



that she was discriminated against by the New Bedford-Cape Cod and Islands Consortium (Consortium) by reason of her sex, in that the Consortium, a subrecipient under CETA, denied her application for enrollment in a 20-week culinary arts vocational training course, scheduled to begin in July 1982, because she was pregnant.

Ms. Bisailon's complaint was, on substantive grounds, found to be without merit by a Consortium equal opportunity officer, by a Consortium review panel (after a hearing), by the Commonwealth of Massachusetts Department of Manpower Development (the prime sponsor), and by this Department's Office of Civil Rights (OCR).

Upon receiving the adverse Final Determination by the Assistant Regional Director for OCR, Region I, Ms. Bisailon timely filed a request for a hearing before a United States Department of Labor ALJ; and, pursuant to the CETA regulations at 20 C.F.R. § 676.88, the requested ALJ hearing was held in Boston, Massachusetts, on September 24 and 25, 1984.

The ALJ who heard the case issued a Decision and Order dismissing Ms. **Bisailon's** complaint on the ground that she lacked standing under the CETA regulations to complain that her application for participation in a CETA training program was denied by reason of her sex. The **ALJ's** decision did not include a determination as to whether the Consortium had so discriminated against her.

The record reveals the following facts pertinent to this Final Decision:

On June 7, 1982, Ms. Bisailon applied at a Consortium office for admission to the **20-week<sup>2/</sup>** culinary arts vocational training course, funded under CETA, next scheduled to begin in July. Administrative File (AF), tabs 1-7, 20. In connection with applying for the program, Ms. Bisailon filled out or signed forms indicating that she had just left a job as a restaurant waitress, AF, tab 1, at 2, that she suffered from chronic back pains, that she was pregnant, and that she was currently under the care of "Dr. L. Smith," an obstetrician. AF, tab 3.

Ms. Bisailon was then interviewed by the intake counselor for that day, Mr. Donald Charlton. She told him: "[a]t this time I am expecting my second child. I cannot keep up the demanding in-season pace of waitressing during my pregnancy". AF, tab 30 (Ms. Bisailon's written complaint against Mr. Charlton, dated June 9, 1982, and apparently filed July 19, 1982). Ms. Bisailon testified that in Mr. **Charlton's** interview with her, he "suggested that I come back after I had the baby". Transcript (T.) at 24. Then Mr. Charlton "put the papers away and he said goodbye. And, I said, huh, this is nice and I left." T. at 62. Mr.

2/ The course was subsequently reduced to 16 weeks.

Charlton recorded the interview in a memorandum to the files on June 7, 1982, as follows:

Jean is pregnant and is expecting to deliver in the next few months. She came in here looking to get into the Culinary Arts program. If Jean were to start training it would be interrupted by her delivery from 3-6 weeks. Therefore, it was decided she would check back with us after delivering her child and has also secured day care for her other child as well.

AF, tab 20.

On June 9, 1982, Mr. Charlton prepared a second memorandum to the files stating that on that day

Alan Bisailon [the complainant's husband] came in to see me. I was informed that his wife was very upset by the decision made not to enroll his wife into training due to her pregnancy and that she intended to file a grievance. I told Alan to have his wife call me and we could discuss what else could be done. He said he would have his wife call Thurs. 6/10 to make another appointment.

AF, tab 21.

On June 10, Ms. Bisailon met again with Mr. Charlton. At that meeting, Ms. Bisailon testified, Mr. Charlton indicated that he was now more favorably disposed to her application. T. at 31. He proceeded, therefore, to prepare with her an "Employability Development Plan" (EDP) setting forth estimated dates of "[s]teps to be taken to accomplish employment goal," including further pre-enrollment interviews, course enrollment, and job placement. Id.; AF, tab 12.

On June 25, Ms. Bisailon successfully completed academic proficiency tests. T. at 31. She then talked with Mr. William Appleton, the Consortium's counselor assigned to the culinary

arts training program, T. at 32, who told her that, because of her pregnancy, a question remained as to her eligibility to enter the course beginning in July, and indicated that a Consortium meeting regarding her application would take place shortly. He asked whether she could obtain a statement from her doctor approving her participation in the course. She told him that her next scheduled appointment with her obstetrician would be on July 16, which was ten days before the July 26 starting date of the course, AF, tab 22, and he indicated that that would allow enough time. T. at 32. Mr. Appleton asked Ms. Bisailon to telephone him on July 7 to learn the results of the Consortium staff meeting. Id.

