FILED
2025 Jan-19 AM 08:47
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ALABAMA DEPARTMENT OF TRANSPORTATION, Defendant.	)	Case No. 2:23-cv-01001-NAD

PLAINTIFF UNITED STATES' REPLY TO DEFENDANT ALDOT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON LIABILITY

Plaintiff United States of America (United States) submits this Reply to the Response in Opposition to the United States' Motion for Summary Judgment (Doc. 40) filed by Defendant Alabama Department of Transportation (ALDOT) on December 24, 2024.

Table of Contents

Table of Authorities

Cases

Statutes and Regulations

I. Introduction

Mr. Davis was a successful, hard-working Transportation Maintenance Technician (TMT) even after his shoulder was left with permanent functional limitations due to an on-the job accident at ALDOT. Current and former managers—Todd Connell, Derek Blankenship, and John Gary Ray—believe he was successful, both before and after he developed his permanent disability. And even with his disability, none of the managers ever indicated that Mr. Davis could not perform the job of a TMT. In fact, several managers witnessed him lift objects as needed and perform all the tasks required, using his own adaptations, like lifting with his other arm or dragging items.

That changed when Mr. Davis reapplied in 2017–2018. Two of those same managers—one who had reviewed Mr. Davis and found him successful in the role, and another who observed his impairment and believed he was nonetheless successful—decided that because they did not think he could lift 50 pounds, a nonessential function of the job, they would refuse to hire him. It is undisputed that they also knew Mr. Davis to have previously been an excellent, capable employee for over 15 years in the same role. Yet they disregarded Mr. Davis's successful performance and disqualified him based upon his impairment. ALDOT instead hired other candidates—some of whom ALDOT described as "young" and "healthy" in interview notes—even though those candidates had no experience working at ALDOT. ALDOT thus refused to hire Mr. Davis, their most qualified candidate, on the basis of his actual or perceived disability, violating Title I of the Americans with Disabilities Act (ADA). This Court should thus grant summary judgment in favor of the United States on liability.

ALDOT's efforts to introduce immaterial facts do not change that Mr. Davis was qualified for the position because he could, and did, complete the requisite level of lifting in the TMT role, notwithstanding his impairment. This is true regardless of whether lifting 50 pounds

is an essential function. ALDOT's suggestion that Mr. Davis could suddenly no longer perform the position in 2018—after receiving successful performance evaluations from his impairment's onset through 2015—only further underscores the violation. Mr. Davis applied because, as he testified, nothing changed about his ability to be a TMT during that timeframe. Yet ALDOT refused to rehire him because of his impairment, and in doing so, violated Title I of the ADA.

II. Summary judgment is warranted for the United States.

The United States has shown that under both the "actual disability" and "regarded as" definition of disability, ALDOT violated Title I of the ADA when they failed to hire Mr. Davis because (1) Mr. Davis was a person with a disability, (2) he was otherwise qualified to perform the job, and (3) he was discriminated against based on his disability. *Cleveland v. Home Shopping Network, Inc.*, 369 F.3d 1189, 1193 (11th Cir. 2004). ALDOT also regarded Mr. Davis as a person with a disability.

A. The United States has established that ALDOT discriminated against Mr. Davis based on his actual disability at the time of the decision not to hire him.

The United States has demonstrated that under the ADA's expansive coverage, Mr. Davis qualifies as a person with an actual disability. Mr. Davis's limitations were permanent, and ALDOT fails to show any changes in his impairment from the time he reached maximum medical improvement in 2008 to the time he was denied the TMT job. Indeed, ALDOT's declaration from Mr. John Gary Ray states that Mr. Davis had reached maximum medical improvement but had *permanent* lifting limitations due to his shoulder injury. Decl. of John Gary Ray ¶ 7, Def.'s Ex. C, ECF No. 40-4 (Ray Decl.).

