

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)**

Plaintiff,)

vs.)

Case No. 99 C 5381

**MID-CONTINENT SECURITY AGENCY,)
INC.,)**

Defendant.)

JURY INSTRUCTIONS GIVEN BY THE COURT

Instructions to the jury

Members of the jury, you have seen and heard all of the evidence and the arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your job, and yours alone. Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, or public opinion to influence you. The parties to this case and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law that I give you, and reach a just verdict regardless of the consequences.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be. It is not my function to determine the facts in this case. That function belongs to you.

You should consider and decide this case as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair consideration. Both government agencies and corporations are entitled to the same fair consideration as a private individual. The parties stand equal before the law and are to be dealt with as equals in a court of justice.

Mid-Continent is a corporation. A corporation acts only through its agents or employees. Any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of the authority delegated to the agent by the corporation, or within the scope of his or her duties as an employee of the corporation.

As I stated, it is your duty to determine the facts. In determining the facts, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, testimony that was presented to you from depositions, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

A deposition is the sworn, recorded answers to questions asked of a witness in advance of the trial. Under some circumstances, if a witness cannot be present to testify in court, that witness' testimony under oath may be presented in the form of a deposition. Deposition testimony is entitled to the same consideration as testimony that was given in court. You are to judge its truthfulness and accuracy, and you are to weigh and consider it, insofar as possible, in the same way as if the witness had been present and testified from the witness stand.

Certain things are *not* evidence. I will list them for you.

First, testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purpose of these statements and arguments is to discuss the issues and the evidence. If the evidence as you remember it is different from what the lawyers said, your memory is what counts.

Some of you may have heard the phrases “direct evidence” and “circumstantial evidence.”

Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did.

Circumstantial evidence is indirect evidence, in other words it is proof of one or more facts that point to the existence or non-existence of another fact.

You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give to any evidence in the case.

You are to consider all of the evidence in determining your verdict. However, that does not mean that you must accept all of the evidence as true or accurate.

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from that fact that another fact exists. In law we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

In determining the facts in this case, you may also have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. You will also have to decide what weight, if any, to give to the testimony of each witness.

In considering the testimony of any witness, you may take into account:

- the opportunity and ability of the witness to see or hear or know the things that the witness testified about;
- the witness's memory;
- the witness's intelligence;
- any interest the witness may have in the outcome of the case, and any bias or prejudice the witness may have;
- the witness's manner while testifying;
- the reasonableness of the witness's testimony in light of all the evidence in the case; and
- any other factors that bear on believability.

The weight of the evidence as to a particular fact does not necessarily depend on the number of witnesses who testify. You may find the testimony of a smaller number of witnesses to be more persuasive than that of a greater number.

A witness may be discredited or “impeached” by contradictory evidence, by among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’ present testimony.

If you believe any witness has been impeached or discredited, then you must determine whether to believe the witness’ testimony in whole, in part, or not at all, and how much weight to give that testimony.

Inconsistencies or discrepancies in the testimony of a witness may or may not cause you to discredit the testimony. In weighing the effect of the discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from an innocent error or intentional falsehood.

The statute defining the claims

The plaintiff's claims in this case are made pursuant to a federal law called the Americans with Disabilities Act, or "ADA." The ADA provides, in part, that an employer may not discriminate against a qualified individual with a disability in regard to the terms, conditions, and privileges of employment because of the person's disability.

The ADA defines the term "discriminate" to include the failure to make reasonable accommodations to the known physical limitations of an otherwise qualified individual with a disability.

The parties and their claims

In this case, the plaintiff is the Equal Employment Opportunity Commission, or “EEOC.” The EEOC is an agency of the United States government which is charged with enforcing the ADA, and it is authorized to bring this lawsuit on behalf of Samuel Campbell.

The defendant in the case is Mid-Continent Security Agency, Inc.

The EEOC is making two separate claims against Mid-Continent. You must consider each of these claims separately.

First, the EEOC claims that Mid-Continent discriminated against Samuel Campbell by terminating him from his position as an usher at the Hawthorne Race Course because of Mr. Campbell’s disability, stomach cancer. I will refer to this claim as the EEOC’s “termination” claim.

Second, the EEOC claims that Mid-Continent discriminated against Samuel Campbell by failing to provide a reasonable accommodation for his disability, specifically by failing to give him one day a week off for chemotherapy treatment. I will refer to this claim as the EEOC’s “accommodation” claim.

Mid-Continent denies both of these claims.

Definition of “preponderance of the evidence”

In the following instructions, I will use the term “preponderance of the evidence.” A preponderance of the evidence means evidence that persuades you that a particular proposition is more likely true than not true.

