

STATE OF NEW YORK
SUPREME COURT COUNTY OF OTSEGO

JAY WHITEHEAD,

Plaintiff,

-against-

UNITED PARCEL SERVICE, INC.,

Defendant.

SUMMONS

Index No.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorneys an Answer to the Verified Complaint in this action within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if the Summons is not personally delivered to you within the State of New York. In case of your failure to Answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: February 17, 2010

Yours, etc.

GLEASON, DUNN, WALSH & O'SHEA

By: 

Ronald G. Dunn, Esq.
Attorneys for Plaintiff
Office & P.O. Address:
40 Beaver Street
Albany, New York 12207
(518) 432-7511

Trial is desired in the County of Otsego. The basis of venue designated is the residence of the Plaintiff and that Defendant has offices located in Otsego County.

STATE OF NEW YORK
SUPREME COURT COUNTY OF OTSEGO

JAY WHITEHEAD,

Plaintiff,

-against-

**VERIFIED
COMPLAINT**

Index No.

UNITED PARCEL SERVICE, INC.,

Defendant.

The plaintiff, Jay Whitehead, by his attorneys, Gleason, Dunn, Walsh & O'Shea, complaining of the defendant, United Parcel Service, Inc., alleges upon information and belief as follows:

INTRODUCTION

1. This is an action under the New York State Human Rights Law, Article 15 of the New York State Executive Law to correct unlawful employment practices. Jay Whitehead, Plaintiff, served Defendant as a capable mechanic at its Oneonta, New York facility. Nonetheless, without regard to his abilities, Defendant fired him because he has a disability that disqualified him from getting a Department of Transportation card. Defendant wrongly insisted on a qualification standard for mechanics that has nothing to do with their actual job and screens out those with disabilities. A DOT card is required for drivers of large trucks in interstate commerce and Plaintiff did not drive large trucks in interstate commerce, as Defendant's own witnesses have admitted. Defendant discharged Plaintiff in violation of the New York State Human Rights Law. Hence, this suit.

JURISDICTION AND VENUE

2. This case is brought pursuant to the New York State Human Rights Law, Article 15 of the New York State Executive Law.

3. Venue in this action is set in the New York State Supreme Court, Otsego County, based upon the location of the events relevant to this action and the residence of the plaintiff.

PARTIES

4. Plaintiff, a resident of Oneonta, New York, is a qualified individual under the New York Human Rights Law, who was discharged by Defendant UPS from his mechanic's position on account of a disability, Plaintiff's epilepsy.

5. Defendant United Parcel Service, Inc. (UPS) is a Georgia corporation authorized to, and doing business in the State of New York. Defendant has a regular and established place of business in the County of Otsego.

CAUSE OF ACTION FOR VIOLATION OF ARTICLE 15 OF NEW YORK STATE EXECUTIVE LAW

6. The plaintiff is a disabled person within the meaning of the New York State Human Rights Law found in Article 15 of the New York State Executive Law. Specifically, Plaintiff has had epilepsy since his original diagnosis at the age of 12 in 1979.

7. Defendant is an employer within the meaning of the definition of the New York State Human Rights Law.

8. At all relevant times Plaintiff was and is a qualified mechanic.

9. Plaintiff met the qualifications to be a mechanic for Defendant.

10. Plaintiff applied for, and was hired as a mechanic for UPS on April 10, 2006.

11. On May 18, 2006, UPS discharged Plaintiff on account of his epilepsy, telling him that all mechanics working for UPS must have a Department of Transportation Medical

Certificate. The Department of Transportation will not issue a Medical Certificate to an epileptic.

12. The actual duties for the position of mechanic at the Otsego facility of UPS where Plaintiff was hired to work did not require a mechanic to possess a Department of Transportation Medical Certificate.

13. Plaintiff was fully qualified and able to perform the essential duties of a mechanic at the Otsego UPS facility.

14. Under the New York Human Rights Act, a qualified person with a disability who is discriminated against on account of disability has a cause of action to correct such unlawful conduct and to recover damages.

15. The defendant has violated New York State Human Rights Law by, among other things, terminating the plaintiff due to his disability; failing to provide any reasonable accommodation to the plaintiff; ignoring the plaintiff's requests for a reasonable accommodation; ignoring evidence that the plaintiff was able to perform his work duties; ignoring plaintiff's medical records and otherwise engaging in discriminatory conduct toward the plaintiff and all persons with the plaintiff's disability. In fact, its own witnesses have admitted that a mechanic does not need a DOT card to perform his duties in Oneonta.

16. Plaintiff has satisfied all of the procedural prerequisites to commencing an action under the New York State Human Rights Law.

17. The plaintiff respectfully demands a trial by jury on each and every issue of the complaint.

WHEREFORE, Plaintiff demands judgment as against Defendant, and respectfully requests the following relief:

- a. Judgment in the amount of plaintiff's actual, consequential and incidental damages, including, but not limited to, all lost back and front pay, lost benefits (including, but not limited to, pension, profit sharing, retirement, social security, health or life insurance medicaid/medicare); lost pay increases or cost of living increases; value of any lost vacation time, sick time, personal time or other accrued time; costs to locate and obtain other work; damages for plaintiff's emotional and psychological injuries including, but not limited to, plaintiff's depression caused by the wrongful termination; all of plaintiff's medical costs and expenses incurred in the diagnosis and treatment for plaintiff's emotional and psychological injuries including, but not limited to, plaintiff's emotional distress caused by the wrongful termination; and
- b. Reinstatement of the plaintiff to his position of employment with the defendant, together with all effective raises and pay increases from the date of the plaintiff's wrongful termination; together with the reinstatement of and/or money damages for plaintiff's lost benefits; lost vacation time, lost personal time, lost sick time, or other lost time; and
- c. Injunctive relief preventing and prohibiting the defendant from engaging in its present discriminatory practice and from all future discriminatory practices; and
- d. All consequential and incidental injuries and damages caused by the plaintiff's wrongful termination; and
- e. Punitive damages, in an amount determined appropriate by the trier of fact, to punish the defendant for its wrongful termination of the plaintiff and defendant's

discriminatory practices with malice or reckless indifference for plaintiff's federal and state protected rights; and

- f. All costs and disbursements of this action; and
- g. Such other, further and different relief as this Court may deem just and proper.

Dated: February 17, 2010

GLEASON, DUNN, WALSH & O'SHEA

By: 


Ronald G. Dunn, Esq.
Attorneys for Plaintiff
40 Beaver Street
Albany, New York 12207
(518) 432-7511

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

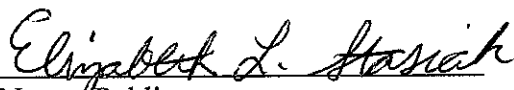
RONALD G. DUNN, being duly sworn, deposes and says that deponent is a partner in the firm of Gleason, Dunn, Walsh & O'Shea, the attorneys for the Plaintiff in the within action; that deponent has read the foregoing Verified Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. The basis for deponent's belief is a review of the file.

This verification is made by your deponent because the Plaintiff is not located in the county where your deponent's offices are located.



RONALD G. DUNN

Sworn to before me this
17th day of February, 2010.



Notary Public

ELIZABETH L. STASIAK
Notary Public, State of New York
Qualified in Schenectady County
No. 01ST6091879
Commission Expires May 5, 2011