ALDOT's efforts to convolute the material facts merely distract from the issues relevant to the United States' Motion. The United States has established that Mr. Davis had an actual disability—a shoulder impairment with permanent limitations resulting from his on-the-job

injury. Pl. United States' Br. in Supp. of Mot. for Summ. J. on Liability at 14 (§ IV.C.1.i), ECF No. 32 (Pl.'s Mot.). While ALDOT initially argued that the United States had no evidence of permanent limitations since the time period after Mr. Davis's injury, *cf.* Def.'s Br. in Supp. of Def.'s Mot. for Summ. J. at 2, ECF No. 33 (Def.'s Mot.), ALDOT now shifts to claiming that Mr. Davis must have healed from his permanent limitations "as early as 2012." Def.'s Resp. in Opp'n to Pl.'s Mot. for Summ. J. on Liability at 3, ECF No. 40 (Def.'s Resp.). ALDOT's only evidence proffered for this new claim is that Mr. Davis said he used his left arm to pull himself into the driver's seat of his work truck in 2012. *Id.* But Mr. Davis's ability to occasionally use his left shoulder despite permanent limitations does not contradict his physician's assessment that those *permanent* limitations existed, because Mr. Davis's physician specifically noted that though Mr. Davis was permanently limited, he could perform occasional lifting. Davis Injury & Accommodations Records, Pl.'s Ex. 5 at ALDOT000253–54, ECF No. 34-10.[1] And ALDOT's continued references to Mr. Davis never returning to the doctor who gave him permanent restrictions is also unhelpful. Mr. Davis received two surgeries and was in recovery for nearly a year before he was assessed to have permanent limitations. *See* Pl.'s Mot. at 2–3, ECF No. 32. That he did not return to the doctor who assessed him only demonstrates that there was no expectation that his limitations would change or could improve. Mr. Davis's testimony further supports that his limitations continued until he applied for the position in 2018, and he never testified that those limitations resolved, in 2012 or any other time. Dep. of Ronald Davis, Pl.'s Ex. 1 at 199:5–21, ECF No. 34-1 (Davis Dep.) (testifying that at the time of the interview for the TMT position he might not have been able to lift heavy objects over his head). ALDOT's

[1] For clarity, the United States provides the ECF number of the relevant document, along with the Bates stamp provided by ALDOT—the number on the lower right of the page with no prefix.

attempts to contradict Mr. Davis's physician's assessment and to reframe Mr. Davis's testimony therefore fail.

B. Mr. Davis was also regarded as having a disability by ALDOT.

ALDOT argues again in its Response that the United States has not plausibly alleged that ALDOT regarded Mr. Davis as disabled, contrary to the factual allegations in the United States' Complaint. It claims that because the United States references accommodations in its Complaint, it cannot have pled a "regarded as" definition of disability. Def.'s Resp. at 24, ECF No. 40. It relies on *EEOC v. Allstate Beverage Co., LLC*, No. 2:19-CV-657-WKW, 2023 WL 158211 (M.D. Ala. Jan. 11, 2023) (subsequent history omitted) in making this argument. But the complaint in *Allstate* was different in a critical way. There, the plaintiff asserted claims based upon a failure to accommodate under 42 U.S.C. § 12112(b)(5). *Allstate*, Compl. ¶¶ 12, 26, 2019 WL 13245251 (M.D. Ala. Sept. 9, 2019). Given that failure to accommodate claims are not permitted under the "regarded as" definition of disability, it was reasonable to conclude that the "regarded as" definition was not alleged in that case. Here, there is no failure to accommodate claim, and discussion in the Complaint about accommodations only exists to provide context that ALDOT initially contemplated accommodations for Mr. Davis. Sept. 23, 2024 Hr'g Tr. at 11:15–19, ECF No. 36. This is not inconsistent with a "regarded as" claim, and in fact bolsters that claim because it demonstrates that ALDOT knew of Mr. Davis's impairment.

Proceeding to the merits of the regarded as claim, the United States must demonstrate that Mr. Davis was perceived to have a physical impairment, regardless of whether the impairment limits or is perceived to limit a major life activity. 42 U.S.C. § 12102(3)(A); 29 C.F.R. § 1630.2(g)(1)(iii); *Lewis v. City of Union City*, 934 F.3d 1169, 1181 (11th Cir. 2019). To establish perception of an impairment, courts look to whether the "decisionmaker" had knowledge of it. *See Sledge v. Nexstar Broad., Inc.*, No. 4:20-CV-170 (CDL), 2021 WL

5772448, at *3 (M.D. Ga. Dec. 6, 2021). This is easily established here, where Mr. Blankenship readily admits he knew about Mr. Davis's shoulder impairment, even providing examples to support that knowledge. *See* Pl.'s Mot. at 19–20, ECF No. 32. ALDOT seeks to minimize this testimony, saying that Mr. Blankenship was "generally aware" of Mr. Davis's shoulder injury, but that he had "no knowledge of his restrictions or Davis's present condition." Def.'s Resp. at 10, ECF No. 40. Not so—as ALDOT admits in its Response, Mr. Blankenship testified that he remembered the limitations connected with Mr. Davis's impairment going into Mr. Davis's interview. *See* Def.'s Resp. at 11, ECF No. 40. This is sufficient to establish that Mr. Davis was regarded as disabled under the ADA.

