENDANT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Plaintiff:

Debra Millenson, Esq., James D. Henry, Esq., Henry L. Solano, Esq., *U.S. Department of Labor, Washington, D.C.*

For the Defendant:

Jeffrey W. Willis, Esq., *Rogers & Hardin, Atlanta, Georgia*

ORDER OF DISMISSAL

The petitioner, United States Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), appealed an ALJ's recommended decision and order on cross-motions for summary judgement in this case arising under Section 503 of the Rehabilitation Act of 1973, 29 U.S.C. § 704 *et seq.* The defendant, Delta Airlines, refused to hire two complainants as commercial airline pilots because the complainants did not meet the respondent's minimum vision requirement of uncorrected visual acuity of 20/20 or better. Both complainants are myopic; however, the vision of both complainants is correctable to 20/20 with corrective lenses. The OFCCP alleged that, in violation of the Rehabilitation Act, Delta discriminated against the complainants on the basis of their disability (*i.e.* myopia) or because Delta regarded the complainants as having a disability.

On June 22, 1999, the Supreme Court issued a decision in *Sutton v. United Air Lines, Inc.*, 119 S. Ct. 2139 (1999), a case arising under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.* The defendant in *Sutton*, United Air Lines, refused to employ the plaintiffs as commercial airline pilots because they did not meet United’s minimum vision requirement of uncorrected visual acuity of 20/100 or better. The plaintiffs are severely myopic, but with corrective measures function identically to individuals without similar impairments. The plaintiffs alleged that, in violation of the ADA, United discriminated against them on the basis of their disability, or because United regarded them as having a disability. The Court held that “the determination of whether an individual is disabled should be made with reference to measures that mitigate the individual’s impairment, including, in this instance, eyeglasses and contact lenses.” 119 S. Ct. at 2143. Thus, the Court concluded that because the plaintiffs alleged that with corrective measures their visual acuity is 20/20, they failed to establish that they are substantially limited in any major life activity. *Id.* at 2149. The Court further held that “[b]ecause the position of global airline pilot is a single job, [the plaintiffs’ allegation that the respondent regards their poor vision as precluding them from holding a global airline pilot’s position] does not support the claim that respondent regards [plaintiffs] as having a *substantially limiting* impairment.” *Id.* at 2151.

On July 16, 1999, we issued an order to show cause why this case should not be dismissed given the *Sutton* decision. In response, OFCCP acknowledged that *Sutton* is factually indistinguishable from this case, and agreed that we should dismiss the appeal. Accordingly, we **DISMISS** OFCCP’s appeal.

SO ORDERED.

PAUL GREENBERG

Chair

E. COOPER BROWN

Member

CYNTHIA L. ATTWOOD

Member