

**COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION  
One Ashburton Place, Room 601  
Boston, MA 02108  
[www.state.ma.us/mcad](http://www.state.ma.us/mcad)**

*Date: 7/1/04*

David Higgs  
1269 Pleasant Street  
Weymouth, MA 02189

**RE: Higgs v. Northrop Grumman  
No: 04-BEM-01326**

Dear Mr. Higgs,

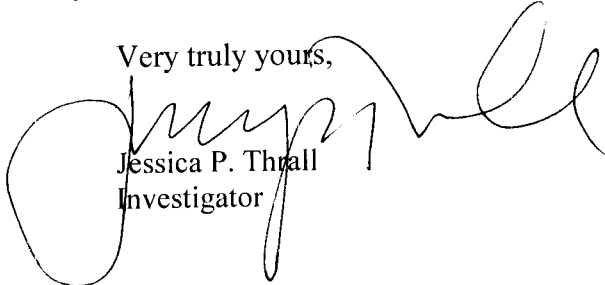
Enclosed, please find a copy of the Respondent's Position Statement. Now that you have received the Position Statement, this Commission requests that you submit a written response to the Position Statement. Your response to the Respondent's position statement is essential to the investigation of this matter. Therefore, please submit your written rebuttal by **Thursday July 22<sup>nd</sup>, 2004**.

The Rebuttal Statement is the tool that the Complainant's use to address the statements written in the Respondent's Position Statement. Please state your opinion as to whether you agree or disagree with the Respondent's statements and include the relevant evidence that will support your opinions.

Please be advised that if you fail to provide a rebuttal, your case can be submitted for final disposition without the benefit of your response to the Respondent's statements.

If you have any questions, you may contact me directly at (617) 994-6079.

Very truly yours,

  
Jessica P. Thrall  
Investigator



Electronic Systems  
Northrop Grumman Corporation  
Post Office Box 1897  
Baltimore, Maryland 21203

July 1, 2004

Ms. Jessica Thrall  
Massachusetts Commission Against Discrimination  
One Ashburton Place  
Boston, MA 02108

Re: David Higgs  
Charge Number: 04BEM01326

Dear Ms. Thrall:

This letter responds to your request for a position statement in connection with the above-referenced charge by David Higgs ("Higgs" or "the Charging Party") against Northrop Grumman Corporation ("Northrop Grumman" or "the Company")<sup>1/</sup>. The charge alleges that Northrop Grumman discriminated against the Charging Party because of his disability. For the reasons more fully stated below, the charge is without merit and should be dismissed without further delay.

#### The Company's Position

Mr. Higgs has not been discriminated against in any manner. All decisions with respect to Mr. Higgs' employment have been made in accordance with Company policy and procedure and without regard to any purported disability or any other protected characteristic.

#### The Charging Party's Allegations with respect to Disability Discrimination Have No Merit<sup>2/</sup>

<sup>1/</sup> The information contained in this letter is confidential. Accordingly, the Company submits this letter with the expectation that the contents will be kept confidential to the maximum extent permitted by law. Moreover, the Company reserves the right to alter or amend the Position Statement it has submitted or to supplement it in the future as additional information becomes available or for other reasons.

<sup>2/</sup> As a threshold matter, the Charging Party's allegations are too vague and non-specific to state a claim for discrimination, let alone to fairly give Respondent notice of any such claims against it or permit a point-by-point response. See 804 C.M.R. 1.10(5) ("The Complaint shall contain (a) the dates on which the unlawful discriminatory acts occurred; (b) a concise statement of the alleged discriminatory acts ...").

In order to establish that the Company violated Chapter 151B by failing to provide a reasonable accommodation, the Charging Party must establish: (1) he is a qualified individual with a disability; (2) that despite knowing the employee's limitations, the employer failed to provide a reasonable accommodation; and (3) that failure affected the terms, conditions or privileges of the employee's employment. See Winters v. ADAP, Inc., et al., 76 F. Supp. 2d 89 (1999). Here, the Charging Party cannot satisfy any of these essential elements. He never notified the Company of an alleged disability. Moreover, Mr. Higgs never informed the Company that he required a reasonable accommodation as a condition of employment. The Company cannot be held liable for failing to provide a reasonable accommodation to an unknown handicap. Ocean Spray Cranberries v. Massachusetts Commission Against Discrimination, 808 N.E. 2d 257, 271 fn.21 (2004) ("basic principle that an employer is not required to accommodate a need that it does not know exists"). See Massachusetts Commission Against Discrimination Guidelines: Employment Discrimination on the Basis of Handicap, Chapter 151B § II.C (1998) ("An employer is obligated to provide reasonable accommodation only to the known handicaps of an applicant or employee. An employer need not offer or provide reasonable accommodation where it has no knowledge or reason to know of the individual's need for an accommodation").