On July 7, Ms. Bisailon went to see Mr. Appleton again. He told her that a course description and letter to her doctor were being prepared by the Consortium staff for delivery to the doctor. Id. On July 13, Mr. Appleton hand-carried the letter, the course description, and a questionnaire to the doctor's office, id., and mailed a copy of it to Ms. Bisailon. T. at 72. The course description stated:

The course is sixteen (16) weeks in length from the time of enrollment, training is six (6) hours per day, and the commuting time involved is approximately three (3) hours per day. Participants are taken to and from this training by school bus.

The majority of the training offered is done so on a "hands-on" basis. This actually involves working in a busy kitchen that serves between 50 and 100 persons daily. Therefore, the daily training schedule requires five and one-quarter (5  $\frac{1}{4}$ ) hours to be spent in meal preparation, serving, stocking, and clean-up. **These** activities, I am told, can involve heavy lifting (up to 50 lbs. -- sacks of sugar, flour, potatoes, onions, large pots of water and

prepared foods, etc.), constant bending, constant standing and constant agile movement in and around a hot kitchen as well as movement **in and** out of a large walk-in freezer.

AF, tab 19.

The daily schedule was set forth as follows:

7:00 am to 8:30 am - bus to New Bedford  
8:30 am to 12:00 pm - prep. cooking meal  
12:00 pm to 12:30 pm - serving meal  
12:30 pm to 1:00 pm - participant lunch  
1:00 pm to 2:15 pm - clean up  
2:15 pm to 3:00 pm - classroom instruction  
3:00 pm to 4:30 pm - bus to Hyannis

Id.

The questionnaire asked:

When is Mrs. Bisailon's expected delivery date?

Will Mrs. Bisailon be able to commute on a regular basis by bus to and from New Bedford?

**yes**  no

Will Mrs. Bisailon be able to remain on her feet for approximately five (5) hours per day?

yes  no

Will Mrs. Bisailon be able to lift up to fifty (50) lbs. on a regular basis?  **yes**  no

Will Mrs. Bisailon be able to participate on a regular basis where constant bending and agile movement are required?  **yes**  no

Will temperature changes (in and out of freezer to hot kitchen) be of any danger to Mrs.

Bisailon?  **yes**  n o

AF, tab 19.

On the same day, Ms. **Bisailon's** doctor sent to the Consortium a reply written directly on the questionnaire and letter, specifically answering only the question regarding her

expected delivery date ("9/28/82"), but adding the comment:

"Ms. Bisailon's EDC is before 16 weeks -- therefore, she could not complete the program." Id.

On July 16, Ms. Bisailon visited Mr. Appleton again. She testified that she told him that she had visited the doctor and had been informed of the doctor's reply on the questionnaire; that the doctor had expressed agreement with her belief that she could physically cope with the course, T. at 35, and suggested that she retrieve the letter from Mr. Appleton and bring it to him, and said that he would indicate on it that he approved of her taking the course beginning in July. T. at 36. At Ms. Bisailon's request, Mr. Appleton thereupon gave her the letter and questionnaire containing the doctor's previous reply. T. at 37. She informed Mr. Appleton that she would hand-carry them to the doctor on Monday, July 19, and return them (with the doctor's modified response) to Mr. Appleton as quickly as possible. AF, tab 22.

In fact, however, Ms. Bisailon never did take the Consortium letter and questionnaire back to her doctor for modification of his original reply. T. at 52, 75-77. She refrained from doing so, she said, because "... they were going to use the letter against me. They were going to use my doctor against me to prevent me from entering the course," and because it would not do any good. T. at 77.

On July 21, Mr. Appleton, not having received a modified reply from Ms. Bisailon's doctor, attempted unsuccessfully to

phone and visit her, and finally left a note at her house asking her to let him know the outcome of her planned meeting with the doctor on July 19 concerning the letter and questionnaire. AF, tab 24.