In deciding whether any fact has been proven by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

Elements of plaintiff's "termination" claim

In order for the EEOC to establish its claim that Mid-Continent intentionally discriminated against Samuel Campbell by terminating him because of his disability, the EEOC has the burden of proving each of the following elements by a preponderance of the evidence:

First, that Samuel Campbell was disabled;

Second, that Samuel Campbell was a "qualified individual" for the position of usher in which he was employed;

Third, that Mid-Continent terminated Samuel Campbell from his employment; and

Fourth, that Mid-Continent terminated Samuel Campbell because of his disability.

If you find that the EEOC has proven each of these elements by a preponderance of the evidence, then you must find for the EEOC on its "termination" claim, unless you find that Mid-Continent has proven, by a preponderance of the evidence, that it would have terminated Samuel Campbell regardless of his disability.

I will provide you with the definitions of certain of the terms used in this instruction.

Elements of plaintiff's "accommodation" claim

In order for the EEOC to establish its claim that Mid-Continent intentionally discriminated against Samuel Campbell by failing to make a reasonable accommodation so that he could continue to work, the EEOC has the burden of proving each of the following elements by a preponderance of the evidence:

First, that Samuel Campbell was disabled;

Second, that Samuel Campbell was a "qualified individual" at the time he requested an accommodation;

Third, that Mid-Continent was aware of his disability at that time;

Fourth, that Samuel Campbell requested that Mid-Continent provide him with a reasonable accommodation; and

Fifth, that Mid-Continent failed to provide Mr. Campbell with a reasonable accommodation.

If you find that the EEOC has proven each of these elements by a preponderance of the evidence, then you must find for the EEOC on its "accommodation" claim, unless you find that Mid-Continent has proven, by a preponderance of the evidence, that it made a good faith effort, in consultation with Mr. Campbell, to identify and make a reasonable accommodation that would have provided Mr. Campbell with an equally effective opportunity at the workplace.

I will provide you with the definitions of certain of the terms used in this instruction.

“Disability” - definition

In this case, the parties have agreed that Samuel Campbell’s stomach cancer constituted a disability within the meaning of the ADA. Thus, the first element of each of the EEOC’s claims has been proven.

“Qualified individual” - definition

The term “qualified individual” means a person who has the necessary qualifications for the employment position that Samuel Campbell held and can perform the essential functions of that position, with or without reasonable accommodation. Determination of whether the person is “qualified” must be made at the time of the employment decision that is being challenged.

- “Essential functions” means the basic, fundamental duties of the position. In determining whether a particular function, such as attendance, is essential, you may consider the employer’s judgment as to which functions are essential, any job descriptions or requirements that existed at the time, the consequences of not requiring the employee to satisfy that function, the work experience of other employees who held the same or similar positions in the past, and/or the current work experience of persons holding the same or similar positions. No one factor should be given greater weight than another.

“Because of” - definition

To prove that Mid-Continent terminated Samuel Campbell because of his disability, the EEOC must prove by a preponderance of the evidence that Mid-Continent would not have terminated Mr. Campbell but for his disability. The EEOC need not prove that Mr. Campbell’s disability was the sole or exclusive motivation for Mid-Continent’s decision to terminate him. However, the EEOC must prove that if Mr. Campbell had not been disabled, Mid-Continent would not have terminated him.

The EEOC may meet this burden with direct evidence, that is, evidence that Mr. Campbell’s disability motivated Mid-Continent to terminate him, or with indirect or circumstantial evidence, such as evidence that Mid-Continent’s stated explanation for terminating Mr. Campbell is not worthy of belief.

An employer may terminate a person considered a “qualified individual” under the ADA for any reason other than his disability. In such a case, there is no illegal discrimination.

“Reasonable accommodation” - definition

“Reasonable accommodation” means any effective modification or adjustment in the workplace that makes it possible for a person with a disability to enjoy the same benefits and privileges of employment that are available to any person without a disability. An employer must be willing to consider making changes in its ordinary work rules, facilities, terms, and conditions in order to enable a disabled person to work.

It is the employee’s responsibility to request a reasonable accommodation in the first place. Once the employee requests an accommodation, both the employee and the employer must engage in an interactive process to determine the appropriate accommodation under the circumstances. If you find that Mid-Continent failed to do so, then you may find that it failed to provide Mr. Campbell with a reasonable accommodation.

Once an accommodation is requested, the employer is required to make those accommodations that would allow the employee to perform the essential functions of the position. However, the employer is not required to eliminate or alter any essential function of the employee’s position.