ALDOT's attempts to raise the bar on this aspect of the United States' Title I claims are unsupported. In *Peace v. Metric Engineering, Inc.*, the only case ALDOT cites to support its argument that there is a fact issue concerning whether Mr. Blankenship perceived Mr. Davis as disabled, Def.'s Resp. at 25, ECF No. 40, the defendant's employees denied that they had made any comments or had any knowledge about plaintiff's PTSD whatsoever. No. 5:21CV137-TKW-MJF, 2022 WL 20087948, at *14–15 (N.D. Fla. Sept. 19, 2022). The Court noted that if such comments were made, a jury could reasonably find that defendant perceived plaintiff to be disabled. *Id.* at *15 (citing *Coleman v. Sec'y of Veterans Affairs*, No. 6:19-cv-1303-Orl-37GJK, 2021 WL 2806142, at *5 (M.D. Fla. Jan. 21, 2021), which found that various comments on plaintiff's difficulty hearing and understanding coworkers showed a perception of disability). Here, Mr. Blankenship does not deny that he perceived Mr. Davis's impairment—he recalled several times when he observed its impacts, sharing in one example that he could "physically see" that Mr. Davis "wasn't able to lift;" "his rotation was hindered;" "[h]e couldn't lift his arms all the way up;" "[h]e couldn't lift his arms;" and "he didn't have full rotation of his shoulder."

Dep. of Derek Blankenship, Pl.'s Ex. 3 at 69:21–70:9, ECF No. 34-3 (Blankenship Dep.). Mr. Connell clearly perceived that Mr. Davis had an impairment at the time of the interview, as he listed an inability to lift 50 pounds as a weakness. *See* Calera District Hiring Files, Pl.'s Ex. 7 at ALDOT001630, ECF No. 34-15; Dep. of Todd Connell, Pl.'s Ex. 2 at 121:5–15, ECF No. 34-2 (Connell Dep.). Consistent with both *Peace* and *Coleman*, this evidence shows the decisionmakers perceived Mr. Davis as having an impairment. Under the broad definition of disability in the ADA, Mr. Davis was regarded as having a disability. *See* 29 C.F.R. § 1630.1(c)(4).

The United States has also demonstrated that Mr. Davis was qualified to perform the TMT role, the second prong of the prima facie case in the *McDonnell Douglas* formulation. *Holly v. Clairson Indus., L.L.C.*, 492 F.3d 1247, 1256 (11th Cir. 2007). ALDOT again raises the 50 pound lifting requirement, stating that a fact issue remains. But regardless of whether lifting at least 50 pounds is an essential function, Mr. Davis could perform the requisite level of "lifting" at the required frequency *without* accommodation through a combination of lifting, dragging, using machinery, and working with others. ALDOT's Response puts forward two arguments that cannot both be true—that Mr. Davis's lifting limitation had "resolved" by as early as 2012, and that he was nonetheless not qualified for the position in 2018 because of his lifting restriction. The more logical conclusion is the simpler one—that Mr. Davis could perform the required lifting for the TMT role notwithstanding his impairment. This is supported by his success in the role, and bolstered by the testimony of former managers, including Mr. Ray, noting his success in the role. *See* Pl.'s Mot. at § IV.C.2, ECF No. 32; Ray Decl., Def.'s Ex. C, ECF No. 40-4. Mr. Ray's declaration only demonstrates further that Mr. Davis was qualified—Mr. Ray recalls that Mr. Davis "had permanent lifting restrictions from his shoulder injury," and

that Mr. Davis could still perform tasks such as "driving, flagging traffic, and removing roadway debris." Ray Decl., Def.'s Ex. C ¶ 9, ECF No. 40-4.

