

David L. Higgs
“Rebuttal Statement”
To the
Northrop Grumman
“Respondent’s Position Statement” Dated July 1, 2004

MCAD Higgs vs. Northrop Grumman
04-BEM-01326

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1 My Position

After reading the Northrop Grumman “Respondent’s Position Statement” dated July 1, 2004, I am still firm in my belief the events that caused me to file a discrimination complaint, Massachusetts Commission Against Discrimination [MCAD] Docket #04BEM01326, against my employer Northrop Grumman on May 17th, 2004, continue to be valid and has merit.

I am a currently an employee of Northrop Grumman Corporation, a national defense firm. I am employed at the Northrop Grumman Electronic Division, Canton Massachusetts.

Fibersense Technology Corporation (Canton Massachusetts) hired me as part-time Software Test Engineer in September 1999, two (2) years after I received my lifesaving liver transplant on September 5th, 1997.

Due to my medical history and my ongoing medical condition, Fibersense afforded me a number of reasonable accommodations in my workplace that aided me in the performance of the principal objectives and duties of my employment.

In December 2002, Northrop Grumman Corporation [¹] acquired Fibersense and I automatically became an employee of Northrop Grumman at that time.

My complaint against Northrop Grumman is as follows:

- A. Northrop Grumman does not recognize or acknowledge my self-identification as a “qualified handicapped person”, re-stated in my February 18th letter to Northrop Grumman,
- B. Northrop Grumman failed to answer my February 18th letter in which I asked for the continuation of some accommodations, the re-installment of an accommodations and the addition of two new accommodations under MGL 151B and
- C. Northrop Grumman has failed to provide me a true and accurate description of the “essential functions” of my employment position (i.e., only those functions that the employee may reasonable be expected to perform during his/her employment).

On February 18th, I hand delivered to Ms. Carol Boisvert, Human Resource Manager, Northrop Grumman, Canton Massachusetts, a four (4) -page letter [²] I wrote titled “Request for Reasonable Accommodations under the Massachusetts Fair Employment Practice Law”[³].

In my February 18th letter, I made a request for the continuation of some reasonable accommodations (made available to me during my employment with Fibersense and continued, without question, after Northrop Grumman acquired Fibersense), the re-installment of an accommodation that was dropped by Northrop Grumman without notice,

¹ See Section 4.11: Exhibit 11: Press Release: Northrop Grumman Acquires Fibersense Technology Corporation

² See Section 4.3: Exhibit 3: Letter Titled “Request for Reasonable Accommodations” under the Massachusetts Fair Employment Practice Law”, Dated February 18, 2004, written by David L. Higgs.

³See Section 5.2: Affidavit 2: Affidavit of David L. Higgs Describing/Identifying when and where he gave his “Request for Reasonable Accommodation” Letter to Ms. Carol Boisvert

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the addition of a new accommodation I believe would prevent the re-occurrence of a workplace incident that compromised my medical health last February (2004) and the addition of an accommodation that would enforce an Occupational Safety & Health Administration [OSHA] ergonomic rule covering computer workstations [⁴] on which I am expected to code and debug test equipment computer programs.

In my February 18th letter, I wrote a detail narrative (see below) of my medical history and my current ongoing medical condition:

"I received my lifesaving (orthotopic) liver transplant on September 5, 1997.

Since the liver transplants, I have been on immunosuppressant therapy, which in the words of one of my transplant doctors (¹) "...has some unpleasant and sometimes debilitating side effects..." Immunossuppressant therapy is a lifetime treatment used to prevent rejection of my transplanted liver.

I also suffered a stroke in 1995 (due to my Primary Biliary Cirrhosis illness). The stroke was a bleeder in the right hemisphere of my brain. This stroke left me with muscle weakness and touch deficit on my left side and in my left leg. The resulting muscle weakness and touch deficit does cause me difficulties in walking. I also have trouble keeping my balance while walking or standing. Due to these after effects of the stroke, I need to use a cane to aid me in walking, standing, and maintaining my balance".

¹ *"To Whom it May Concern" letter dated February 14, 2003, by W. David Lewis, M.D. Director of Liver Transplantation, Lahey Clinic, Burlington, Ma. A copy of this letter was transmitted to Ms. Carol Boisvert, HR at Northrop Grumman, Canton Ma by David Higgs on or about February 14, 2003.*

Immunosuppression - Suppression of the body's immune system and its ability to fight infections or disease. Immunosuppression may be deliberately induced with drugs, as in preparation for bone marrow or other organ transplantation to prevent rejection of the donor tissue. It may also result from certain diseases such as AIDS or lymphoma or from anticancer drugs.

Immunosuppression is the medical suppression of the immune system. This is usually done to prevent the body to reject an organ transplant.

When an organ is transplanted, the immune system of the recipient will most likely recognize it as foreign tissue and attack it. The destruction of the organ will, if untreated, end in the death of the recipient.

To prevent that, immunosuppressant drugs are used to inhibit the reaction of the immune system. The downside is that with such a deactivated immune system, the body is very vulnerable to opportunistic infections, even those usually considered harmless. Also, prolonged use of immunosuppressants increases the risk of cancer [⁵]

⁴ Occupational Safety & Health Administration [OSHA] checklist for Computer Workstations, <http://www.osha.gov/SLTC/etools/computerworkstations/checklist.html>

⁵ <http://encyclopedia.thefreedictionary.com/Immunosuppression>

Also in my February 18th letter, I self-identified myself as a qualified handicapped person (under MGL 151B) to Ms. Boisvert. A handicapped qualification I made based on my medical history, my ongoing medical condition and from information contained in MGL 151B Section 1 and from MCAD guideline documents [⁶].

“Based on my medical history and my on going medical conditions, I am a “handicapped” employee, under the Massachusetts Fair Employment Practice Law, as defined by the Massachusetts Commission Against Discrimination.”

The accommodations I requested in my February 18th letter are, in my view, moderate in scope and would not present any undue hardships for Northrop Grumman. In my view, these accommodations are tools that have/will allow me to continue to be a productive employee for Northrop Grumman given my ongoing medical health issues.

“Under the provisions of the Massachusetts Fair Employment Practice Law, as defined by the Massachusetts Commission Against Discrimination, I am writing to formally requesting that Northrop Grumman provide me with the following “Reasonable Accommodations” in my work place. I am making this request for reasonable accommodations so that I can continual to perform the essential functions of my employment position and be on site 32+ hours/week.”

After waiting 34 days for Northrop Grumman to respond to my February 18th letter and accommodation requests: I met with Ms. Boisvert in her office on March 22nd (2004). I asked Ms. Boisvert when I was going to receive a response from Northrop Grumman to my February 18th letter and my accommodation request. Ms. Boisvert informed me Northrop Grumman would NOT offer me a response to my February 18th letter [⁷].

In his “Position Statement”, Mr. Kevin L. Wilson (Manager, EEO/Diversity, Northrop Grumman Electronic Systems) wrote Northrop Grumman did “...responded to the requests made by Mr. Higgs in his February 18, 2004 memo.”

This claim in the “Position Statement” is a FALSE STATEMENT.

I would NOT HAVE FILED my discrimination complaint against Northrop Grumman on May 17th with MCAD had I received any type of response from Northrop Grumman I could identify as being the “official” answer to my self-identification as a handicapped person and the accommodation requests I made in my February 18th letter.

The only Northrop Grumman written reply I can connect as being a response to my February 18th letter from Northrop Grumman is Northrop Grumman’s “Respondent’s Position Statement” itself! A response authored by Northrop Grumman in response to my May 17th MCAD complaint and transmitted to MCAD, not a response that was authored by Northrop Grumman in response to my February 18th letter and sent to me.

⁶ Massachusetts Commission Against Discrimination, “Guidelines: Employment Discrimination of the Basis of Handicap”, <http://www.mass.gov/mcad/disability1a.html>.

⁷ See Section 5.3: Affidavit 3: Affidavit of David L. Higgs Describing His Conversation With Ms. Carol Boisvert, March 22, 2004

It is a sad statement when an employee only option is to file a discrimination complaint against his employer in order to get a written response to his request for basic information about his employment position, including a job description, a description of the “essential functions” of his position and his request for accommodations due to his medical history and ongoing medical condition.

I have a history of not being able to obtain basic information about my employment situation from Northrop Grumman: as an example, On December 8th, 2003, I sent a letter [8] (in which I requested a written reply) by e-mail and First Class Mail to my direct supervisor and department manager, Mr. Richard Murphy. I also sent a copy of this letter to Ms. Faith Ball (Northrop Grumman Director of Engineering, Canton, and Mr. Murphy’s direct supervisor).

In my December 9th letter to Mr. Murphy I wrote:

“I am writing to ask you to clarify my employment position within the company, the job description and title of the position I currently hold and the full responsibilities of my position within your test engineering department. I am also asking you to identify the reasonable accommodation(s) the company is providing me in the workplace due to my documented health issues. Your reply to these questions will be forwarded to my health providers for their reference.”

“Last February, I was informed (by HR)..[the] Accommodation of working at home no longer existed because (as I was informed by HR), my employment position requires me to be standing at a test console every day, writing test software...Does my employment position requires me to be (in effect) “..standing at a test console every day, writing test software”?”

Mr. Murphy, a few days after I sent him my December 9th letter, sent me an e-mail message informing me it would take him a few days to respond to my letter.

Mr. Murphy did not meet his promise. I never received a response from Mr. Murphy in answer to my December 9th letter. Later, Mr. Murphy informed me Human Resources had given him orders not to respond to my December 9th letter [9].

On January 9th, 2004, I met with Ms. Boisvert and Ms. Ball (my direct manager, Mr. Murphy, did not attend this meeting) in a meeting that I assume I was going to receive Northrop Grumman written reply to my December 9th letter to Mr. Murphy as I had requested.

In the January 9th meeting, I did not receive a written response to my December 9th letter to Mr. Murphy.

⁸ See Section 4.1: Exhibit 1: Copy of a Letter Sent by E-mail and First Class Mail to Mr. Dick Murphy, Dated December 8, 2003, by Mr. Higgs.

⁹ In late December, Mr. Murphy in a conversation with me, informed me HR had given him orders NOT to answer the questions I had asked in my December 9th, 2003 letter to him. Mr. Murphy expressed to me his view the “lawyers” were involved. Mr. Murphy gave me the indirect suggestion I should file a complaint with Mr. Kevin Wilson, Northrop Grumman EEO Manager.

In a letter ^[10] I wrote to Ms. Boisvert on January 28th, 2004, I summarize my view of the January 9th meeting with Ms. Boisvert and Ms. Ball when I wrote:

“While I found the meeting interesting, our verbal discussion, in my view, did little to answer the questions I asked Mr. Murphy in my letter and your meeting supplied me with no factual information about my job description and workplace conditions that I could forward to my health care providers to read.”

“As you know, you informed me (February, 2003 by telephone) my job description required me to be “..standing at a test console every day, writing test software..” Is this a true statement (?) and is this statement contained in my job description?”

“Once again, I request you and Northrop Grumman respond to this letter any my original letter to Mr. Murphy in writing in a timely manner. I believe the questions I have asked are reasonable questions for any employee to ask of his/her employer.”

“I am making this request again because I believe the response to my questions is important information that I need to forward to my health care providers at this time.”

I never received the requested written reply from Mr. Murphy, Ms. Boisvert or Ms. Ball as I requested in my December 9th (2003) letter to Mr. Murphy or my January 28th (2004) letter to Ms. Boisvert.

2 Disputed Statements and Facts

2.1 The Company claimed Higgs’ never notified them of his disabilities.

In the “Position Statement”, Mr. Wilson wrote, “[Higgs] never notified the Northrop Grumman of an alleged disability. Moreover, Mr. Higgs never informed the Northrop Grumman that he required a reasonable accommodation as a condition of employment.”

