

2 Fair Empl.Prac.Cas. (BNA) 118 (E.E.O.C.), EEOC Dec. No. 70-11, EEOC Dec. P 6025, 1969 WL 2892
Decision No. 70-11
June 8, 1969

DECISION

SUMMARY OF CHARGE

*1 Charging Party alleges that Respondent Employer has committed an unlawful employment practice in violation of Title VII of the Civil Rights Act of 1964, by refusing to hire her because of her sex (female).

SUMMARY OF INVESTIGATION

I. Respondent, which employs 165 persons, operates security trucks for the purpose of transporting commercial paper between various banks. This paper is of substantial value, and the drivers of the trucks, whom Respondent calls "Courier Guards," are bonded in the amount of \$25,000. In addition to responsibility for the truck and its contents, the guards also are entrusted with keys to some of the customer banks.

II. Charging Party initially applied for a position as a driver with Respondent *** in May, Although Respondent had promised to consider Charging Party's application promptly, it was held in abeyance until *** July ***

It is undisputed that Charging Party was not hired because of her sex. Respondent asserts, however, that sex is a bona fide occupational qualification for the position of Courier Guard. In support of its position, Respondent's counsel states that:

"...[I]f females were required to be used as Courier Guards, the risk to the property under their custody would increase appreciably. Moreover, since the guards carry keys on their person to the premises of customer banks, the security to these banks themselves would be jeopardized. For these reasons, it is anticipated that the employer would lose the accounts of a substantial number of banking customers who demand security protection. This would be especially true in *** metropolitan areas where armored service is readily available. Certainly Title VII of the Act was not intended to be interpreted in a manner which would result in the loss of business to an employer.

In addition, if females were employed as Courier Guards, the risk to their personal safety would likewise be greater. Thus, in many instances, the guards are required to drive their vehicles through unlit alleys and enter the banks through unattended side entrances when making pickups and deliveries, often during the evening hours. To expose females to additional risks over and above those to which they are already subject to in metropolitan areas is a responsibility which this company is not willing to accept, particularly since the company would be liable for any injuries sustained by the females during the course of their employment."

Respondent's counsel correctly notes that it is not unlawful under the Act for an employer to hire on the basis of sex, where sex is an "occupational qualification reasonably necessary to the normal operation of that particular business or enterprise."¹ The applicability of the 703(e) exception must be demonstrated, however, not merely claimed. In [Weeks v. Southern Bell, 408 F 2d 228 \(5th Cir. 1969\)](#), plaintiff was denied a promotion (to Switchman) because of her sex. Defendant claimed that it had determined that sex was a bona fide occupational qualification reasonably necessary to the normal operation of the position in question, and therefore it was entitled to discriminate here pursuant to Section 703(e)(1) of the Act. In denying the validity of this defense and finding for plaintiff, the Court stated that the "bona fide occupational qualification" exception was intended to

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be narrowly construed, and that the clear burden of proof is on the employer to show that the position in question fits within the exception. The Court emphasized that the employer must prove that it had a factual basis for believing that all or nearly all women would be unable to perform solely and efficiently the duties of the job involved.

*2 The Weeks rationale clearly applies here. Although Respondent's arguments in defense of its refusal to hire Charging Party, listed supra, include such broad generalizations as "the risk to the property under their (the women's) custody would increase, appreciably," "the risk to their personal safety would ... be greater," etc., Respondent cites no factual evidence, based on experience or otherwise, that would support its assertion that all or nearly all females are unfit for the position of Courier Guard. Assuming arguendo that more males than females presently occupy positions as security officers, this condition alone hardly would serve as reasonable justification for the conclusion that all or nearly all women are unfit for that position.

Respondent further asserts that its customers might refuse to subscribe to Respondent's services if female guards are employed. To require the hiring of females would, in Respondent's view, not be in keeping with: "... a common sense approach to the possible impacts of this novel Act."

Respondent's assumption that its present customers require that it continue to violate the Act likewise is unsupported in the record. More significantly, however, this argument is, in law, without merit, since it presumes that customers' desires may be accommodated even at the price of rendering nugatory the will of Congress.

In summary, Respondent has not sustained its burden of proof that sex is a bona fide occupational qualification for the position of Courier Guard. Accordingly, its treatment of Charging Party was unlawful and violative of the Act.

DECISION

Reasonable cause exists to believe Respondent has committed an unlawful employment practice in violation of Title VII of the Civil Rights Act of 1964, as charged.

Footnotes

1 Section 703(e), Civil Rights Act of 1964.

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