

FILED

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

**Alexandria Division**

2016 JUL 18 A 9 45

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

\_\_\_\_\_  
**CHERI ZOSH,**  
**10816 James Halley Drive**  
**Fairfax, VA 22032**

**Plaintiff,**

v.

**FAIRFAX COUNTY,**  
**12000 Government Center Parkway,**  
**Fairfax, VA 22035**

**Defendant.**  
\_\_\_\_\_

Civil Action No. 1:16-cv-910-AJT/JFA

**COMPLAINT**

(Employment Discrimination)

**Introduction**

1. Plaintiff Cheri Zosh, brings this action pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000(e) *et seq.* ("Title VII"), to redress unlawful employment discrimination perpetrated against her by the Fairfax County Fire and Rescue Department ("Defendant"). Specifically, Plaintiff alleges that, because of her sex and her protected EEO activity, Defendant subjected her to a hostile work environment and prevented her from advancing her career.

**Jurisdiction**

2. This Court has subject matter jurisdiction over the claims raised herein pursuant to Title VII of the Civil Rights Act of 1964 and pursuant to the Civil Rights Act of 1991, 42 U.S.C. §1981(a). Subject matter jurisdiction also exists pursuant to 28 U.S.C. § 1331, this action arising under the laws of the United States, thereby presenting a federal question.

**Exhaustion of Administrative Remedies**

3. Plaintiff sufficiently exhausted all available administrative remedies on her claims as the EEOC issued a dismissal and notice of right to file a civil action concerning these claims fewer than 90 days of the filing of this action.

**Venue**

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 2000e-5(f)(3), as Plaintiff was employed by Defendant in Fairfax County, Virginia, which is where the acts of discrimination and retaliation complained of herein took place, and where Plaintiff's personnel records are maintained by Defendant.

**Parties**

5. Plaintiff Cheri Zosh is a woman who, at all times relevant to the claims in this Complaint, has served as a Battalion Chief for the Fairfax County Fire and Rescue Department.

6. Defendant Fairfax County is a municipal agency in the Commonwealth of Virginia, which has had more than 600 employees in each of the last 20 months.

**Statement of Facts**

7. Plaintiff Cheri Zosh is female and has been employed by Fairfax County since 1994.

8. Ms. Zosh currently serves as a Battalion Chief in the Fairfax County Fire and Rescue Department. As such, she is among the highest ranking women serving in the Fairfax County Fire Department.

9. Battalion Chief Zosh was supervised by Deputy Chief Richard Roatch, who reports to Assistant Chief John Caussin. Caussin reports directly to the Fire Chief, Richard Bowers.

10. Until October 2014, Battalion Chief Zosh supervised six shift Captains, including Captain Jon Bruley who was then-assigned to Station 442, C Shift. Most Captains in the Fire

Department supervise a combination of Lieutenants, Technicians, and Firefighters where the Lieutenants serve as Officers and share supervisory responsibility with the Captains. Captain Bruley supervised only firefighters and technicians.

11. On April 29, 2014, Battalion Chief Zosh received a report from Firefighter Magaly Hernandez that Captain Bruley was creating a hostile work environment for her based on her sex. Hernandez told Zosh that Captain Bruley physically encroached on her space on three separate occasions and had made inappropriate sexual comments toward her. Later, Hernandez told Zosh that Bruley had also made unwanted sexual advances and comments toward her, demanded hugs, and wanted to know where she was at all times, including when she used the restroom.

12. That same day, Battalion Chief Zosh spoke with Captain Bruley and directed him not to touch or encroach upon Hernandez and to keep two arms lengths away from her. Bruley claimed that Hernandez was sending mixed messages to him because she was friendly with other shift members.

13. Zosh was concerned that Captain Bruley felt he had a right to have the same close relationship with Hernandez as he saw her have with others. Therefore, the next day she wrote an email to her supervisor, Deputy Chief Roatch, recommending further action including reassignment to a station where he would share supervision with other officers to provide a check on his actions.

