

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

DAVID CERMINARA,

Civil Action No.

Plaintiff,

v.

THE CITY OF PITTSBURGH,

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 107 of the Americans with Disabilities Act, 42 U.S.C. §12117(a), incorporating by reference Section 706 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5; and 28 U.S.C. §§ 1331 and 1343(a)(4).

2. Plaintiff has satisfied all administrative prerequisites to suit under the Americans with Disability Act (ADA) in that:

- a. He filed a timely Charge of Discrimination with the EEOC alleging discrimination on August 6, 2007 and dual filed his Charge of Discrimination with the Pennsylvania Human Relations Commission on August 9, 2007;
- b. The U.S. Department of Justice issued a Notice of Right to Sue on February 14, 2008; and
- c. This Complaint is filed within 90 days of receipt of that notice.

3. Defendant is a covered entity within the meaning of the Americans with Disabilities Act of 1990, 42 U.S.C. §12111(2) and (5)(A)

II. Parties

4. Plaintiff David Cerminara is an adult individual who resides at 1900 Shelly Drive, Pittsburgh, PA 15216. At all times relevant hereto, he was employed by Defendant as a Captain in its Fire Department.

5. 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.

II. Factual Background

6. Cerminara has been employed by Defendant's Fire Department for 27 years, since July 28, 1980. Throughout his career he has performed his job in an exemplary manner.

7. In May 2007, Defendant indefinitely and without pay, suspended Cerminara, a Fire Captain who had worked for the Pittsburgh Fire Department for 27 years. Defendant did this because Capt. Cerminara has a seizure disorder. He remains suspended to date.

8. On March 14, 2007 Cerminara held the position of Fire Captain.

9. Shortly thereafter, Cerminara's doctor diagnosed him with a seizure disorder/epilepsy, and placed him on a brief medical leave.

10. On March 30, 2007, Cerminara's doctor released him to return to work and noted that he could perform the essential functions of the fire Captain without restrictions.

11. Nonetheless, on April 3, 2007, Defendant placed Cerminara on involuntary leave pending the results of a physical examination by its doctor.

12. On May 21, and May 22, 2007, Cerminara's neurologist also released him to work without any restrictions.

13. Sometime shortly after this, Defendant's Civil Service Physician, Joseph Lanzarotta, wrote to Cerminara's neurologist and requested that he change his release based on a National Fire Protection Association Medical Standard, No. 1592, which precludes a person who has not been seizure free for 1 year to be medically qualified *as a candidate* for the position of firefighter.

14. However, Defendant's Civil Service Physician omitted Section 9.13.6.1 of the NFPA standards which apply to incumbent firefighters.

15. Standard 1592 provides that a medical certificate should not be granted *to a firefighter candidate* with epilepsy (thus disqualifying the individual from service), unless he or she has been on a stable medication regimen for five or more years without having had a seizure, or has not experienced a seizure for one year after discontinuing all anti-epilepsy medication.

16. On the other hand, Section 9.13.6.1 of the 2007 NFPA standards applies to incumbent firefighters. It provides the following:

“[T]he Physician shall report the applicable job limitations to the fire department unless the member meets” the conditions specified for fire firefighter applicants.

(NFPA 2007, 1582 Medical Guidelines at §9.13.6.1).

17. Indeed, the NFPA standards, at section 9.3, provide that fire department physicians are to make recommendations about restricting members (incumbent firefighters) *only from those job duties that cannot be safely performed given the member's medical condition*. And the fire department is directed to determine appropriate accommodations for members restricted from certain job tasks

18. The 2007 NFPA Guidelines define a “member” as a person involved in performing the duties and responsibilities of a fire department under the auspices of the organization. In short,

a “member” is an incumbent, as opposed to a candidate, a person who has submitted an application to become a member of a fire department.

19. While the NFPA 1592 standard is *not mandatory*, and *does not even apply to incumbent firefighters*, Defendant misled Capt. Cerminara’s doctor into believing it applied to incumbents, and was mandatory.

20. Defendant did this by writing to Capt. Cerminara’s doctor, including in the packet of information the section of the NFPA standard that applied to applicants, and asked the doctor if Cerminara met those criteria. However, Defendant intentionally omitted from the doctor’s packet copies of the 2007 NFPA standards regarding *incumbent* firefighters.

21. The next day, based on Defendant’s misrepresentation of the NFPA standards as they would apply to incumbent firefighters, Cerminara’s treating physician said Cerminara did not meet the NFPA 1592 candidate standard, although the day before he was cleared from a neurological standpoint to return to full duty employment as a firefighter.

22. The May 23 letter lists nothing Cerminara would be precluded from doing because of his seizure disorder.

23. Based on the NFPA candidate guidelines, Defendant has subsequently taken the position that Cerminara is not medically qualified to work in firefighter positions, a class of jobs.

24. Thus, on May 24, 2007, Defendant told Cerminara he would not be permitted to return to work.

25. On May 25, 2007, Cerminara requested a reasonable accommodation for his seizure disorder.

26. Defendant denied any accommodation, and indeed has refused to enter into the

interactive process. Rather, Defendant simply stated that: “a firefighter cannot perform their (sic.) duties unless they (sic.) have been off seizure medications and seizure-free for one year.”

27. Likewise, Defendant claims it does not, and will not, provide accommodations for firefighting duties.

28. Therefore, Defendant suspended Cerminara, without pay, based on nothing other than the fact that he had a seizure disorder/epilepsy.

