

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

KAYLEE SEALS, f/k/a KEVIN SEALS,)	
)	
Plaintiff,)	
)	COMPLAINT
v.)	
)	Civil Action No.:
OLD DOMINION FREIGHT LINE, INC.,)	
)	
Defendant.)	
)	

I. NATURE OF THE ACTION

1. Plaintiff Kaylee Seals, formerly known as Kevin Seals,¹ brings this Complaint against Defendant Old Dominion Freight Line (“Old Dominion”) under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* as amended, for employment discrimination. The Equal Employment Opportunity Commission (“EEOC”) has issued a determination that there is reasonable cause to believe that Old Dominion discriminated against Seals because of his sex when Old Dominion terminated him from his job as a truck driver for “portray[ing] a female.” Having received a Notice of Right to Sue from the EEOC, Plaintiff now brings this case to vindicate his right to be free from sex and sex stereotyping discrimination.

II. JURISDICTION AND VENUE

2. This case arises under the laws of the United States and presents a federal question within this Court’s jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 2000e-5(f).

¹ Plaintiff Seals is a male-to-female transsexual and currently identifies as a female. However, Seals identified as a male while working as a truck driver for Old Dominion. Accordingly, in this Complaint, Plaintiff has referred to herself using male pronouns.

3. Plaintiff's claims for injunctive and equitable relief are authorized by 42 U.S.C. § 2000e-5(g).

4. Venue is proper in this judicial district under 42 U.S.C. § 2000e-5(f) because: (1) Plaintiff's unlawful termination occurred in this judicial district; (2) upon information and belief, records relevant to the unlawful acts against Plaintiff are maintained and administered in this judicial district; and/or (3) Plaintiff would have worked in this judicial district but for Defendant's alleged unlawful acts.

5. Plaintiff has fulfilled all conditions precedent under Title VII prior to instituting this lawsuit, as necessary, and has otherwise exhausted his administrative remedies.

III. PARTIES

6. Plaintiff Kaylee Seals is a resident of Knoxville, Tennessee. Seals is a male-to-female transsexual, meaning that he was born anatomically male, but has a female gender identity and is taking steps to alter his body so that it more closely matches the female gender identity. In particular, Seals has taken hormonal therapy since approximately late February or March 2005. On January 10, 2007, Seals obtained a court order in state court in Knoxville, Tennessee to change his name from "Kevin Eric Seals" to "Kaylee Anna Seals."

7. Defendant Old Dominion Freight Line, Inc. is a corporation that employees 15 or more individuals. According to information available at its website (www.odfl.com), Old Dominion is a multi-regional motor carrier providing one-to-five day service among six regions in the United States. Old Dominion maintains at least two Major Inter-Regional Hub Service Centers in the state of Tennessee, including in Memphis, Tennessee, and Morristown, Tennessee, and according to its website, provides "full coverage" of its services in Tennessee. Plaintiff, who was employed as a truck driver at Old Dominion, was hired and

terminated at, and based out of, Old Dominion's Major Inter-Regional Hub Service Center in Morristown, Tennessee, which is within this judicial district.

IV. FACTUAL ALLEGATIONS

8. On or about April 2003, Old Dominion hired Plaintiff for a position as a line-haul driver. Plaintiff's position involved driving from Defendant's regional service center in Morristown, Tennessee to distant locations throughout the United States, and then back to Morristown. Those drives required Plaintiff to go "off-duty" to take rest hours as required by the United States Department of Transportation.

9. Prior to being terminated, Seals had a positive employment record with Old Dominion. Indeed, in July 2005, Old Dominion awarded Seals a certificate and lapel pins as part of a "safe driver award" for being accident-free for two years. During his 2½ year tenure at Old Dominion, Seals received other gifts, awards, and work assignments as recognition for his good work for the company.

10. During the entirety of Seals' employment with Old Dominion, Seals' legal name was Kevin Eric Seals, Seals' driver's license identified him as "male," and Old Dominion's records reflected Seals' legal name and male sex. Although Seals was undergoing hormonal therapy beginning in the spring of 2005 as part of his transition to the female sex, Seals did not wear makeup, did not dress in clothes or wear jewelry traditionally associated with the female sex while he was on the job at Old Dominion. However, during Seals' employment with Defendant, Seals wore his hair at shoulder-length (sometimes in a pony-tail), wore small diamond stud or small hoop-like earrings in both ears, and occasionally wore bracelets and rings.

