



EEOC Finds Disability Bias In Foreign Service Hiring

By Joseph Marks

Law360, New York (October 05, 2010) -- A U.S. Equal Employment Opportunity Commission judge has approved a class complaint against the U.S. Department of State for allegedly discriminating against disabled applicants for the U.S. Foreign Service.

The State Department must respond within 40 days to the decision issued Thursday by EEOC Administrative Judge Mary Elizabeth Palmer, either remedying its procedures or filing an appeal with the EEOC's Office of Federal Operations.

At the heart of the complaint is the Foreign Service's "worldwide availability" requirement, a medical determination that requires foreign service officers be able to work anywhere in the world, including in hardship posts where medical care isn't readily available.

"A candidate who may be able to work at 80 percent of the agency locations without accommodation or at 100 percent of locations with an accommodation cannot receive a worldwide availability rating and cannot be on the register," Judge Palmer wrote.

Approved class agent Doering Meyer claims this unfairly restricts people from pursuing Foreign Service careers and violates the Rehabilitation Act of 1973, according to the decision.

Meyer, who has multiple sclerosis, passed the Foreign Service's oral and written exams in 2005, but was found medically ineligible to work for the Foreign Service in 2006, the decision states. Meyer appealed to the State Department's Employment Review Committee, which granted her a waiver in 2007, and she was sent to a consular post in 2008, according to the decision.

Meyers' attorney Bryan Schwartz said Tuesday his client wasn't merely taking an ideological stand, but was genuinely injured by the two years she was forced to wait for a waiver to begin her foreign service career.

During roughly those same two years, ending in October 2008, the State Department's Office of Medical Services denied worldwide availability clearances for 49 Foreign Service candidates, Judge

Palmer's decision states.

Of those denied applicants, 24 sought waivers, but only four were granted, Judge Palmer said.

Schwartz said the actual class affected by the worldwide availability policy could number in the thousands, but that it was impossible to determine, "because the State Department actively discourages people with disabilities from applying" for the Foreign Service.

"The Foreign Service is the face of America around the globe and it should be the face of all Americans, including people with disabilities," Schwartz said.

Judge Palmer denied a request by the plaintiff to also certify the portion of the class that is over 40 under the Age Discrimination in Employment Act of 1967.

Meyer was in her forties when she applied to the Foreign Service, along with about half of the other 49 applicants denied worldwide availability between 2006 and 2008, according to the decision.

Calls to the State Department seeking comment on the ruling were not immediately returned Tuesday.

Schwartz said he hoped the State Department leadership would not fight the ruling.

"My hope is that the Obama administration, which sends the message that kids should feel that they can be whatever they want to be when they grow up, will step up to the plate and change this policy," he said. "[Secretary of State] Hillary Clinton has been an advocate for the rights of people with disabilities. She understands these are civil rights and human rights at stake."