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September 10, 2013

VIA REGULAR MAIL

Susan A. Flynn, Chief Administrative Judge
EEOC
The Bourse Suite 400
21 South Fifth Street
Philadelphia, PA 19106-2515

Re: Lori Lyons v. TSA Transportation Security Administration
Complaint of Lori Lyons v. Michael Chertoff, Secretary
U.S. Department of Homeland Security
Case No.: TSAF 05-0485
Our File No.: 2209

Dear Judge Flynn:

Please be so kind as to accept this letter brief in reply to the Transportation Security Administration's ("TSA," or "the Agency") "Reply" to Complainant's Brief in Opposition to Agency's Motion for Summary Judgment and Response to Complainant's Cross Motion , in lieu of a more formal brief.

The Agency states in its reply brief, at Paragraph B, that our supplement did not include any reasoning, nor describe how it is relevant. It appears that the Agency may not have received our letter which accompanied our supplemental submission. We are now re-sending this document to the Agency. This issue is addressed in this August 22, 2006 Supplemental Submission in Opposition to the Agency's Motion for Summary Judgment and in Support of Complainant's Cross Motion for Summary Judgment and Support of Complainant's Motion to Compel Discovery. The August 2006 bid sheets are relevant to this case because they show that a bid was done which was specific to baggage screeners and which was done without gender discrimination. The Agency has continually stated that there is a Bona Fide Occupational Qualification ("BFOQ") that renders gender discrimination a necessary part of the bid process. This recent bid, which does not utilize gender

discrimination, highlights the fact that there was no need to do the bid in a gender discriminatory fashion. This point supports the very essence of the argument that the gender discrimination which was utilized in the April 2005 bid was illegal and violative of Title VII. Further, we did not receive the bid sheets until recently, which is the reason we filed this document as a supplement. Finally, we certainly have no opposition to the Agency's request for additional time to respond.

At Paragraph C of its Brief, the Agency argues that our cross motion for summary judgment is untimely. We find this argument highly disingenuous, considering that the Agency was untimely in responding to our discovery demands. We sent correspondence, which we attach hereto, giving the Agency extra time to respond to discovery demands, provided that doing so would in no way prejudice Plaintiff. (Vorih Cert., Ex. "1"). We find it disingenuous and highly questionable that the Agency is now raising this issue in Part C of their reply brief, which should be captioned as a response brief.

At Paragraph D of its Brief, the Agency protests the application of New Jersey Case law, and, of course, cites to no case law in support of its proposition which is nonsensical. New Jersey law, to the extent that it is cited in our brief, emanates from and relies upon federal law which interprets Title VII. Therefore, the Agency's arguments on this point should be disregarded.

The disingenuousness of the Agency's point at paragraph C transcends its argument at paragraph E of its response brief. The Agency takes no note of its discovery violations. Although normally counsel merely deals with such discovery matters orally, luckily this matter was memorialized in correspondence reflecting the Agency's delinquency in being untimely in responding to Complainant's discovery demands. (Vorih Cert., Ex. "1"). Of course this letter preceded numerous efforts by the undersigned to obtain discovery responses by the Agency without resorting to unnecessary motion practice.

Part F of the Agency's brief is of great interest in that the Agency contends there are no material facts in dispute. One has to look no further than Point G of this same brief to ascertain that there are numerous material facts that are hotly contested.

In Part G of the Agency's brief, most, if not all the propositions contained therein, reflect the Agency's disagreement with material facts raised by Lyons. The main fact that is in dispute surrounds whether there exists a BFOQ that allows the Agency to discriminate by gender in hosting bids for baggage screeners. The Agency goes on at great length to argue that such a BFOQ exists. However, these arguments are not only bereft of merit, they are nonsensical. This alone warrants the denial of the Agency's motion for summary judgment.

Gerard Grandinetti puts forth a declaration that all screeners are required to have all qualifications for both baggage screener and passenger screener. (Agency Br., Grandinetti Decl., ¶¶2-3). No such requirement exists. (Vorih Cert., Ex. "2," Lyons September 6, 2006, Cert., ¶1). However, one need not even look to Lyons' certification to ascertain the lack of truthfulness in the Agency's assertion. One can look at the contradiction in the Agency's submission to uncover its deception. Grandinetti, in his same declaration, discusses the fact that the Agency is, only since the end of 2003, attempting to dual-train female baggage screeners, such as Lyons. (Agency Br., Grandinetti Decl., ¶5). There would be no reason to dual train baggage screeners if all screeners already possess all the qualifications to be both baggage and passenger screener. Of course, even this declaration is not accurate, as no one attempted to dual train Lyons until well after she filed the Charge of Discrimination for gender discrimination. (Lyons September 6, 2006, Cert., ¶¶26-27).

