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BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS
ON REFERRAL TO THE OFFICE OF ADMINISTRATIVE HEARINGS

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, MARTI BUSCAGLIA,)
EXECUTIVE DIRECTOR, *ex rel.*)
BORIS SAR,)
)
Complainant,)
)
v.)
FEDERAL EXPRESS CORPORATION,)
)
Respondent.)
_____)

ASCHR No. J-13-204
OAH No. 16-0618-HRC

AMENDED ACCUSATION

Marti Buscaglia, Executive Director of the Alaska State Commission for Human Rights, *ex rel.* Boris Sar, hereby alleges the following against Respondent Federal Express Corporation:

1. Respondent Federal Express Corporation (FedEx) is a Delaware corporation headquartered in Memphis, Tennessee, and doing business in Alaska.
2. FedEx is a global courier delivery services company with approximately 300,000 employees and which had approximately \$2.7 billion in net income in 2015.
3. FedEx employs numerous couriers or drivers in Alaska whose primary responsibilities are to deliver and pick up packages while driving FedEx-owned vehicles.
4. FedEx has a number of different vehicles used to deliver and pick up packages in Alaska. Some of these vehicles weigh more than 10,000 pounds and some

1 weigh 10,000 pounds or less. Couriers or drivers who drive commercial vehicles that
2 weigh more than 10,000 pounds are required, pursuant to federal Department of
3 Transportation regulations, to pass a physical examination (DOT physical).
4

5 5. To pass a DOT physical, a driver must, among other things, demonstrate a
6 certain level of hearing in at least one ear.

7
8 6. Boris Sar was employed by FedEx in its Anchorage location from March
9 2009 to June 2015. Mr. Sar has a hearing impairment and is deaf.

10 7. In June 2013, Mr. Sar applied as an internal applicant for an open courier
11 position with FedEx. The courier position for which Mr. Sar applied is responsible for
12 delivering and picking up packages in Southcentral Alaska.

13
14 8. The position for which Mr. Sar applied required the courier to drive an
15 “F250,” a vehicle that weighed 10,000 pounds or less, for the vast majority of the time.
16 Nevertheless, FedEx required the courier in this position to pass a DOT physical because
17 the “back up” vehicle used by the courier weighed more than 10,000 pounds. The “back
18 up” vehicle was used when the F250 was out of service, approximately five to seven
19 times a year.
20

21
22 9. On June 26, 2013, FedEx informed Mr. Sar that he was the “number one
23 candidate” for the courier position, and that as part of the application process Mr. Sar
24 was required to take a DOT physical.
25

26 10. Fed Ex referred Mr. Sar to Beacon Occupational Health and Safety, Inc.
27 (Beacon), in Anchorage for the physical examination.
28

11. On June 28, 2013, Mr. Sar reported to Beacon for his physical

1 examination. Mr. Sar was examined by a physician's assistant at Beacon who told him
2 that he would not be allowed to drive a commercial vehicle because he could not pass
3 the hearing test. Mr. Sar was unable to complete the physical examination at Beacon
4 because he was unable to pass the hearing test.
5

6 12. Mr. Sar then returned to FedEx and asked to be examined by a different
7 provider and inquired about the possibility of a waiver of the hearing requirement.
8

9 13. FedEx did not respond to Ms. Sar's request to be examined by a different
10 provider and did not consider any accommodations that could have been made for Mr.
11 Sar that would have allowed him to perform the courier job. Instead, after FedEx
12 learned that Mr. Sar was unable to pass the hearing test, it rejected him for the courier
13 position on July 1, 2013.
14

15
16 **FIRST CAUSE OF ACTION**
17 **FAILURE TO HIRE BECAUSE OF DISABILITY**
18 **A VIOLATION OF AS 18.80.220(a)**

19 14. Paragraphs 1-13 above are realleged and incorporated herein.

20 15. Boris Sar has an impairment that substantially limits the major life activity
21 of hearing and is a person with a disability as that term is defined in AS 18.80.300(14).
22

23 16. Mr. Sar applied for the position of courier with Respondent.

24 17. Mr. Sar was qualified to perform the essential functions of the courier
25 position, with or without a reasonable accommodation.
26

27 18. Despite the fact that Mr. Sar was qualified to perform all of the essential
28 functions of the courier position, Respondent refused to hire him because of his

1 disability.

2 19. Respondent's refusal to hire Mr. Sar as a courier constitutes a violation of
3 AS 18.80.220(a).
4

5 20. Because of Respondent's refusal to hire Mr. Sar, Mr. Sar has suffered
6 harm in the form of lost wages and benefits.
7

8 PRAYER FOR RELIEF

9 Wherefore the Executive Director asks for the following relief:

10 1. That the Commission issue an order declaring that Respondent FedEx
11 violated AS 18.80.220(a) by refusing to hire Boris Sar because of disability.
12

13 2. That the Commission order Respondent to adopt and disseminate to all
14 employees a policy of nondiscrimination under the Alaska Human Rights Law, including
15 a policy for providing reasonable accommodations to employees and applicants for
16 employment.
17

18 3. That the Commission order Respondent to obtain, within thirty days of the
19 Commission's order, training conducted by a neutral, third-party trainer, of at least four
20 hours in length, for its managers, supervisors, and human resources personnel on the
21 provisions of the Alaska Human Rights Law that prohibit discrimination in employment,
22 with an emphasis on an employer's obligation not to discriminate against persons with
23 disabilities and to provide reasonable accommodations to persons with disabilities.
24

25 4. That the Commission's order specify that the aforementioned policy, trainer,
26 and training curriculum be subject to approval by the Executive Director.
27

28 5. That the Commission order Respondent to direct its agents or contractors

1 conducting medical or fitness examinations of Respondent's employees or applicants for
2 employment to refrain from advising or opining to such employees or applicants about the
3 employees' or applicants' ability to perform the job for which they are being examined.
4

5 6. That the Commission order Respondent to eliminate from Mr. Sar's
6 personnel records all documents and entries relating to the facts and circumstances that led
7 to Mr. Sar's filing of the above-captioned charge and any of the related events occurring
8 thereafter.
9

10 7. That the Commission order Respondent to refrain from penalizing Mr. Sar in
11 any way in future considerations for employment and, if hired, for transfers, promotions, or
12 upgrading because Mr. Sar filed a complaint with the Commission.
13

14 8. That the Commission order Respondent to refrain from advising or
15 informing any other employer or potential employer of Mr. Sar of the facts or
16 circumstances involved in this case.
17

18 9. That the Commission order Respondent to pay back wages, including any
19 lost benefits, to Mr. Sar, plus interest at the applicable legal rate, the exact amount of
20 which will be proven at hearing.
21

22 10. That the Commission order Respondent to immediately reinstate Mr. Sar
23 to a courier position substantially similar to the position for which Mr. Sar was rejected
24 on July 1, 2013, with full benefits and seniority consistent with his original date of hire.
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11. That the Commission order Respondent to pay front pay to Mr. Sar until he is fully reinstated.

Dated this 14th day of June 2016 at Anchorage, Alaska.

ALASKA STATE COMMISSION
FOR HUMAN RIGHTS



Stephen Koteff
Human Rights Advocate
Alaska Bar No. 9407070