Count I
Americans with Disabilities Act
42 U.S.C. §12112

29. Plaintiff incorporates by reference paragraphs 1 through 28 as if fully restated herein.

30. As described above, Plaintiff suffers from a seizure disorder epilepsy, an impairment that substantially limit several major life activities.

31. In addition, Defendant regards Cerminara as being substantially limited in several major life activities because of his impairment.

32. Cerminara, with or without reasonable accommodation, can perform all of the essential functions of the position of fire captain with Defendant’s Fire Department, and therefore is a qualified individual with a disability.

33. Defendant removed Cerminara from his position as Fire Captain, without pay, because of his disability, or because it regarded Cerminara as disabled, in violation of the Americans with Disabilities Act, 42 U.S.C. §12112(a).

34. Defendant also failed to make reasonable accommodations for Cerminara’s known disability in violation of the Americans with Disabilities Act, 42 U.S.C. §12112(b)(5)(A).

35. Defendant’s violation of the Americans with Disabilities Act was intentional and

undertaken with reckless disregard of Plaintiff's federally protected right to be free of discrimination on the basis of his disability.

36. As a direct and proximate result of Defendant's illegal and discriminatory actions, Plaintiff has suffered and continues to suffer damages, including not limited to:

- a. Lost wages and benefits;
- b. Emotional distress, anxiety, humiliation and inconvenience;
- c. Costs and expenses of litigation; and
- d. Attorneys fees.

WHEREFORE, Cerminara demands judgment against Defendant for Defendant's violation of the Americans with Disabilities Act as follows:

- a. Defendant shall pay the amount of lost wages and benefits from April 2007 until the time of trial, with interest;
- b. Defendant shall be enjoined from discriminating or retaliating against Plaintiff in any manner prohibited by the Americans with Disabilities Act;
- c. Defendant shall employ Plaintiff as a Fire Captain with all salary, benefits, and seniority calculated from April 1, 2007;
- d. Plaintiff shall be awarded compensatory damages for his emotional distress, anxiety, humiliation and inconvenience;
- e. Plaintiff shall be awarded reasonable attorneys fees and costs and expenses of litigation; and
- f. Defendant shall provide such other legal and equitable relief as the Court deems just and proper.

Count II
Americans with Disabilities Act
Retaliation
42 U.S.C. §12203

37. Plaintiff incorporates by reference paragraphs 1 through 36 as if fully restated herein.

38. Defendant suspended Cerminara without pay in retaliation for requesting a reasonable accommodation under the ADA, in violation of 42 U.S.C. §12203(b).

39. Defendant's suspension of Cerminara was undertaken with malice or reckless indifference to Cerminara's federally protected right not to be retaliated against for requesting a reasonable accommodation.

40. As a direct and proximate result of Defendant's suspension of Cerminara without pay, in retaliation for requesting a reasonable accommodation, he has suffered and continues to suffer damages, including not limited to:

- a. Lost wages and benefits;
- b. Emotional distress, anxiety, humiliation and inconvenience.
- c. Costs and expenses of litigation; and
- d. Attorneys fees.

WHEREFORE, Plaintiff demands judgment against Defendant for Defendant's violation of the Americans with Disabilities Act:

- a. Defendant shall pay the amount of lost wages and benefits from April 2007 until the time of trial, with interest;
- b. Defendant shall be enjoined from discriminating or retaliating against Plaintiff in any manner prohibited by the Americans with Disabilities Act;
- c. Defendant shall employ Plaintiff as a Fire Captain with all salary, benefits, and seniority calculated from April 1, 2007;

- d. Plaintiff shall be awarded compensatory damages for his emotional distress, anxiety, humiliation and inconvenience;
- e. Plaintiff shall be awarded reasonable attorneys fees and costs and expenses of litigation; and
- f. Defendant shall provide such other legal and equitable relief as the Court deems just and proper.

Count III
Denial of Equal Protection

41. Plaintiff incorporates by reference paragraphs 1 through 40 as if fully restated herein.

42. Although Cerminara could perform all the essential functions of the position of Fire Captain, Defendant nonetheless suspended him without pay, while retaining with pay other similarly situated Fire Captains who could likewise perform all the essential functions of the position.

43. Defendant's suspension of Cerminara was not rationally related to a legitimate governmental purpose and therefore deprived Cerminara, under color of state law, of Equal Protection of the Law in derogation of his rights under the 14th Amendment of the U.S. Constitution and 42 U.S.C. §1983.

44. Defendant's actions were undertaken intentionally.

WHEREFORE, Plaintiff demands judgment against Defendant for Defendant's violation of the Americans with Disabilities Act:

- a. Defendant shall pay the amount of lost wages and benefits from April 2007 until the time of trial, with interest;
- b. Defendant shall be enjoined from discriminating or retaliating against Plaintiff in any manner prohibited by the Americans with Disabilities Act;
- c. Defendant shall employ Plaintiff as a Fire Captain with all salary, benefits, and seniority calculated from April 1, 2007;

- d. Plaintiff shall be awarded compensatory damages for his emotional distress, anxiety, humiliation and inconvenience;
- e. Plaintiff shall be awarded reasonable attorneys fees and costs and expenses of litigation; and
- f. Defendant shall provide such other legal and equitable relief as the Court deems just and proper.

Respectfully submitted,

OGG, CORDES, MURPHY & IGNELZI, L.L.P.

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