In an attempt to argue that Mr. Davis was not qualified for the position, ALDOT argues that TMTs do not work in teams to help each other with tasks like lifting, saying they work in teams only "in case someone gets hurt on the job." Def.'s Resp. at 8, ECF No. 40. But this directly contradicts the form that John Gary Ray filled out before Mr. Davis returned to work after his injury indicating that "[n]ormally this task is done by a two-person crew, therefore coworker help should be available for larger items." Davis Injury & Accommodations Records, Pl.'s Ex. 5 at ALDOT000227, ECF No. 34-9.

ALDOT also makes much of the 50-pound lifting "job dimension," seeking to disavow the documents they themselves use to advertise and assess performance of the TMT role that make no mention of it. But the inclusion of "lift at least 50 pounds" in a list of 35 job dimensions used only during interviews does not disqualify Mr. Davis from the position. Mr. Davis was qualified for the TMT job because he could perform the essential functions that involved removing objects from the highway, including any lifting required. And even if lifting objects that weighed at least 50 pounds was an essential function of the job, this lifting could be and was accomplished by Mr. Davis in several ways for 15 years of employment with ALDOT both before and after his permanent limitations. He accomplished these tasks the same way other crew members without impairments did—in pairs or teams or with machinery to avoid injury. *See* Davis Injury & Accommodations Records, Pl.'s Ex. 5 at ALDOT000227, ECF No. 34-9 (form mentioned in Mr. Ray's declaration specifically says that employees typically work as a crew to pick up and remove hazardous objects); Pl.'s Mot. at 7–8, ¶¶ 31–37, ECF No. 32.

In addition, as previously discussed, ALDOT commended Mr. Davis for his performance in removing objects from the roads. Mr. Davis's 2010 performance evaluation included comments specifically stating that "Mr. Davis does an excellent job picking up trash bags, dead animals and other debris from the roadway in order to ensure the safety of the traveling public." Davis Employee File, Pl.'s Ex. 4 at ALDOT000059, ECF No. 34-5.

The evidence also shows that removing debris from the roadway was an essential function of the TMT role, but there is no evidence that this task requires lifting those heavy items independently, or overhead in a way that Mr. Davis could not accomplish. ALDOT tries to claim that lifting objects that weigh more than 50 pounds must sometimes be done without machinery or the assistance of others, but it then describes primarily moving debris out of the roadway, which can be accomplished without lifting 50 pounds overhead. Def.'s Resp. at 8–9, ECF No. 40; Ray Decl. ¶ 6, Def.'s Ex. C, ECF No. 40-4. As Mr. Davis described, he accomplished this requirement by either lifting objects or dragging them off the roadway and letting his supervisor know, including by using the radio, that they needed to be removed. Davis Dep., Pl.'s Ex. 1 at 259:20–262:1; 366:13–367:23, ECF No. 34-1. Mr. Davis also testified that lifting was done in teams "[m]ost of the time" because "[w]e worked as a crew and everybody just, you know, helped out each other. That's what, you know the crew was for, you know, to help each other out. We didn't go solo unless we just have to." Davis Dep., Pl.'s Ex. 1 at 365:6–17, ECF No. 34-1. It would put employees at an unnecessarily greater risk of injury if ALDOT required them to regularly physically lift, independently, objects weighing more than 50 pounds when such objects could be removed from the roadway without lifting, and teammates and machinery could ultimately be used to dispose of those objects. In fact, Mr. Davis testified that TMTs could get in trouble, or even fired, for lifting heavy objects and putting themselves at risk

of injury unnecessarily. *Id.* at 364:2–365:5. Because of this, ALDOT's quibbles with the 50 pound lifting requirement ultimately have no bearing on whether Mr. Davis could do the job. As Mr. Davis explained, "…you don't have a . . . weight limit on nothing out there telling you what it is. And if I figured it was too big, even when I wasn't hurt, I would let somebody know that I needed help doing this. But if I could do it on my own, I didn't call for help or ask for help." *Id.* at 198:1–17. Therefore, Mr. Davis was always able to remove debris effectively regardless of its weight, and nothing in the record indicates otherwise.