11. Approximately in April or May 2005, Seals informed his immediate supervisor, Kelly Cradick, that he was considering transitioning to the female sex, but did not ask

to be identified or treated as female by Old Dominion. Cradick responded that Seals' transition probably would not be a problem given Seals' positive work record with Old Dominion.

12. In November 2005, Seals was given an assignment to drive from Morristown, Tennessee to Old Dominion's regional service center in Jacksonville, Florida. Old Dominion assigned Seals to work in the Florida area from approximately November 17 through November 22, 2005. During the assignment, Seals would deliver goods to various locations in Florida and return to the Jacksonville area at the end of his shift. Because Seals was on assignment as a solo driver, Old Dominion was obligated to provide him with lodging during his time in Jacksonville.

13. Seals arrived at the Jacksonville terminal on or about November 17, 2005. At the time he arrived, Seals was wearing sweatpants and a sweatshirt and t-shirt underneath. Seals' hair was shoulder-length and he was wearing small diamond stud or small hoop-like earrings in both ears and bracelets and rings.

14. When Seals arrived at the Jacksonville terminal, as per customary practice, he handed his paperwork to an Old Dominion employee at the dispatch window. The paperwork included Seals' "trip sheet," which included his name and employee number. The Old Dominion employee asked for Seals' employee number, which Seals accurately provided, and then logged Seals' into the company's computer database. The employee then gave Seals a motel purchase order number and directions to a motel. Similar interactions occurred on the following days in Jacksonville; that is, Seals checked in with an Old Dominion terminal employee or dispatcher and was provided with a motel purchase order number. On one of those nights, the Old Dominion employee asked Seals whether he wanted to stay at the motel or the company bunkhouse at the terminal. Seals chose the motel and was provided with a purchase

order. Prior to that conversation, Seals was unaware that the Jacksonville bunkhouse was still operational, as Seals had been informed by an Old Dominion employee in an earlier trip that the company was phasing out all of its bunkhouses.

15. On Seals' last day in Jacksonville, Seals went to the terminal to check in, as he had done the prior days. When Seals arrived, the Jacksonville terminal manager, who upon information and belief is named Keith Martin, confronted Seals. Martin demanded to know why Seals had been staying at a motel instead of the bunkhouse. Seals explained that he had checked in each night and been given the motel purchase orders by the Old Dominion employees. During the course of this confrontation, Martin aggressively questioned Seals about his sex several times. In front of other Old Dominion employees, Martin asked whether if anyone were to walk in on Seals in the showers, "it would just be another guy – you are a guy, right?" Seals answered yes. Martin then followed Seals out to his truck, where he continued to challenge Seals about his sex, asking something to the effect of, "You are a guy, right? You do have a penis?" Seals again answered yes. Martin instructed Seals to stay at the company bunkhouse that night, and Seals did so.

16. When Seals returned to Morristown, Tennessee, he told his immediate supervisor Kelly Cradick about the interaction with Martin. Cradick responded that it sounded like harassment, and asked if Seals wanted Cradick to file a report. Seals said no, "I just want to work." Cradick then stated that if Seals had any other problems with the manager in Jacksonville, that he should let her know and that Cradick would take care of it. At that time, Seals informed Cradick that he had been diagnosed with gender identity disorder and had medical documentation of that fact. Gender identity is a person's internal psychological

identification as a man or a woman. Gender identity disorder is a medical condition in which a person's gender identity does not match his or her anatomical sex at birth.

17. During this conversation, Seals also mentioned to Cradick that he intended to transition to the female sex and asked whether the company would have a problem with Seals presenting at work as a woman. Cradick asked what Seals meant by presenting as a female. Seals explained to Cradick that under prevailing medical standards, Seals would need to live, dress, and identify as a female in all aspects of his life, including at work, for one year in order to be eligible for sex-reassignment surgery. Cradick reassured Seals that there would not be a problem with Seals' transition and desire to present as a female at work.