The Charging Party was first hired as a temporary employee by Fibersense Technology Corporation ("Fibersense") on September 21, 1999, to work as a Software Engineer on a part-time basis. In December 2002, Northrop Grumman acquired Fibersense. Prior to the acquisition, the Charging Party had become a regular Fibersense employee working fewer than 40 hours a week. Contrary to the Charging Party's allegation, he did not become a part-time employee as a result of the Northrop Grumman acquisition; he was already a part-time employee and Northrop Grumman honored his request to remain a part-time employee.

Beginning in early 2003, the Charging Party was diagnosed with a variety of medical conditions which caused him to miss work frequently and to take a formal leave of absence. In order to allow Mr. Higgs to perform his duties during these illnesses, the Company agreed to alter his work schedule, his work area, and the manner in which he performed his duties. The Company took these actions despite the fact that the Charging Party did not supply any medical documentation of a purported disability.

The Charging Party alleges that he was ignored when he asked for a job description. This allegation is false. As with any employee who requests a job description, the Charging Party was given both a hard copy and an online link to the SIRS description of his job. The SIRS description was given to the Charging Party during a meeting with the Director of Engineering and Human Resources on January 9, 2004. A copy of the SIRS job description which was provided to the Charging Party is attached as Exhibit 1.

The Charging Party states that on February 18, 2004, he formally requested in writing reasonable accommodations for his alleged disability, but did not provide any medical documentation in support of his request. Despite failing to do so, Mr. Higgs

sought several short-term accommodations such as reduced hours, and those requests have been granted on an as-needed basis.

Contrary to the allegation in his charge, the Company responded to the requests made by Mr. Higgs in his February 18, 2004 memo. The Charging Party's memo contained seven requests, and the Company responded to those requests as follows:

- 1) Regarding the Essential Functions Job Description - The Charging Party had been provided with a copy of the SIRS job description on January 9, 2004, during a meeting with Human Resources and the Director of Engineering. The Charging Party was also given a link to the SIRS website to review his job description. This SIRS description is used for all employees corporate wide.
- 2) Regarding a Modified Work Schedule – Since the start of his employment with Fibersense and continuing up to the present with Northrop Grumman, the Charging Party has always been allowed to work flex time with his managers approval.
- 3) Regarding the Workplace Environment –The Charging Party has been afforded a private office despite the fact that his current job description allows only for a cubicle.
- 4) Regarding Obtaining or Modifying Adaptive Job Equipment or Devices – When the Charging Party is required to work on the Test Console (the Test Console is located on the manufacturing floor and used by multiple employees), the Console is modified by either lowering equipment to desk level or raising a seat to allow him to sit at the level of the Console.
- 5) Regarding Modifying Methods of Supervision – The Charging Party's request directions.
- 6) Regarding Permitting Performance of Job Functions at Alternative Locations – The Charging Party's request to be allowed to work at home was denied because the nature of his job requires him to be at the work site.
- 7) Regarding Employment Status – The Charging Party's status as a regular employee working fewer than 40 hours a week has remained unchanged throughout the transition from Fibersense to Northrop Grumman and is in place today.

The Company has no idea why the Charging Party states that “on March 22, 2004, I was informed that my request for reasonable accommodations would not be answered.”

Like the other allegations in the complaint, there is no factual basis to support this assertion.

Conclusion

As described above, the Charging Party has not been subjected to discrimination of any sort whatsoever. His charge has absolutely no basis in fact and should be dismissed without further delay.

As requested in the notice of complaint, please be advised that the Company is represented by Donald W. Schroeder, Mintz Levin Cohn Ferris Glovsky and Popeo PC, One Financial Center, Boston, MA 02111, (617) 348-3077.

