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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERIC BATES, BERT ENOS, BABARANTI
OLOYEDE, ERIC BUMBALA, and EDWARD
WILLIAMS on behalf of themselves, and on
behalf of all others similarly situated,

Plaintiffs,

v.

UNITED PARCEL SERVICE, INC. (d.b.a.
UPS), and DOES 1-20,

Defendants.

CASE NO. C 99-2216 TEH
HEARING PROTOCOL EXPERT PANEL
AWARD

1 The Panel was charged with developing a "Hearing Protocol" for UPS drivers and driver
2 applicants who do not meet the hearing standard promulgated for commercial drivers by the United
3 States Department of Transportation. The Hearing Protocol will apply to all non-DOT-regulated
package delivery vehicles for a period of not less than one year following its implementation date.

4 The Panel has determined that the Hearing Protocol adopted by UPS shall contain the
5 following elements:

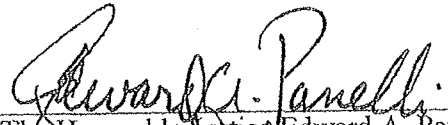
6 1. UPS shall adopt Exhibit A, including the following alternative standard:

7 The candidate must demonstrate, at either 1kHz or 2 kHz, a binaural sound field
8 threshold of 45 dB HL or better (ANSI-1989), with or without hearing aids, as
measured by a licensed or certified audiologist following relevant and current ANSI
standards.

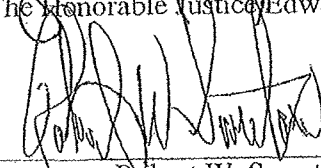
9 2. On-road testing and driver training to all individuals who pass the hearing protocol
10 shall be provided in non-DOT regulated package cars.

11 3. All UPS managers providing on road testing and driving training to individuals who
12 pass the Hearing Protocol shall participate in training developed to facilitate more
effective communication with hearing impaired drivers and driver applicants.


13 Dated: December 19, 2008

14 By: 
The Honorable Justice Edward A. Panelli (Ret.)

15 Dated: Dec 19, 2008

16 By: 
Robert W. Sweetow, Ph.D

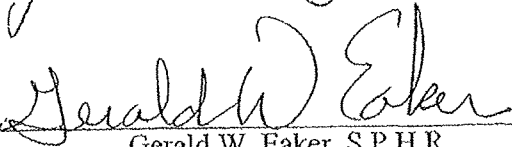
17 Dated: 12/19/08

18 By: 
Robert A. Dobie, M.D.

19 Dated: 12/19/08

20 By: 
John Romano

21 Dated: 12/19/08

22 By: 
Gerald W. Eaker, S.P.H.R.

December 19, 2008

Hearing Protocol

In the past, UPS has maintained a policy that if a driver failed any part of the D.O.T. physical, that driver would be prevented from operating a UPS vehicle. UPS has now taken a closer look at that policy and is implementing a pilot program to test a new protocol that may allow certain D.O.T. disqualified drivers the opportunity to operate specific UPS vehicles.

Driver candidates with hearing impairments will be individually assessed upon request to determine their ability to safely operate UPS vehicles weighing 10,000 pounds or less. The following is a breakdown of the steps to be utilized:

