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August 14, 2014

U.S. Commission on Civil Rights  
Attn. Chairman, Martin R. Castro  
1311 Pennsylvania Ave., NW Suite 1150  
Washington, DC 20425

U.S. Commission on Civil Rights  
Southern District  
61 Forsyth Street  
Atlanta, Georgia 30303

EEOC District Office  
100 SE 2<sup>nd</sup>. St., Suite 1500  
Miami, FL 33131

To whom it may concern,

In accordance with Section 1601.76 of EEOC regulations we are requesting a Substantial Weight Review of our case.

Thanking you in advance,



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Attorney for Plaintiff

MICHAEL REED,  
Petitioner

vs.

Case No. 13-0026  
FCHR No. 201202377  
EEOC No. 510201203694

AT AND T CUSTOMER SERVICE  
CENTER,

Respondent,

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**REQUEST FOR SUBSTANTIAL WEIGHT  
REVIEW**

On May 30, 2012, Petitioner filed an Age Discrimination in Employment complaint with the Equal Employment Opportunity Commission, EEOC, EEOC No: 510-2012-03694. In a letter dated August 9, 2012 in accordance with the procedures of the Commission, the Florida Commission on Human Relations, FCHR, notified the Plaintiff that a dual charge, FCHR No: 201202377 had been filed. This notification not only cited the charges previously cited in the EEOC filing, alleged violations of The Age Discrimination in Employment Act (ADEA) but charges under Florida Statutes. Upon reliance of this notification the Petitioner presented his case before the Honorable Administrative Law Judge Lawrence P. Stevenson, on September 10, 2013, in Daytona Beach, Florida alleging:

**STATEMENT OF THE ISSUE:**

The issue to be determined in this proceeding is whether Respondent violated the Age Discrimination in Employment Act (ADEA) as amended: and/or the Florida Civil Rights Act of 1992, as amended Chapter 760, Florida Statutes, and if so, what should the proper relief.

The Petitioner filed a RECOMMENDED ORDER with the court citing evidence from the hearing In support of his allegations of violations of the ADEA statues in part as follows:

1. AT&T's policy of excluding work experience beyond 5 years adversely affects older applicants in three ways: (1) Older applicants who were advised during the teleconference that only the last 5 years work experience would be considered may have withdrawn their application at that point, thus having a filtering effect excluding older applicants. (2) AT&T's policy of excluding work experience beyond 5 years would influence supervisors and interviewers that the company policy is that older applicant's experience that was beyond 5 years had no value. Interviewers would tend to reflect this position and be subject to age based stereotypes consciously or subconsciously and influence evaluations negatively. (3) Older applicants that managed to be hired that had applicable experience that was beyond 5 years would not be given additional wage credit steps above the minimum starting salary (4) Individuals who are older tend to have more work experience and by its nature limiting work experience to 5 years prejudice those employees but not on them to present the whole picture of their work experience as would younger employees.

2. The Equal Employment Opportunity Commission ("EEOC") issued a final rule amending the Age Discrimination in Employment Act ("ADEA") regulations. Specifically, the rule expressly recognizes disparate impact claims under the ADEA. In the context of the ADEA, disparate impact claims address neutral employment practices that disproportionately affect individuals 40 years and older. Employers are prohibited from using employment practices and policies that have a disparate impact, unless the employer can show that the policy or practice is based on reasonable factors other than age.

3. Any employment practice that adversely affects individuals within the protected age group on the basis of age is discriminatory unless the practice is justified by a “reasonable factor other than age.” (1625.7 C).

4. The Petitioner identified AT&T’s policy of excluding work experience beyond 5 years as an employment practice responsible for the adverse impact.

5. An employer defending an ADEA claim of disparate impact has the RFOA burden of proof, i.e., the burden of production as well as persuasion to demonstrate the defense. (1625.7 D)

An employer must show that an employment practice was reasonably designed to achieve a legitimate business purpose and was administered in a way that reasonably achieves that purpose in light of the facts that were known or should have been known to the employer. (1625.7 (e)(1)

AT&T offered no evidence to suggest that the practice of excluding the work experience of applicants beyond 5 years served any legitimate business purpose.

6. The second item in the list of factors relevant to “reasonableness” concerned the extent to which the factor is related to the employer’s stated business goal. (1625.7(e)(2)(i). No legitimate business goal was stated by AT&T.

7. Employers are subject to liability under the disparate-impact analysis for granting supervisors unchecked discretion to engage in subjective decision making because the unchecked discretion allows conscious or unconscious age-based stereotypes to affect the decision-making process and, as such, is not “other than age.” It listed three factors relevant to whether an employment practice was “other than age”, the extent to which the employer gave supervisors unchecked discretion to assess employees subjectively, the extent to which supervisors evaluated employees based on factors known to be subject to age-based stereotypes, and the extent to which supervisors were given guidance or training. (1625.7(e)(2)(ii,iii,iv).

8. In the present case, the individual who made the determination of whether an applicant was suitable to be hired was Kerstetter. She acknowledged that she could subjectively rate applicant's performance between a 1 and 5 and it was her sole discretion to make that decision.

9. Ms. Kerstetter was given unchecked discretion to assess applicants subjectively and was not under any supervision by her superiors.