ALDOT further distracts by arguing that the United States relies on "inapplicable documents" to establish the job duties of a TMT. Def.'s Resp. at 4–7, ECF No. 40. ALDOT now disavows the documents it produced when the United States asked in its second interrogatory for ALDOT to identify and explain essential functions. In response, ALDOT referred the United States to the TMT I Job Posting, saying "The TMT I job dimensions and functions are outlined in documents produced as ALDOT 360 . . . ." Pl.'s Ex. 14 at 3. Realizing that this document is problematic for them, ALDOT now claims that this posting is just a "general description," and that even though ALDOT works directly with the State Personnel Department to share "specific duties" of the role, it is actually just a "pared down summary" for "example purposes only." Def.'s Resp. at 4–5, ECF No. 40. The United States relies on the documents that ALDOT themselves provided to demonstrate essential functions, which includes the TMT I and II Job Postings and Position Classification Questionnaire. Pl.'s Ex. 6, ECF No. 34-11.

And although ALDOT now says that "the only accurate and complete description" of the TMT's essential functions is the Job Dimensions and Interview form, Def.'s Resp. at 7, ECF No. 40, the evidence establishes that form is not the only relevant document discussing TMT job

duties, nor is it complete. Importantly, the Job Dimensions and Interview form says nothing about "essential functions." It is not used in appraisals, evaluations, or job postings. Mr. Blankenship testified that the Job Dimensions and Interview form is "basically saying the same thing" as the actual job posting. Blankenship Dep., Pl.'s Ex. 3 at 165:3–7, ECF No. 34-3. And the Job Dimensions and Interview form also contains "dimensions" that clearly cannot be taken as absolute requirements for the position. For example, dimension 34 is "other task[s] as assigned," and dimension 35 is "other," theoretically allowing interviewers to insert any "dimension" they like (though the blank line next to that task was not filled on any of the versions of this form provided to the United States). Pl.'s Ex. 7 at ALDOT001552, ECF No. 34-12. Thus, there are no more relevant position descriptions than the one the United States has relied upon, and that ALDOT produced as showing the essential job functions.

Finally, the United States has demonstrated that Mr. Davis suffered an adverse employment action because of his disability. *Holly*, 492 F.3d at 1261. The United States can rely upon either direct or circumstantial evidence to make this showing. *See* Pl.'s Mot. at § IV.C.3, ECF No. 32. ALDOT's Response discusses conflicting accounts of what happened in Mr. Davis's interview. Pl.'s Resp. at 28, ECF No. 40. Although what happened in Mr. Davis's interview is disputed, both Mr. Davis's version and the hiring managers' version of what occurred supports the United States' Motion.

Mr. Davis's account of the interview supports that he was not hired because of his disability. Mr. Davis testified that Mr. Connell only asked him if he could lift fifty pounds—he was asked no questions about any other requirements. Davis Dep., Pl.'s Ex. 1 at 173:14–174:10, ECF No. 33-2. Mr. Davis said he responded that he did every job he was assigned, and that he did the job well, and that Mr. Connell never followed up or asked to him to clarify. *Id.* at 177:5–

178:13. The fact that the managers then wrote that he couldn't lift 50 pounds on Mr. Davis's interview form shows that they clearly regarded him as unable to do so by relying on their prior knowledge of his disability. Mr. Davis did not, in his recollection of the interview, respond that he couldn't lift 50 pounds—he only said that he had performed the job successfully in the past. *Id.*

The hiring managers' version of what happened in the interview also supports that Mr. Davis was not hired because of his disability. Both managers testified that Mr. Davis admitted to not being able to fulfill the minimum lifting requirement. This is tantamount to the managers admitting that they perceived Mr. Davis to have an impairment. Mr. Blankenship testified that at the time of the interview, "we knew the injury was there." Blankenship Dep., Pl.'s Ex. 3 at 119:2–15, ECF No. 34-3. So regardless of what was actually said in the interview, the United States can prevail in showing that ALDOT perceived Mr. Davis as having a disability. This is sufficient to meet the first prong of the prima facie case, that Mr. Davis was regarded as having a disability, and this also demonstrates the causation prong—that ALDOT failed to hire him on the basis of that disability. *See Lewis*, 934 F.3d at 1184. In either telling, ALDOT regarded Mr. Davis as having an impairment, and ALDOT chose not to hire him due to that same impairment.

