

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA**

DAVID CERMINARA,

Civil Action

Plaintiff,

No.

v.

THE CITY OF PITTSBURGH, and
MICHAEL HUSS, Pittsburgh Director of
Public Safety, in his individual capacity,

Defendant.

JURY TRIAL DEMANDED

CIVIL COMPLAINT

Plaintiff, David Cerminara, by undersigned counsel, files this Civil Complaint and alleges the following:

I. Jurisdiction

1. The Jurisdiction of this Court is invoked pursuant to Section 1 of the Civil Rights Act of 1866, 42 U.S.C. §1983; 28 U.S.C §§1331, 1343(a)(3) and (a)(4).

II. Parties

2. Plaintiff David Cerminara is an adult individual who resides at 1900 Shelly Drive, Pittsburgh, PA 15216. Until June 1, 2012, when he retired, he was employed by the City of Pittsburgh as a Captain in its Fire Department.

3. Defendant, the City of Pittsburgh, is a political subdivision of the Commonwealth of Pennsylvania with its principal place of business at the 200 Ross Street, 5th Floor, Pittsburgh, PA 15219.

4. Defendant Michael Huss is the City of Pittsburgh Director of Public Safety, and therefore is a state actor who in this case acted and failed to act under color of state law. As part of

his duties he oversees the City of Pittsburgh's Police Department, Fire Department, and Paramedics bureaus. His place of business is City County Building, Room 516, 414 Grant Street, Pittsburgh, PA 15219 He is sued in his individual capacity.

II. Factual Background

5. Cerminara was employed by Defendant's Fire Department from July 28, 1980 until June 1, 2012. Throughout his career he performed his job in an exemplary manner.

6. In May 2007, Defendants indefinitely and without pay, suspended Cerminara, a Fire Captain who at the time had worked for the Pittsburgh Fire Department for 27 years. Defendants did this solely because Capt. Cerminara has a seizure disorder.

7. Subsequently, Capt. Cerminara challenged Defendants suspension under the Americans with Disabilities Act, 42 U.S.C. §§12112(a) and 12112(b)(5)(A), in proceedings before this Court, and also in proceedings before an Arbitrator under the Collective Bargaining Agreement between the City and its firefighter union.

8. As a result of those two proceedings, Defendants were ordered to reinstate Capt. Cerminara, and subsequently paid damages.

9. On May 30, 2012, Capt. Cerminara was working at the City's No. 30 Firehouse on Stuben Street, in the West End of Pittsburgh.

10. At that time, he had announced his retirement after 32 years of honorable service. His last day before retirement was May 31, 2012, and he officially retired as of 8 a.m. on June 1, 2012.

11. On May 30, 2012, Capt. Cerminara observed action by members of the City's street crew that later generated interest by a local television reporter for station KDKA.

12. At about 8 a.m. on May 30, 2012, one crew from the Pittsburgh Public Works

Department painted double yellow solid traffic lines on a long stretch of Stuben Street in front of the No. 30 Firehouse. They used 15-20 gallons of paint to do so.

13. About an hour later, a milling machine from the same Public Works Department arrived at the same location and proceeded to tear up all the asphalt on Stuben Street, and the lines were gone.

14. Pittsburgh Public Works Director, Robert Kaczorowski later described what happened as a “breakdown in communications.”

15. Cerminara, who had witnessed the entire Keystone Cops episode, was interviewed about what he had seen by a reporter for KDKA.

16. Cerminara described what he had witnessed, and commented that what had occurred made no sense, was stupid, and a waste of taxpayer money.

17. Cerminara’s comments to the news media were made as a citizen. He had no authority over the Pittsburgh Department of Public Works; had never worked for the DPW, and his job as a Fire Department Captain did not require him to comment on DPW performance, or report such waste.

18. KDKA ran a humorous news story about the waste of City taxpayers’ time and resources in late day reports on May 30, 2012.

19. Cerminara officially retired June 1, at 8 a.m.

20. About 2:30 p.m. the same day, he was served at his residence with a retirement gift from the City and Defendant Huss.