10. The final rule regarding to what extent the company evaluated impact-assessment and harm considerations, (1625.7(e)(2)(iv)(v) AT&T knew or should have know that the adverse impact of it's employment practice was significant on older applicants, and that the degree of harm to individuals within the protected age group, in terms of extent of injury and the number of persons adversely affected would have been significant. There is no indication that the Respondent AT&T took steps to reduce the harm. It is the policy was by design to reduce the additional wage step credits and additional monies that would have had to have been paid to older applicants for their experience.

11. The Petitioner has additionally presented evidence that the frequency distribution by aged hired of employees currently employed at the respondents location in Ocala was highly skewed toward younger employees. The applicants that were hired for the position were considerably younger than the Petitioner and were given opportunities in the employment process which the Petitioner was not. Those opportunities include asking of questions dealing into further experience and those employees not being penalized to failure to answer questions fully.

**TESTIMONY SUPPORTING AT&T had a policy of Excluding Work Experience beyond  
5 years.**

1. When asked if it was the policy of the company not to consider work experience of an applicant beyond 5 years Ms. Kerstetter stated; "I'm not sure what's on-line it tells them it's five or eight, I'm not real sure of the specific how many years that it asks them to include." (Testimony of Kerstetter, page 239, line 11).

2. During that conference call, Garcia indicated to the Petitioner and other applicants that work experience beyond 5 years would not be considered for the position, self employed persons would have to substantiate the last 5 years work experience by producing 1099 forms, and applicants may want to revise their resumes to reflect this policy. (Testimony of Petitioner, page 35, line 10).

3. During the interview the Petitioner was asked by Ms. Keretter extensive information regarding the Petitioner's past experience with the Respondent's affiliate, Pacific Bell, including seventeen (17) years of experience including six (6) years as a customer service representative. (testimony of Petitioner page 40).

4. Petitioner also provided information regarding his over twenty five (25) years experience as an owner of his current small business telephone system interconnect company (testimony of Petitioner page 40).

5. The interviewer took notes during the interview but did not write anything down regarding these experiences (testimony of Petitioner, page 41, line 1).

6. Petitioner advised the interviewer the Customer Service position he had was similar to the job he was applying for with Respondent. (Testimony of Petitioner, page 43, line 3).

When Petitioner gave information to Ms. Kerstetter information about his experience with

Pacific Bell, she did not ask any detailed questions about what he did, using computers, and dealing with people. (Testimony of Petitioner, page 43, line 12).

7. Ms. Garcia testified "So when we verify employment that's listed on application, we go from the current date to five years." (Testimony of Garcia, page 209, line 14).

8. If someone has experience outside of five years or more than five years Respondent would not consider that in terms of salary. (Testimony of Garcia, page 209, line 20).

9. The ALJ in his ruling on May 15, 2014 failed to address any of the issues alleged under the ADEA in the EEOC complaint. The Petitioner respectfully requests that the U.S. Commission on Civil Rights or the EEOC evaluate the merits of the disparate impact claims.

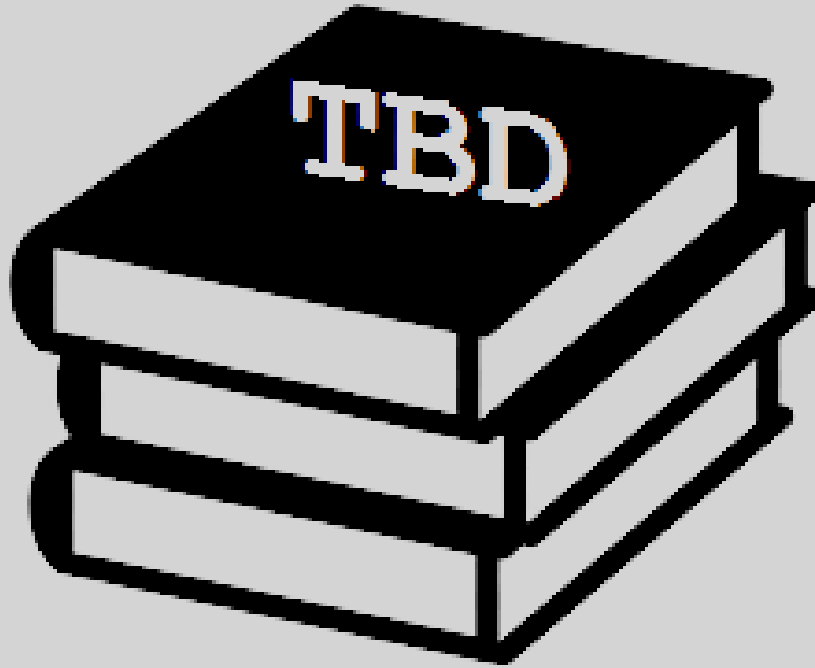
I hereby certify that a true and correct copy of the foregoing has been forwarded by electronic mail delivery to the EEOC District Office at 100 SE 2<sup>nd</sup> Street, Suite 1500, Miami, Florida 33131 by U.S. Mail and facsimile (305-808-1855), U.S. Commission on Civil Rights, Main Office and Eastern District, 1311 Pennsylvania Avenue, N.W. Suite 1150, Washington, DC 20425, to the U.S. Commission on Civil Rights, Southern Regional Office, Attn: Chairman, Martin R. Castro and Director, Peter Minarik, 61 Forsyth Street SW, Suite 16T126, Atlanta, Georgia 30303 and the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida 32301.

/s/ David W. Glasser  
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