

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

1 MICHAEL J. ELLIS,)	
)	
Plaintiff,)	Civil No. <u>CIV-09-562-C</u>
)	
v.)	
)	
1 GOODYEAR TIRE & RUBBER COMPANY,)	
)	
Defendant.)	

COMPLAINT

Plaintiff Michael J. Ellis (“Ellis”), by the undersigned attorneys, makes the following averments:

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4333 (“USERRA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) and 28 U.S.C. § 1391(b)(2). Defendant Goodyear Tire & Rubber Company (“Goodyear”) is a private employer that maintains a place of business in the district of this United States District Court, and a substantial part of the events giving rise to the claims occurred in this district.

PARTIES

4. Ellis resides in Lawton, Oklahoma, which is within the jurisdiction of this Court.

5. Goodyear is an Ohio corporation that operates a manufacturing plant in Lawton, Oklahoma, and is an employer within the meaning of 38 U.S.C. § 4303(4)(A).

CLAIMS FOR RELIEF

6. On February 1, 1991, Ellis suffered a cervical spine injury while serving with the U.S. Army in Iraq during Operation Desert Storm. In October 1995, Ellis left active duty and joined the U.S. Army Reserves.

7. On October 7, 1996, Ellis was hired by Goodyear and began working as a Curing Technician at Goodyear's Lawton, Oklahoma, plant. Around 1997, Ellis suffered an on-the-job injury that made him unable to perform the duties of a Curing Technician.

8. Goodyear employees unable to perform their assigned jobs due to injury are considered for other jobs through what is referred to as the "Automatic Bidders List" ("ABL"), a process by which employees are automatically considered for all job vacancies matching their physical qualifications. For those employees on the ABL who meet the physical requirements, preference is given for seniority and low controllable absences.

9. When Ellis became unable to work as a Curing Technician in 1997, Goodyear placed him on the ABL and, within a few months, Ellis was selected from the

ABL for a Roll Changer/Component Extruder ("Roll Changer") job. Among other physical requirements, a Roll Changer must be able to occasionally lift 60 pounds, occasionally "front carry" 60 pounds, frequently push 90 pounds, and frequently pull 90 pounds. Around this time, Ellis was diagnosed with spinal canal stenosis and told that the condition eventually might require surgery.

10. In May 2003, Ellis's condition deteriorated to the point of making him temporarily incapable of working altogether. Goodyear placed Ellis on a medical leave of absence and, in October 2003, Ellis underwent back surgery.

11. In April 2004, Ellis returned to his Roll Changer job, but recurring pain forced Ellis permanently out of his Roll Changer job by mid-2004.

12. In or around the middle of 2004, when Ellis was no longer able to perform Roll Changer duties, Goodyear placed him in the temporary light duty job of Trucker and back onto the ABL to be considered for other jobs. Goodyear placed Ellis on short-term disability status in November 2004.

13. In May 2005, Joseph Bassinger, M.D., a doctor working for Goodyear, examined Ellis by performing a Functional Capacity Evaluation ("FCE"), and concluded that permanent restrictions on lifting, pushing and pulling disqualified Ellis from the Roll Changer position. On May 24, 2005, Goodyear Human Resources Manager Angela Martinez ("Martinez") completed a "Medical D/Q Form," recommending that Ellis be disqualified medically from the Roll Changer job.

14. Ellis was on the ABL when he was called to active military duty on October 16, 2005. He served on active military duty at the rank of Major with the U.S. Army Reserves from October 16, 2005 to September 30, 2007.

15. On August 16, 2007, Ellis notified Goodyear of his impending release from active military duty. Ellis was honorably discharged on September 30, 2007, and he reported for reemployment with Goodyear on October 1, 2007.

16. Rather than reemploying Ellis, Martinez sent Ellis home, telling Ellis that Goodyear would not reemploy him until another FCE was conducted. Goodyear took three weeks to schedule Ellis for an FCE.

17. On October 25, 2007, Ellis filed a USERRA complaint against Goodyear with the Department of Labor's Veterans' Employment Training Service ("VETS").

18. On November 5 and 6, 2007, Goodyear Physical Therapist Ruth Ross conducted an FCE on Ellis. Ross concluded that Ellis could not satisfy the front carry, push or pull requirements of the Roll Changer job, and the limits Ross recorded for him were in accordance with those that had been recorded by Dr. Bassinger in May 2005.

19. Following the FCE, Goodyear asked Ellis to sign a release for his entire medical record and informed him that he would be returned to the ABL to be considered for any job openings that matched his physical limitations.

20. In January 2008, Goodyear attorney Adam Childers informed VETS that Goodyear still had not matched Ellis with a job. In March 2008, Childers advised VETS

that Ellis had been considered for 61 job postings between October 2007 and February 2008, but was deemed by Goodyear to be unqualified for any of them due to his physical limitations.

21. Childers informed VETS that Goodyear had not considered Ellis for additional positions because he had not yet consented to provide Goodyear with his entire medical record.

22. In May 2008, Ellis informed Goodyear that he would relocate to any other Goodyear plant. Childers responded that Ellis could only relocate by applying for a job vacancy at another Goodyear plant because every Goodyear plant other than the Lawton plant was unionized.

23. In June 2008, despite his objections, Ellis signed a release authorizing Goodyear to receive his entire medical record.

24. In June 2008, VETS informed Childers of eight jobs posted at the Lawton facility that matched Ellis's physical limitations: Benefits Coordinator, Scheduler, Tire Assembly Machine Setter, Mold & Bladder Changer, two Inventory Control Coordinators and two Maintenance Technicians. Goodyear did not select Ellis for any of these jobs.

25. On September 19, 2008, Goodyear finally reemployed Ellis as an Extruder Operator, a job that paid \$23.75 per hour.

26. Shortly after being reemployed, Ellis resigned from Goodyear to accept a better-paying job.

27. The Department of Labor's Solicitor's Office concluded that the USERRA complaint Ellis filed against Goodyear had merit.

28. Goodyear, through its conduct as set forth above, violated USERRA, 38 U.S.C. § 4312 and 4313, by failing to promptly reemploy Ellis upon his return from military service in October 2007, and also by imposing unlawful prerequisites to his reemployment.

29. Ellis has suffered a substantial loss of earnings and other benefits as a result of Goodyear's violations of USERRA.

PRAYER FOR RELIEF

WHEREFORE, Ellis prays that the Court enter judgment against Goodyear, its officers, agents, employees, successors, and all persons in active concert or participation with it, as follows:

A. Declare that Goodyear's failure to promptly reemploy Ellis was unlawful and in violation of USERRA;

B. Order Goodyear to comply fully with the provisions of USERRA by paying Ellis for his loss of earnings and other benefits suffered by reason of Goodyear's failure and refusal to comply with the provisions of USERRA;

C. Award Ellis prejudgment interest on the amount of lost compensation found due;

D. Enjoin Goodyear from taking any action with respect to Ellis that fails to

comply with the provisions of USERRA; and

E. Grant such other and further relief as may be just and proper.

Date: May 29, 2009

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