Later on July 21, Mr. Appleton was informed by Ms. **Bisaillon's** husband that she had no intention of resubmitting the letter and questionnaire to the doctor for modification of his reply. AF, tab 23. On July 27, Mr. Appleton sent **Ms.** Bisaillon a note asking her to return the letter and questionnaire to his office. AF, tab 26. Ms. Bisaillon sent a reply letter to Mr. Appleton refusing to return the original letter and questionnaire on the ground they are "concrete evidence of the sex discriminatory methods employed by the New Bedford, Cape Cod and Islands Consortium," and stating that she was sending copies of the letter and questionnaire, and her complaints, to the Assistant Regional Director for Manpower for the Department of Labor. AF, tab 27.

Ms. Bisaillon filed complaints, dated July 29, 1982, against Messrs. Charlton, Appleton, and Rinaldi (the course instructor), and the Consortium's New Bedford Regional Job Center. AF, tab 30. The complaint against Mr. Charlton stated that, "[f]ollowing the interview ... he clearly rejected me from the Cook Course ... based solely on the fact of my pregnancy. ... I was unfairly, predetermined an unemployable person upon ~~com-~~pletion of the course based solely on the fact of my pregnancy." Id.

The complaint against Mr. Appleton stated that

"[d]uring training counseling ... I was treated differently from other applicants for admission into the CETA program Cook course based solely on the fact of my pregnancy. The standard Health Examination Record was not issued to me for a routine examination. In place of the standard Health Examination Record, a letter signed by William C. Appleton was sent to my obstetrician."

Id. The complaint against the Job Center stated that "a letter & questionnaire were drafted especially for my case and sent to my obstetrician. The letter and questionnaire were not previously approved by me before it was sent .... The letter and questionnaire were an attempt to discriminate against me based solely on the fact of my pregnancy." Id. The complaint against Mr. Rinaldi stated that,

"[i]n association with Mr. William C. Appleton and the New Bedford Regional Job Center; Mr. Rinaldi outlined the negative aspects of the Cook Course so as to enlist the cooperation of my personal obstetrician in an attempt to exclude me participating in the cook course. No other special letters or questionnaires were composed for any other interested individuals presently participating in the cook course."

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In response to those initial complaints to this Department, Ms. Bisailon was informed that she must first utilize the grievance machinery of the Consortium and the prime sponsor before she could pursue her complaint with the Department, which she did. AF, tab 34.

DISCUSSION

The threshold issue in this case is whether Ms. Bisailon, an applicant for participation in a CETA program, is covered by the CETA statutory and regulatory nondiscrimination requirements. The ALJ held that the CETA nondiscrimination provisions in the regulations, 20 C.F.R. § 676.52, only cover participants. Since Ms. Bisailon was an applicant, the ALJ found that she lacked standing to bring a discrimination complaint.

The ALJ failed, however, to consider Section 132(a) of the Act itself, which provides that:

[n]o person in the United States shall on the ground of . . . sex . . . be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of or in connection with any program or activity funded in whole or in part with funds made available under this Act.

29 U.S.C. § 834(a) (emphasis supplied). Clearly, that statutory language independently protects, against sex discrimination, applicants for participation in CETA program. Furthermore, I find the regulation, 20 C.F.R. § 676.52, also clear on its

3/ See, cases under other anti-discrimination statutes which contain language nearly identical to § 132 of CETA, in which the Supreme Court assumed that that language protected applicants:- Cannon v. University of Chicago; 441 U.S. 677 (1979) (medical school applicant; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) (1982)); Regents of the University of California v. Bakke, 438 U.S. 265 (1978) (plurality opinion) (medical school applicant; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (1982)), and Southeastern Community College v. Davis, 442 U.S. 397 (1979) (nurses' training program applicant; § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (1982)).

face as protecting applicants. It provides:

(a) No person shall, on the ground of race, color, religion, sex, national origin, age, handicap, or political affiliation or belief, be discriminated against, or denied employment as a participant, administrator, or staff person, in connection with any program under the Act. (emphasis added.)

The ALJ focused on the phrase "No person shall ... be discriminated against ... as a participant ...." But the regulation also prohibits denial of employment as a participant, which is what Ms. Bisailon alleges happened to her. I conclude, therefore, that the ALJ erred in ruling that Ms. Bisailon lacked standing to bring a discrimination complaint under the Act and, accordingly, that his dismissal of her complaint on that ground was improper and must be set aside.