1. The employee must have a driving record that would not otherwise disqualify him or her from a UPS driving position.
2. In addition to completing a D.O.T. Medical evaluation at a designated UPS clinic, once the employee's medical board certified physician (Otolaryngologist—more commonly known as an ENT) has been provided with a complete and thorough written explanation of the specified UPS job requirements, it is the responsibility of that physician to notify UPS of any otolaryngological conditions discussed in the evaluation that would make it unsafe for the employee to drive a UPS vehicle. In addition, the employee's physician must agree to report to UPS any discrepancies that the employee exhibits that are in conflict with the reasonable accommodation guidelines. This includes, without limitation, noncompliance with the established treatment program or change in the employee's condition that may warrant removal from a driving position. Also, the employee's physician must certify that the employee has been thoroughly educated about his or her condition. For example: control, recognition and identification of problems.
3. The employee must agree to release pertinent medical records to a UPS consulting physician, and where necessary, a third doctor, in order that these physicians may, where necessary, conduct a thorough examination.
4. The employee must agree to periodic medical evaluations as defined in the protocol that are related specifically to the condition in question. This is in addition to the required routine D.O.T. physical. The frequency of these condition-related examinations may be adjusted by the UPS consulting physician after consideration and evaluation of employee safety and public safety issues. (See paragraph IV of the Hearing Evaluation Program).
5. Any necessary third doctor examinations or opinions will be rendered by a medical board certified physician in the specialty covering the medical condition in question. The decision rendered by that doctor will be final and binding as set forth in the collective bargaining agreement.
6. The employee's physician and the UPS consulting physician shall not be one and the same.
7. Any physician's evaluation involved in this accommodation process shall be conducted in accordance with the provisions of the medical evaluation worksheet furnished by UPS and enclosed in the attached binder.

This entire process is to be considered an individualized assessment of the employee's medical condition. Because this is being considered a job-related adjustment, all the collective bargaining provisions and Company ADA policies applicable to this process apply.

Hearing Evaluation Program for UPS Drivers with Hearing Impairments

I. Program Scope and Applicability

This program was developed to assess a UPS driver's hearing impairment and the effect of this impairment upon his/her ability to safely operate a package car weighing 10,000 pounds or less. This policy does NOT apply to drivers subject to 49 CFR Section 391.41 and 391.43.

II. Background

A. Objectives of the Hearing Impairment Evaluation Program

For the purposes of this manual, this program will be referred to as the Hearing Impairment Evaluation Program, or HIEP. The objectives of the HIEP are to:

1. Review minimum hearing requirements for operating a package car under 10,001 pounds;
2. Identify conditions that may impair hearing;
3. Formalize the evaluation process of the driver with these hearing impairments;
4. Characterize the hearing of the driver; and
5. Determine the fitness of the driver to operate a package car under 10,001 pounds.

B. Basis for Recommendations

This evaluation is based upon accepted standards of care by Otolaryngologists and audiologists. In this protocol, these two professional groups are known as "hearing care professionals".

C. Confidentiality of Medical Information

Maintaining confidentiality of UPS employees' medical records shall be observed at all times. The hearing care professionals shall retain all medical records, UPS summary documents and attestations. Copies of hearing care professionals attestations shall be maintained under secured conditions by UPS Occupational Health supervisors. Medical information will be shared with UPS management and Health & Safety only as this information pertains to the employee's status as having a hearing impairment.

III. Delegation of Responsibilities

A. The Employee

The employee's active participation in all aspects of the HIEP is critical to:

1. Assist his/her hearing care professionals in accurately determining his/her fitness to operate a commercial vehicle under 10,001 pounds and to perform the other essential functions of the job; and
2. Prevent, detect and control any further decline in hearing.

The employee's successful participation in the HIEP depends upon his/her good faith compliance in caring for his/her hearing, including:

1. Following the recommendations of hearing care professionals;
2. Taking medications as prescribed; and
3. Reporting changes in hearing to the hearing care professionals when they occur.

The employee shall also report any change in hearing that occurs while on duty to his/her manager.

B. The Center Manager and Health & Safety Manager

1. Driver fitness for duty and the role of hearing impairment.

The Center Manager is routinely expected to assess whether the drivers under his/her jurisdiction are fit to drive. If management determines that a driver may not be fit to drive, it is his/her responsibility to make the assessment, make the appropriate intervention, and document management's findings accordingly.

2. The Hearing Impairment Evaluation Program

The employee's manager will work closely with and cooperate with the Health & Safety manager who will have local oversight of drivers' participation in the HIEP.