I Dispute This Statement – If Mr. Wilson and Northrop Grumman had fully read my February 18th, 2004 letter, he would know I self-identified myself as a qualified handicapped person due to my medical history and ongoing medical condition to Northrop Grumman in the February 18th letter.

I have not received any response, written or verbal, from Northrop Grumman that disputes my self-identification as a qualified handicapped person as contained in my February 18th letter.

Mr. Wilson’s, in his “Position Statement makes the statement that I “...never notified...” Northrop Grumman of an “..alleged disability..”

That I “...never notified...” is a FALSE STATEMENT. I view this statement as Mr. Wilson’s attempt to divert attention away from my self-identification as a qualified handicapped person statement contained in my February 18th letter.

¹⁰ See Section 4.2: Exhibit 2: Copy of a Letter Sent by First Class Mail to Ms. Carol Boisvert, Dated January 28, 2004, by Mr. Higgs.

In fact, my self-identification as a qualified handicapped person in my February 18th letter to Ms. Boisvert is also a reassertion of the same identification I made to Fibersense in September 1999 when I was interviewed and then hired by Fibersense as a Software Test Engineer.

In September, 1999, I was hired by Fibersense as a part time Software Test Engineer by Mr. Mike Perimutter (one of the owners of Fibersense). During my pre-employment interviews with Fibersense, I was interviewed by Ms Margot Seheuren [¹¹] (Human Resource Manger), Richard Murphy [¹²], (Manager Test Engineering) and Ian Humphrey [¹³] (System Engineer). During the course of these pre-employment interviews, I informed Ms Seheuren, Mr. Murphy and Mr. Humphrey I had received a liver transplant and I still had ongoing health's issues due to the liver transplant, my recovery from the transplant and the effects the lifetime immunosuppressant therapy I was taking to prevent organ transplant rejection. I also informed them I would need some reasonable accommodations should Fibersense decide to hire me.

I never withheld basic facts about my medical history and health condition from Fibersense and my fellow employees, including the fact I had received a liver transplant, my ongoing health issues. The fact I had received a life saving liver transplant and my medical health condition became common knowledge among most of the employees at Fibersense.

On many occasions, Fibersense employees such as Mr. Mike Perlmuter [¹⁴], Mr. Joseph Bresman [¹⁵], Mr. Steven Quattrocchi [¹⁶] and Ms. Carol Boisvert [¹⁷] would engage me in a conversation and ask me about my liver transplant, my health and my ongoing medical conditions. I have always been and continue to be very open and candid about my medical history, my liver transplant and my medical condition because I am a strong believer in the lifesaving decision of organ donation.

When Northrop Grumman acquired Fibersense in December 2002, I was not interviewed or re-interviewed by Northrop Grumman to continue my employment position. Also, Northrop Grumman never notified me my Fibersense acquired "reasonable accommodations" would not continue under Northrop Grumman ownership.

Northrop Grumman never notified me I had to re-identified "...alleged disability..." to them or re-apply for accommodations when Northrop Grumman acquired Fibersense.

¹¹ Ms. Margot Seheuren resigned her position as Fibersense Human Resource Manager in late 1991. Ms. Mary Kelly replaced Ms. Seheure. Ms. Kelly resigned her position in mid-1992. Fibersense than hired Ms. Carol Boisver as Human Resouce Manger, replacing Ms. Kelly..

¹² Mr. Richard Murphy was my direct manger between mid-1992 until June, 2004.

¹³ Mr. Ian Humprey was my direct manger upon being hired by Fibersense. I reported to Mr. Humprey until mid-1992, when Mr. Richard Murphy became my direct manager. Northrop Grumman at the Canton, Ma, currently employs Mr. Humprey as a System Engineer. Site.

¹⁴ Mr. Mike Perlmuter, (former Fibersense Executive Vice President), now employed as a "(add title)" by Northrop Grumman, Canton Ma.

¹⁵ Mr. Joseph Bresman, (former Fibersense Executive Vice President), now employed as a "(add title) by Northrop Grumman, Canton Ma.

¹⁶ Mr. Steven Quattrocchi, (former Fibersense Chief Financial Officer) was employed by Northrop Grumman, Canton Ma until early 2004. Mr. Quattrocchi is now employed, from time to time, by Northrop Grumman as a consultant.

¹⁷ Mr. Carol Boisvert, (former Fibersense Human Resource Director) now employed as Manager Human Resources, Northrop Grumman, Canton Ma.

Also, because the Fibersense managers, namely, individual such as Mr. Murphy, Mr. Humprey, Mr. Perlmutter, Mr. Bresman, Mr. Quattrocchi and Ms. Boisvert, became Northrop Grumman managers after the acquisition and now hold Northrop Grumman management positions that were functionally the same as the positions they held under Fibersense, I had no expectation my Fibersense acquired accommodations would not continue under Northrop Grumman ownership

When Northrop Grumman acquired Fibersense in December 2002, they also acquired the collected knowledge of the Fibersense managers who were directly aware of my medical history; medical condition and the work place accommodations Fibersense was providing me due to my medical condition.

2.2 The Company claimed Higgs' wanted to remain a part-time employee.

In the "Position Statement", Mr. Wilson wrote, "...Northrop Grumman honored [Higgs'] request to remain a part-time employee"

I Dispute This Statement – Mr. Wilson is unjustifiably speculating the FALSE IMAGE Northrop Grumman sat down with me and asked me directly, after the Northrop Grumman acquisition of Fibersense, how I wanted to continue my employment status under Northrop Grumman ownership -- this is a FALSE STATEMENT.

Northrop Grumman never asked and I never had any conversation with Northrop Grumman about how I wanted to continue my Fibersense employment under the Northrop Grumman ownership. The claim by Mr. Wilson that such a conversation occurred and resulted in an employment agreement between Northrop Grumman and myself is a FALSE STATEMENT.

I do remember a quick (about one minute) and one-sided conversation Ms. Carol Boisvert had with me just as I was entering a Northrop Grumman wide (at the 410 University Avenue Canton Site) meeting about the benefits former Fibersense employees would now be receiving under the Northrop Grumman ownership (June, 2003).

Ms. Boisvert informed me I was a Northrop Grumman part time employee and as a Northrop Grumman part time employee my vacation time, sick leave and personal time benefits would now be less then the same benefits I was receiving as a Fibersense employment [¹⁸]. Ms. Boisvert made the comment to me that in (the acquisition) negotiations, Northrop Grumman refused to continue my (Fibersense) employment benefits at the same levels under Northrop Grumman ownership.

Ms. Boisvert also claimed that she wanted too informed me of this Northrop Grumman decision before I was (publicly) informed of it during the benefits meeting I was about to attend.

¹⁸ Under Fibersense, my vacation time, sick time and personal time benefits accrual rate was (a minimum) of $\frac{3}{4}$ that of a Fibersense employee working 40 hours/week. Under Northrop Grumman ownership, my vacation time, sick time and personal time benefits dropped to a fixed accrual rate that is $\frac{1}{2}$ that of a Northrop Grumman employee working 40 hours/week.

2.3 The Company claimed Higgs was diagnosed with a variety of medical conditions in early 2003.

In the “Position Statement”, Mr. Wilson wrote, “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 absent. 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.

I strongly dispute the statement – “Beginning in early 2003, the Charging Party was diagnosed with a variety of medical conditions...”

Mr. Wilson is attempting to cull selected facts from my Northrop Grumman medical file to support his allegation my ongoing medical condition and accommodation needs developed after Northrop Grumman acquired Fibersense.

Mr. Wilson, in his “Position Statement, ” fails to acknowledge my medical condition pre-dates my employment with Northrop Grumman and Fibersense (see Section 2.1). He also fails to identify my basic health condition is the result of my life saving liver transplant and my ongoing immunosuppressant therapy, despite medical documents sent to Ms. Boisvert early in 2003 as cited below and my February 14th letter itself.

In early 2003, as reported in the “Position Statement, ” I did have to take two medical leave of absences (about six weeks total) due to diagnoses of bronchitis.

For both of these medical leave of absents, full medical documentation was submitted to Ms. Boisvert by Dr. Thomas Serino (Scituate, Mass, my primary physician) [¹⁹] and Fredric D. Gordon (Hepatobiliary Surgery and Liver Transplantation, Lahey Clinic, Mass) [²⁰].

Northrop Grumman approved both medical leaves of absents. Mr. Wilson, in citing his claim that I “..did not supply any medical documentation..” has forgotten that I did supply Northrop Grumman with all required medical documents from my health care provided, per Northrop Grumman policy, whenever I had to seek a medical leave of absent from Northrop Grumman due to my ongoing medical condition.

Dr Gordon, in the cited e-mail message to Ms. Boisvert dated February 28, 2003, wrote:

“...[Mr. Higgs] is a patient who has been under our care since he received a liver transplant in 1997. As a transplant recipient, he requires life-long immunosuppression to prevent rejection. Unfortunately, this medication does increase both Mr. Higgs’ risk for infection as well as the length of time it takes for him to recover from such infection...”

¹⁹ See Exhibit 7: Dr. Serino February 20th, 2003, Diagnosis of Mr. Higgs.

²⁰ See Exhibit 8: E-Mail Message to Ms. Boisvert from Fredric D. Gordon, MD, February, 28, 2003

Also, Dr David Lewis (Director of Liver Transplantation, Lahey Clinic, Mass) [²¹], at my request, wrote a “To Whom It may Concern” letter that identifies my basic medical condition. I hand delivered Dr. Lewis’ letter to Ms. Boisvert upon my return from my first medical leave of absent in mid-March, 2003. In his letter, Dr. Lewis wrote:

“Mr. David Higgs underwent surgery for an orthotopic liver transplant on September 5, 19997. Since that time, he has been on immunosuppressant therapy, which has some unpleasant and sometimes debilitating side effects. This is a lifetime treatment that helps prevent organ rejection.”

The submittal of Dr. Lewis’ letter and Dr. Gordon’s e-mail message to Ms. Boisvert does in itself, pull the trigger informing Northrop Grumman I have a medical history and ongoing medical condition that should have identified me as a “handicapped” person under MGL 151B to Northrop Grumman.

In January 2004, on the advice of Dr. Steven Freilich PhD (Clinical Licensed Psychologist, Braintree, Mass) I did seek a reduction in my work hours in order to reduce my work place stress issues (²²) I was having due to my workplace task assignments. I submitted a letter written by Dr. Freilich to Ms. Boisvert in which Dr. Freilich wrote:

“I have recently advised Mr. Higgs to reduce his work week below his current 32 hours/week to see if this change will be beneficial to hi medical condition that concerns me. It is my hope that limiting his work hours at this time will help significantly to lower his stress level-a major negative component in his current condition.”

Because of Dr. Freilich letter, Ms. Boisvert agreed to reduced my work week hours from 32 hours/week to 24 hours/week per Dr. Freilich recommendations; but Ms. Boisvert made no offer to help me to reduce my work place stress issues and dismissed my suggestions how to decreased these issues [²³].

A few weeks after my work hours were decreased to 24 hours/week, Dr. Serino and Dr Freilich decided the reduction in my work hours had not resulted in any reduction or lessening in my workplace stress issues. On February 18th, 2004, in a meeting with Ms. Boisvert, I requested a four-week medical leave of absent due to work place stress issues and I gave Ms. Boisvert a copy of Dr. Serino’s medical order. Northrop Grumman approved my requested medical leave of absent due to my workplace stress

I returned from this medical leave of absent on March 22nd (2004).

Mr. Wilson, I believe, is also making a veiled reference to my most resent need to take a medical leave of absent from my employment at Northrop Grumman. On May 21, four (4) days after I filed my MCAD complaint, I was admitted to South Shore Hospital (Weymouth Mass) as an emergency patient in a life-death medical situation. During my

²¹ See Exhibit 5: “To Whom It May Concert” letter from Dr. David Lewis, Director Of Liver Transplantation, Lahey Clinic, Burlington, MA, dated February 14, 2003

²² See Exhibit 9: Letter to Ms. Carol Boisvert from Dr. Steve Freilich, Ph.D. Licensed Psychologis, January 14, 2004.

