

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DOE,)	
)	
Plaintiff,)	
)	
v.)	
)	No. 08-cv-1678 (PLF)
CONDOLEEZZA RICE, in her Official Capacity as)	
Secretary of State, and TRIPLE CANOPY, INC.,)	
)	
Defendants.)	
)	

ANSWER OF THE SECRETARY OF STATE TO PLAINTIFF’S COMPLAINT

Defendant Condoleezza Rice, in her official capacity as Secretary of State, answers Plaintiff’s Complaint as follows:

First Defense

The Complaint fails to state a claim against the Secretary of State for which relief can be granted.

Second Defense

Plaintiff’s claims against the Secretary of State are barred to the extent that Plaintiff was not a qualified individual with a disability who, with or without reasonable accommodation, could perform the essential functions of a site-security specialist for Triple Canopy, Inc., a Department of State (DOS) contractor, at certain locations overseas.

Third Defense

Plaintiff’s claims against the Secretary of State are barred to the extent that Plaintiff could not satisfy, with or without reasonable accommodation, the health or medical-fitness standards required for employment with Triple Canopy as a site-security specialist at certain

locations overseas, where such standards were job-related and were consistent with business necessity.

Fourth Defense

Plaintiff's claims against the Secretary of State are barred to the extent that allowing Plaintiff to perform the essential functions of a site-security specialist for Triple Canopy at certain locations overseas would have posed a direct threat to the health and safety of Plaintiff and others.

Fifth Defense

Plaintiff's claims against the Secretary of State are barred to the extent that a waiver of the health or medical-fitness standards required for employment with Triple Canopy as a site-security specialist at certain locations overseas would have imposed undue administrative burdens on DOS.

Sixth Defense

Plaintiff's claims against the Secretary of State are barred to the extent that Plaintiff's application for employment as a site-security specialist at certain locations overseas was denied by Triple Canopy for legitimate, non-discriminatory reasons.

Seventh Defense

Venue in this Court for Plaintiff's claims against the Secretary of State is improper.

* * * * *

In response to the individually numbered paragraphs contained in the Complaint, Defendant states as follows:

NATURE OF THE ACTION

1. This paragraph consists of Plaintiff's characterization of this action, to which no response is required. To the extent that a response is deemed to be required, Defendant denies the allegations in this paragraph.

2. The first three sentences of this paragraph consist of Plaintiff's characterization of the Rehabilitation Act and the Americans with Disabilities Act, to which no response is required. To the extent that a response is deemed to be required, Defendant denies the allegations in these sentences and respectfully refers the Court to each of the cited statutes for a complete and accurate statements of its contents. As to the fourth sentence, Defendant denies the allegations.

3. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

4. As to the first sentence of this paragraph, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations. As to the second sentence, Defendant admits that DOS entered into a Worldwide Personal Protective Services (WPPS) Contract with Triple Canopy for security services overseas, and lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations. As to the third sentence, Defendant denies that DOS "barred Triple Canopy from hiring anyone with HIV for work under the WPPS," and lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

5. This paragraph consists of Plaintiff's characterization of this action, to which no response is required. To the extent a response is deemed to be required, Defendant denies the allegations in this paragraph.

PARTIES

6. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

7. Admitted.

8. As to the first sentence of this paragraph, Defendant admits that Triple Canopy has provided security services to DOS in several locations overseas, and lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations. As to the second sentence, Defendant admits the allegations. The third sentence consists of legal conclusions, to which no response is required.

JURISDICTION AND VENUE

9. This paragraph consists of legal conclusions, to which no response is required.

10. As to the first sentence of this paragraph, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations. The second sentence consists of Plaintiff's characterization of a Notice issued by the United States Equal Employment Opportunity Commission (EEOC) on June 11, 2008, which speaks for itself, and therefore no response is required. To the extent a response is deemed to be required, Defendant respectfully refers the Court to the Notice for a complete and accurate statement of its contents.

11. Defendant admits that DOS maintains its principal office in Washington, D.C., and states that the remainder of this paragraph consists of legal conclusions, to which no response is required.

12. The first sentence of this paragraph consists of legal conclusions, to which no response is required. As to the second sentence, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations. As to the third sentence, Defendant denies the allegations.

13. As to the first sentence of this paragraph, Defendant denies the allegations. As to the second sentence, Defendant admits that DOS maintains its principal office in Washington, D.C., and denies all remaining allegations. As to the third sentence, Defendant admits that the State Department Office of Civil Rights maintains its principal office in Washington, D.C., and denies all remaining allegations. As to the fourth sentence, Defendant denies the allegations.

FACTUAL ALLEGATIONS

14-18. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in these paragraphs.

