

### **Jury awards \$8M for blind worker in disability bias case**

After a three-day trial, a 12-person jury returned an \$8 million verdict in federal court for the U.S. Equal Employment Opportunity Commission (EEOC) in a lawsuit alleging that a Colorado-based provider of advanced digital television services violated the Americans with Disabilities Act of 1990 (ADA) when it refused to provide a reasonable accommodation to a qualified blind employee. The jury verdict awarded \$2,000 in back pay, \$5,000 in compensatory damages, and \$8 million in punitive damages for the employee. In the trial, the plaintiffs alleged the following:

- The company failed to accommodate the individual in the application process;
- The company failed to accommodate the individual in the job by never trying to install adaptive software;
- The company denied the individual an employment opportunity because of his disability or because of the need to provide him an accommodation; and
- The company violated a section of the ADA when it failed to use a proper testing device to determine an applicant's skills.

In the trial, the plaintiffs presented evidence that the individual, who is blind, applied for a customer service representative job at the company in 1999. Prior to applying, the individual had completed training at the Colorado Center for the Blind for that type of position. Blind individuals can perform the customer service representative job by using a computer program called JAWS (Job Access With Speech), which translates text into speech. A blind customer service rep uses a split headset, in which he hears the JAWS voice in one ear, and the customer conversation in the other ear. Using JAWS, people with vision impairments can process written language at 400 to 700 words per minute, which is faster than many sighted individuals read.

When the individual first went to the company to apply, the company told him it would not do him any good to put in an application because it was not set up to handle blind people. However, after receiving a copy of his charge of discrimination, the company invited the individual back and put him through a sham interview process that included a Braille test, which was longer and more

difficult that the test given sighted people, and a Windows skill test that consisted of a person giving him directions on how to access icons, such as "move to the left, move down, now click."

Much of the testimony related to whether, if the company had tried to install JAWS in 1999, it could have worked. The company asserted that JAWS could not have worked because of the complexity of the software environment.

Contrary evidence presented by plaintiffs reflected that, in 1999, numerous employers had installed JAWS and employed blind customer service representatives at their call centers.