14. Captain Bruley's response to the April 29 meeting was to not speak or interact with Firefighter Hernandez at all unless it was business related. He kept a physical distance from her at all times, approximately five to ten feet. In addition, he started keeping a log, tracking with whom and how Hernandez interacted.

15. On July 17, 2014, Captain Bruley complained to Deputy Chief Roatch that Firefighter Hernandez wanted to continue her practice of physical training with Chief Zosh, her only female coworker, and did not want to train with him and her male colleagues.

16. On July 19, 2014, Zosh learned that Bruley was keeping notes on the whereabouts of both her and Firefighter Hernandez in a computer file. He did not have any notes on anyone else. The next day, Zosh again raised the issue of Bruley's tracking and harassment with Deputy Chief Roatch. She told Roatch that she was concerned that "there is an unhealthy and perverted obsession that Bruley has with FF Hernandez" and that his tracking of her daily activities and moves is in direct result of being ordered not to touch or encroach Firefighter Hernandez.

17. On July 24, 2014, Zosh told her supervisor that she was concerned that Bruley's obsessive behavior could lead to violence and recommended a Fitness for Duty evaluation. She also recommended a formal investigation for sexual harassment and retaliation. Despite this, Defendant took no corrective action against Bruley.

18. On July 24, 2014, Captain Bruley told Zosh, in the presence of Captain II Charles R. ("Richie") Cunningham, that Firefighter Hernandez should inform him if and when she needs to use the bathroom.

19. On or about July 28, 2014, Battalion Chief Zosh met with Jay Grove, Defendant's EEO Officer, in an attempt to cause an EEO investigation about Bruley's sexual harassment of Firefighter Hernandez. Instead, Mr. Grove interrupted Chief Zosh and stated that he and Assistant Chief Caussin had talked and agreed that the issue was one of supervision and management and not harassment. He asked if Bruley and Hernandez had had a relationship. Zosh explained that Bruley had made advances toward Hernandez but that Hernandez rejected

him.

20. Zosh described Bruley's harassment of Hernandez to the EEO Officer. She told him that she had witnessed Bruley encroaching on Hernandez's space and touching her with his body.

Zosh also expressed concern that Bruley had escalating anger towards the Hernandez and her – he and yelled at her even though she was his supervisor – and said that she feared that Bruley's anger would result in violence.

21. The EEO Officer told Zosh that she was being transferred and interrogated her about her supervision of Bruley. He also told Zosh that she should document the situation correctly because if she didn't she would "be bent over the desk" in the process.

22. At the end of the July 28<sup>th</sup> meeting, the EEO Officer told Zosh that she could not file a complaint about Bruley's behavior because she was a third party.

23. On August 22, 2014, Zosh met with Deputy Chief Roatch, Assistant Chief Caussin and Dr. Don Stewart, Defendant's Medical Director. Dr. Stewart agreed with Zosh's recommendation that Bruley undergo Fitness for Duty and psychological evaluations. At that meeting, Dr. Stewart recommended a full forensic psychological evaluation on Bruley due to his pattern of behaviors. The Fire Chief and Assistant Fire Chief allowed Bruley to continue serving as a Captain and supervisor.

24. On October 18, Assistant Chief Caussin verbally told Bruley to stop tracking Hernandez and Zosh. Four days later, Bruley requested information about Hernandez from her former Captain. Again, he was warned not to concern himself with Firefighter Hernandez because he no longer supervised her. However, he continued to track Hernandez and Zosh electronically and to spread a rumor that they were having an affair.

25. Zosh met again with FC Bowers, AC Caussin, DC Roatch and Dr. Stewart on November 10, 2014. During that meeting, Dr. Stewart recommended a "senior level fitness for duty" and stated that, in his opinion Bruley has a personality disorder which it seemed to surface every three years. Dr. Stewart noted Bruley's history of similar behaviors toward women in the past including with his ex-wife and ex-fiancé. Chief Zosh also noted that she had concerns that about Bruley acting out violently. The Fire Chief and Assistant Fire Chief allowed Bruley to continue serving as a Captain and supervisor.