18. About a week after this conversation with Cradick, Seals was summoned to a meeting with Cradick and two higher-level managers at Old Dominion scheduled for December 12, 2005. Upon information and belief, those managers were David Gibb, the Morristown terminal manager, and Brian Stoddard, the director of safety and personnel for Old Dominion. Prior to that meeting, Seals spoke with Cradick, who told Seals that an Old Dominion employee from Jacksonville had lodged a complaint about Seals using the motel there. Cradick also stated that she had informed Gibb and Stoddard about Seals' desire to transition to the female sex.

19. In the December 12, 2005 meeting, Stoddard (who participated by phone) told Seals that the purpose of the meeting was to discuss Seals' impersonation of a woman at the Jacksonville terminal. Stoddard asked Seals if he dressed as a female or wore makeup at work, and Seals responded no, that he did so only occasionally on his personal time. Stoddard accused Seals of imitating a female in order to receive purchase orders to stay at a motel instead of the terminal bunkhouse. Seals explained that he had been given the purchase order numbers when

he checked in at the terminal, and that he had in fact stayed at the bunkhouse when Martin advised him to do so. Stoddard then pointed out that Seals' voice is very feminine and "sounded like a woman," or something to that effect. Stoddard asserted that the terminal employees in Jacksonville had assumed that Seals was a woman because of his long hair, his jewelry, and his soft feminine voice and had given him the motel purchase order numbers on that basis. Stoddard blamed Seals for not realizing that the terminal employees had made a mistake in giving him the motel purchase orders and stated that it was Seals' responsibility to tell the employees that he was, in fact, a male. Stoddard told Seals that he had been hired as a man, that the company expected him to be a man, that Seals couldn't work at Old Dominion "until [Seals] was the sex he wanted to be," and that Seals' actions in Jacksonville defrauded the company.

20. At the conclusion of the meeting, Stoddard told Seals that he had two choices: either be fired for fraud or resign and take "extended leave of absence." Stoddard represented that if Seals resigned and took the "extended leave of absence," he would be eligible for rehire once Seals completed his transition to female. Stoddard also stated that if Seals resigned, Old Dominion would give him a letter of recommendation and a good reference. Stoddard explained that if Seals did not take the "extended leave of absence," Old Dominion would fire him, give negative references to prospective employers, and "make sure that he never worked in this industry again," or something to that effect. Seals asked if he could have some time to think about it, and Stoddard said something to the effect of, "if you can't decide right now, I can make up your mind for you." Presented with this ultimatum, Seals believed that he had no reasonable choice but to resign and take the "extended leave of absence" and did so in that meeting.

21. In September 2006, Seals filed a charge of discrimination with the EEOC and the Tennessee Human Rights Commission (attached hereto as Exhibit A) within the 300 day statutory time period. A senior investigator at Nashville area office of the EEOC then commenced an investigation into Seals' charges.

22. In response to the EEOC's investigation, Defendant alleged that Seals had "portray[ed] himself as a female upon arrival at Jacksonville" in order to evade an alleged policy wherein male employees were required to stay at the company bunkhouse, but women were allowed to stay at a motel. (Attached hereto as Exhibit B is the February 6, 2007 letter from Old Dominion's counsel to the EEOC). In another letter to the EEOC, Old Dominion further alleged that Seals had resigned "apparently in the belief that his desire to become a female somehow overcame the biological reality that he was a male until such time as he medically and legally certified to the contrary." (Attached hereto as Exhibit C is the November 22, 2006 letter from Old Dominion's counsel to the EEOC.)

23. The EEOC discovered in its investigation that four other male employees had received motel purchase orders at the Jacksonville terminal during the same time period that Old Dominion alleged that Seals had violated company policy by accepting an assignment to a motel despite being a man. The EEOC found no evidence, and Old Dominion provided none, that those male employees had been disciplined or questioned about their sex as Seals had been. Accordingly, the EEOC investigator determined that Old Dominion's explanation that Seals had violated company policy was "pretextual," and that the company had "singled out" Seals for harassment as other similarly situated male employees had not been disciplined for receiving motel vouchers.

