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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
EAST. DIV. COLUMBUS

Milton Klise,  
Plaintiff

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CIVIL ACTION NO.

**2:08-cv-202**

vs.

**JUDGE SMITH**  
**MAGISTRATE JUDGE ABEL**

United Parcel Service,  
Defendant

**COMPLAINT WITH  
DEMAND FOR JURY TRIAL**

**Introduction**

1. Milton Klise is an experienced mechanic. For more than 15 years, he worked for UPS and received numerous accolades for his work. But in 2003, Klise lost his job because he has a disability. UPS requires all its mechanics to qualify to drive commercial vehicles in interstate commerce, even though that was never part of Klise's actual work. When Klise's diabetes treatment required him to take insulin, he no longer qualified to drive in interstate commerce. Even though Klise is a mechanic, not a driver, UPS dismissed him and refused to change its discriminatory standard. Indeed, it refuses to change it to this day.

**Jurisdiction**

2. This case is brought under the Americans with Disabilities Act, 42 U.S.C. 12101, and Ohio Revised Code § 4112.99. This Court has federal question jurisdiction as to Plaintiff's federal statutory claims under 28 U.S.C. §§ 1331 and 1332, and supplemental jurisdiction as to Plaintiff's state law claims under 28 U.S.C. § 1367, as these claims arise from the same core of operative facts as his claims arising under federal law.

### **Parties**

3. Plaintiff is a resident of Orient, Ohio, in the Southern District of Ohio.

4. Defendant UPS is a major multinational package delivery company, doing business in over 200 countries and territories worldwide. Defendant is a Georgia corporation registered to do business in the state of Ohio and doing business in the Southern District of Ohio.

### **Factual Statement**

5. Plaintiff began working for UPS in 1988 as a journeyman tractor mechanic at the UPS facility at 5101 Trabue Road in Columbus, Ohio 43228. He maintained and repaired a large fleet of tractors. Over the years, plaintiff has received numerous accolades for his fine work. Plaintiff achieved the distinction of “Best in Division” in the Central Ohio region four times, and was also recognized several times when the fleets he worked on went a month or longer without needing repair or maintenance.

6. Each year, plaintiff was required to obtain a Department of Transportation medical card. That card qualified him to drive large commercial vehicles in interstate commerce. Plaintiff did not, however, drive large commercial vehicles in interstate commerce. He was a mechanic and usually drove only on UPS property, moving vehicles needing repair into his stall. None of the tractors he drove on UPS property were attached to trailers, and Plaintiff rarely drove these vehicles off UPS property. Plaintiff also rarely went on a service call during his more than fifteen years at UPS, as UPS sent a wrecker service to retrieve trucks broken down off property. In fact, during the year preceding his termination, he did not go out on even one service call. Nonetheless, he followed his employer’s instructions and obtained a new DOT card every two years.

7. Plaintiff was diagnosed with diabetes in 2001. Diabetes is a disease in which the body does not produce enough (or any) insulin or it does not properly use insulin. Insulin is needed to convert food to the energy needed for daily life. When plaintiff was first diagnosed with diabetes, it could be treated with oral medications. But, in 2002, his doctor told him that he needed to take insulin as part of his medical treatment for diabetes. So, he followed his doctor's instructions and to this day continues to take insulin.

8. On November 3, 2003, Klise went to renew his DOT card as his supervisor had told him to do. The doctor who performed the physical told him that he had passed the physical, but, because he was taking insulin, could not get his DOT medical card.

9. Klise went back to work that afternoon and his supervisor, Billy Shawver, told him that he had some bad news about the DOT physical and said that Klise needed to accompany him to Ron Mascia's office. Mascia, auto manager for that location, told Klise that he could not continue to do his job since he could not get the DOT card. Mascia volunteered that Klise should apply for short-term disability benefits. Klise first asked if his vehicle could be driven into the shop by another employee and Mascia said no. Mascia did not explain why. Then, Klise asked if there wasn't another job that he could have, such as a job working with parts or a trailer job. Mascia again said no and advised him to apply for short-term disability.

10. Klise was stunned that he was being dismissed when he could actually do his job with no problem. His job, after all, was to maintain and repair tractor-trailers and there was absolutely no reason he could not do it. Driving was something he almost never did anyway, except to move the truck from the yard to the specific bay where he worked on it. He had never driven to another state while working for UPS.

11. Klise learned very quickly about the immense prejudice in the UPS organization to individuals with diabetes. On November 14, 2003, Klise went to the office and met with Mark Pecikonis, district automotive manager for UPS. Klise asked Pecikonis if there were any other jobs that Klise could do at that location. Pecikonis stated, "Letting you work in the shop would be a hazard to the shop." Klise asked if he could have equipment in his stall for him to work on. Pecikonis's response was "Milt, you have people that work beside you and we can't have that liability." Klise asked about other jobs, including a job working with trailers and the parts job. Each time, Pecikonis said no. With regard to the parts job, he claimed Klise might have to leave the office and pick up parts – even though that would be in a small van or his own car.