C. The United States has met its burden of proof.

Under a direct evidence theory, or under any theory of circumstantial evidence, the United States is entitled to judgment on liability. Where a case of discrimination is proven by direct evidence, as the United States has done here, Pl.'s Br. at 27–30, ECF No. 32, the burden then shifts to the defendant to prove by a preponderance of evidence that the same decision would have been reached even absent the presence of the discriminatory motive. *Fernandez v. Trees, Inc.*, 961 F.3d 1148, 1156 (11th Cir. 2020); *Schultz v. Royal Caribbean Cruises, Ltd.*, 465 F. Supp. 3d 1232, 1263 (S.D. Fla. 2020). ALDOT has made no such showing. Managers

testified that the 50 pound lifting issue—which the United States has demonstrated was not an essential function—was the sole reason Mr. Davis was not hired. *See, e.g.*, Blankenship Dep., Pl.'s Ex. 3 at 133:1–3, ECF No. 34-3. Mr. Blankenship went on to mention that Mr. Davis had a Commercial Driver's License, which is a "big thing," and he "not only h[ad construction] experience, he actually worked for ALDOT, so he [knew] how things go, that's a big yes, big thumbs up." *Id.* at 117:16–118:15. Yet instead of bringing on an employee ALDOT knew had exactly the experience they needed for the TMT role, ALDOT sought "healthy" candidates, and they deemed Mr. Davis unfit for the position solely because of their belief that he could not lift 50 pounds. ALDOT cannot show that it would not have hired Mr. Davis anyway, even if he didn't have an impairment, because ALDOT's own managers made clear that they would have hired him absent his impairment. *Id.* at 161:23–162:10; [2] Connell Dep., Pl.'s Ex 2 at 127:11–22, ECF No. 34-2.[3] Thus, the United States is entitled to judgment on liability. *See Fernandez*, 961 F.3d at 1156.

If the Court deems the evidence to be circumstantial, or subject to more than one interpretation, the *McDonnell Douglas* framework of alternating burdens applies. *Schultz*, 465 F. Supp. 3d at 1263. Under that framework, once the employee's prima facie case is established, the employer has the burden of producing a legitimate, nondiscriminatory reason for the challenged employment decision. *Id.* at 1264. If the employer can do so, the plaintiff can provide evidence, including the previously produced evidence, sufficient to permit a reasonable

[2] "Q: When he came in for the interview, before he said anything about not being able to lift 50 pounds, did you think you were going to hire him back? A: I would assume so, yes. Q: So your opinion changed when you heard he couldn't lift 50 pounds? A: Correct. Q: And there was nothing else that influenced that decision? A: No."

[3] "Q: So the reason for not hiring him was because of the 50-pound lifting issue that came up? A: Yes. . . . Q: And was there any other reason that you didn't hire him? A: Not that I recall, no. That's the only weakness I've got down."

factfinder to conclude that the reasons given by the employer were not the real reasons for the adverse employment decision. *Id.* If the employer cannot rebut the presumption created by the prima facie case, judgment is proper for the plaintiff. *Texas Dep't of Cmty. Affs. v. Burdine*, 450 U.S. 248, 254 (1981).

The United States can make out the prima facie case for disability discrimination, as explained in detail in its opening brief, and ALDOT fails to rebut that presumption. Pl.'s Mot., ECF No. 32. ALDOT now raises as its sole "legitimate nondiscriminatory reason" that Mr. Davis did not meet the minimum lifting requirement. But the evidence demonstrates that the 50 pound lifting requirement on the Job Dimensions and Interview form is a pretext because lifting 50 pounds independently is not an essential function of the job. A plaintiff can show pretext by, *inter alia*, casting sufficient doubt on the defendant's proffered nondiscriminatory reasons to permit a reasonable fact finder to conclude that the employer's proffered reasons were not what actually motivated its conduct. *Lewis*, 934 F.3d at 1186. Here, ALDOT refused to hire Mr. Davis not because he could not *actually* meet the minimum requirements of the TMT position—managers testified on the contrary that they knew he had successfully performed the position for many years—but because of their belief that he could not lift at least 50 pounds. Mr. Blankenship went so far as to suggest that Mr. Davis could have just lied about his lifting ability, and ALDOT may have proceeded to hire him, further demonstrating that the 50 pound lifting requirement was the only reason he was not hired. Blankenship Dep., Pl.'s Ex. 3 at 119:2–15, ECF No. 34-3. There is no evidence to suggest that any other reason for refusing to hire Mr. Davis was at play.

