

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DOE,
c/o Paul, Weiss, Rifkind, Wharton
& Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Plaintiff,

v.

CONDOLEEZZA RICE,
Secretary of State
2201 C Street, N.W.
Washington, DC 20520,
and
TRIPLE CANOPY, INC.
2250 Corporate Park Drive, Suite 300
Herndon, VA 20171,
Defendants.

No. _____

COMPLAINT
(for Discrimination in Violation of the Rehabilitation Act and the Americans with Disabilities Act)

NATURE OF THE ACTION

1. This is an action to halt and seek redress for the unlawful discrimination on the basis of Human Immunodeficiency Virus (“HIV”) status that the United States Department of State (the “State Department”) has been compelling its contractors such as Triple Canopy, Inc. to commit as a condition of receiving lucrative contracts.
2. The Rehabilitation Act and the Americans with Disabilities Act expressly prohibit discrimination in employment on the basis of disability. *See* 29 U.S.C. §§ 791,

et seq.; 42 U.S.C. §§ 12101, *et seq.* Under the Rehabilitation Act, executive agencies such as the State Department cannot deny qualified individuals employment opportunities or benefits or discriminate against them because they have disabilities such as HIV. Likewise, the Americans with Disabilities Act prohibits employers from denying qualified individuals employment because they have disabilities such as HIV. Despite these mandated protections, the State Department requires certain of its contractors to terminate, or deem ineligible for employment, *all* individuals with HIV *regardless* of their ability to perform the essential functions of the job.

3. Plaintiff John Doe (a pseudonym) is a decorated Army veteran who served his country for twenty years. Plaintiff also has asymptomatic HIV. After retiring honorably from the military, Plaintiff decided to continue his service to his country by providing security at military bases in Iraq while employed by contractors for the United States Department of Defense. Plaintiff's HIV-status, which was known to these contractors, did not impede his two years of employment for these contractors in any way.

4. In 2005, however, Plaintiff decided to work for a different contractor under a contract with the State Department. Defendant Triple Canopy, Inc. ("Triple Canopy") hired Plaintiff to provide security in Haiti under the World Personal Protective Services Contract ("WPPS") that Triple Canopy had entered into with the State Department. Upon learning that Plaintiff had HIV, Triple Canopy terminated and disqualified Plaintiff because the State Department barred Triple Canopy from hiring anyone with HIV for work under the WPPS.

5. Plaintiff brings this action against Secretary of State Condoleezza Rice and Triple Canopy for discrimination based on HIV in violation of the Rehabilitation Act and the Americans with Disabilities Act.

PARTIES

6. Plaintiff John Doe is an adult resident of the United States. At all times relevant to this Complaint, Plaintiff had HIV, a disability recognized under the Rehabilitation Act and Americans with Disabilities Act.

7. Defendant Condoleezza Rice is the United States Secretary of State. She is sued in her official capacity.

8. Defendant Triple Canopy, Inc. provides “security solutions” to private and governmental entities around the world. Since 2005, Triple Canopy’s corporate headquarters have been located in Herndon, Virginia. Triple Canopy is an employer covered under the Americans with Disabilities Act.

JURISDICTION AND VENUE

9. This Court has jurisdiction pursuant to 28 U.S.C. § 1331. Plaintiff also seeks declaratory relief as authorized by 28 U.S.C. §§ 2201 and 2202.

10. On December 27, 2005, John Doe timely filed a charge with the United States Equal Employment Opportunity Commission (“EEOC”) against Triple Canopy for discrimination in employment. The EEOC found “reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge” and, on June 11, 2008, issued John Doe a Notice of Right to Sue Triple Canopy for violation of the Americans with Disabilities Act.

11. This Court may assert jurisdiction over Defendant Rice as head of the State Department, which is located in Washington, D.C.