21. Defendant Huss had filed charges with the Pittsburgh Fire Administration Trial Board alleging that Cerminara violated Department of Public Safety regulations by speaking with the

KDKA reporter about the Stuben Street fiasco on May 30.

22. Although Cerminara had retired at the time, he was ordered to “remain on duty pending the outcome of a Trial Board hearing on June 21, 2012.”

23. When it was pointed out to Defendant Huss that he could not order a person who no longer worked for either him or the City of Pittsburgh to remain on duty, to attend a hearing, or indeed to not speak as a private citizen on a matter of public concern, he became enraged.

24. Pursuant to Pennsylvania law, and the agreement between the City and its collective bargaining units, retired Fire Department employees can “bank” sick days during their career and redeem them upon their retirement.

25. Throughout his career, despite his seizure disorder, Cerminara had missed little if any work, and had 110 days of accumulated sick days as of his retirement. He thus was owed about \$20,000.

26. However, because Cerminara spoke to the news media on a matter of public concern, Defendant Huss arranged for Cerminara’s check to be held and not issued to Cerminara in the normal course.

27. Huss, and the City, to date have refused to provide Cerminara with his sick day pay check because Cerminara spoke to the news media.

Count I
42 U.S.C. §1983
First Amendment

28. Plaintiff incorporates by references the allegations in Paragraphs 1 through 27 as if fully restated herein.

29. Cerminara’s comments to the news media about the stupidity, and waste of public

time and funds created by the Pittsburgh DPW actions on May 30, 2012, involve matters of public concern and therefore were speech protected under the First Amendment of the U.S. Constitution.

30. Cerminara, as a citizen of the United States, did not surrender his rights, privileges and immunities under the U.S. Constitution as a condition of employment with Defendant.

31. Under the First and Fourteenth Amendments of the U.S. Constitution, Cerminara has a right to speak on matters of public concern involving the waste of taxpayer money and time and to further not be subjected to retaliation for his exercise of that right to free speech.

32. Likewise, under the First and Fourteenth Amendments of the U.S. Constitution, Cerminara has a right to petition the government for redress of grievances, and to not be retaliated against for exercise of those rights.

33. Cerminara was subjected by Defendants to Civil Service Charges and then was deprived of his sick pay reimbursement because of the exercise of his right to speak freely and to petition the government for redress of grievances, and therefore Defendants, under color of state law, violated Cerminara's rights under the First and Fourteenth Amendments of the U.S. Constitution and 42 U.S.C. §1983.

34. Defendants' withholding of earned pay and its bringing of Civil Service Charges against Cerminara, deprived him of his right to freely speak and petition the government as protected by the First Amendment and was undertaken under color of state law, in violation of 42 U.S.C. §1983.

35. Defendants' actions directed at Cerminara were taken with reckless indifference to Plaintiffs' federally protected right to speak freely on matters of public concern and to not be retaliated against for so doing.

36. As a direct and proximate result of Defendants' intentional and reckless actions, Cerminara has sustained the following injuries.

- a. Loss of income;
- b. Humiliation;
- c. Loss of reputation; and
- d. Inconvenience.

WHEREFORE, Plaintiffs demand judgment against Defendant, Michael Huss, in his individual capacity, and the City of Pittsburgh for deprivation of his rights under the First and Fourteenth Amendments in violation of 42 U.S.C. §1983, and damages as follows:

- a. That Defendants be permanently enjoined from discriminating against Plaintiff.
- b. That Defendants be permanently enjoined from retaliating against Plaintiff.
- c. That Plaintiff be awarded actual and consequential damages in an amount to be proven at trial, plus interest.
- d. That Plaintiff be awarded compensatory damages to compensate for the emotional distress and humiliation Plaintiff has suffered as a result of Defendants' conduct.
- e. That Plaintiff be awarded punitive damages against Defendant Huss in his individual capacity, in an amount sufficient to punish him and to deter similar conduct.
- f. That Plaintiff be awarded against Defendants the costs and expenses of this litigation, and, pursuant to 42 U.S.C. §1988, a reasonable attorney's fee; and
- g. That Plaintiffs be awarded such further relief as this Court deems to be just and proper.

Respectfully submitted,

Samuel J. Cordes & Associates

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