On the merits of whether the Consortium discriminated against her by reason of her sex, at the ALJ hearing, Ms. Bisailon sought to establish as facts --

(1) That on June 7, 1982, she was discriminated against by reason of her sex in that the Consortium intake counselor refused, because of her pregnancy, to process her application for inclusion in a culinary arts vocational training course;

(2) That the subsequently specified requirement of a favorable communication from her obstetrician as a precondition for

her inclusion in the course during her pregnancy --

- (a) Was sex-discriminatory disparate treatment in that --
  - (i) Other, non-pregnant culinary arts course applicants were not required to obtain such a medical statement; and
  - (ii) As evidenced by her husband's experience with the Consortium, requiring a doctor's statement in her case was not consistent with the Consortium's normal practice; and
- (b) Was merely pretextual in that, in the course description and questionnaire submitted by the **Consortium** to Ms. **Bisailon's** obstetrician, the physical rigors to which students would be subjected were deliberately exaggerated in order to encourage the obstetrician to respond unfavorably to Ms. **Bisailon's** application.

Of the numerous laws which establish the national policy against discrimination because of a person's race, color, religion, sex, or national origin, the most relevant one to this case is Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2000e-17 (1982). Section 2000e-2 of Title VII makes it an unlawful employment practice to discriminate in employment or training because of an individual's race, color,

religion, sex, or national origin./ Section 132 of CETA applies that principle to all CETA programs whether they provided immediate employment or, as in **this** case, provided job training designed to lead to subsequent employment. For that reason, administrative adjudication of this case will be guided, where appropriate, by judicial decisions in cases arising under Title VII.

This is a disparate treatment case in that Ms. Bisailon does not allege, and the record contains no evidence tending to establish, a policy or practice by the Consortium which has a disparate impact on pregnant women. All of Ms. **Bisailon's** allegations of discrimination pertain to her individual treatment. The Supreme Court described a "disparate treatment" case in International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977), as follows:

"Disparate treatment" . . . is the most easily understood type of discrimination. The employer simply treats some people less favorably than others because of their race, color, religion, sex, or national origin. Proof of discriminatory motive is critical, although it can in some situations be inferred from the mere fact of differences in treatment.

431 U.S. at 335 n.15. Such alleged differences are the gravamen of Ms. Bisailon's complaint.

4/ Title VII provides, at 42 U.S.C. § 2000e(k) (1982), that "[t]he terms [discrimination] 'because of sex' or on the basis of 'sex' include . . . [discrimination] because of or on the basis of pregnancy, childbirth, or related medical conditions," and further provides that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work."

In McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), the Court articulated the order and allocation of proof in an individual disparate treatment case.

The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination.

\* \* \* \*

The burden then must shift to the employer to articulate some legitimate, **non-discriminatory** reason for the employee's rejection.<sup>5/</sup>

411 U.S. at 802.

Under McDonnell Douglas, the employee (or complainant) can establish a prima facie case by showing that (1) she is a member of a protected group; (2) she applied and was qualified for a position for which the employer was seeking applicants; (3) despite her qualifications, she was rejected; and (4) after her rejection the position remained open and the employer continued to seek applicants with the complainant's qualifications. The Court went on to say:

**[B]ut** the inquiry does not end here. While Title VII does not, without more, compel hiring of [the employee], neither does it permit [the employer] to use [the employee's] conduct as a pretext for the sort of discrimination prohibited .... [The employee] must ... be afforded a fair opportunity to show that [the employer's] stated reason for ... rejection was in fact pretext.

411 U.S. at 804.

<sup>5/</sup> Or, alternatively, the employer may present evidence of **its** own showing that the propositions of fact relied on in the prima facie case are not true.

In short, ... [the employee] must be given a full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for his rejection were in fact a **coverup** for a racially discriminatory decision.

411 U.S. 805.

In Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978), the Court points out that "the method suggested in McDonnell Douglas for pursuing [the] inquiry ... was never intended to be rigid, mechanized, or ritualistic. Rather it is merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination." 438 U.S. at 577 (emphasis supplied). Awareness of this is particularly important in the instant case, in which prima facie, rebuttal, and surrebuttal evidence tumble into the hearing record in no particular order of presentation.