ALDOT's implication that Mr. Blankenship or Mr. Connell needed to state explicitly that they did not hire Mr. Davis "because of his disability" demands too much. ALDOT's decision

does not exist in a vacuum, in which the managers who interviewed Mr. Davis shed all prior knowledge of his work and impairments when he entered the room. To the contrary, Mr. Blankenship admitted that he remembered Mr. Davis in the interview, had observed Mr. Davis's impairment impacting his ability to lift objects, and that he believed Mr. Davis was nonetheless successful in the role when they worked together. *See* Pl.'s Mot. at § IV.C.1.ii, ECF No. 32. However, the ALDOT hiring managers believed that while Mr. Davis could not lift 50 pounds, as stated on the Job Dimensions form, that it was a pro that others were "young" and "healthy." *Id.* at § IV.C.3. ALDOT attempts to disclaim those interview notes, suggesting that an "unidentified author" made them. Def.'s Resp. at 29, ECF No. 40. But Mr. Connell testified that all three interviewers consulted together and "normally we all three pretty much agreed. I don't ever recall an instance where one of us just absolutely disagreed with the other two." Connell Dep., Pl.'s Ex. 2 at 108:20–109:5, ECF No. 34-2. ALDOT cannot place blame on just one of the interviewers, when the three interviewers considered their unsigned interview notes together to come to a decision. This evidence overcomes ALDOT's purported "legitimate nondiscriminatory reason" and demonstrates that the hiring managers felt they must reject Mr. Davis based on the pretextual lifting requirement.[4]

[4] ALDOT argues in a footnote that the evidence is not the type that could establish the alternative "convincing mosaic" method of proving discrimination through circumstantial evidence. Def.'s Resp. at 16 n.5, ECF No. 40. Not so. A convincing mosaic can be established if evidence shows, among other things, "(1) suspicious timing, ambiguous statements, and other bits and pieces from which an inference of discriminatory intent might be drawn, (2) systematically better treatment of similarly situated employees, and (3) that the employer's justification is pretextual." *Lewis*, 934 F.3d at 1185 (11th Cir. 2019) (alterations, quotations, and citation omitted). Such evidence exists here, including: statements by managers about Mr. Davis's impairment; that they set aside their awareness that he could do the requisite lifting for the job and failed to hire him because of their belief he could not lift more than 50 pounds; that they hired employees with significantly less experience than Mr. Davis, and for some of those candidates, they considered as "pros" that the candidates were "young" and "healthy." Pl.'s Mot. at §§ IV.C.1.ii–IV.C.3, ECF No. 32.

III. Conclusion

For the foregoing reasons, the Court should grant the United States' motion for summary judgment.

Dated: January 19, 2025

For the United States of America:

ANNE S. RAISH
Principal Deputy Chief

JENNIFER K. MCDANNELL
Deputy Chief
DAVID K. GARDNER
Trial Attorney

STEPHANIE M. BERGER
Trial Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
150 M Street, N.E.
Washington, D.C. 20002
Telephone: (202) 598-1628
Email: david.gardner@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this the 19th day of January, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will forward a copy thereof to all attorneys of record.

DAVID K. GARDNER
Attorney Advisor
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
150 M Street, N.E.
Washington, D.C. 20002
Telephone: (202) 598-1628
Email: david.gardner@usdoj.gov

Plaintiff United States' Exhibit 14: Excerpt of Defendant's Responses to Plaintiff's First Set of Interrogatories*

*The full file was excerpted to limit the size of submissions, however the United States will submit the full file upon request.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, U.S. DEPARTMENT OF JUSTICE DISABILITY RIGHTS SECTION **Plaintiff,** **v.** **ALABAMA DEPARTMENT OF TRANSPORTATION** **Defendant.**	Case No.: 2:23-cv-1001-NAD

DEFENDANT'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Defendant Alabama Department of Transportation ("ALDOT"), pursuant to Fed. R. Civ. P. 26 and 33 and subject to and without waiving its objections, submits the following responses to Plaintiff's First Set of Interrogatories:

Interrogatories

Interrogatory No. 1: Explain how and when Defendant learned of Mr. Davis's health condition(s) or injuries affecting his ability to lift objects; treatment(s) for those health conditions or injuries; or disability, and identify any document Defendant received, sent, or created regarding Mr. Davis's health condition(s) or injuries affecting his ability to lift objects; treatment(s) for those health conditions or injuries; or disability.