12. This Court has personal jurisdiction over Triple Canopy under D.C. Code §§ 13-334, 13-423, and 11-943, as well as Federal Rules of Civil Procedure 4(k)(1)(B) and 19. Triple Canopy regularly transacts business in Washington, D.C. Moreover, Plaintiff's claims arise out of Triple Canopy's contractual relationship with the State Department and Triple Canopy's termination and disqualification of John Doe based on the State Department's requirement in the WPPS that Triple Canopy not hire anyone with HIV.

13. Venue in this Court is proper under 28 U.S.C. §1391. The State Department, which is located in Washington, D.C., has engaged in unlawful discriminatory conduct by requiring its contractors, including Triple Canopy, to discriminate against employees with HIV. Moreover, the State Department Office of Civil Rights, which endorsed Triple Canopy's discrimination against Plaintiff on the basis of HIV, is located in Washington, D.C. Thus, "a substantial part of the events or omissions giving rise to the claim occurred" within this jurisdiction.

FACTUAL ALLEGATIONS

14. Plaintiff John Doe served in the United States Army from September 1981 through September 2001. During his time in the Army, he served in Special Forces, engineer battalions, and the Airborne Division. Among other duties, he served as a Special Forces Engineer, intelligence officer, and Company Operations and Team Sergeant, and provided security in Haiti, Kenya, Kuwait, and Pakistan. Plaintiff received numerous performance awards and recognitions, including among others the Army

Commendation Medal, 4th Award, Army Achievement Medal, 5th Award, national defense service medal, humanitarian service medal, overseas service ribbon, Kuwait liberation badge, Special Forces tab, master parachutist badge, air assault badge, naval scuba divers badge, and ranger tab. At the time Plaintiff retired honorably in September 2001, he held the rank of Sergeant, First Class.

15. While Plaintiff was in the Army, he tested positive for HIV. He continued to serve in the Army until his normal retirement date.

16. Since testing positive for HIV, Plaintiff has remained healthy.

17. In 2004-2005, after retiring from the Army, Plaintiff worked for two Department of Defense contractors in Iraq, serving as a civilian security specialist. In that role, he led security teams on bases in Iraq. Included among his responsibilities was serving as a site security manager in Iraq, where armed conflict occurred weekly.

18. While Plaintiff was employed by these contractors, the United States Army Continental U.S. ("CONUS") Replacement Center ("CRC"), was aware that he was HIV positive and approved his deployment to Iraq.

19. The State Department also retains contractors to provide personal security overseas. In particular, the State Department hires contractors to provide security services to United States embassies, consulates, Foreign Service personnel, ambassadorial residences, and high level government officials around the world. In 2000, the State Department began hiring these contractors through a Worldwide Personal Protective Services Contract ("WPPS"), which the State Department enters with each contractor that provides such services.

20. The State Department has hired at least three companies, including Triple Canopy, to provide security services under a WPPS.

21. Under the WPPS with each contractor, the State Department strictly monitors each contractor's hiring of personnel and performance under the WPPS.

22. The WPPS governs the contractors' hiring of all personnel working under the contract and imposes eligibility requirements with which the contractors must comply. Among these requirements is the mandated exclusion of any employees who have HIV. The WPPS thus mandates that all personnel working under the contract produce a "[v]alid negative HIV result within six (6) months of report date to FDC [Forward Deployment Center]." The WPPS also provides "suggested physical standards," that include a requirement that all contractor personnel be "free from communicable disease."

23. As a result of recent litigation, State Department policy bars the State Department from categorically excluding people with HIV from working in the Foreign Service. Despite this policy with regard to its own employees, the State Department continues to apply a categorical ban barring its WPPS contractors from hiring anyone with HIV, despite the ability to perform the essential functions of the job.

24. In October 2005, Plaintiff applied for, and was accepted to, work for Triple Canopy as a Shift Leader to provide personal security for the United States embassy in Haiti under Triple Canopy's WPPS contract with the State Department. As a Shift Leader, Plaintiff would be responsible for leading teams to protect personnel working at the American embassy in Haiti as they traveled in motorcades from the

embassy to their residences or other locations in Haiti and to provide security for the embassy itself.