C. The Health Care Professionals

All hearing care professionals shall have a thorough understanding of the job demands and essential functions of the package car driver, and how the driver's work routine interacts with the employee's hearing impairment. The success of the HIEP is based upon clear, effective communication among all members of this professional team and the driver.

D. The Occupational Health Supervisor

1. Serving as a resource for the employee's hearing care professional

The Occupational Health supervisor will communicate with the employee's hearing care professional as needed to answer any questions about the HIEP, the employee's job demands or any other information pertaining to the job. This will assure that the hearing care professionals make an accurate and informed determination about the employee's fitness to operate a commercial motor vehicle. In order to clarify policies and procedures, the region Occupational Health manager will assist the personal physician in contacting the UPS Corporate Medical Consultant as needed.

2. Quality Control

The Occupational Health supervisor will review completed hearing care professional attestation statement, and determine when the employee's next hearing evaluation should be scheduled.

E. The Corporate Medical Consultant

The Corporate Medical Consultant will be available to answer questions from the region and corporate Occupational Health manager or hearing care professional. The consultant will recruit other specialists to serve as resources or review medical records, as needed. This HIEP will be formally reviewed annually, and intercurrent policy and procedure changes will be made as indicated.

IV. Routine Diagnosis-Specific Evaluations to be Performed for Common Pathological Ear Conditions that Impair Hearing

The hearing care professional will perform the required testing using the attached HIEP form. These examinations will be performed annually for employees with progressive hearing loss, or more frequently, if changes in the employee's condition indicate the need, and every two years for employees with stable hearing loss. As used herein, **Stable** hearing loss includes hearing not expected to progress more rapidly than age-related changes and **Progressive** hearing loss includes that characterized by a substantial chance of progressive or fluctuating hearing loss.

Examples of conditions that are related to stable hearing loss include, but are not limited to hearing loss resulting from normal aging process, noise-induced hearing loss post-exposure, and congenital hearing loss. Examples of conditions that are related to progressive hearing loss include, but are not limited to Meniere's Disease, Chronic Otitis Media, Acoustic Tumors, Autoimmune Inner Ear Disease, and certain cancer treatments involving chemotherapeutic drugs. Employees with conditions related to progressive hearing loss shall be tested for protocol compliance at least annually, and more frequently if indicated for the condition.

V. The Individual must meet All of these Criteria in Order to be Qualified for Operating a Package Car Under 10,001 pounds

The candidate must demonstrate, at either 1kHz or 2 kHz, a binaural sound field threshold of 45 dB HL or better (ANSI-1989), with or without hearing aids, as measured by a licensed or certified audiologist following relevant and current ANSI standards.

All HIEP screening will involve audiometric testing, as stated above, in lieu of the forced whisper test.

United Parcel Service Employee Name:

Hearing Impairment Evaluation Program SSN#

Employee Data	DOB / / - SSN Sex M F
	Name:
Examiner	Board Certification:
Information	Facility:
	Date of Examination:
Etiology of Hearing Impairment Prognosis	
	<input type="checkbox"/> Stable: Hearing not expected to progress more rapidly than age-related changes <input type="checkbox"/> Progressive: Substantial chance of progressive or fluctuating hearing loss (Please check the appropriate box.)

QUALIFYING CRITERIA AND RESULTS OF HEARING EXAMINATION: The individual must meet the criteria below in order to be qualified. All hearing testing must be performed by a licensed or certified audiologist following relevant and current ANSI standards.

Frequency	Required dB HL in the sound field (must pass either 1000 or 2000 Hz with or without a hearing aid)	Pass
		Y/N
1000	45	
2000	45	

Recommendations or Restrictions: Please list any hearing aids, or other requirements to comply with this Hearing Impairment Evaluation. Insert "None" if indicated:

Next Evaluation scheduled for (Date)

Hearing Care Professional's Signature
Date

Name