12. Sadly, Klise was not judged on his own qualifications. At the November 25, 2003 hearing held about Klise's challenge to his removal from the job, Pecikonis claimed that he had witnessed a diabetic mechanic wreck vehicles because he had a problem with his diabetes. Pecikonis said they just could not have that liability in the shop. Klise tried to make Pecikonis see that people should be judged individually and not under a blanket policy. But Mascia stated that Klise might have a problem with his diabetes and lose control of a chisel he was sharpening and injure another employee. Mascia repeated that "we just can't have that liability in the shop."

13. At the November 25, 2003, hearing, Klise again asked for a job accommodation and listed a number of UPS drivers with diabetes who had been accommodated and moved to other positions after they became insulin dependent. Mascia said that UPS is not going to accommodate like it has in the past. He added "This is the new UPS and we're not going to accommodate anymore."

14. Klise asked for several accommodations – he asked that he be relieved of driving duties (which were few and far between) and he asked for a job in the parts area. Both of these were rejected. He also filled out the company’s paperwork asking for an accommodation and that was rejected as well in January 2004. In late 2003, Klise went to the HR office to speak with Ann Swinford about his benefit status. He spoke about the emotional pain he and his family had experienced. Swinford rudely responded, “Big, bad UPS is always out to get someone.”

15. At the second hearing of his grievance, Klise asked again about getting his old job back. UPS representative Tom Buoni told him that he had better get that out of his head because “You’re not going to turn wrenches in the automotive department again.” Klise tried to talk about other jobs, including the parts job. Pecikonis rejected that again, saying that he might have to go out and pick up parts. Klise explained that the vendors delivered the parts. But HR Manager Kevin DiLibero said, “We really do not have to offer you anything.” He added that, if they gave Klise a new job, they were opening the door for others to use if they had a problem.

16. UPS claimed that Klise was no longer qualified for the job because of his failure to get a DOT card, but his job required almost no driving at all, much less interstate driving. To cover any driving within the state, Klise applied for a variance from the Public Utilities Commission of Ohio, which he received in February 2004. Once again, his request to return to work was rejected. Klise received some disability benefits while he was not working.

17. Plaintiff’s medical condition imposes substantial limitations on several major life activities, including eating and caring for himself. As his doctor explained in a letter to UPS, dated September 1, 2004, Type 1 diabetes is very difficult to control. It cannot be controlled merely with pills or oral agents. Instead, rapid acting insulin needs to be administered at every



meal with dose adjusted depending on the amount of carbohydrate, his blood sugar level at the time, and other factors such as physical activity, which may affect his blood glucose. Dosage changes are made at each and every meal. Further, Klise must follow a controlled program of type, quantity, and timing of food. He must eliminate or carefully limit his consumption of many foods that the American public regularly eats. And he cannot eat anything at all without doing careful calculations of the insulin he needs to take before the meal. Failure to follow the needed insulin regimen and meal pattern could result in severe complications requiring hospitalization. Klise is substantially limited in the major life activities of eating and caring for oneself when compared to the average person in the population.

18. Because he was removed from his job because of his disability, Klise filed an EEOC charge in March 2004. In April 2005, the EEOC issued one of its rare cause determinations in this case, finding that UPS had in the past and still continued to discriminate against Klise because of his disability.

19. In September 2004, Klise went back to work as a trailer mechanic for UPS – with lower pay and no seniority. He thus was required to work the night shift. Klise investigated whether he could get a waiver from the DOT, but, at the time, he did not qualify. In fact, almost no driver with diabetes qualified because it required 3 years commercial driving experience while on insulin. Of course, Klise had been on insulin for only 8 months at the time he was denied the DOT card, so he could not qualify for this exemption. In 2005, Congress passed a statute that prohibited DOT from conditioning an exemption on past experience operating commercial vehicles while taking insulin.

20. Although Klise had gone back to work, he continued his efforts to get a better job – the one he had done so well for so many years. With the help of the American Diabetes Association, he applied for a DOT waiver in 2005 and was granted that waiver in August 2006. He was able to return to his old job on August 21, 2006. In order to maintain his DOT waiver, his endocrinologist must provide DOT with a quarterly report of his medical condition. Further, he must seek and obtain another DOT waiver every two years in order to keep his job. The company also requires that he obtain a separate DOT medical card every year (rather than every two years as required of other mechanics who do not have insulin-dependent diabetes).