As the Court indicated in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981), the ultimate burden of persuasion never shifts. After receipt of all the evidence, the complainant bears the burden of proving by a preponderance of the evidence that the employer was motivated by an illegal, discriminatory reason. Although McDonnell Douglas was a race discrimination case, the evidentiary principles set forth above have been followed by the Federal courts in numerous disparate treatment cases involving the full range of prohibited employment discrimination, including sex discrimination. Ford Motor Co. v. Equal Employment Opportunity Commission, 458 U.S. 219 (1982); Egger v. Local 276, Plumbers and Pipefitters

Union, etc., No. 85-1965-C (D.Mass. September 23, 1986) (available November 26, 1986, on LEXIS, Genfed library, Dist file).

Ms. Bisailon established a prima facie case under Burdine and McDonnell Douglas, but I find that the Consortium not only articulated, but established, a legitimate nondiscriminatory reason for its action. The credible testimony establishes that the Consortium, in requesting that Ms. Bisailon present a medical assessment of her ability to perform the tasks of the training course, treated her essentially the same as it would have any CETA training applicant. Any applicant, male or female, pregnant or not, who had disclosed an existing physical condition which might prevent full participation or completion of the course applied for, and who indicated that he or she was currently under medical treatment for that condition, would have received a similar request. Moreover, the Consortium's purpose in doing so was to make the best use of CETA funds granted to it by refraining from including in the training course students who might not be able to benefit adequately from it. See T. at 186-87, 239-40. Thus, Mr. **Charlton's** action on June 7, 1982, of failing to accept Ms. **Bisailon's** application and suggesting she reapply after birth of her child was not discriminatory but was based on legitimate program considerations. In Marafino v. St. Louis County Circuit Court, 537 F. Supp. 206 (E.D. Mo. 1982), aff'd, 707 F.2d 1005 (8th Cir. 1983), the

court held that an employer did not violate Title VII when it failed to hire a woman who planned to take maternity leave of four to eight weeks only three months after being hired. It found that concern about the impact of her planned leave on the employer's workload and the employee's training were legitimate business reasons for rejecting her. 537 **F.Supp.** at 212.

Ms. Bisailon's effort to show that the Consortium's reasons were pretextual fails. The materials (the questionnaire and the course description) prepared by the Consortium for consideration by the obstetrician are not self-evidently exaggerated, and thus inferentially intended to misguide the doctor into judgments unfavorable to Ms. Bisailon's application. Ms. Bisailon has offered no other reliable and persuasive evidence of a pretextual purpose. Indeed, even as she accused the Consortium of a pretextual purpose, she expressed the belief that Mr. Appleton, the counselor assigned to the course and her principal Consortium contact after the intake interviews, wanted her in the course and "bent over backwards" to achieve that **ob-**jective. T. at 71.

In support of her contention that the requirement of a favorable response to the Consortium from her obstetrician constituted sex-discriminatory disparate treatment because of her pregnancy, Ms. Bisailon testified at the ALJ hearing that, to her knowledge, no other applicants for the culinary arts course

were required to obtain such a communication from their doctor as a precondition to their participating in the course. T. at 90-92. The Consortium does not deny this, and I accept it as true. I also note, however, that Ms. Bisailon did not allege that any of the other culinary arts course applicants disclosed health conditions which might have alerted Consortium staff persons to the possibility that the applicant could not perform the physical activities involved in the course.

In further support of Ms. **Bisailon's** contention that the requirement of favorable communication from her obstetrician was discriminatory disparate treatment, her husband testified that he had applied for inclusion in a Consortium-conducted CETA course in machine-shop work: that he had stated in his application that he had had a back injury and a broken leg, T. at 161; that he had told Consortium staff persons that his back injury was a current problem preventing him from working, T. at 162; but that he was not required to undergo a physical examination or to submit a letter from his doctor allowing him to ride a bus to and from New Bedford. T. at 161.

In response, Mr. Appleton testified that he had been the Consortium intake counselor when Mr. Bisailon had applied for admission to the machine-shop course; that Mr. Bisailon had told him that he had an undiagnosed back problem and had seen a chiropractor about it; that he did not believe that Mr. Bisailon had said that he was currently under a chiropractor's care; that Mr. Bisailon had indicated that his back condition

interfered only with his doing heavy work and that he could not, therefore, continue to work as a carpenter. T. at 220. Mr. Appleton testified further that Mr. Bisailon had been referred to the Consortium by the Commonwealth of Massachusetts' rehabilitation agency -- an agency which, to Mr. Appleton's knowledge, routinely conducted medical examinations of clients before referring them to the Consortium for training. T. at 223. I find Mr. Appleton's testimony more credible, particularly in view of (1) the absence of any denial by Mr. Bisailon that he had been medically examined at the request of the Commonwealth rehabilitation agency before referral to the Consortium, in sharp contrast to his vigorous assertiveness with respect to other matters in issue; and (2) persuasive testimony, elsewhere in the record as to the Consortium's policy regarding medical examinations and reports.