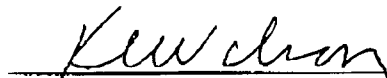
If you require additional information, please do not hesitate to contact Mr. Schroeder directly.

Sincerely,



Kevin L. Wilson  
Manager, EEO/Diversity  
Northrop Grumman  
Electronic Systems

On behalf of Respondent, I have read the foregoing Position Statement. Said Position Statement was prepared by or with the assistance of agents, employees, representatives or attorneys of Respondent, or others believed to have relevant information, and with the assistance and advice of counsel, upon which I have relied. The facts set forth therein, subject to inadvertent or undiscovered errors or omissions, are based on and therefore necessarily limited by the records and information still in existence, presently recollected, thus far discovered in the course of the preparation of the Position Statement, and currently available to Respondent. Consequently, Respondent reserves the right to make any changes in or additions to the Position Statement if it appears at any time that errors or omissions have been made therein or that more accurate or complete information has become available. Subject to the limitations set forth herein, the facts contained in the Position Statement are true to the best of my present knowledge, information and belief. I certify under penalty of perjury on behalf of Respondent that the foregoing is true and correct. Executed on July \_\_\_\_, 2004.

  
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Kevin L. Wilson

LIT 1467615v1

# ES SIRS Exempt Benchmarks

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## Family

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### 17 DESIGN ENGINEERING

#### T007 S379 CHEMISTRY-ANALYTICAL

Performs qualitative and quantitative analyses of organic and inorganic compounds to determine chemical and physical composition and properties. Evaluates new drugs prior to their initiation into clinical and/or toxicological investigations by verifying their identity, purity, and homogeneity. Investigates dosage forms of the new drugs to verify their identity, potency, and pharmaceutical properties. Ascertains relationships between molecular structure and physical properties to aid in analysis of unknown compounds. Conducts research to develop or improve analytical techniques, methodology, procedures, and investigates application of instruments in analysis. Organizes and interprets all data obtained. May also require the use of mass spectrometer equipment.

#### T014 S208 PROGRAMMING

Creates ad hoc or bolt-on programs for organizations such as Finance, Human Resources, Sales, Research & Development or Manufacturing. Provides patches and upgrades to existing systems. May design Graphical User Interface (GUI) to meet the specific needs of users. Corrects program errors, prepares operating instructions, compiles documentation of program development, and analyzes system capabilities to resolve questions of program intent, output requirements, input data acquisition, programming techniques, and controls. Works closely with functional users to enhance and maintain programs.

#### T015 S210 ENGINEERING-SOFTWARE

Conducts or participates in multidisciplinary research and collaborates with equipment designers and/or hardware engineers in the planning, design, development, and utilization of electronic data processing systems for commercial software. Determines computer user needs; advises hardware designers on machine characteristics that affect software systems such as storage capacity, processing speed, and input/output requirements; designs and develops compilers and assemblers, utility programs, and operating systems.

#### T018 S216 ENGINEERING-HARDWARE

Conducts or participates in the research, design, development, testing and utilization of information processing hardware and/or electrical components, mechanisms, materials, circuitry, processes, and as a minor subset, packaging and cabinetry, for processors and/or storage. Prepares technical and progress reports on assigned projects. Prepares specifications, evaluates vendors, and analyzes test reports. May specialize in one area such as storage systems, printers, etc.

#### T021 S377 CHEMISTRY

Conducts exploratory research to produce new knowledge and potential products; conceives, organizes, promotes, and executes ideas and plans to increase chemistry's role in and contribution to the discovery and chemical approaches to meet exploratory objectives in product discovery. Develops research proposals to provide a technically and economically sound basis for developing and evaluating new or improved products, processes, and analytical and physical testing techniques. Reports progress of research work and significance of the results. Recommends utilization of the results or changes in the scope of work or termination of projects.

#### T069 ENGINEERING-NUCLEAR

Designs, develops, and tests nuclear equipment and systems. Conducts research on new materials of special interest in nuclear reactors. Conducts studies related to the detection and control of radiation and radioactive contaminants. Studies nuclear fuel cycle to define most economical uses of material and safest means of waste products disposal. Other areas of research include radiation transport modeling, statistical analyses and performance metrics. Recommends various technology options or approaches for system, processes, facility or program improvements in terms of safety, performance, efficiency or costs.