Damages

If you conclude that the EEOC has proven either of its claims against Mid-Continent, you must determine what amount of damages, if any, Mid-Continent caused to Samuel Campbell.

You should not interpret the fact that I am giving instructions about damages as an indication in any way that I believe that the EEOC should, or should not, prevail in this case. It is your task first to decide whether Mid-Continent is liable under either of the EEOC's claims. I am instructing you on damages only so that you will have guidance in the event you decide that Mid-Continent is liable on one or both of the EEOC's claims and that the EEOC is entitled to recover money from Mid-Continent on behalf of Mr. Campbell.

Damages - back pay

If you find that Mid-Continent discriminated against Samuel Campbell either by terminating him because of his disability or by failing to provide him with a reasonable accommodation, or both, you may award as actual damages an amount that reasonably compensates Mr. Campbell for any lost wages that he would have received if Mid-Continent had not discriminated against him. You must subtract from this the amount of money that Mr. Campbell actually earned in other jobs after he was terminated .

The parties agree that the last date that Mr. Campbell worked at Mid-Continent was August 9, 1998.

A person may be awarded back pay only for periods during which he was actually able to work.

Damages - compensatory

In addition to back pay, the law permits you to award compensatory damages in an amount that will reasonably compensate Mr. Campbell for any humiliation, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and/or stress that he experienced as a result of discrimination by Mid-Continent.

If you find that the EEOC has proven by a preponderance of the evidence that Mr. Campbell experienced these types of injuries, you may award damages for those injuries. The damages you award must be fair compensation, no more and no less. No evidence of the monetary value of such intangible things as pain and suffering has been, or need be, introduced into evidence. There is no exact standard for fixing the compensation to be awarded for these elements of damages. Any award that you make should be fair in light of the evidence presented at trial.

Damages - general considerations

In determining the amount of any damages that you decide to award, you should be guided by dispassionate common sense. You must use your sound discretion in fixing an award of damages, drawing reasonable inferences from the facts in evidence. You may not award damages based on sympathy, speculation, or guess work. On the other hand, the law does not require the EEOC to prove the amount of Mr. Campbell's losses with precision, but only with as much definiteness and accuracy as the circumstances permit.

Damages - punitive

The law also allows you, but does not require you, to award punitive damages. The purpose of an award of punitive damages is, first, to punish a wrongdoer for misconduct, and second, to serve as an example or warning to others against doing the same.

You may award punitive damages if, and only if, the EEOC has proven by a preponderance of the evidence, the following two elements:

First, that Mid-Continent intentionally discriminated against Samuel Campbell with malice or with reckless indifference to his federally protected rights of an employee; *and*

Second, that the Mid-Continent employees who discriminated against Mr. Campbell were managerial agents acting within the scope of their employment.

(I will define these terms on the next page of these instructions.)

If you find that the EEOC has proven both of these elements, then you may award punitive damages, unless you find that Mid-Continent has proven by a preponderance of the evidence that it engaged in good faith efforts to implement and carry out a policy against discrimination.

In setting an amount of punitive damages, you should consider: How offensive was the conduct? What amount is needed, considering the defendant's current financial condition, to punish the defendant? What amount is needed to warn others against engaging in similar conduct? Does the amount have a reasonable relationship to the actual damages awarded?

If you do award punitive damages, you should fix the amount using calm discretion and sound reason. You must not be influenced by sympathy for or dislike for any party in the case.

Punitive damages - definitions

The terms “malice” and “reckless indifference” in the preceding instruction mean that the plaintiff must prove that the employer knew, or perceived a risk, that its actions would violate federal law, and not simply that the employer was aware that it was engaging in discrimination. In determining whether Mid-Continent intentionally discriminated against Samuel Campbell with malice or with reckless indifference to his federally protected rights, you may consider:

- whether Mid-Continent’s managerial agents knew of or were familiar with the anti-discrimination laws;
- whether Mid-Continent had adopted effective policies for implementing those laws; and
- whether Mid-Continent’s employees lied to cover up discrimination.

In determining whether the employees who discriminated against Mr. Campbell were managerial agents acting within the scope of their employment, you may consider the kind of authority the employer has given the employee, the amount of discretion given to the employee in executing his job duties, and the manner in which those duties are carried out.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

A verdict form has been prepared for you for each of the Plaintiff's claims. (explanation of verdict form)

Take the verdict form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in the appropriate blanks and date the form, and each of you will sign it.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer.

If any communication is made, it should not indicate your numerical division.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or solely for the purpose of returning a unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