Specifically, three members of the Consortium staff -- Messrs. Charlton, Appleton, and John H. **Fernandez<sup>6/</sup>** -- testified that it had been Consortium policy to require a medical examination and/or report whenever information about a training-course applicant indicated that he or she might, for medical reasons, be unable to complete or satisfy the reasonable requirements of the course. T. at 128, 221, 239-43. That testimony, which I believe accurately reflects the facts, is supported both by the presence in the record of standard forms designed to elicit

<sup>6/</sup> Consortium equal opportunity/personnel officer during the period in question. T. at 167; AF, tabs 35, 37, 38.

such information, **AF**, tab 18, and by the patently obvious fact that the Consortium would have been remiss in its responsibilities, both to the Federal Government (to avoid misspending of CETA training funds) and to itself (to avoid the risk of negligence liability), if it had failed to exercise such reasonable caution in its accepting training course students.

Upon consideration of the foregoing, I am persuaded that the Consortium, in requiring Ms. Bisailon to submit to it a communication from her obstetrician favorable to her course application as a precondition for her participating in the course, treated her the same as it would have treated any CETA training applicant who had disclosed a physical condition which might prevent the applicant from full participation in or completion of the course and that he or she was currently under medical treatment for that condition.

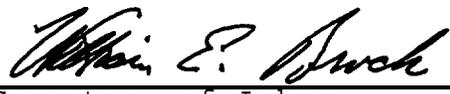
In support of her allegation that the requirement of a favorable response from her obstetrician was pretextual, Ms. Bisailon testified that the information set forth in the course description and questionnaire which the Consortium prepared for the obstetrician exaggerated the physical activity involved in the course in order to encourage him to respond unfavorably to her application. The daily schedule included in the course description indicated that a total of 5  $\frac{1}{4}$  hours a day would be spent preparing and serving meals and cleaning up. The questionnaire asked whether Ms. Bisailon would be able to remain on her feet "approximately five hours per day."

In her testimony Ms. Bisailon contended that the course description, see pp. 5-6, supra, was inaccurate in that "it doesn't make any reference to any coffee -- fifteen minute coffee break in the morning and a fifteen minute coffee break in the afternoon. Nor to a half an hour for lunch. Which is time that you could be sitting down", T. at 82; and in that, although it uses the phrase "can involve", it creates the inaccurate impression that the daily course work regularly entails heavy lifting, "[c]onstant bending, constant standing, constant agile movement in and around a hot kitchen as well as the movement in and out of a large walk-in freezer," because "[n]othing is constant." T. at 85. Ms. Bisailon did not testify that she had personal knowledge of the contents of the course.

Ms. Bisailon's criticism of the Consortium's indication of the amount of time she might be on her feet each day is unpersuasive. The daily schedule makes it clear that the participants' lunch is not part of that estimate; and the fact that the questionnaire speaks of "approximately five hours per day" (emphasis supplied) rather than 5 1/4 hours, implies that the two **15-minute** coffee-break periods cited by Ms. Bisailon were viewed as part of the 5 1/4 hours scheduled for meal preparation and serving and cleaning up. Her objection to the phrase "can involve" is not warranted. It clearly indicates a possibility rather than a certainty of continuous bending, standing, or agile movement during the periods devoted to meal preparation, serving, and clean-up.

In conclusion I find that Ms. Bisailon has failed to establish that she was discriminated against because of her sex or because of her pregnancy. Accordingly, 'the Decision and Order of the Administrative Law Judge IS VACATED, and the complaint IS DISMISSED.

SO ORDERED.

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Secretary of Labor

Dated: DEC 4 1986  
Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: Jean Bisailon v. New Bedford Consortium

Case No. : 83-CET-118

Document : Final Decision and Order

A copy of the above-referenced document was sent to the  
following persons on DEC 41986  
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*Pam Horton*

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