25. Also in October 2005, Plaintiff submitted to Triple Canopy letters and forms from his doctors at the Veterans Administration (“VA”) indicating that he was HIV positive, that he was able to be deployed abroad, and that he had been deployed abroad previously while he had HIV. Plaintiff’s doctors informed Triple Canopy that Plaintiff was in good health and had no medical conditions that would bar him from being deployed overseas.

26. Plaintiff flew to Virginia for personal security training with Triple Canopy in October. He passed all of Triple Canopy’s trainings that he was given before Triple Canopy terminated and disqualified him.

27. On November 9, 2005, the day before Plaintiff was to graduate from Triple Canopy’s personal security training, Triple Canopy’s Senior Director of Global Staffing informed Plaintiff that the State Department required Triple Canopy to pull him from training because he was HIV positive. The Senior Director told John Doe that the WPPS prohibited Triple Canopy from deploying overseas any employees who are HIV positive. When John Doe questioned this decision, the Senior Director pointed John Doe to paragraph C5 of Triple Canopy’s WPPS contract, which reads:

All Contractor employees working under this contract should:

- Be well proportioned in height and weight
- Be in good general health, without physical disabilities that would interfere with acceptable performance of their duties, including standing for prolonged periods in performance of guard duty
- Be free from communicable disease
- Possess binocular vision, correctable to 20/30 (Snellan) and shall not be color blind
- Be capable of hearing ordinary conversation

Be capable of satisfying the P.E. Battery Scores, or better, as identified below

28. Triple Canopy made clear to Plaintiff that the standard that employees “[b]e free from communicable disease” included HIV and was mandatory.

29. Triple Canopy did not individually assess whether Plaintiff was able to perform the essential functions of the job or whether he could do so with reasonable accommodation.

30. Plaintiff advised Triple Canopy that CRC had approved his deployment to Iraq previously despite knowledge of his HIV status and he requested that Triple Canopy request such approval for deployment again. Triple Canopy nevertheless refused to allow Plaintiff to deploy.

31. Triple Canopy did not offer Plaintiff any other positions or identify any other opportunities for him at Triple Canopy.

32. Triple Canopy terminated and disqualified Plaintiff solely on the basis of his HIV status.

33. Plaintiff filed an administrative complaint against the State Department with the State Department’s Office of Civil Rights (“State Department OCR”) on March 6, 2006. On July 14, 2006, the State Department OCR dismissed the complaint because Plaintiff was not an employee of the State Department and thus could not seek relief through the Equal Employment Opportunity administrative process. With regard to Triple Canopy’s decision to terminate and disqualify Plaintiff, the State Department OCR’s dismissal of his complaint noted that he did not meet the qualifications for a Shift Leader, citing Triple Canopy’s list of qualifications for a shift leader from its web page,

which included the State Department's requirement that employees be "free from communicable diseases."

34. The State Department required and endorsed Triple Canopy's termination and disqualification of Plaintiff on the basis of HIV.

35. On June 11, 2008, the EEOC issued Plaintiff a Notice of Right to Sue Triple Canopy. The Right to Sue Notice stated that the EEOC had found "reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge. . . ."

FIRST CLAIM FOR RELIEF

Violation of the Rehabilitation Act (against Defendant Rice)

36. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, provides that:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

37. Because HIV substantially limits at least one of Plaintiff's major life activities Plaintiff is an individual with a disability under the Rehabilitation Act.

38. Plaintiff was fully qualified to be a Shift Leader and was able to perform all the essential functions of the position.

39. Indeed, the Army's CRC had approved John Doe for deployment to Iraq with two different contractors working under contracts with the Department of Defense. With these other contractors, John Doe managed security on Army bases in Iraq. John Doe likewise was qualified to provide personal security as a Shift Leader in Haiti.