²³ I informed Ms. Boisvert I believe if I received my employment assignment from on individual or a “gatekeeper”, Instead for the current structure that exposed me to “many” bosses, this would help me to reduce my issues with workplace stress. Ms. Boisvert informed me this type of assignment was not possible.

three-week recovery, I was diagnosed as having chronic active colitis, perhaps caused by my immunosuppressant therapy.

I returned to work on June 17th (2004).

2.4 The Company claimed they responded to Higgs' February 18, 2004 Letter

In the "Position Statement", Mr. Wilson wrote, "Contrary to the allegation in his charge, the Northrop Grumman responded to the requests made by Mr. Higgs in his February 18, 2004 memo."

I Dispute This Statement – Except for two brief telephone communications with Mr. Wilson [²⁴], I did not receive any written communications nor did I have any conversations with Ms. Boisvert, Mr. Murphy or any other agent of Northrop Grumman authorize to review/act on the various accommodations requests I had made in my February 18th letter before I filed my complaint on May 17th with MCAD.

Whenever I tried to speak with Mr. Murphy about my February 18th letter, Mr. Murphy would refuse to speak to me about my letter and the accommodations requests I had made in the letter. I believe Mr. Murphy was acting under orders of his management structure not to discuss my February 18th letter with me every time he refuse to speak to me about this matter.

2.5 The Company claimed they supplied Higgs with his job description on January 9th, 2004.

In the "Position Statement", Mr. Wilson wrote "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."

I Dispute This Statement – I did not receive a SIRS job description document at the January 9th, 2004 meeting as alleged by Mr. Wilson in his "Position Statement." As cited above, on January 28, 2004, I sent an e-mail message to Ms. Boisvert where I wrote:

²⁴ A few days after I hand delivered my February 18th letter requesting accommodations to Ms. Boisvert, I received two telephone calls from Mr. Kevin Wilson (the first phone call was during the week of February 22 and the second phone call occurred during the week of March 1 (2004).

In each of the two-telephone conversation, Mr. Wilson asked me some basic questions about my medical condition and about the accommodation requests I had made in my February 18th letter and the reasons why I was requesting these accommodations. I believe I fully answered all of Mr. Wilson's questions in each telephone call. At the conclusion of the second telephone call, Mr. Wilson informed me he was going to call me a third time the following week and give me his answer to my accommodations request.

Mr. Wilson's third telephone call DID NOT OCCUR.

I was un-successful in contacting Mr. Wilson again until the day after I filed my MCAD complaint against Northrop Grumman when Mr. Wilson called me in response to the e-mail message I sent to Mr. Alexis Livanos, Mr. Wilson manager, on May 18th, 2004 (See Section 4.4: Exhibit 4: May 18, 2004, Copy of E-mail letter sent to Alexis Livanos, CC'ed Kevin L. Wilson, by David Higgs.).

“..your meeting supplied me with no factual information about my job description and workplace conditions..”

In fact; the evidence shows Northrop Grumman did not supply me with a job description until I received an e-mail message from Ms. Boisvert on February 2, 2004, twenty four (24) days after Mr. Wilson claimed date Northrop Grumman answered my request and supplied me with a job description for my employment position.

Ms. Boisvert February e-mail message reads (²⁵):

Dave - Regarding your request for a job description; The link below will take you to the Command Media site for all NG job descriptions.

Scroll down to pg. 46, family number 19 - Qual Assur, Reliab, Tst & Insp. Within that family, your job is T422, Engineering - System's Test.

<http://cm.md.essd.northgrum.com/cm/info/other/SIRS-1.PDF>

Mr. Wilson, in his “Position Statement” provided as his “Exhibit 1” a copy of the SIRS job description document he claims was given to me at the January 9th, 2004 meeting.

Mr. Wilson’s “Exhibit 1” contains six (6) difference ES SIRS job descriptions. Mr. Wilson, in the text of his “Position Statement” fails to identify which one of the six difference SIRS job descriptions listed in his “Exhibit 1” applies to my employment position.

I met with Ms. Boisvert (Human Resources) and Ms. Faith Ball (Director of Engineering) on January 9th, 2004 as cited by Mr. Wilson.

In an e-mail message to Mr. Wilson [²⁶](February 23, 2004) I wrote:

“During the Christmas week, I saw Boisvert for a few minutes and she re-cited the need to set up a appointment and talk to me. In early January, Boisvert finally schedule an appointment to see me (only after I sent her an e-mail message) . The appointment became a meeting with Faith Ball and Boisvert. At the start of this meeting, when Ball first entered Boisvert's office, she asked Boisvert a question...".is this the fellow who made the complaint about Bart Addis' promotion " (or word to the same effect). Boisvert answered yes and the meeting started.

During the meeting I was informed my job function was to continue my work on the EKV test software. No reference was made to my Dec 9th letter and my employment related question were not answered except Ball did voiced she does not have any problems with part time employees working on her staff.

²⁵ See Section 4.6, “Exhibit 6: “E-Mail Message From Boisvert to Higgs, February 2, 2004, Subject: SIRS Job Descriptions”

²⁶ See Section 4.12: Exhibit 12: Higgs E-mail Message to Wilson, February 23, 2004

Because Boisvert did not fully answer my Dec 9th letter, I view the meeting with Boisvert and Ball as un-productive.”

In my cited communications I informed Mr. Wilson I did not received a job description during the January 9th meeting. Mr. Wilson, in claiming I did received an SIR job description is making a FALSE STATEMENT.

2.6 The Company claimed they responded to Higgs’ February 18th, 2004 Letter.

Mr. Wilson, in his “Position Statement” makes the following statement: “..the Company responded to the requests made by Mr. Higgs in his February 18th, 2004 memo..”

I Dispute This Statement - As I have stated in this reply rebuttal statement -- I received no communication from Northrop Grumman that I saw as a response to my February 18th letter between February 18th, 2004 and May 17th, when I filed my MCAD complaint.

Once again, had I received a response from Northrop Grumman to the qualified handicapped person self-identification and my accommodation requests contained in my February 18th letter, I would NOT HAVE FILED a complaint against Northrop Grumman with MCAD.

2.6.1 The Company claimed they responded to Higgs Essential Function Job Description Request

In his “Position Statement” Mr. Wilson writes: “Regarding the Essential Functions Job Description – The Charging Party has 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.”

I Dispute this Statement – I have not received from Northrop Grumman a description of the “essential functions” of my employment position. Also, I have not received from Northrop Grumman any job description that contains any statement reporting the nature of my job “..requires [me] to be at the work site” as claimed by Mr. Wilson in his “Position Statement.”

My direct manager, Mr. Murphy has never informed me my job description now contains any statement reporting the nature of my job “..requires [me] to be at the work site.”

In my February 18th Letter I wrote: “As a reasonable accommodation, I am requesting a job description that is a true and accurate description of the essential functions of my employment position at Northrop Grumman. I suggest this job description should meets (as a minimum) the Massachusetts Commission Against Discrimination, Guidelines: Employment Discrimination of the Basis of Handicap – Chapter 151B definition, namely:

“Job Descriptions – Job descriptions should include only those functions that the employee may reasonably be expected to perform during his/her employment.... Employers should periodically review job descriptions, as the nature of the job may change over time.”

On February 2nd (2004) in an e-mail message [²⁷], Ms. Boisvert supplied me with the SIRS T422 job description.

[Note: the T422 job description is not listed on Mr. Wilson's "Position Statement" Exhibit 1 which contains the job description he claims I received during my January 9th (2004) meeting with Ms. Boisvert and Ms. Ball.]

The T422 job description supplied by Ms. Boisvert on February 2nd reads:

T422 ENGINEERING-SYSTEMS TEST

Synthesizes customer contractual needs and requirements into system test solutions that acknowledges technical, schedule and cost constraints. Develops and directs preparation and execution of comprehensive test plans, procedures and schedules for completing systems. Coordinates integrated testing activities. Reviews and evaluates test requirements to insure completeness of test program. Performs technical analysis of complete systems and prepares comprehensive system level evaluations.

In my view, the T422 SIRS job description Ms. Boisvert supplied me in her February 2nd e-mail message does not meet the MCAD definition of an "essential functions" description. Also, in my view, the T422 job description fails to describe the actual work I am currently performing in my employment position.

Shortly after Ms. Boisvert gave me the T422 job description, I discussed this description with Mr. Murphy. Mr. Murphy agreed this job description failed to describe the actual work I performed daily in his Test Engineering group. Mr. Murphy also informed me the T244 job description sounded more like his own job description as manager of the Test Engineering group than my job description.

Also, in my February 18th letter to Ms. Boisvert, in reference to the T422 job description I wrote:

"In my view, the T422 does NOT offer a full and accurate description of the sum total of the tasks and functions I perform daily for Northrop Grumman"

Ms. Boisvert did not challenge or refute the statements I made about the T422 job description contained in my February 18th letter.

In my view, the T422 job description supplied to me by Northrop Grumman does not match my past and current principal functions I have been assigned to perform in my employment position.

Nowhere in the SIRS T422 job description does it make any reference to software development and the various activities around the development of test software, which is a major component in my current employment position designing, developing and

²⁷ See Section 4.6: Exhibit 6: "E-Mail Message From Boisvert to Higgs, February 2, 2004, Subject: SIRS Job Descriptions

supporting the development of custom factory floor automatic testing equipment and the test software that controls such equipment.

The SIRS job descriptions, as identified by Mr. Wilson, “..is used for all employees corporate wide.” Therefore, because the SIRS job descriptions are used “..corporate wide”, the T422 job description provided to me by Northrop Grumman can not and does not meet the requirements of also being a full and accurate description of my employment position “essential functions” within the MCAD definitions of “essential functions”.

In my view, Northrop Grumman has failed to provide me with a “..true and accurate description of the essential functions of my employment position at Northrop Grumman” as I requested in my January 28th letter, my December 9th letter and in my February 18th letter.

2.6.2 The Company claimed they responded to Higgs Modified Work Schedule Request

In his “Position Statement” Mr. Wilson writes: “Regarding a Modified Work Schedule – Since the start of his employment with Fibersense and continuing up to the present with Northrop Grumman, the Charging Part has always been allowed to work flex time with his managers approval.”

I Dispute this Statement – In my February 18th letter I wrote:

“If not already recognized as a reasonable accommodation I am now receiving from Northrop Grumman, I request the ability to set my own work hours (Flex Time). This would includes the ability to set the day or days of the week I will not be on site due to medical reasons (appointments with my health care gives or other health related needs) as an reasonable accommodation.”

I have received no information from Northrop Grumman, Ms. Boisvret or my direct manager, Mr. Murphy, that they recognize I am receiving Flex Time [²⁸] as a reasonable accommodation due to my medical condition or that this accommodation will continue.

2.6.3 The Company claimed they responded to Higgs Workplace Environment Request

In his “Position Statement”, Mr. Wilson writes: “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.”

I Dispute this Statement – In my February 18th letter I wrote:

“Being on immunosuppressant therapy means my immunity system is suppressed to prevent rejection of my transplanted liver. Because my immune system is suppressed, I am at greater risk of contacting illnesses and it takes me longer to recover from an illness than other individuals (example: my need to take a total of 8 week medial leave of absent last winter/spring due to Bronchitis).”

²⁸ I received the accommodation of Flex-Time when I was hired by Fibersense, as set up by my Fibersense manager, Mr. Ian Humprey.

My only defense against contacting illnesses is to limit (within reason) my exposure to situations that could put me at increase risk of being exposed to individual who are infected or who are already ill.

Currently, my office (and main work location) is located in a full office (full height walls with a door) where I am the only occupant. I believe this accommodation has been a reasonable balance between my need to limit my exposure to work place health risks and my daily need to interact with my co-workers. I request that this configuration in my office assignment continues as an reasonable accommodation.”