Objection: ALDOT objects to this interrogatory as not proportional to the needs of this case because it is vague and overly broad in temporal scope. The request does not specify the health conditions or restrictions the request is asking about or the applicable period. Considering the single hiring decision at issue is the non-selection of Mr. Davis for the TMT I position in 2018, to the extent this request seeks other information, it is not proportional to the needs of this case for the reasons stated.

Answer: Subject to and without waiving the foregoing objections, ALDOT learned of Mr. Davis's injuries on October 19, 2007, the day Mr. Davis's on-the-job accident occurred. The accident was reported to Alfonzo Wilson, who completed the requisite paperwork for on-the-job injuries. Thereafter, ALDOT learned of Mr. Davis's treatment and related work restrictions through a series of Therapeutic Activity Restriction forms from the State Employee Injury Compensation Trust Fund ("SEICTF"). More specifically, the SEICTF sent the forms directly to ALDOT's risk management personnel, not any employees in Mr. Davis's supervisory chain of command. ALDOT did not learn of Mr. Davis's inability to lift 50 pounds or that he did not meet the minimum job requirements for the TMT I position in 2018 until he disclosed this in his interview. Please see ALDOT 251 – 358; 1630.

Interrogatory No. 2: Identify and explain every essential function of a Transportation Maintenance Technician, at all levels, including the percentage of time expected to be spent on each essential function, any job description or other document referencing the essential function, and when the essential function became part of the job responsibilities, including any lifting requirements.

Objection: ALDOT objects to this interrogatory as overly broad in temporal and geographical scope and to the position at issue. As relevant to Plaintiff's claims, Mr. Davis applied for the TMT I position, not the TMT II or III positions. Additionally, this interrogatory includes no time limitation and since Plaintiff's interrogatories ask ALDOT to assume the relevant timeframe is June 8, 1999 to September 23, 2020, this request appears to encompass a more than 20-year period. Requests for information concerning the essential functions and time spent performing those functions for roles that are not at issue over a more than 20-year period are not proportional to the needs of this case, exceed the proper scope of discovery, seek documents that are not relevant and would not be admissible or lead to the discovery of admissible evidence, and are unnecessarily burdensome to ALDOT. ALDOT made the

hiring decision at issue solely based on the essential functions of the TMT I job description in 2017-2018, and therefore, its answer is limited to the essential functions as outlined in the TMT I description in effect in 2017-2018.

Answer: The TMT I job dimensions and functions are outlined in documents produced as ALDOT 360; 1560 and 1591. The TMT I job dimensions require "perform[ance] to a fully competent level," and in pertinent part, such dimensions include: lifting at least 50 pounds, cutting vegetation, spreading asphalt, using power tools and heavy equipment, and removing debris from the roads, medians and shoulders of the roads. The other job dimensions involve the applicant's general ability to be a dependable employee and co-worker as well as working outside in tough conditions and other safety-related concerns, such as working near automobile traffic. Moreover, the TMT I is responsible for loading and unloading materials, supplies, and equipment and for setting up and operating traffic control devices. Additionally, while possession of a valid CDL is listed as a required job dimension, selected candidates may satisfy this requirement by either possessing a valid CDL or obtaining a CDL during the initial probationary period of their employment, as a condition of continued employment. Selected candidates are informed of this condition as part of a conditional agreement that they are presented with and sign on the first day of employment. Lastly, the "percentage of time expected to be spent on each essential function" varies by the day, month, and year, as Mr. Davis's performance appraisals reflect.

Interrogatory No. 3: Identify any communication between Defendant and any of Mr. Davis's health care providers from June 16, 2007 through the present, regarding Mr. Davis, including, but not limited to, Mr. Davis's health condition(s); temporary leave; Mr. Davis's return to work; and potential reasonable accommodations or other modifications to work responsibilities. Please identify the date and form of each such communication.

Objection: ALDOT objects to this request as overly broad inasmuch as it seeks communications that were not made available to or relied on by the decisionmakers for the position in the Calera District office that is at issue. Any such communications are wholly unrelated to the decision on which Plaintiff's claims are based, and any request seeking such information is not proportional to the needs of this case, exceeds the proper scope of discovery, seeks information that would not be admissible or lead to the discovery of admissible evidence, and is unnecessarily burdensome on ALDOT.