40. The State Department is an executive agency to which Section 504 of the Rehabilitation Act applies.

41. The State Department has entered into WPPS agreements with at least three contractors, including Triple Canopy.

42. The WPPS mandates that contractors must exclude from employment under the WPPS all individuals with HIV.

43. The WPPS does not permit contractors to individually assess on a case-by-case basis whether an individual with HIV is able to perform the essential functions of the job and be employed by the contractor, or whether a reasonable accommodation would permit an individual with HIV to be employed by that contractor.

44. Instead, as evidenced by its requirement that all employees must submit a negative HIV test before deployment under the WPPS, the State Department mandates that its WPPS contractors categorically exclude all individuals from HIV.

45. The State Department required and endorsed Triple Canopy's exclusion and termination of John Doe on the basis of his HIV status.

46. By requiring its contractors to exclude all individuals with HIV regardless of their ability to perform the essential functions of the job (with or without reasonable accommodation), the State Department has denied individuals with HIV, including Plaintiff, the benefits of an opportunity of employment with State Department contractors, has discriminated against individuals with HIV, and has required and endorsed discrimination on the basis of HIV by its contractors, all in violation of the Rehabilitation Act.

47. As a result of the State Department's actions, John Doe has suffered and will continue to suffer harm.

SECOND CLAIM FOR RELIEF

Violation of the Americans with Disabilities Act (against Defendant Triple Canopy)

48. The Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, prohibits employers from discriminating against qualified individuals because of a disability “in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112.

49. Because HIV substantially limits at least one of Plaintiff's major life activities Plaintiff is an individual with a disability under the ADA.

50. Plaintiff was fully qualified to be a Shift Leader and could perform all the essential functions of the position. Plaintiff also passed all of Triple Canopy's training requirements before Triple Canopy terminated and disqualified him because he has HIV.

51. Indeed, the Army's CRC had approved Plaintiff for deployment to Iraq with two different contractors working under contracts with the Department of Defense. With these other contractors, Plaintiff managed security on Army bases in Iraq. Plaintiff likewise was qualified to provide personal security as a Shift Leader in Haiti.

52. Triple Canopy is a covered employer to which the ADA applies.

53. Triple Canopy terminated and disqualified Plaintiff from employment solely because Plaintiff has HIV. Triple Canopy made no individualized assessment to determine whether Plaintiff could perform the essential functions of the job of Shift

Leader and be employed by Triple Canopy, or whether a reasonable accommodation would enable him to be employed as a Shift Leader by Triple Canopy, as is required under the ADA.

54. Triple Canopy's termination and disqualification of Plaintiff on the basis of his disability and Triple Canopy's failure to make an individualized assessment to determine whether Plaintiff could be employed or whether a reasonable accommodation would enable him to be employed by Triple Canopy violated the ADA.

55. As a result of Triple Canopy's actions, John Doe has suffered and will continue to suffer both economic and non-economic harm.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment in favor of Plaintiff and against Defendants and award the following relief:

- a. Declaratory relief, including but not limited to a declaration that Defendant Rice discriminates against individuals with HIV in violation of the Rehabilitation Act through the WPPS;
- b. Declaratory relief, including but not limited to a declaration that the Rehabilitation Act and the Americans with Disabilities Act bar State Department contractors from denying employment to individuals who are HIV-positive without an individualized assessment of whether they can perform the essential functions of the job (with or without a reasonable accommodation);

- c. Appropriate injunctive relief, including but not limited to reinstatement of John Doe's position with Triple Canopy and an order restraining Secretary Rice, the State Department, and Triple Canopy from engaging in further discriminatory conduct of the types alleged in this Complaint;
- d. Back pay in an amount to be determined at trial;
- e. In the event reinstatement is not granted, front pay;
- f. Compensatory and consequential damages, including for emotional distress against defendant Triple Canopy;
- g. Punitive damages against defendant Triple Canopy;
- h. Pre-judgment and post-judgment interest at the highest lawful rate;
- i. Attorneys' fees and costs of this action; and
- j. Any such further relief as the Court deems appropriate.

Respectfully submitted,

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