Grandinetti also states that TSA does not hire screeners to specifically serve as baggage or passenger screeners. (Agency Br., Grandinetti Decl., ¶3). Absolutely ludicrous. The offer letter by TSA is crystal clear in hiring Lyons to serve as a baggage screener. (Lyons August 1, 2006, Cert., ¶30). How does TSA handle this fatal defect in its position? TSA ignores the issue. TSA makes the desperate and flawed claim that, to the extent such an offer letter was issued, it is irrelevant because Grandinetti declares such to be the case. (Agency Br. at 7; Grandinetti Decl., ¶4). Lyons was hired as a baggage screener, as TSA's own offer letter makes clear. (Vorih Cert., Ex. "3," Lyons August 1, 2006, Cert., ¶30-32). This disputed material fact alone should necessitate the denial of TSA's motion for summary judgment. It is of interest that even though TSA conclusively states that Lyons is incorrect in stating that she was hired to screen bags, TSA makes no argument pertaining to the impact of the offer letter's clear language. (Agency Br. at 7).

The Agency also argues that Lyons is incorrect in stating that she cannot provide any passenger screening functions because she is not trained and certified as a passenger screener. (Agency Br. at 7). First, TSA must be forgetting that this is a motion for summary judgment. The Agency's own language reflects the reason why its motion for summary judgment must fail. Second, TSA's argument makes no sense. TSA states that Lyons could have served as a witness. However, the issue of bidding is the issue of placement of passenger screeners, not witnesses. Additionally, Lyons could not have served as a witness during the relevant time period, as she was not trained or familiar with the proper procedures on how to properly screen passengers. (Lyons September 6, 2006, Cert., ¶¶7-10).[1]

Lyons recently went through training to become certified to screen passengers.

1 It was not until the weeks of August 21 and 28, 2006, that TSA finally cross-trained Lyons. (Lyons September 6, 2006, Cert., ¶¶5-6).

(Lyons September 6, 2006, Cert., ¶¶5-6). She learned numerous things such as how to do the pat down itself that she did not previously know. (Lyons September 6, 2006, Cert., ¶¶8-9). One example of what she learned is that you are to use the back of your hands in doing a pat down of the breast area. (Lyons September 6, 2006, Cert., ¶9). Prior to this recent training, Lyons had no knowledge of this critical requirement in doing passenger screening. (Lyons September 6, 2006, Cert., ¶9). It makes no sense to have a witness to ensure proper procedures are followed, if the witness does not even know what the proper procedures are. Not only is this not being done to Lyons' knowledge, the undersigned can only hope that TSA is not so foolish. (Lyons September 6, 2006, Cert., ¶¶2-4). Luckily, Lyons knows of no baggage screener who has ever been called to witness a private same sex screening, where that baggage screener was not cross-trained as a passenger screener. (Lyons September 6, 2006, Cert., ¶¶2-4). One can only imagine the liability that would befall the TSA if the public learned that the TSA was using witnesses who were never trained on the procedures.

TSA argues that non-certified passenger screeners can still provide passenger screening functions. (Agency Br. at 8). This is untrue. (Lyons September 6, 2006, Cert., ¶¶4, 10). In fact, when non-certified female passenger screeners were sent to do passenger screening, they were returned to baggage as they could serve no function doing passenger screening. **(**Lyons August 1, 2006, Cert., ¶14). There is specific training a screener must go through before the screener can perform passenger screening functions (Lyons August 1, 2006, Cert., ¶¶9-12).

It is truly amazing that TSA has the wherewithal to file a pleading with the Court arguing that Summary Judgment should be granted as there are no material facts in dispute, and in the same brief make numerous arguments about how TSA disagrees with the material statements of Lyons and that thus Lyons is wrong. (*Cf.* Agency Br. at 5-6 with Agency Br.6-8). This conflict alone sets forth the reason why the TSA's motion for summary judgment should be denied.

In regard to the Agency's statements about delays in Complainant's being dual-trained, these are ridiculous *ad hominem* attacks. Complainant has never been written up or disciplined for avoiding training, nor for refusing to follow any lawful or proper request. The Agency's allegations are also irrelevant, as each of the training dates which the Agency alleges Lyons missed, occurred after the gender discriminatory bid in April, 2005. Nonetheless, we will respond to the allegations.