I have received no information from Northrop Grumman, Ms. Boisvert or my direct manager, Mr. Murphy, that they recognize I am receiving this accommodation ⁽²⁹⁾ due to my medical condition or that this accommodation will continue.

2.6.4 The Company claimed they responded to Higgs Adaptive Job Equipment Request

In his “Position Statement”, Mr. Wilson writes: “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.”

I Dispute this Statement – In my February 18th letter I wrote:

“In previous letters to you (^{1 2}), I have asked you if my employment position requires me to be (in effect) “..standing at a test console every day writing test software..” As of this date, you have not afforded me a written response to this question as I have requested.

The standard configuration of test stations (in Canton) requires one to be standing when using the test station. This include writing and debugging test software on the station.. The test station keyboard and display (CRT) are not mounted in any configuration that approximates an office installation of the same equipment.

Due to my combine medical condition, I find it very difficult (and sometimes painful) to stand on my feet for any extended periods of time. I am requesting a reasonable accommodation that will limit the time duration I am expected to spend “..standing at a test console ... writing test software...” or the means to (temporally) re-configure the test station I am working with such that the keyboard and display (CRT) can be used in a normal office type sitting position as an reasonable accommodation.”

²⁹ It is my understanding, Mr. Steven Quattrocchi, Fibersense CFO, extended me this workplace accommodation in the spring of 2002 after I discussed with him the medical issues I have with being on immunosuppressant therapy and the fact the immunosuppressant therapy means I am at greater risk of contacting infections and once I have an infection, it does take me longer to recover from infections

1Letter dated December 8, 2003 to Dick Murphy (cc Faith Ball), Northrop Grumman, Canton Mass, from David L. Higgs

2Letter dated January 28, 2004 to Carol Boisvert, Northrop Grumman, Canton Mass, from David L. Higgs

Northrop Grumman has failed to provide me confirmation that my employment position requires me to be (in effect) “..standing at a test console every day, writing test software” as stated to me by Ms. Boisvert during a telephone conversation (February, 2003).

On June 17th, my manger Mr. Murphy did speak to me and informed me he would adapt the CRT/Keyboard configuration of test consoles [Mr. Wilson only acknowledged ONE Test Console, in fact, Northrop Grumman Canton has a number of Test Consoles were I would need this accommodation] as need to meet my work requirements whenever I needed to write/debug software code on such Test Consoles.

The adaptations that Mr. Wilson claimed has occurred in his “Position Statement” is not a TRUE response. Such adaptations, as claimed by Mr. Wilson, still would not meet OSHA rules for Computer Workstations, which is what a Test Console becomes whenever I need to write/debug software code, for any extended time duration, on the Test Console.

Mr. Wilson refers to “..multiple employees...” using the Test Console. Most of the “...multiple employees...” in Mr. Wilson reference need only use the Test Consoles’ keyboard and CRT for a few minutes for simple data entry functions during their work day. Individuals, such as myself, who need to write/debug test software code on a Test Console, could be using the Test Console keyboard and CRT as a Computer Workstation for hours or days at a time.

2.6.5 The Company claimed they responded to Higgs Modifying Method of Supervision Request

In his “Position Statement”, Mr. Wilson writes: “Regarding Modifying Methods of Supervision – The Charging Party’s request directions.”

I Dispute this Statement – In my February 18th letter I wrote:

“I am asking for the restructuring of my work place such that all my work assignments flow down to me through one individual (such as my supervisor or a gate keeper) as a reasonable accommodation.”

I decided to make this accommodation request because I needed to reduce my workplace stress issues (such as the stress issues that caused me to take a medical leave of absent in February/March 2004).

Mr. Wilson comment that I need “...directions..” is his attempt to draw attention away from the true reason I made this accommodation request: namely workplace stress issues and the negative effects of such stress has on my general medical condition.

I have received no information from Northrop Grumman, Ms. Boisvert or my direct manager, Mr. Murphy in reference to this accommodation request. I feel this accommodation is needed to help me control my workplace stress issues.

2.6.6 The Company claimed they responded to Higgs Alternative Location Job Request

In his “Position Statement”, Mr. Wilson writes: “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.”

I Dispute this Statement – In my February 18th letter I wrote:

“Since my first year of employment with Fibersense, I held the reasonable accommodation of working at home, with the approval of my supervisor, on test software development and related documentation from time to time.

I believe this reasonable accommodation allowed me to maintain (on average) a 40 hours/week employment schedule without harming my general health.

I am asking that this reasonable accommodation of working at home, from time to time (which was terminated last year without noticed), be restored as a reasonable accommodation.”

Mr. Wilson, in his “Position Statement” is trying to PUSH THE IMAGE I AM REQUESTING TO PERFORM **ALL** OF MY EMPLOYMENT DUTIES AT HOME.

This is NOT TRUE.

I am asking for the reinstatement of an accommodation [³⁰] I held until February, 2003: namely the accommodation of working at home, from time to time, with my manger permission. This is an accommodation I had held since the summer of 2000 and it is a accommodation that was terminated by Ms. Boisvert during a telephone conversation she had with me in February 2003.

In that February telephone conversation, Ms. Boisvert informed me I could no longer work at home because my job description required me to be,

“...standing at a test console every day, writing test software..”

During the telephone conversation, I request Ms. Boisvert put her decision in writing and sent me it.

I never received any written confirmation from Ms. Boisvert of her decision to terminated an accommodation I had been receiving since 2000. When I protested the termination of

³⁰ My manager, Mr. Ian Humprey, put in place the accommodation of working at home, from time to time, on test software code development in place in 2000. I never work at home without Mr. Humprey’s permission. When Mr. Richard Murphy was assigned as my manger (in Spring of 2002) the accommodation of working at home, from time to time, was continued by Mr. Murphy.

this accommodation to Mr. Murphy, he informed me he was not allow to discuss the issue with me.

I also attempted to gain written confirmation of this "...standing at a test console every day..." decision when I wrote a letter to Mr. Murphy (December 9th, 2003) and in the letter I wrote to Ms. Boisvert (January 28, 2004). Once again, I never received any written confirmation of this decision from either Mr. Murphy (my direct supervisor and the only one who fully understood the details of the work I was performing) or from Ms. Boisvert.

Mr. Wilson has failed to include a copy of my job description or any document that modifies my job description, sent to me, that documents the "...nature of [my] job requires [me] to be at the work site" at all times.

2.6.7 The Company claimed they responded to Higgs Employment Status Request

In his "Position Statement, Mr. Wilson writes: "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."

I Dispute this Statement – In my February 18th letter, I wrote:

"At the end of my first year of employment (with Fibersense), as a reasonable accommodation, I became a full time employee working (a minimum of) 32 hours per week by agreement.

Last year, under Northrop Grumman, my employment status changed from a full time status to a part time status without notice.

I am asking that my full time employment status (working, as a minimum, 32 hours per week by agreement) be restored as a reasonable accommodation."

On or about September 2000, I informed my supervisor, Mr. Ian Humprey my medical condition had improved to the point where I could commit to working (an average of) 32 hours/week. As a result of my ability to commit to working 32 hours/week, Fibersense changed my employment status from that of a part-time employee to a full time employee working (a minimum of) 32 hours/week (on average) as a reasonable accommodation. Alone with this employment status change, I was now eligible to join the Fibersense health insurance plan which I did.

This accommodation, along with the accommodation of working at home, from time to time, allowed me (on average) to maintain a 40 hours workweek until February, 2003, when Ms. Boisvert terminated my accommodation of doing some work at home, with my manger's permission.

Under this Fibersense employment status, I was now receiving vacation time, sick time and personal day benefits at a accrual rate of 4/5 (minimum) of that of a Fibersense employee working 40 hours/week, with a benefit accrual rate that increased whenever I maintain a 40 hours workweek.

As a Northrop Grumman part time employee, I am now receiving vacation time, sick time and personal day benefits at a rate of ½ that of a Northrop Grumman employee working 40 hour/week. This benefit rate does not change, even if my manager requires me to work a 40-hour week or more.

Thus, Mr. Wilson's statement Higgs' "status as a regular employee...has remained unchanged throughout the transition from Fibersense to Northrop Grumman..." is a FALSE STATEMENT.

I have received no information from Northrop Grumman, Ms. Boisvert or my direct manager, Mr. Murphy, that Northrop Grumman has accepted or rejected the reinstatement of this accommodation.

2.7 Allegation the Company has no idea why Higgs was informed his accommodation request would not be answered.

In the "Position Statement", Mr. Wilson wrote, "The Northrop Grumman has no idea why the Charging Party states, "on March 22, 2004, I was informed that my request for reasonable accommodations would not be answered."

I Dispute This Statement -- On May 18th, 2004, I sent Mr. Alexis Livano, (Vice-President, Northrop Grumman Electronic Division), with a copy to Mr. Wilson, e-mail message informing Mr Livano I had filed an MCAD complaint against the Northrop Grumman and the reasons why I decided to file the complaint. In this e-mail message, I wrote:

"In my complaint, one of the items I cited was on February 18th, 2004, I gave Ms. Carol Boisvert, Canton Human Resource Manager, a written request for "Reasonable Accommodations" under the Massachusetts Fair Employment Practice Law. I also cited that on March 22, upon my return from a five week medical leave of absent due to work related stress, Ms. Boisvert informed me directly, when I asked about the status of my accommodation request, she [Northrop Grumman] was not going to afford me with any [written] reply to my request for accommodations".

Mr. Wilson and Northrop Grumman were fully informed by me on May 18th as to why I filed my MCAD complaint.

When Mr. Wilson wrote "Northrop Grumman has not idea why ...[Higgs] ...was informed...his request for reasonable accommodation would not be answered", Mr. Wilson is making a FALSE STATEMENT.

3 Conclusion

I have shown in this rebuttal brief narrative (when combined with the attached supporting exhibits and affidavits) that:

- A. My employer Northrop Grumman did failed to answer, in a forthright and direct manner, an request for reasonable accommodations (i.e., my February 18th letter) under MGL 151B and
- B. Northrop Grumman has failed to acknowledge my self-identification as a qualified handicapped person under MGL 151B due to my medical history and ongoing medical condition and
- C. Northrop Grumman has failed to provide me a true and accurate description of the “essential functions” of my employment position.

Comment:

A few days after I filed my complaint against Northrop Grumman with MCAD, I spoke to Mr. Wilson (Manager, EEO/Diversity, Northrop Grumman) in a telephone conversation. Mr. Wilson express to me his feeling I was making a big thing out of a small problem and he could clear everything up once he had the opportunity to speak to my doctors.

I made arraignment for Mr. Wilson to speak with Dr. David Lewis (Director of Liver Transplantation, Burlington, Mass). Mr. Wilson, without informing me, decided NOT to speak with Dr. Lewis. Mr. Wilson has rejected all statements I have made about my medical history and ongoing medical condition. Instead, Mr. Wilson is requiring me to submit a detail list from my medical provider to him in which my medical providers identify what employment functions I can and cannot perform.

Here is the catch-22; without an “essential functions” description of my employment functions, my health care providers cannot respond to Mr. Wilson request. Any dialog between Northrop Grumman and myself about accommodations initiated after May 17th is now at a standstill.

I believe, because I have had to take a total of (about) 14 week of medical leave of absent since January 2003, there now exist a negative bias again me within Northrop Grumman

When Ms. Boisvert, in February 2003, terminated my accommodation of working at home, from time to time, with my manager’s permission, I accused Ms. Boisvert of not understand the accommodation needs of employees such as myself who had received a liver transplant and are dealing with the effects of the medication they must take daily to remain alive.

I asked Ms. Boisvert to put me in touch with another individual within the Northrop Grumman Human Resource department who had a better knowledge of the needs of Northrop Grumman employees who had received an organ transplant.

Ms. Boisvert answered by informing me she would NOT connect me any other individual in Human Resource. She also told me I was to deal with her and her only. Then she told me she did not want to hear any more information about my medical condition (or words having the same meaning).