26. After Bruley ignored the October 22 warning, Assistant Chief Caussin issued Bruley another warning on November 15, 2014. Again, he was ordered to cease all investigation of Zosh and Hernandez.

27. Because Bruley's rumor spreading and tracking of the two women continued, on December 19, 2014, Battalion Chief Zosh again complained to the Fire Chief that his behavior was escalating and that her work environment was hostile.

28. On February 8, 2015, Captain Bruley contacted the Fairfax County Police Department requesting an accident report on Battalion Chief Zosh's work vehicle. Despite having received two orders to cease his investigations of Zosh and Hernandez, Bruley continued to use his work computer and time to electronically track the whereabouts of both.

29. As Bruley's harassment continued, Chief Zosh again complained to FC Bowers, AC Caussin and DC Roatch. On February 24, 2015, she sent her three supervisors an email stating that Bruley's behavior continued to be out of control and noting that the Department did not correct his behaviors. In that email, she requested a workplace free of harassment by Bruley. She met with the Fire Chief personally the next day to tell him that Bruley continued to stalk her

and asked for a harassment free workplace. She asked him how could she protect herself now that Bruley has moved on to trying to access her personal information and told him she was thinking about getting a protective order.

30. Rather than addressing Bruley's behavior, on February 25, 2015, Defendant responded by subjecting Zosh to a three hour interrogation session by Guy Morgan, Defendant's Professional Standard's Officer. Morgan questioned Zosh about her supervisory actions and her relationship with Firefighter Hernandez (apparently believing the rumor started by Bruley) as if she were the wrongdoer.

31. Having disregarded two previous warnings to cease his personal investigations and tracking of the two women, Captain Bruley received a third warning on March 3, 2015. This time, he was specifically told to cease tracking Zosh and Hernandez and a reprimand was placed in his file. As late as August 12, 2015, Defendant was aware that Bruley believed that he could track Zosh and Hernandez so long as he believed that doing so did not negatively impact his duties. Defendant did not correct Bruley's understanding of the order and has not, as of the time of this filing, examined his computer to determine whether or not Bruley continues to keep notes on Telestaff or Outlook regarding the whereabouts of Zosh and Hernandez. As an officer and a Captain in the Fire and Rescue Department, Defendant continues to allow Bruley unfettered access to these computer programs.

32. Just before Fire Chief Bowers issued Bruley his written reprimand regarding the tracking, he called Battalion Chief Zosh to warn her that Bruley might act out; he said that he was concerned for her safety and warned her that if Bruley did anything, that she should call 911 immediately. Fire Chief Bowers also commented that he was also concerned about Ms.

Hernandez but could not reach out to warn her because, "Maggie had lawyered up."

33. After Hernandez refused his advances and Chief Zosh attempted to discipline Bruley for his unwanted sexual advances toward Hernandez in July 2014, Bruley began to spread the rumor that Battalion Chief Zosh was having a sexual relationship with Firefighter Hernandez.

34. There is no sexual relationship between Zosh and Hernandez and there never had been. Despite being told that by Zosh and by other officers, Bruley continued to persist in spreading this rumor. Deputy Chief Roatch, Zosh's supervisor, has also insinuated that Chief Zosh had an inappropriate relationship with Ms. Hernandez.

35. It would have been a violation of Standard Operating Procedure, punishable by demotion in rank, for Battalion Chief Zosh to have a sexual relationship with Hernandez because Zosh had supervisory authority over Hernandez. Furthermore, Battalion Chief Zosh has been in a committed relationship during the time that Bruley has spread this rumor. Thus, Bruley's rumor is not only an accusation that threatened Chief Zosh's career and damaged her professional reputation, but also her committed relationship, and her personal reputation. Yet, the Fire Department has not disciplined Bruley for spreading these rumors, or even ordered him to stop.