19. As to the first and second sentences of this paragraph, Defendant admits the allegations. As to the third sentence, Defendant denies the allegations, except to admit that, in 2000, DOS first entered into a WPPS Contract with one or more contractors for security services overseas.

20. Admitted.

21. Defendant denies the allegations in this paragraph, except to admit that DOS monitors contractors' performance of work performed under a WPPS Contract, including the hiring of personnel.

22. This paragraph contains Plaintiff's characterization of unspecified provisions of an undated WPPS Contract, which speaks for itself, and therefore no response is required. To the extent that a response is deemed to be required, Defendant denies the allegations in this paragraph and respectfully refers the Court to the applicable WPPS Contract for a complete and accurate statement of its contents.

23. As to the first sentence of this paragraph, Defendant denies the allegations, except to admit that DOS does not "categorically exclud[e] people with HIV from working in the Foreign Service." As to the second sentence, Defendant denies the allegations.

24. As to the first sentence of this paragraph, Defendant admits that Plaintiff applied for work at Triple Canopy, and lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations. As to the second sentence, Defendant admits that a shift leader hired by Triple Canopy for security services performed in Haiti would have been responsible for leading a team to provide personal security for the American embassy in Haiti and personnel who work there, and lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

25. The first sentence of this paragraph contains Plaintiff's characterization of a letter from Plaintiff's doctors dated October 21, 2005, which speaks for itself, and therefore no response is required. To the extent a response is deemed to be required, Defendant respectfully refers the Court to the letter for a complete and accurate statement of its contents. As to the second sentence, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations.

26. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

27. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, except that the third sentence contains Plaintiff's characterization of provisions in a WPPS Contract, which speaks for itself, and therefore no response is required. To the extent a response is deemed to be required, Defendant respectfully refers the Court to the WPPS Contract for a complete and accurate statement of its contents.

28. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph regarding Plaintiff's communications with Triple Canopy.

29. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

30. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

31. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

32. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

33. As to the first and second sentences of this paragraph, Defendant admits the allegations. The third sentence consists of plaintiff's characterization of the Final Agency Decision issued by the State Department's Office of Civil Rights (OCR) on July 14, 2006, which speaks for itself, and therefore no response is required. To the extent that a response is deemed to be required, Defendant respectfully refers the Court to that OCR decision for a complete and

accurate statement of its contents.

34. Denied.

35. As to the first sentence of this paragraph, Defendant admits the allegations. The second sentence contains Plaintiff's characterization of a letter dated March 22, 2006, which speaks for itself, and therefore no response is required. To the extent a response is deemed to be required, Defendant respectfully refers the Court to the letter for a complete and accurate statement of its contents.

FIRST CLAIM FOR RELIEF

Violation of the Rehabilitation Act
(Against Defendant Rice)

36. This paragraph quotes a portion of 29 U.S.C. § 794, which speaks for itself. To the extent a response is deemed to be required, Defendant respectfully refers the Court to the cited statute for a complete and accurate statement of its contents.

37. This paragraph consists of legal conclusions, to which no response is required. To the extent that a response is deemed to be required, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

38. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

39. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

40. Admitted.

41. Admitted.

42. This paragraph consists of Plaintiff's characterization of the WPPS Contract, which speaks for itself. To the extent that a response is deemed to be required, Defendant denies the allegations in this paragraph and respectfully refers the Court to the WPPS Contract for a complete and accurate statement of its contents.

43. This paragraph contains Plaintiff's characterization of the WPPS Contract, which speaks for itself. To the extent that a response is deemed to be required, Defendant denies the allegations in this paragraph and respectfully refers the Court to the WPPS Contract for a complete and accurate statement of its contents.

44-47. Denied.

SECOND CLAIM FOR RELIEF

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

48-55. Because plaintiff's second claim is not directed against DOS, no response by DOS to the allegations in these paragraphs is required.

REQUEST FOR RELIEF

Defendant denies that Plaintiff is entitled to the requested relief, or to any relief whatsoever.

* * * *

Defendant further denies any allegations in Plaintiff's Complaint that are not specifically admitted herein.

WHEREFORE, Defendant requests that Plaintiff's request for relief be denied in its entirety, that this action be dismissed with prejudice, and that Defendant be awarded her costs and such other relief as may be appropriate.

Dated: December 29, 2008

Respectfully submitted,

GREGORY G. KATSAS
Assistant Attorney General

JEFFREY A. TAYLOR
United States Attorney

JOSEPH W. LOBUE
Assistant Branch Director

/s/ Peter T. Wechsler
PETER T. WECHSLER (MA 550339)
Trial Attorney
United States Department of Justice
Civil Division
Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, D.C. 20530
Tel.: (202) 514-2705
Fax: (202) 616-8470
Email: peter.wechsler@usdoj.gov
Attorneys for the Secretary of State