I submit Mr. Boisvert and Northrop Grumman are showing a negative bias against me because of my medical condition. In my view, there is no other way to explain why a Human Resource manager would make such a statement -- don't ask, don't listen, don't know and don't accommodate.

I welcome the opportunity to discover I am in error....

Respectfully submitted,

Signed under the pains and penalties of perjury on this 21 day of July 2004.

David L. Higgs
1269 Pleasant Street
Weymouth Massachusetts, 02189

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4 Exhibits

- 4.1 Exhibit 1: Copy of a Letter Sent by E-mail and First Class Mail to Mr. Dick Murphy, Dated December 8, 2003, by Mr. Higgs.

David L. Higgs
P.O. Box 391
Weymouth, Ma, 02188
781-335-3301
dhiggs42@comcast.net

Dick Murphy
Northrop Grumman/Electronics Systems
755 Dedham Street
Canton, Ma, 02021

by E-mail and First Class Mail

cc: Ms. Faith Ball

December 8, 2003

Dear Dick,

I am writing to ask you to clarify my employment position within the company, the job description and title of the position I currently hold and the full responsibilities of my position within your test engineering department. I am also asking you to identify the reasonable accommodation(s) the company is providing me in the workplace due to my documented health issues¹. Your reply to these questions will be forwarded to my health providers for their reference.

When I first joined Fibersense in September, 1999, I was hired by Mike Perimutter to replace Bill Lewis, a contract software programmer, who was working on the EKV program. I joined Fibersense with an extensive resume of experience (see attached resume; which I submitted to HR during the interview process). I have worked for a number of defense electronics firms (including Northrop PPD) as well as commercial electronics firms. During my employment career, I have held DOD clearances up to and above the top secret level. The majority of my work experiences since 1975 (when I started to make my transition from Microwave Engineering to Test Engineering/Test Software development) has been in the field of designing, coding and building out computer based testing solutions for research, engineering development, secure, depot testing and production (both high and low volume) testing on the factory floor.

Upon joining the company in 1999, many individuals have asked for and received my advice and help on issues related to testing and computerized testing applications within the company. Because of my growing involvement in this dialog within the company, I believed my employment responsibilities were naturally expanding into a role that also included advising, guiding and helping to shape the role of computer based testing solutions within the company.

This evolving adjunct to my test software programming responsibilities suddenly ended one year ago. Since the decision to promote another individual to the position of lead test software engineer over myself, I no longer feel I am, in any way, actively included in dialogs about shaping computer based testing solutions within the company or within the test engineering department.

On a number of occasions during this past year, when I have tried to inject my views and experience into this important dialog, I have been told it is not of my concern.

¹ "To Whom it May Concern" letter, dated February 14, 2003, by Dr. W. David Lewis, Director of Liver Transplantation, Lahey Clinic, Burlington, Ma. This letter is on file at HR.

Also, within the past few months, I was informed by a senior member of the management team it was likely I did not receive full consideration for the lead software engineer position a year ago because I am a part-time employee.

As you know, I am working 32 hours per week, not because I desire to limit my working hours by choice, but due to my on going health issues and my frequent need to meet with my health providers who are monitoring my health. As you know, I am on immunosuppressant therapy due to the life saving liver transplant I received a few years ago. Because of this therapy, I find I must balance my daily activities, including work, against the side effects of the liver transplant and the medical therapy (“..which has some unpleasant and sometimes debilitating side effects...”) that is keeping me alive.

Since last year, I no longer feel I am a professional equal in status with my full time co-workers. The dropping of my employment vacation and sick time benefits to ½ that of a full-time employee during the transition from Fibersense to Northrop was personally demoralizing. The exclusion of my name from various professional training programs this year has reinforced my feelings on this subject.

I am asking you to clarify employment advancement opportunities for employees, like myself, who are not working 40 hours per week because of documented long term health issues. Is it true that by working less than 40 hours per week, I am not entitle to the same advancement considerations and opportunities afforded to employees who are working 40 hour per week?

As you know, since I accepted the employment offer in 1999, I enjoyed the reasonable accommodation of working on test software development at home from time to time (with approval from my supervisor). I believe this accommodation of working at home aided me in the past in maintaining my work place health, thus allowing me to maintain and uphold my employment responsibilities and working hours while not putting my post-transplant health at undue risk.

Last February, I was informed (by HR) this reasonable disability accommodation of working at home no longer existed because (as I was informed by HR), my employment position requires me to be standing at a test consoles every day, writing test software. Therefor, there was no test engineering work I could perform at home (HR refused to put this decision in writing when requested).

Does my employment position requires me to be (in effect) “..standing at a test consoles every day, writing test software”?

Your written reply is requested.

Thank you,

David L. Higgs

- 4.2 Exhibit 2: Copy of a Letter Sent by First Class Mail to Ms. Carol Boisvert, Dated January 28, 2004, by Mr. Higgs.

David L. Higgs
P.O. Box 391
Weymouth, Ma, 02188
781-335-3301
dhiggs42@comcast.net

Ms. Carol Boisvert
Northrop Grumman
755 Dedham Street
Canton, Ma 02021

January 28, 2004

Dear Carol;

First, I appreciated the opportunity you afforded me to meet with you and Ms. Faith Ball a few weeks ago.

I assume the meeting was your response to the e-mail (December 8th and letter, December 9th) I sent to my supervisor Mr. Dick Murphy (with a copy to Ms. Ball). I have attached a copy of the letter I sent to Mr. Murphy to this letter for your reference,

I am very disappointed you and Northrop Grumman, for whatever reason, decided to give me a verbal response instead of the written response I had requested in my letter to Mr. Murphy.

While I found the meeting interesting, our verbal discussion, in my view, did little to answer the questions I asked Mr. Murphy in my letter and your meeting supplied me with no factual information about my job description and workplace conditions that I could forward to my health care providers to read.

Once again, I am asking you and Northrop Grumman to respond in writing to the questions I asked in my letter to Mr. Murphy regarding my Northrop Grumman employment: namely, my current employment title, job description and responsibilities, the identification of all reasonable accommodation(s) Northrop Grumman is providing me in the workplace due to my documented health^{1 2} issues, my current employment status (part time, full time, full time working reduced hours by agreement or other).

Also, is it true that by working less than 40 hours/week because of documented long term health issues, I am not entitle to the same advancement considerations and opportunities afforded to employee who are working 40 hours/week?

As you know, you informed me (February, 2003 by telephone) my job description required me to be "...standing at a test console every day, writing test software.." Is this a true statement (?) and is this statement contained in my job description?

Once again, I request you and Northrop Grumman respond to this letter and my original letter to Mr. Murphy in

1 Letter, Dated February 14, 2003 from W. David Lewis, M.D. Director of Liver Transplantation, Lahey Clinic, Burlington Mass.

2 Letter, to Ms. Bosvert from Dr. Steve Freilich, Ph.D. Licensed Psychologist "...I have recently advised Mr. Higgs to reduce his work week below his current 32 hours/week to see if this change will be beneficial to his medical condition that concerns me..."

writing in a timely manner. I believe the questions I have asked are reasonable questions for any employee to ask of his/her employer.

I am making this request again because I believe the response to my questions is important information that I need to forward to my health care providers at this time. Once my health care providers have this information, based on their professional advice, I may need to seek a dialog with you and Northrop Grumman in reference to modifying/seeking reasonable accommodation(s) in my Northrop Grumman workplace that will allow me to continue to be a productive employee of Northrop Grumman.

Such a dialog and resulting actions, I believe, could lessen the need for me to seek a short term [or long term] leave of absent due to some growing health issues.

Thank you,

A handwritten signature in black ink, appearing to read "David L. Higgs", with a stylized flourish at the end.

David L. Higgs

- 4.3 Exhibit 3: Letter Titled “Request for Reasonable Accommodations” under the Massachusetts Fair Employment Practice Law”, Dated February 18, 2004, written by David L. Higgs.

David L. Higgs
P.O. Box 391
Weymouth, Ma, 02188
781-335-3301
dhiggs42@comcast.net

Ms. Carol Boisvert
Northrop Grumman
755 Dedham Street
Canton, Ma 02021

February 18, 2004

Hand Delivered

Re: Request for "Reasonable Accommodations" under the Massachusetts Fair Employment Practice Law.

Introduction

In September 1999, I was hired by Mr. Mike Perlmutter (Fibersense, now Northrop Grumman) as a Software Test Engineer. A position I still hold today.

As many of my co-worker know, I had a liver illness (Primary Biliary Cirrhosis, a terminal illness) that set in motion the need for me to receive a liver transplant.

I received my lifesaving (orthotopic) liver transplant on September 5, 1997.

Since the liver transplants, I have been on immunosuppressant therapy, which in the words of one of my transplant doctors (¹) "...has some unpleasant and sometimes debilitating side effects..." Immunosuppressant therapy is a lifetime treatment used to prevent rejection of my transplanted liver.

I also suffered a stroke in 1995 (due to my Primary Biliary Cirrhosis illness). The stroke was a bleeder in the right hemisphere of my brain. This stroke left me with muscle weakness and touch deficit on my left side and in my left leg. The resulting muscle weakness and touch deficit does causes me difficulties in walking. I also have trouble keeping my balance while walking or standing. Due to these after effects of the stroke, I need to use a cane to aid me in walking, standing, and maintaining my balance.

Because of the immunosuppressant therapy, I am also under treatment for hypertension, a side effect of this therapy. Also, on a daily bases, I am dealing with the problems of general fatigue, tremors and headaches, a few of the debilitating side effects of the immunosuppressant therapy and other medication I need to take.

During my hiring process, I informed all individuals who interviewed me I had suffered a stroke and I had

1 "To Whom it May Concern" letter dated February 14, 2003, by W. David Lewis, M.D. Director of Liver Transplantation, Lahey Clinic, Burlington, Ma. A copy of this letter was transmitted to Ms. Carol Boisvert, HR at Northrop Grumman, Canton Ma by David Higgs on or about February 14, 2003.

received a liver transplant. I also informed those same individuals I was, on a daily bases, dealing with the side effects of the stroke and liver transplant, post-transplant recovery, the the medication I have to take daily..

During the first few years of my employment at Fibersense, a number of reasonable accommodations in the work place were made available to me in response to my medical condition.

These reasonable accommodations, in time, allowed me to fully perform the essential functions of my employment position on a (near) 40 hours/week employment schedule.

Some of the reasonable accommodations I was receiving ended, without notice, when Fibersense was purchased by Northrop Grumman.

Handicap Status

Based on my medical history and my on going medical conditions, I am a “handicapped” employee, under the Massachusetts Fair Employment Practice Law, as defined by the Massachusetts Commission Against Discrimination.

Request for “Reasonable Accommodations”

Under the provisions of the Massachusetts Fair Employment Practice Law, as defined by the Massachusetts Commission Against Discrimination, I am writing to formally requesting that Northrop Grumman provide me with the following “Reasonable Accommodations” in my work place. I am making this request for reasonable accommodations so that I can continual to perform the essential functions of my employment position and be on site 32+ hours/week..

I am requesting the following reasonable accommodations from Northrop Grumman:

1. Essential Function Job Description

In previous letters to you (or copied sent to you by the receiver) ^(2 3), I have asked you to supply me with a copy of my job description and my employment responsibilities. You did not respond to my request for my job description and employment responsibilities in my first letter. You did provide me with the NG T422 job description in response to my second letter.

In my reply to your e-mail message ⁽⁴⁾, I replied (by e-mail) “In my view, the T422 does offer a full and accurate description of the sum total of the tasks and functions I perform daily for Northrop Grumman. I also noted the total lack of any reference, direct or indirect, to any of the s/w engineering activities that are on my plate daily in this job description.”

After re-reading my reply, I meant to write “.. In my view, the T422 does **NOT** offer a full and accurate description of the sum total of the tasks and functions I perform daily for Northrop Grumman.”