36. To the contrary, the leadership of the Department has contributed to the false rumor. Deputy Chief Roatch granted Bruley's request to be transferred away from Zosh's supervision and she is prohibited from serving on the same shift as Bruley in his Battalion. At present, Bruley continues to tell others in the Department, including those under Zosh's command, that she had an affair with Hernandez while she had supervisory responsibility over her.

37. When Richard Bowers first became Defendant's Fire Chief in 2013, he and Battalion Chief Zosh had a strong working relationship. In October 2014, the Fire Chief approached Zosh

and said he would like her to be on his team. He gave Zosh his personal challenge coin and suggested she apply for a deputy chief position. The relationship changed, however, after Zosh attempted to correct Captain Bruley's sexual harassment and retaliation. By 2016, when a vacancy at the deputy chief level became available, Battalion Chief Zosh had fallen out of Chief Bowers' inner circle. Because she supported Firefighter Hernandez in her complaints of sexual harassment, the Fire Chief did not encourage Battalion Chief Zosh to apply for the new Deputy Chief position as he did several other Battalion Chiefs. Instead, Fire Chief Bowers encouraged and selected Brad Cochrane, a male Battalion Chief, to serve as his new Deputy Chief.

### **Statement of Claims**

#### **Claim I – Retaliation -Based Hostile Work Environment**

38. As demonstrated in paragraph nos. 7 through 37 above, Defendant has subjected Plaintiff to an unlawful hostile work environment because of her support and protection of a victim of sex discrimination in violation of Title VII of the Civil Rights Act of 1964.

39. As a direct and proximate result of this unlawful retaliation, Plaintiff has suffered and continues to suffer injuries in the form of personal and professional humiliation and embarrassment, career damage, loss of enjoyment of life, as well as other emotional distress, pain and suffering.

**Claim II — Sex-Based Hostile Work Environment**

40. As demonstrated in paragraph nos. 7 through 37 above, Defendant has subjected Plaintiff to an unlawful hostile work environment based on her sex in violation of Title VII of the Civil Rights Act of 1964.

41. As a direct and proximate result of this unlawful sex discrimination, Plaintiff has suffered and continues to suffer injuries in the form of personal and professional humiliation and embarrassment, loss of enjoyment of life, as well as other emotional distress, pain and suffering.

**Claim III –Retaliation-Based Denial of Promotion**

42. As demonstrated in paragraph nos. 7 through 37 above, Defendant has unlawfully retaliated against Plaintiff for engaging in protected activity by excluding her from the promotion process for Deputy Chief, rendering her ineligible for promotion to Deputy Chief, in violation of Title VII of the Civil Rights Act of 1964, as amended.

43. As a direct and proximate result of this unlawful reprisal, Plaintiff has suffered and continues to suffer injuries in the form of personal and professional humiliation and embarrassment, career damage, loss of enjoyment of life, as well as other emotional distress, pain and suffering.

**Prayer for Relief**

WHEREFORE, Plaintiff prays that this Court enter judgment in er favor and against Defendant on the claims of employment discrimination and retaliation brought herein pursuant to Title VII of the Civil Rights Act of 1964, as amended, and provide him with the following relief:

(a) award Plaintiff compensatory damages against Defendant in the amount of \$300,000.00, plus interest;

- (b) order Defendant to promote Plaintiff to Deputy Chief retroactive to April 30, 2016 with back pay and benefits;
- (c) order Defendant to remove all negative documentation from Plaintiff's personnel file;
- (d) enjoin Defendant from discriminating or retaliating against Plaintiff in the future;
- (e) award Plaintiff the costs of bringing and maintaining this civil action and the administrative charges that preceded it, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 2000e-5(k); and
- (f) award Plaintiff such other and further relief as the interests of justice may require.

**Jury Demand**

Plaintiff hereby requests a trial by jury on all issues of fact and measure of damages.

Respectfully submitted,



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