

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 17-cv-02362-STV

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

EGAN J. WOODWARD,

Applicant for Intervention,

v.

A&E TIRE, INC.

Defendant,

UNOPPOSED MOTION FOR LEAVE TO INTERVENE AS PARTY PLAINTIFF

Pursuant to Fed.R.Civ. P. 24(a)(1) & (2) and 42 U.S.C. § 2000e-5(f)(1), Egan J. Woodward (“the Applicant”), by and through his attorneys, Bachus & Schanker, LLC, moves for leave to intervene as Party Plaintiff in this action, to assert the claims set forth in his proposed Complaint in Intervention, a copy of which is attached hereto as Exhibit 1.

1. Pursuant to D.C.Colo.LCivR 7.1A, this Court is advised that counsel for the Applicant has consulted with counsel for Plaintiff and Defendant. Plaintiff and Defendant do not oppose this Motion for Intervention.

2. On October 12, 2017, the EEOC filed the instant lawsuit, alleging that Defendant has discriminated against Woodward, a transgender male, on the basis of sex, when it refused to hire Woodward because of his sex. Plaintiff’s claims are brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. (“Title VII”).

3. The Applicant is a transgender male who applied for employment with Defendant. He seeks to intervene in this action to assert claims identical to the claims asserted by the Plaintiff Equal Employment Opportunity Commission (“EEOC”). The Applicant’s claims arise from Defendant’s denial of his employment, including being discriminated against in regards to the terms and conditions of his employment based on his status as a transgender male. These are the *same* claims asserted by the Plaintiff in this litigation.

4. Given the Applicant’s claim of discrimination based on his sex (male-transgender), he is “persons aggrieved” within the meaning of Title VII. 42 U.S.C. § 2000e-5(f)(1). As an aggrieved person, the Applicant has the unconditional statutory right to bring individual claims of discrimination, and thus to intervene in the pending action: “The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission[.]” *Id.* (emphasis added).

5. Granting the Applicant’s Motion to Intervene would promote the most efficient use of scarce judicial resources because as an individual the Applicant is free to bring a separate federal court action under Title VII, 42 U.S.C. §§ 2000e-5(f)(1) (“a civil action may be brought against the respondent named in the charge ... by the person claiming to be aggrieved”). Thus, the best use of the Court’s resources is to have a single action which definitively adjudicates the respective rights and liabilities of all parties arising out of the facts alleged in this action.

6. Even if this Court were to determine that the Applicant is not a “persons aggrieved” under Title VII, and therefore does not have an unconditional statutory right to intervene, he still must be permitted to intervene by virtue of Fed.R.Civ. P. 24(a)(2). Under this

alternative basis for intervention, an applicant may intervene by right if the application is timely, the applicant has an interest in the action, disposition of the action may impair the applicant's ability to protect that interest, and the applicant's interest is not adequately represented by the existing parties. All of these criteria are met in this case.

WHEREFORE, the Applicant respectfully request this Court to grant him leave to intervene in this action as Party Plaintiff, and that he be granted further leave to file his Complaint in Intervention, which is attached hereto as Exhibit 1.

Dated this 10th day of November, 2017.

Bachus & Schanker, LLC

s/ Sara A. Green

Sara A. Green

1899 Wynkoop Street, Suite 700

Denver, Colorado 80202

303-893-9800 (office)

303-893-9900 (fax)

Sara.green@coloradolaw.net

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2017, I electronically filed the foregoing MOTION TO INTERVENE with the Clerk of the COURT using the CM/ECF system which will send notification of such filing to the following email addresses:

Iris Halpern
iris.halpern@eeoc.gov
U.S. Equal Employment Opportunity Commission

James P. Driscoll-MacEachrom
JAMES.DRISCOLL-MACEACHRON@EEOC.GOV
U.S. Equal Employment Opportunity Commission

Marilee E. Langhoff
6795 E. Tennessee Ave., #330
Denver, Colorado 80224
720-639-2870
marilee@langhofflaw.com

s/ Alessandra Schneider
Alessandra Schneider - Paralegal

EXHIBIT 1

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COMPLAINT IN INTERVENTION

I. NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. (“Title VII”), and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, to correct unlawful employment practices on the basis of sex, and to provide appropriate relief to Egan Joseph Woodward (“Woodward”), who was adversely affected by such practices.

As alleged with greater particularity below, Woodward alleges that Defendant, A&E Tire, Inc. (“A&E” or “A&E Tire”) engaged in unlawful discrimination against Woodward, a transgender male, when it failed to hire Woodward because of his sex.

II. JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1),(3), and 706(g) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1), (3), and (g), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

3. The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the District of Colorado.

4. Woodward timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission on or about August 1, 2014 for sex discrimination..

5. Based on evidence adduced during the EEOC's investigation, the EEOC issued a determination finding reasonable cause. In that determination, the EEOC informed Defendant that it had reasonable cause to believe Defendant had violated Title VII in that Defendant failed to hire Charging Party because of his sex, male, and/or transgender status.

6. All conditions precedent to the institution of this lawsuit have been fulfilled.

III. PARTIES

7. Woodward, is a transgender male, and was, at all relevant times hereto, a resident of the State of Colorado.

8. At all relevant times hereto, Defendant A&E Tire, a Denver corporation, has continuously been doing business in the State of Colorado and has continuously had at least 15 employees.

9. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce under Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

IV. GENERAL ALLEGATIONS

10. On or about May 15, 2014, Defendant posted an ad for a managerial administrative and dispatch position online.

11. On or about May 16, 2014, Woodward completed an application for this managerial position at an A&E Tire store.

12. Woodward also gave Defendant a copy of his resume.

13. That very same day, just after Woodward completed the application, Manager Derrick Haight interviewed him in person.

14. During the interview, Woodward was wearing traditional male attire (black dress pants and a black and gold striped shirt).

15. Woodward also had a goatee.

16. During the interview, Haight did not realize Woodward was a transgender male.

17. Haight interviewed Woodward for about 45 minutes.

18. Woodward and Haight got along well during the interview.

19. Haight and Woodward discussed that they had similar backgrounds.

20. In the same vein, Haight told Woodward that Haight was a good old boy from Nebraska.

21. Both Haight and Woodward grew up in mid-west states.

22. Haight and Woodward also spoke about annual salary.

23. When asked by Haight what his salary goals were, Woodward suggested an annual salary of \$25,000.00.

24. Haight responded that he could pay \$30,000.00 or \$32,000.00.

25. At the end of the interview, Haight told Woodward that Woodward had the job so long as he could pass all of the screening process, which included a drug test and criminal background check.

26. After the interview, Haight asked Woodward to take a tour of A&E's premises.

27. Haight and Woodward drove to various locations in Haight's vehicle.

28. When Haight introduced Woodward to the other A&E employees, he introduced Woodward to them as their new manager.

29. Haight also drove Woodward across the street to a building Defendant recently purchased to serve as A&E's new service offices.

30. The building was still under construction.

31. Haight asked Woodward to go home and sketch what Woodward wanted the offices to look like, since that's where they would all soon be working.

32. After completing the tour, Haight reiterated to Woodward that Haight wanted Woodward in the position, and that as long as Woodward passed the various screenings, the position was his.

33. Haight then told Woodward that hopefully Woodward could in come in later that week to complete the drug test.

34. Before he left A&E Tire that day, Defendant also asked Woodward to complete a “screening consent form” providing Defendant with authorization to complete a background check and providing certain other personal information.

35. In response to a question on the form asking for other names, Woodward provided his former name, the one assigned to him at birth, which is typically associated with the female sex.

36. In response to a question asking him to identify his sex, Woodward stated he was female.

37. Woodward also provided his assigned name at birth on the second page of his application.

38. Approximately an hour after Woodward left A&E Tire, Haight called Woodward and told him, “I see on your drug test that you checked female.”

39. Woodward confirmed that this was no mistake.

40. Haight abruptly hung up after stating, “Oh, that’s all I need.”

41. Woodward attempted multiple times over the next three weeks to follow up with Defendant about completing his background screenings and starting employment.

42. On June 10, 2014, Woodward finally managed to speak with Haight.

43. On June 10, 2014, Haight informed Woodward that Defendant was giving the position to a different applicant.

44. The selected applicant, Stephen Montes, did not apply for the position with Defendant until May 21, 2014.

45. Defendant did not interview Montes until June 6, 2014.

46. Montes began employment on or about June 10, 2014.

47. Montes began employment about three weeks after Defendant failed to hire Woodward after offering Woodward the job.

CLAIM FOR RELIEF

Disparate Treatment/Failure to Hire Because of Sex-42 U.S.C. § 2000e-2(a)

48. Woodward incorporates by reference the allegations set forth above in Paragraphs 1 through 47.

49. Defendant is an employer as that term is defined under Title VII.

50. On or about May 16, 2014, Defendant engaged in unlawful employment practices in violation of Section 2000e-2(a) of Title VII, by refusing to hire Woodward because of his sex.

51. Defendant willfully and intentionally subjected Woodward to sex discrimination.

52. Defendant's decision not to hire Woodward was predicated on unlawful sex-based considerations, specifically that he is a transgender male and/or because Woodward did not conform to the Defendant's sex- or gender-based preferences, expectations, or stereotypes.

53. The effect of the practices complained of above has been to deprive Woodward of equal employment opportunities and otherwise adversely affect his status as an employee because of his sex.

54. The unlawful employment practices complained of in the forgoing paragraphs were intentional.

55. The unlawful employment practices complained of in the forgoing paragraphs were done with malice or with reckless indifference to Woodward's federally protected rights.

56. As a direct and proximate result of the foregoing actions and conduct of Defendant, Woodard has suffered, and will continue to suffer, damages including but not limited to loss of front and back wages, earnings, benefits, insurance premiums, health care costs, diminution of future earning capacity, non-economic damages such as, but not limited to, mental anguish, inconvenience, attorney fees, costs and expenses, and other damages to be determined at trial. Woodward claims compensatory damages for these losses and injuries under § 102 of the Civil Rights Act of 1991, 42 U.S.C §1981a.

PRAYER FOR RELIEF

WHEREFORE, Woodward respectfully requests that this Court enter judgment in his favor and against Defendant, and award him damages for back pay, front pay and benefits, personal humiliation, severe emotional pain, inconvenience, mental anguish, future pecuniary loss and loss of enjoyment of life, punitive damages, penalties, costs, interest and expert fees, attorney's fees, and such other and further relief as this Court deems proper.

Respectfully submitted this 10th day of November, 2017.

Bachus & Schanker, LLC.

s/ Sara A. Green

Sara A. Green

1899 Wynkoop Street, Suite 700

Denver, CO 80202

(303) 893-9800

Sara.green@coloradolaw.net

Attorney for Plaintiff