As a reasonable accommodation, I am requesting a job description that is a true and accurate description of the essential functions of my employment position at Northrop Grumman. I suggest this job description should meets (as a minimum) the Massachusetts Commission Against Discrimination, Guidelines: Employment Discrimination of the Basis of Handicap – Chapter 151B definition, namely:

2 Letter dated December 8, 2003 to Dick Murphy (cc Faith Ball), Northrop Grumman, Canton Mass, from David L. Higgs

3 Letter dated January 28, 2004 to Carol Boisvert, Northrop Grumman, Canton Mass, from David L. Higgs

4 Northrop Grumman Internal E-mail from Carol Boisvert to David L. Higgs, Dated February 2, 2004 @ 2:36 pm.

“Job Descriptions – Job descriptions should include only those functions that the employee may reasonably be expected to perform during his/her employmentEmployers should periodically review job descriptions, as the nature of the job may change over time.”

2. Modifying Work Schedules

If not already recognized as a reasonable accommodation I am now receiving from Northrop Grumman, I request the ability to set my own work hours (Flex Time). This would include the ability to set the day or days of the week I will not be on site due to medical reasons (appointments with my health care gives or other health related needs) as a reasonable accommodation.

3. Work Place Environment

Being on immunosuppressant therapy means my immunity system is suppressed to prevent rejection of my transplanted liver. Because my immune system is suppressed, I am at greater risk of contacting illnesses and it takes me longer to recover from an illness than other individuals (example: my need to take a total of 8 week medical leave of absent last winter/spring due to Bronchitis).

My only defense against contacting an illnesses is to limit (within reason) my exposure to situations that could put me at increase risk of being exposed to individual who are infected or who are already ill.

Currently, my office (and main work location) is located in a full office (full height walls with a door) where I am the only occupant. I believe this accommodation has been a reasonable balance between my need to limit my exposure to work place health risks and my daily need to interact with my co-workers. I request that this configuration in my office assignment continues as a reasonable accommodation.

4. Obtaining or Modifying Adaptive Job Equipment or Devices

In previous letters to you (or copied sent to you by the receiver) (⁵ ⁶), I have asked you if my employment position requires me to be (in effect) “..standing at a test console every day writing test software..” As of this date, you have not afforded me a written response to this question as I have requested.

The standard configuration of test stations (in Canton) requires one to be standing when using the test station. This includes writing and debugging test software on the station.. The test station keyboard and display (CRT) are not mounted in any configuration that approximates an office installation of the same equipment.

Due to my combined medical condition, I find it very difficult (and sometimes painful) to stand on my feet for any extended periods of time. I am requesting a reasonable accommodation that will limit the time duration I am expected to spend “..standing at a test console ... writing test software...” or the means to (temporarily) re-configure the test station I am working with such that the keyboard and display (CRT) can be used in a normal office type sitting position as a reasonable accommodation.

5. Modifying Methods of Supervision

I am asking for the restructuring of my work place such that all my work assignments flow down to me through one individual (such as my supervisor or a gate keeper) as a reasonable accommodation.

6. Permitting Performance of Job Functions at Alternative Locations

Since my first year of employment with Fibersense, I held the reasonable accommodation of working at home,

⁵ Letter dated December 8, 2003 to Dick Murphy (cc Faith Ball), Northrop Grumman, Canton Mass, from David L. Higgs

⁶ Letter dated January 28, 2004 to Carol Boisvert, Northrop Grumman, Canton Mass, from David L. Higgs

with the approval of my supervisor, on test software development and related documentation from time to time.

I believe this reasonable accommodation allowed me to maintain (on average) a 40 hours/week employment schedule without harming my general health.

I am asking that this reasonable accommodation of working at home, from time to time (which was terminated last year without noticed), be restored as a reasonable accommodation..

7. Employment Status

At the end of my first year of employment (with Fibersense), as a reasonable accommodation, I became a full time employee working (a minimum of) 32 hours per week by agreement.

Last year, under Northrop Grumman, my employment status changed from a full time status to a part time status without notice.

I am asking that my full time employment status (working, as a minimum, 32 hours per week by agreement) be restored as an reasonable accommodation.

Thank you


David L. Higgs

- 4.4 Exhibit 4: May 18, 2004, Copy of E-mail letter sent to Alexis Livanos, CC'ed Kevin L. Wilson, by David Higgs.

Subject: MCAD Discrimination Complaint Filed against Northrop Grumman/Canton Mass
From: "David L. Higgs" <dhiggs42@comcast.net>
Date: Tue, 18 May 2004 09:12:58 -0400
To: Alexis Livanos <alexis.livanos@ngc.com>, "Kevin L. Wilson" <k.wilson@ngc.com>

Dear Dr. Livanos...

I am an employee of Northrop Grumman Electronic Systems, Canton, Massachusetts. Yesterday, I filed a complaint with The Commonwealth of Massachusetts Commission Against Discrimination (MCAD DOCKET NUMBER: 04BEM01326) making the allegations I was the subject of work place discrimination due to my medical disability by the Northrop Grumman Electronic System, Canton Massachusetts site.

In my complaint, one of the items I cited was on February 18th, 2004, I gave Ms. Carol Boisvert, Canton Human Resource Manager, a written request for "Reasonable Accommodations" under the Massachusetts Fair Employment Practice Law. I also cited that on March 22, upon my return from a five week medical leave of absent due to work related stress, Ms. Boisvert informed me directly, when I asked about the status of my accommodation request, she [Northrop Grumman] was not going to afford me with any [written] reply to my request for accommodations.

In addition, I was given no evidence my request for "Reasonable Accommodations" was handled in accordance with Northrop Grumman Corporate Procedure "Reasonable Accommodation", H112 (I do assume if my request had been handled as specified in H112, I would have received a copy of the finding from the committee chairperson).

During my medical leave of absent, I did have some (limited) conversations with Mr. Kevin Wilson about my accommodation request and my growing concerns I was the subject of work place discrimination due to my medical disability, but my dialog with Mr. Wilson did not continue after my return from the medical leave.

I strongly believe it is an injustice, if not also a breach of the Northrop Grumman ethical standards, for Northrop Grumman to have decided not to afford me a written answer to my request for "Reasonable Accommodations".

Also please note that upon my return to work after my sick leave, my manager, Richard Murphy, has been able to assign me work that I would classified as "lower in stress". I greatly appreciate Mr. Murphy understanding of my medical condition and his abilities to assign me tasks that allow me to continue to be a productive Northrop Grumman employee without putting my health at increase risk.

I am open to any forthright dialog on this subject.

Thank you

David

- 4.5 Exhibit 5: “To Whom It May Concern” letter from Dr. David Lewis, Director Of Liver Transplantation, Lahey Clinic, Burlington, MA, dated February 14, 2003

Lahey CLINIC

Hepatobiliary Surgery and Liver Transplantation
41 Mall Road
Burlington, MA 01805
Tel. 781-744-2500
FAX 781-744-5743
www.lahey.org/livertransplant

Roger L. Jenkins, M.D., F.A.C.S.
*Section Head of Hepatobiliary Surgery
Co-Director, Institute of Transplantation
Professor of Surgery
Tufts University School of Medicine*

W. David Lewis, M.D., F.A.C.S.
*Director of Liver Transplantation
Co-Director, Institute of Transplantation
Associate Professor of Surgery
Tufts University School of Medicine*

Elizabeth Pomfret, M.D., Ph.D., F.A.C.S.
*Director, Living Donor Liver Transplantation
Assistant Professor of Surgery
Tufts University School of Medicine*

James Pomposelli, M.D., Ph.D., F.A.C.S.
*Senior Staff Surgeon
Assistant Professor of Surgery
Tufts University School of Medicine*

Fredric D. Gordon, M.D.
*Medical Director of Liver Transplantation
Director of Hepatology
Assistant Professor of Medicine
Tufts University School of Medicine*

Eric D. Goldberg, M.D.
*Senior Staff Hepatologist
Assistant Professor of Medicine
Tufts University School of Medicine*

Stephen C. Fabry, M.D.
*Senior Staff Hepatologist
Assistant Professor of Medicine
Tufts University School of Medicine*

Sunil G. Sheth, M.D.
*Senior Staff Hepatologist
Assistant Professor of Medicine
Tufts University School of Medicine*

Nurse Practitioner
Carole Davis, MS, RN, CS

Transplant Nurse Coordinators
Patricia Conway, MHA, RN, CCTC
Denise Morin, MSN, RN

Social Worker
Eric Richman, MSW, LICSW

Financial Coordinator
Patricia Hogan

Director, Clinical Research - Transplant
Maryann Simpson, Ph.D.

February 14, 2003

**Re: David L. Higgs
LC#: 2030801**

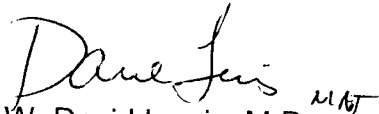
To Whom It May Concern:

Mr. David Higgs underwent surgery for an orthotopic liver transplant on September 5, 1997. Since that time, he has been on immunosuppressant therapy, which has some unpleasant and sometimes debilitating side effects. This is a lifetime treatment that helps prevent organ rejection.

Mr. Higgs is seen here in the office on a regular basis and we advise him to avoid stressful situations that might compromise his present state of good health. It is of extreme importance that our patients receive plenty of rest and good nutrition. I have advised Mr. Higgs that he needs to ensure that his work environment is conducive to achieving the goals we have discussed and agreed upon for maintaining his current standard of health. Working long, stressful hours is contraindicated and I have expressed this to him on several occasions. Any assistance you can provide to Mr. Higgs to encourage him to slow down to protect and preserve his health status would be most appreciated.

If you have any questions or concerns, please don't hesitate to contact me.

Sincerely,



W. David Lewis, M.D.
Director of Liver Transplantation
WDL/jd

Respect • Caring • Teamwork • Excellence • Commitment to Personal Best

41 Mall Road, Burlington, MA 01805

4.6 Exhibit 6: “E-Mail Message From Boisvert to Higgs, February 2, 2004, Subject: SIRS Job Descriptions

Subject: FW: SIRS Job Descriptions
From: "Higgs, David" <david.higgs@ngc.com>
Date: Tue, 3 Feb 2004 09:03:03 -0800
To: dhiggs42@comcast.net
X-UIDL: 20040203170354r1200j8i14e00085t
X-Mozilla-Status: 0001
X-Mozilla-Status2: 00000000
Received: from xcgmd810.ngxcgmdr1.northgrum.com
(xcgmd810.northgrum.com[155.104.240.104](misconfigured sender)) by rwcrmxc12.comcast.net
(rwcrmxc12) with ESMTP id <20040203170350r12005aqjae>; Tue, 3 Feb 2004 17:03:53 +0000
X-Originating-IP: [155.104.240.104]
Received: by xcgmd810.ngxcgmdr1.northgrum.com with Internet Mail Service (5.5.2656.59) id
<D63B3ZDW>; Tue, 3 Feb 2004 09:06:24 -0800
Message-ID: <C13E116330758C45AC81FE06B2C1CD174771CC@xcgma005.northgrum.com>
MIME-Version: 1.0
X-Mailer: Internet Mail Service (5.5.2656.59)
content-class: urn:content-classes:message
Content-Type: text/plain; charset="iso-8859-1"

-----Original Message-----

From: Boisvert, Carol
Sent: Monday, February 02, 2004 2:36 PM
To: Higgs, David
Cc: Ball, Faith; Murphy, Richard
Subject: SIRS Job Descriptions

Dave - Regarding your request for a job description; The link below will take you to the Command Media site for all NG job descriptions. Scroll down to pg. 46, family number 19 - Qual Assur, Reliab, Tst & Insp. Within that family, your job is T422, Engineering - System's Test.

<http://cm.md.essd.northgrum.com/cm/info/other/SIRS-1.PDF>

With regards to your request about accommodations, please let me know your availability this week to meet.