21. By maintaining qualification standards that screen out those with disabilities, UPS has violated the ADA and Ohio Revised Code Chapter 4112. And, by having managers who acted on fears about diabetes, rather than the qualifications of this fine mechanic, UPS violated the ADA and Ohio law.

#### **Federal Claims of Disability Discrimination**

22. Plaintiff realleges and incorporates the above paragraphs as if fully restated herein.

23. Plaintiff performed his job well, but was fired because of his disability. The defendant's conduct violates the Americans with Disabilities Act, which prohibits discrimination in employment on the basis of disability. Plaintiff is a qualified individual with a disability and was discriminated against because of such disability. Defendant is a covered employer under the ADA.

24. In imposing a requirement that plaintiff must obtain a DOT card even though he is a mechanic and not a commercial truck driver, the defendant violated the ADA, which prohibits an employer from using qualification standards that screen out the disabled. 42 U.S.C. 12112(b)(6).

The defendant's conduct in discharging plaintiff constitutes discrimination in employment on the basis of a disability or perceived disability in violation of the ADA. Sadly, this discriminatory standard is still being utilized and this improperly requires plaintiff to get a waiver from the DOT every two years—or again lose his job.

25. Plaintiff sought a reasonable accommodation when he was denied a DOT medical card because of his insulin-dependent diabetes. He asked that he be exempted from driving duties that would require a DOT card. To be sure, he did not drive in interstate commerce anyway, so he never should have been required to seek this accommodation, but he did seek it as a way to keep his job. He even went to the step of obtaining approval from the state of Ohio for him to drive commercial trucks. But that was not good enough for UPS. He was told he could not work as a mechanic because he could not qualify to drive trucks in interstate commerce.

26. The plaintiff timely filed a charge of discrimination to challenge the disability discrimination he suffered by defendant. The plaintiff has received a right to sue letter from the EEOC on this charge and timely files this lawsuit to vindicate his state and federal rights.

#### **State Claims of Disability Discrimination**

27. Plaintiff realleges and incorporates the above paragraphs as if fully restated herein.

28. Each of the acts of discrimination described above also constitutes disability discrimination in violation of Chapter 4112.02 of the Ohio Revised Code.

#### **Damages**

29. The damages suffered by the plaintiff include lost wages and benefits as well as compensatory damages for the injuries suffered at the hands of the defendant, including, but not limited to, mental anguish.



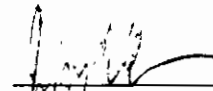
30. Further, because defendant's actions were of the sort that render the imposition of exemplary damages appropriate, the plaintiff is entitled to an award of these damages.

**RELIEF REQUESTED**

The plaintiff asks this court to enter a judgment:

1. Declaring that the acts and practices complained of in this Complaint are in violation of the Americans with Disabilities Act;
2. Declaring that the acts and practices complained of in this Complaint are in violation of Ohio Revised Code Chapter 4112;
3. Enjoining and permanently restraining these violations of law so that the defendant can no longer enforce an illegal qualification standard on its mechanics;
4. Directing the defendant to pay plaintiff actual and compensatory damages that he suffered, past and future;
5. Directing the defendant to pay plaintiff exemplary damages for its conduct in an amount as yet to be ascertained;
6. Awarding plaintiff pre-judgment interest on the amounts owed at the maximum rate allowed by law;
7. Awarding plaintiff the costs of this action, together with reasonable attorneys' fees and expert witness fees;
8. Awarding plaintiff post-judgment interest on the amount of judgment until paid at the maximum rate allowed by law; and
9. Awarding plaintiff such other relief, legal or equitable, as may be warranted.

Respectfully submitted,

  
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Frederick M. Gittes (0013444)  
TRIAL COUNSEL  
fgittes@gitteschulte.com  
Jeffrey P. Vardaro (0081819)  
jvardaro@gitteschulte.com  
GITTES & SCHULTE  
723 Oak Street  
Columbus, Ohio 43205  
(614) 222-4735  
Fax: (614) 221-9655  
Attorneys for Plaintiff

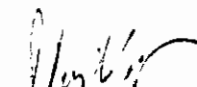
Of Counsel:

Katherine L. Butler  
Butler & Harris  
1007 Heights Boulevard  
Houston, Texas 77008  
(713) 526-5677  
Fax: (713) 526-5691  
kabutler@igc.org

John W. Griffin, Jr.  
Marek, Griffin & Knaupp  
The McFaddin Building  
203 N. Liberty Street  
Victoria, Texas 77901  
(361) 573-5500  
Fax: (361) 573-5040  
www.lawmgk.com

**JURY DEMAND**

The plaintiff hereby demands a jury of eight (8) to determine all issues triable by jury in this matter.

  
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Jeffrey P. Vardaro (0081819)