The Agency claims that Complainant avoided training on six dates; however, Complainant has never failed to attend a training session when she was available and was

given reasonable notice. (Lyons September 6, 2006, Cert., ¶17). Twice, when Lyons was contacted about training, she advised the training team that she was unavailable due to a lack of advance notice. (Lyons September 6, 2006, Cert., ¶¶18 and 29-32). The Agency had no issue with Lyons' response and merely requested that she ask other screeners to attend the training. (Lyons September 6, 2006, Cert., ¶18 and 29-32). Complainant complied with these requests. (Lyons September 6, 2006, Cert., ¶18 and 29-32). Complainant was never previously informed that she was scheduled for training on May 23, 2005, and thus denies and disputes that she was scheduled for training. (Lyons September 6, 2006, Cert., ¶16). Additionally, Complainant does not recall being notified of trainings on August 8, 2005, September 11, 2005 or July 10, 2006. (Lyons September 6, 2006, Cert., ¶¶19, 28 and 32). Lyons' lack of recall regarding these dates is understandable, given the apparent disorganization and last-minute nature of the scheduling process. The Agency usually gives screeners only a few days notice, and often fails to notify screeners at all, when they are scheduled for training. (Lyons September 6, 2006, Cert., ¶¶12-15). Even after Lyons informed the training team in April 2006 that she would be available for training only after June 24, 2006, she was again contacted for training on May 15, 2006. (Lyons September 6, 2006, Cert., ¶¶30-31).

The disorganization of the training scheduling is so widespread that only three of the eight screeners who were to be scheduled for Lyons' August 2006 cross-training actually attended. (Lyons September 6, 2006, Cert., ¶15). Grandinetti, unsurprisingly, fails to mention that on one of the dates the Agency alleges Lyons avoided, Complainant was unable to participate in the training because the Agency failed to give her sufficient notice, informing her only hours in advance of the training. (Lyons September 6, 2006, Cert., ¶¶20-22). Further, the Agency purposefully scheduled the training for two days that Lyons was off duty. (Lyons September 6, 2006, Cert., ¶23). If she had given up her days off, she would have worked at least seven consecutive days. (Lyons September 6, 2006, Cert., ¶23). Further, Lyons was scheduled to take care of her daughter on both of her days off, and to attend a pre-scheduled doctor's appointment on one of those days. (Lyons September 6, 2006, Cert., ¶24-25). All TSA had to do, in order to have Complainant attend training, was to give her sufficient notice. TSA failed to do so and now argues that Lyons is to blame, without acknowledging the fact that no proper notice was given to Lyons. (Agency Br. at 8). One can only imagine how TSA's own lawyer would feel if she were put in such a situation.

TSA also demeans and degrades its other female employees Atiya Singleton and Julie Hanley with regard to not showing up for training. (Agency Br. at 9). We need to discuss the TSA's attack on these two women with them, to ascertain the merit to TSA's claim. However, if the attack is similar to the attack on Lyons, we would not be surprised if it

lacked merit. Further, it is of interest that what is missing in the two pages of whining about these women not showing up for training in May through September 2005, is any indication that any of these women were brought up on disciplinary charges for failing to follow a lawful order. (Agency Br. at 8-9). Of course, if TSA now chooses to bring up such untimely charges, it would only be in retaliation for these women asserting their Title VII rights because we are referencing their situations in support of Lyons' claim of gender discrimination.

The TSA further states that Lyons is incorrect in stating that the Agency did not advertise in women-oriented periodicals, attend job fairs directed toward women or contact women's groups to encourage women to apply for positions with TSA. (Agency Br. at 9). However, what follows is no reflection of any such advertising. TSA merely states more males apply for screener positions than females. (Agency Br. at 10). This has nothing to do with Lyons' point pertaining to advertising and recruiting efforts. The fact that more males than females apply for screener positions may be a direct result of the Agency aiming its advertising and recruiting more to males.

For the reasons stated above, we respectfully request that the Agency's motion for summary judgment be denied and that Lyons' cross-motion be granted.

As the Agency has provided us with the bid sheets earlier requested, we respectfully withdraw our motion to compel discovery.

Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,
LAW OFFICES OF TY HYDERALLY, PC

TY HYDERALLY, ESQ.
for the Firm

TH/jv
Encls.
cc: Teresa Davis, Esq. (via regular mail w/encls.)
Z:\1Law Offices of Ty Hyderally\Lyons Lori\Pleadings\090606.Letter Brief Reply on SJ & MTC.doc