Carol

ES SIRS Exempt Benchmarks

Family

19 QUAL ASSUR, RELIAB, TST & INSP

A073 S690 QUALITY ANALYSIS

Reviews, analyzes and reports on quality discrepancies related to assembly, process, mechanical, electrical and electro-mechanical systems. Investigates problems and develops disposition and corrective actions for recurring discrepancies. Interfaces with manufacturing, engineering, customer, vendor and subcontractor representatives to determine responsibilities. Recommends corrective actions, dispositions and modifications.

A429 S487 QUALITY ASSURANCE SUPPLIER ADMINISTRATION

Plans, organizes, directs and reports on all supplier quality-related activities to assure fulfillment of contract/purchase order requirements. Assures that customer quality-imposed requirements are adhered to by supplier and that a quality system is maintained. Conducts programs designed to improve supplier performance and productivity through training and coordination of various procurement quality assurance efforts. Prepares, maintains and reviews procurement quality assurance procedures to assure compliance with customer and/or government requirements. Reviews and analyzes corrective action reports and purchase orders in an effort to reduce and eliminate defects. Monitors quality control activities and systems at supplier and subcontractor facilities, and maintains feedback loops. May administer a Certified Supplier Program or related programs in receiving inspection to ensure cost effectiveness and cost avoidance. May also audit third party manufacturers, due diligence and vendor selection process.

S499 TEST SUPERVISION

Supervises employees who test products to determine compliance with specifications.

S500 INSPECTION SUPERVISION

Supervises employees who inspect products to determine compliance with specifications.

S501 TEST AND/OR INSPECTION SUPERVISION

Supervises employees who test and inspect products to determine compliance with specifications.

S508 QUALITY-MULTIPLE FUNCTIONS

This benchmark code is intended for job classifications that have supervisory/management responsibilities over more than one functional area in this family or over the entire job family.

T422 ENGINEERING-SYSTEMS TEST

Synthesizes customer contractual needs and requirements into system test solutions that acknowledges technical, schedule and cost constraints. Develops and directs preparation and execution of comprehensive test plans, procedures and schedules for completing systems. Coordinates integrated testing activities. Reviews and evaluates test requirements to insure completeness of test program. Performs technical analysis of complete systems and prepares comprehensive system level evaluations.

4.7 Exhibit 7: Dr. Serino February 20th, 2003, Diagnosis of Mr. Higgs.

THOMAS V. SERINO, M.D.
INTERNAL MEDICINE AND PULMONARY DISEASE
7 DRIFTWAY P.O. BOX 165
SCITUATE, MASSACHUSETTS 02040
—
(617) 545-5225 871-0755 337-2113

February 20, 2003

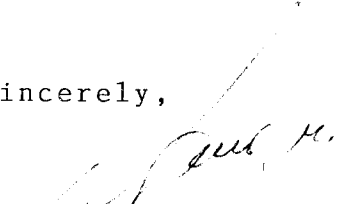
RE: David Higgs

To Whom it May Concern:

David Higgs is a patient of mine who I have been treating for bronchitis, and fatigue. Due to this condition he ned to stay out of work for at least two weeks if not three weeks.

Thank you.

Sincerely,



Thomas V. Serino, M.D.

4.8 Exhibit 8: E-Mail Message to Ms. Boisvert from Fredric D. Gordon, MD, February, 28, 2003

Subject: David Higgs
From: "Morin, Denise S." <Denise.S.Morin@lahey.org>
Date: Fri, 28 Feb 2003 20:29:23 -0500
To: <cboisvert@fibersense.com>
CC: <rmurphy@fibersense.com>, <jennis@fibersense.com>

Dear Ms Boisvert, Mr Murphy, and Mr Ennis:

I am writing on behalf of Mr Higgs. He is a patient who has been under our care since he received a liver transplant in 1997. As a transplant recipient, he requires life-long immunosuppression to prevent rejection. Unfortunately, this medication does increase both Mr Higgs' risk for infection as well as the length of time it takes for him to recover from such infections; this winter has been particularly difficult as he has experienced four episodes of bronchitis. It is our medical opinion that Mr Higgs would benefit from an additional week of rest so he may fully recover from his illness. Any flexibility you may offer him regarding the possibility of completing some of his work at home would be much appreciated. In this way he could pace his 32 hour work week over the course of 7 days.

Thank you for your consideration. If you have any questions, please do not hesitate to contact our office.

Sincerely,
Denise S. Morin, MSN, RN
Liver Transplant Recipient Manager

Fredric D. Gordon, MD
Medical Director of Liver Transplantation

See our web page at <http://www.lahey.org> for a full directory of Lahey sites, staff, services and career opportunities.

THIS MESSAGE IS INTENDED FOR THE USE OF THE PERSON TO WHOM IT IS ADDRESSED. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If you are not the intended recipient, your use of this message for any purpose is strictly prohibited. If you have received this communication in error, please delete the message and notify the sender so that we may correct our records.

4.9 Exhibit 9: Letter to Ms. Carol Boisvert from Dr. Steve Freilich, Ph.D. Licensed Psychologis, January 14, 2004.

Dr. Steve Freilich, Ph.D.
Licensed Psychologist
8 Washington Place
Braintree, MA
781-849-1953

Ms. Boisvert
HR
Northrop Grumman
Canton, MA

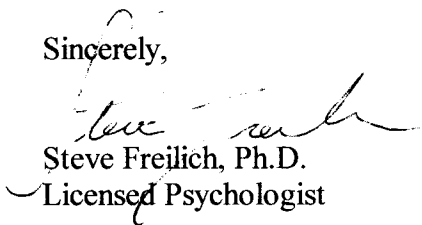
Dear Ms. Boisvert,

David Higgs has been my patient since July of 1999. I am a Clinical licensed Psychologist in private practice specializing in depression and have worked extensively with men and women with chronic medical conditions.

I have recently advised Mr. Higgs to reduce his work week below his current 32 hours/week to see if this change will be beneficial to his medical condition that concerns me. It is my hope that limiting his work hours at this time will help significantly to lower his stress level-a major negative component in his current condition.

I understand from Mr. Higgs that your office requires a start date and, while less straightforward, a stop date for Mr. Higgs work week reduction for your files. This is fine as long as it is understood that this is my educated guess, and what I shall work towards, but ultimately based on Mr. Higgs medical condition at the proposed end-date time. Thus, for your files, I have advised Mr. Higgs to begin this reduction January 12th, 2004 and end it March 15th, 2004. I will be seeing Mr. Higgs on a regular schedule and monitoring his condition during this period.

Sincerely,



Steve Freilich, Ph.D.
Licensed Psychologist

4.10 Exhibit 10: Northrop Grumman's "Respondent's Position Statement", Dated July 1, 2004

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION
One Ashburton Place, Room 601
Boston, MA 02108
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,

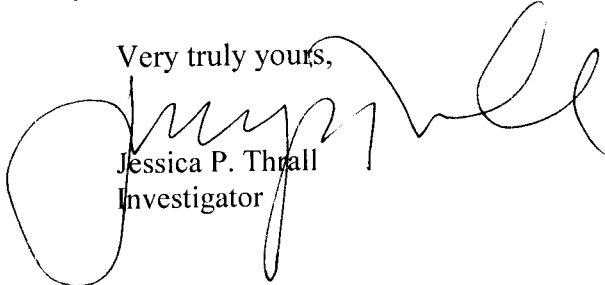
Enclosed, please find a copy of the Respondent's Position Statement. Now that you have received the Position Statement, this Commission requests that you submit a written response to the Position Statement. Your response to the Respondent's position statement is essential to the investigation of this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

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.

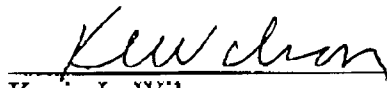
If you require additional information, please do not hesitate to contact Mr. Schroeder directly.

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.



Kevin L. Wilson

LIT 1467615v1

ES SIRS Exempt Benchmarks

Family

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.

4.11 Exhibit 11: Press Release: Northrop Grumman Acquires Fibersense Technology Corporation



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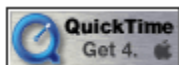
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Press Releases

Northrop Grumman Press Release

Contact: Frank Moore

(310) 201-3335

For Immediate Release

Northrop Grumman Acquires Fibersense Technology Corporation

LOS ANGELES, Dec. 18, 2002 -- Northrop Grumman Corporation (NYSE:NOC) announced today that it has acquired Fibersense Technology Corp. from Audax Group. The stock of Fibersense, a designer and manufacturer of fiber optic gyroscope-based navigation systems, was acquired for \$44 million in cash.

Fibersense, which has approximately 140 employees, designs and manufactures precision fiber optic gyroscopes (FOG), inertial measurement units and sensor components for missile, aircraft, sea and land applications. The Fibersense business has expected 2003 revenue in excess of \$30 million with solid double-digit growth anticipated for the next several years. Fibersense will be integrated into Northrop Grumman's Navigation Systems Division headquartered in Woodland Hills, Calif.

"The acquisition of Fibersense Technology enhances our ability to offer fiber optic gyroscope-based navigation systems and provide better situational awareness solutions to customers in the aerospace and defense markets," said Robert P. Iorizzo, president of Northrop Grumman's Electronic Systems sector. "Fibersense Technology's strong customer base and technical expertise will provide the platform for Northrop Grumman's future FOG design and development."

A part of Northrop Grumman's Baltimore, Md.-based Electronic Systems sector, the Navigation Systems Division provides situational awareness products and services for the defense and commercial markets. The division offers integrated avionics, inertial navigation and guidance systems, satellite electronics, identification friend or foe systems, smart displays, fiber-optic sensors and systems, and logistic support products and services.

Fibersense Technology is a wholly owned subsidiary of Fibersense Holdings LLC, whose principals include Audax Group, a private equity firm based in Boston, Mass.

Northrop Grumman Corporation is a \$25 billion global defense company, headquartered in Los Angeles, Calif. Northrop Grumman provides technologically advanced, innovative products, services and solutions in systems integration, defense electronics, information technology, advanced aircraft, shipbuilding and space technology. With approximately 120,000 employees and operations in all 50 states and 25 countries, Northrop Grumman serves U.S. and international military, government and commercial customers.

Note: Certain statements and assumptions in this release contain or are based on "forward-looking" information (that Northrop Grumman believes to be within the definition in the Private Securities Litigation Reform Act of 1995) and involve risks and uncertainties. Such "forward-looking" statements are subject to numerous assumptions and uncertainties, many of which are outside Northrop Grumman's control.

#

4.12 Exhibit 12: Higgs E-mail Message to Wilson, February 23, 2004

Subject: Information Documents from David Higgs on his un-fair practices allegation

From: "David L. Higgs" <dhiggs42@comcast.net>

Date: Mon, 23 Feb 2004 11:21:08 -0500

To: "Kevin L. Wilson" <k.wilson@ngc.com>

BCC: dhiggs42@comcast.net

Dear Mr. Wilson....

First, thank you for returning my phone call to you last week.

I have taken the liberty of attaching a few document (pdf files) for your information and giving some additional details to events I cited to you during our phone conversation last Friday..

I sent a letter to my supervisor [Dick Murphy] by e-mail and First Class Mail on Dec 9th (20031209_LetterToDickMurphy.pdf). I received an e-mail message from Murphy in which Murphy informed me he would respond to my letter in a few days. Murphy did not respond, but Carol Boisvert, about two weeks later informed me she needed to talk to me and would set up an appointment. A few days later, Boisvert scheduled an appointment, but I had to cancel it due to a long standing appointment I had with my liver transplant doctors. Boisvert did not try to re-schedule the appointment at that time.

During the Christmass week, I saw Boisvert for a few minutes and she re-cited the need to set up a appointment and talk to me. In early January, Boisvert finally schedule an appointment to see me (only after I sent her an e-mail message) . The appointment became a meeting with Faith Ball and Boisvert. At the start of this meeting, when Ball first entered Boisvert's office, she asked Boisvert a question..."is this the fellow who made the complaint about Bart Addis' promotion " (or word to the same effect). Boisvert answered yes and the meeting started.