24. The EEOC concluded that, “Based on the review of the entire file, it appears that [Old Dominion] discriminated against [Seals] by terminating him because of his gender and subjecting him to stereotype. The evidence shows that [Seals] received a [motel Purchase Order], used the P.O. per policy, and was treated differently than males who also received a P.O. and were allowed to stay in the motel without disciplinary action or their gender being questioned.” (Attached hereto as Exhibit D is the September 24, 2007 Pre/Determination Notice of Findings from the EEOC investigator to counsel for Old Dominion.) The EEOC investigator also noted that the explanations provided by Old Dominion’s counsel concerning Seals’ “desire to be female” despite his “biological reality” was a clear acknowledgement that the company had “made decisions based on [Seals’] sex/gender.” In addition, the EEOC noted that Old Dominion, contrary to Stoddard’s representations, had given negative references about Seals to potential employers and disclosed to at least one potential employer that Seals had filed a charge with the EEOC.

25. On September 27, 2007, the EEOC issued its determination that “reasonable cause exists to believe that [Old Dominion] discriminated against [Seals] when it discharged him from his position.” (Attached hereto as Exhibit E is the September 27, 2007 EEOC Determination.) The EEOC’s attempt to reach conciliation was unsuccessful, and on March 20, 2008, the EEOC mailed to Seals its Notice of Suit Rights. (Attached hereto as Exhibit F is the Notice of Suit Rights). Seals received the Notice about a week later.

COUNT I
(Title VII – Sex Discrimination)

26. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs of this Complaint.

27. Old Dominion took adverse employment actions against Seals, including but not limited to terminating his employment or constructively discharging him, because of his sex. Old Dominion's ultimatum to Seals that he either resign and take an extended leave of absence or be fired was made with the intent to cause Seals to resign and Seals' resignation was a foreseeable consequence of Old Dominion's actions. In taking these unlawful actions, Old Dominion was motivated in whole or in part by Seals' sex and/or failure to conform to sex stereotypes.

28. Sex or conforming to sex stereotypes is not a bona fide occupational qualification for the position of line haul truck driver.

29. Defendant's actions violate Title VII of the Civil Rights Act of 1964.

30. Defendant's actions were done with either malice or with reckless indifference to Plaintiff's rights under law.

31. As a result of Defendant's actions, Plaintiff has suffered, and will continue to suffer, both economic and non-economic losses, emotional distress and other compensable damages.

COUNT II
(Title VII – Retaliation)

32. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs of this Complaint.

33. By giving bad job references to prospective employers and/or informing prospective employers about Seals' pending EEOC claim, Old Dominion retaliated against Seals because of his complaint of sex discrimination, including his filing of a charge of discrimination against Old Dominion with the EEOC.

34. Defendant's actions violate Title VII of the Civil Rights Act of 1964.

35. Defendant's actions were done with either malice or with reckless indifference to Plaintiff's rights under law.

36. As a result of Defendant's actions, Plaintiff has suffered, and will continue to suffer, both economic and non-economic losses, emotional distress and other compensable damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in his favor and against Defendant, and award the following relief:

- a. Declaratory relief, including but not limited to a declaration that Defendant's actions violate Title VII;
- b. Appropriate injunctive relief, including but not limited to reinstatement, an order restraining Defendant from engaging in further discriminatory conduct of the types of which Plaintiff complains herein, an order requiring Defendant to notify all employees that the discriminatory conduct of the types of which Plaintiff complains herein is unlawful, and an order requiring Defendant to put into place appropriate training for all employees to prevent sex and sex stereotyping discrimination;
- c. Back pay, in amounts to be determined at trial, along with credit for job seniority since December 2005;
- d. In the event reinstatement is not granted or deemed inappropriate or impracticable, front pay;
- e. Compensatory and consequential damages, including for emotional distress;

- f. Punitive damages;
- g. Pre-judgment and post-judgment interest at the highest lawful rate;
- h. Attorneys' fees, expenses, and costs of this action; and
- i. Any such further relief as justice allows.

DATED: June 18, 2008

Respectfully submitted,

Christine P. Sun (TN BPR No. 026138 -
admission into E.D. Tennessee pending)
American Civil Liberties Union Foundation
P.O. Box 120160
Nashville, TN 37212
(615) 329-9934

Counsel for Plaintiff