

**EMPLOYMENT**

Disability Discrimination — Civil Rights — School

**University professor claimed he was let go because he's deaf****VERDICT** \$547,651**CASE** Michael L. Collier, Ph.D. v. Texas Tech University, No. 2008-545,781**COURT** Lubbock County District Court, 99th, TX**JUDGE** Bill Sowder**DATE** 5/25/2011**PLAINTIFF****ATTORNEY(S)** Brian Dean East, Disability Rights Texas, Austin, TX  
Rafe Foreman, Foreman, Lewis & Hutchison, Grapevine, TX  
Susan E. Hutchison, Foreman, Lewis & Hutchison, Grapevine, TX  
Kern Lewis, Foreman, Lewis & Hutchison, Grapevine, TX  
Robert W. Schmidt, Crews Law Firm, Austin, TX**DEFENSE****ATTORNEY(S)** Dan Perkins (lead), Attorney General's Office, Austin, TX  
Eric L. Vinson, Attorney General's Office, Austin, TX

**FACTS & ALLEGATIONS** In October 2006, plaintiff Michael L. Collier, Ph.D., 52, a first-year tenure-track assistant professor at Texas Tech University, was told that his contract, or appointment, would not be renewed for the following school year. Collier is deaf and taught sign language and other courses related to deaf culture.

Collier sued the school for disability discrimination under the Texas Commission on Human Rights Act. He said his supervisor did not meet with him face-to-face or express any concerns about performance before the non-renewal. According to Collier, university policy included a progressive disciplinary action program, which he said school officials ignored by firing him without any prior counseling or opportunity to improve performance. He argued that, by contrast, hearing professors were counseled and mentored, and Collier was placed under the direct supervision of a non-tenure-track professor. He also argued that "aloof" and "standoffish" were used as "code words" to describe him without mentioning his deafness.

Collier's counsel also argued spoliation. He said there were missing documents relating to an internal investigation of whether Collier was being discriminated against. He argued this issue to the jury, but for strategic reasons, ultimately chose not to request a spoliation instruction.

The defense denied discrimination and argued that Collier did not participate in department activities and did not respond sufficiently to a peer review.

According to Collier's counsel, the defense argued that Collier "wasn't built for" being a professor. According to the defense, this quote was from Collier's research mentor and pertained only to whether Collier could perform quality research in an academic setting.

Defense counsel reported that there were other deaf faculty members, all of whom were fluent in sign language and had worked with deaf persons for their entire careers.

The defense also argued that applicable university policy does not require progressive discipline before a non-reappointment, but only requires regular and ongoing assessment in teaching, research and service, which the defense argued Collier received.

Regarding the claim of spoliation, according to defense counsel, the only records at issue were "meaningless margin notes that the investigator made on copies of documents provided to him by the plaintiff. These notes were not relied upon by the decision-makers who decided not to reappoint the plaintiff, and they were summarized by the appeal authority in his finding of no discrimination."

Collier has some speech impairment related to his deafness.

**INJURIES/DAMAGES** Collier's job with Texas Tech ended on June 31, 2007. He then took a job in a public high school teaching sign language.

He sought back pay of \$47,651, front pay of \$250,000 (through retirement age) and compensatory damages of \$400,000.

Because of the Texas Tech job, Collier and his wife had moved to Lubbock from Austin, as had their adult daughter and her

spouse. Collier was told of the non-renewal roughly two weeks after his daughter and her husband moved to Lubbock.

Collier said he was the only deaf professor at Texas Tech and possibly the only deaf college professor in Texas and that he was therefore considered a trailblazer in the deaf community. He said the non-renewal was a crushing blow to his self-esteem and reputation, both in the deaf community and in his family.

The defense did not dispute the amount of back pay, but argued that, if the jury found for Collier, it should limit damages to compensatory damages of about \$40,000 and three years of front pay.

**RESULT** The jury determined that Collier's deafness was a motivating factor in the decision not to renew his contract and that the same decision would not have been reached in the absence of this condition. It awarded \$547,651. He will seek attorney fees and court costs.

Attorney Robert Schmidt said that Lubbock County jurors have a conservative reputation, and he is particularly pleased with the verdict.

**MICHAEL L.**

**COLLIER, PH.D.** \$47,651 past lost earnings  
\$100,000 future lost earnings  
\$400,000 past compensatory damages  
\$547,651

**DEMAND** \$500,000

**OFFER** \$2,000

**TRIAL DETAILS** Trial Length: 7 days  
Jury Vote: 11-1  
Jury Composition: 4 male, 8 female

**PLAINTIFF**

**EXPERT(S)** Jean Andrews, disabled discrimination,  
Beaumont, TX  
Dwight Stewart, Ph.D., economics,  
Austin, TX

**DEFENSE**

**EXPERT(S)** None reported

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel and the university's deputy general counsel.

—John Schneider