During the meeting I was informed my job function was to continue my work on the EKV test software. No reference was made to my Dec 9th letter and my employment related question were not answered except Ball did voiced she does not have any problems with part time employees working on her staff.

Because Boisvert did not fully answer my Dec 9th letter, I viewed the meeting with Boisvert and Ball as un-productive.

On January 28th, I sent another letter to Boisvert (20040128_Boisvert.pdf) asking the same basic question about my employment. Boisvert did not reply to this letter, but did reply to two selected questions in a series of e-mail messages. One reply was to point me to a job description on the Northrop Command Media and to informed me Northrop was supplying me with Flex time as a "reasonable accommodation".

Just after Boisvert limited reply to my January 28th letter, I spoke again to my supervisor. Murphy informed me he was told not to reply to my Dec 9th letter in any way or to answer any questions about my employment (I believed Murphy has been ordered to minimize his contact with me since last summer). Murphy gave me a very broad hint Boisvert did not answer my letters because there existed a fear I was going to bring a law suit against Northrop. Murphy also gave me a strong hint that I should contact you office ASAP. In my view, people don't fear a law suit unless there is some reason to do so and Murphy would not have given me your name for no reason..

Early last summer, I wrote a letter to Dick Murphy asking him to remove me from the EKV program because of "stress" and other issues (see the general information letter from Dr. Lewis about my health, 20030214_LaheyToWhom.pdf, which I sent to Boisvert around Feb, 03). Murphy accommodated my request, adding he had to get approval to do so from his managers. In early fall, I was assigned to code a special (DVT) test program for the EKV program and I have been back on the EKV program since that special assignment.

During the pass few months, one of my health care providers has advised me to take a medical leave of absent. In January, I decided to reduced my work hours from 32 hours/week to 24 as my middle of the road balance (20040114_DrSteve.pdf). Last week, another of my doctors ordered me not to return to work until March 15th. Because this order was written on 2/12 and I came to work on 2/13 (for 8 hours) to forward some critical EKV information to the contract programmer who was assigned to pick up my work during my absent, Boisvert

asked me to have the doctor's order re-written showing a start date after 2/13. I sent Boisvert by e-mail (carol.boisvert@ngc.com) and First Class Mail the rewritten order on 2/19 (20040216_SerinoNoWork.pdf).

Last Wednesday, I meet with Boisvert to start my leave of absent (until March 15th). At that time, I gave Boisvert a letter in which I fully informed Northrop Grumman about my medical history, stated I was an "handicap employee" under the Massachusetts Fair Employment Practice Law" and asked for some "reasonable accommodations" due to my on going health condition.

When I informed Boisvert the letter I was giving her contained requests for reasonable accommodations, she refused to accept the letter from me (20040218_Accom.pdf). She told me only my doctors can make such requests. Only when I informed Boisvert I was making the reasonable accommodation request under the Massachusetts Fair Employment Practice Law did she accept my letter.

A few minutes latter, Boisvert call me into her office while she was still reading the letter. Boisvert, in response to my Flex Time request informed me I already had this accommodation. I replied I did not have the accommodation in writing. When Boisvert read my request about my office space, she informed me I was assigned to a one person office, not because my title allowed me to have a one person office, but because she (Boisvert) is allowing me to sit in a one person office as a reasonable accommodation.

I bring this up because in both letters to (Murphy and then to Boisvert), when I asked what reasonable accommodations Northrop Grumman was providing me, an answer could have been provided in writing, but was not!

I hope this background helps in you understanding and can lead to a common ground solution. When I return to work on March 15th....I would like to think there will be a forthright dialog.

David L. Higgs

20031209_LetterToDickMurphy.pdf

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20030214_LaheyToWhom.pdf

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20040114_DrSteve.pdf

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20040216_SerinoNoWork.pdf

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20040218_Accom.pdf	Content-Type: application/pdf Content-Encoding: base64
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5 Affidavits

- 5.1 Affidavit 1: Affidavits of David L. Higgs Describing his Meeting on January 9th, 2004, with Ms. Carol Boisvert and Ms. Faith Ball.

AFFIDAVIT OF DAVID L. HIGGS DESCRIBING HIS MEETING WITH Ms. BOISVERT and Ms. FAITH BALL, on JANUARY 9th, 2004

I, David L. Higgs, residing at 1269 Pleasant Street, Weymouth Massachusetts, having been duly sworn, do depose and say as follows:

- A. On January 9th, 2004, I met with Ms. Faith Ball, Engineering Director, and Ms. Carol Boisvert, Human Resources Manager, Northrop Grumman, Canton, Massachusetts in Ms. Boisvert office around 1:30 p.m.
- B. The meeting was scheduled for 1:00 pm, but Ms. Boisvert was about 15 minutes late. Ms. Boisvert and myself had to wait (about) an additional 15 minutes for Ms. Ball to arrive.
- C. When Ms. Ball arrived she had a quick conversation with Ms. Boisvert, in my present. While I did not hear the full conversation between Boisvert and Ball, I did hear enough of the conversation to feel it was about me and the fact I had made a verbal claim I was the subject of employment discrimination in the decision to hire and then promote Mr. Bart Addis as Lead Software Engineer over myself in September of 2002.
- D. I informed Ms. Boisvert and Ms. Ball I believe I was a second-class employee of Northrop Grumman because I was not being provided with the same on the job training opportunities as other full time employees. I also stated as a Northrop Grumman part time employee, I believe I no longer had the same advancement opportunities as full time Northrop Grumman employees.
- E. I asked Ms. Ball if there were any plans for Northrop Grumman to assign me other engineering responsibilities that would make fuller use of my broad abilities in the filed of test engineering.
- F. Ms. Ball replied that "she" did not discriminate in her employment and advance decision within her engineering group.
- G. Mr. Ball also informed me my only employment task was to work on EKV test software and get the EKV test software released.
- H. I then informed Ms. Boisvert and Ms. Ball I was feeling overwhelm by the EKV program job stress and I needed to find a way to decrease this stress before it affected my health.
- I. I also informed Ms. Boisvert and Ms. Ball that since the hiring of Lewis Nathan, my job stress levels have greatly increased because not only do I need to work on my EKV test software and meet a demanding release delivery schedule, I must also train Mr. Nathan at the same time. I strongly informed Ms. Ball and Boisvert my job stress was becoming critical and I was not handling the stress well.

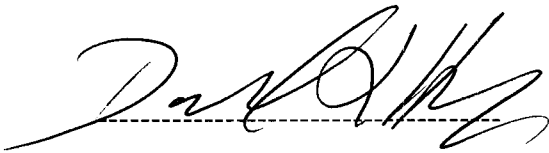
J. Both Ms. Ball and Ms. Boisvert replied (after each had a short laugh) I was not the only employee feeling stress on the job. Ms. Boisvert commented she was also feeling stress. After making this comment, Boisvert said stress was the nature of the work because we work in a matrix management structure.

K. I suggested to Ms. Boisvert I believed one way for me to reduce my stress was to have all of my work assignment comedown to me from one individual.

L. Ms. Boisvert rejected my suggestion saying it could not be done within a matrix management structure.

M. At this point in the conversation, the meeting ended.

Signed under the pains and penalties of perjury on this 19th day of July, 2004

A handwritten signature in black ink, appearing to read 'David L. Higgs', written over a horizontal dashed line.

David L. Higgs

1269 Pleasant Street

Weymouth, Mass, 02189

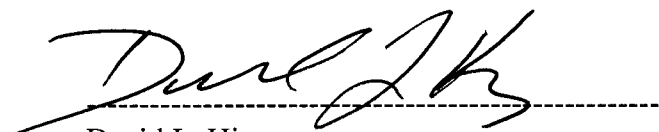
5.2 Affidavit 2: Affidavit of David L. Higgs Describing/Identifying when and where he gave his “Request for Reasonable Accommodation” Letter to Ms. Carol Boisvert

AFFIDAVIT OF DAVID L. HIGGS DESCRIBING/IDENTIFYING WHEN AND WHERE HE GAVE HIS "REQUEST FOR REASONABLE ACCOMMODATION" LETTER TO MS. CAROL BOISVERT, HUMAN RESOURCE MANAGER, NORTHROP GRUMMAN ELECTRONIC SYSTEMS, 755 DEDHAM STREET, CANTON, MASSACHUSETTS.

I, David L. Higgs, residing at 1269 Pleasant Street, Weymouth, Massachusetts, having been duly sworn, do depose and say as follows:

1. On the Morning of February 18, 2004 (around 9:00 am, in Ms. Carol Boisvert's office) I was meeting with Ms. Boisvert, Human Resource Manager, Northrop Grumman Electronic System (Canton Massachusetts Site) to apply for a medical leave of absent.
2. At that meeting, I gave Ms. Boisvert a copy of my letter (Dated February 18, 2004, addressed to Mr. Carol Boisvert) requesting "Reasonable Accommodations" under the Massachusetts Fair Employment Practice Law from Northrop Grumman.
3. Initially, Ms. Boisvert refused to accept my letter when I informed her it as a written request for "Reasonable Accommodations"
4. Then I informed Ms. Boisvert the request was being made under the Massachusetts Fair Employment Practice Law.
5. Ms. Boisvert then accepted the letter from me.
6. Before I started to leave the area of her office, I noticed Ms. Boisvert was reading my "Reasonable Accommodations" letter at her desk.
7. While leaving the area of Ms. Boisvert's office, Ms. Boisvert called me back into her office and informed me I already had "Flex Time" (one of the reasonable accommodation requests I was making in the letter was to have Flex Time). I replied to Ms. Boisvert I understood I had flex time, but I had nothing in writing (from the company) that indicated I held "Flex Time" as a "Reasonable Accommodation".
8. Ms. Boisvert then returned to her office and I left her office area to start my medical leave of absent.

Signed under the pains and penalties of perjury on this 17th day of May, 2004

A handwritten signature in black ink, appearing to read 'David L. Higgs', written over a horizontal dashed line.

David L. Higgs
1269 Pleasant Street
Weymouth Mass, 02189

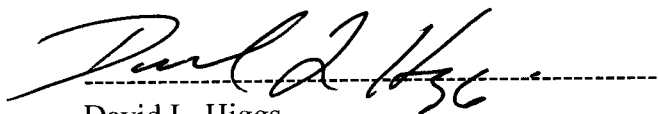
5.3 Affidavit 3: Affidavit of David L. Higgs Describing His Conversation With Ms. Carol Boisvert, March 22, 2004

AFFIDAVIT OF DAVID L. HIGGS DESCRIBING HIS CONVERATION WITH MS. CAROL BOISVERT, HUMAN RESOUC E MANAGER, NORTHROP GRUMMAN ELECTRONIC SYSTEMS, 755 DEDHAM STREET, CANTON, MASSACHUSETTS, ON MARCH 22, 2004.

I, David L. Higgs, residing at 1269 pleasant Street, Weymouth, Massachusetts, having been duly sworn, do depose and say as follows:

1. On March 22, 2004, I meet with Ms. Carol Boisvert, Human Resource Manager, Northrop Grumman Electronic System in her office about 9:00 am.
2. The reason for meeting with Ms. Boisvert was to make sure she had received my doctor order allowing me to turn back to my employment after being on a medical leave of absence for five week.
3. During that meeting, I directly ask Ms. Boisvert if I was going to receive a written answer to my "Request for Reasonable Accommodations" letter I give her on February 18, 2004.
4. Ms. Boisvert answered my question by saying I would not receive any type of reply to my letter.

Signed under the pains and penalties of perjury on this 17th day of May, 2004

A handwritten signature in cursive script, appearing to read "David L. Higgs", is written over a horizontal dashed line.

David L. Higgs
1269 Pleasant Street
Weymouth Mass, 02189