

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

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<b>ANTONIO DIAS,</b>	:	<b>CIVIL ACTION NO.:</b>
<b>Plaintiff,</b>	:	
<b>vs.</b>	:	
	:	
<b>CITY OF BRIDGEPORT</b>	:	
<b>Defendants.</b>	:	<b>February 10, 2017</b>

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**COMPLAINT**

**I. INTRODUCTION**

1. The Plaintiff, **ANTONIO DIAS** (hereinafter, "Plaintiff" or "Dias"), brings claims related to Plaintiff's employment with the Defendant against the **CITY OF BRIDGEPORT** (hereinafter, "Defendant" or "Bridgeport") for employment discrimination in violation of Section 504 of the Federal Rehabilitation Act of 1973, 29 U.S.C. § 704. The Defendant violated Section 504 by withdrawing a job offer made to him for an Entry Level Firefighter position after he was diagnosed with hypertension which is controlled by blood pressure medication.

**2. THE PLAINTIFF CLAIMS A TRIAL BY JURY.**

3. On or about December 29, 2016, the Plaintiff filed claims for disability discrimination under Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12201 et. seq. ("ADA") and Connecticut's Fair Employment Practices Act, Conn. Gen.

Stat. § 46a-51 et. seq. (“CFEPA”). The Connecticut Commission on Human Rights and Opportunities (“CHRO”) is investigating his claims.

## **II. PARTIES**

4. The Plaintiff resides in Bridgeport, Ct.

5. The Defendant is a public entity and is located at 999 Broad Street, Bridgeport, CT 06604-0432. Bridgeport provides a variety of public services, including fire prevention and safety.

6. The City of Bridgeport is a “federal fund recipient,” as defined by Section 504.

## **III. FACTS**

7. On or around May 15, 2016, Dias took and passed the Candidate Physical Ability Test (“CPAT”). CPAT tests a potential firefighter’s physical abilities to perform the essential functions of a firefighter in a fire emergency. The test creates a pool of physically capable candidates. Once a candidate passes CPAT, he or she is allowed to apply for a position with the Bridgeport Fire Department (hereinafter referred to as “BFD”) and take a written examination.

8. On May 18, 2016, Dias submitted his application for an opening at the BFD.

9. On June 16, 2016, Dias took the written exam for a firefighter position. He received a score of 105.07 and had the fifth highest score on the exam.

10. On June 30, 2016, Plaintiff received a letter offering him an offer of employment that was conditioned on passing all screenings.

11. Dias received another letter on July 20, 2016, indicating that he passed his drug, background, and motor vehicles screenings. The July 20 letter also informed him that he had advanced to the psychological evaluation of the BFD's selection process.

12. On July 29, 2016, Dias passed his psychological evaluation.

13. On August 2, 2016, Dias sat for his physical examination and passed it. He attempted to take a stress test on August 2, 2016, administered by Dr. Anja Wagner, M.D. ("Dr. Wagner"). However, he was informed that his blood pressure was too high, and, as a result, it was unsafe for him to take the stress test. He rescheduled his stress test for August 4, 2016.

14. On August 4, 2016, Plaintiff was told once again by Dr. Wagner that his blood pressure was too high. Dr. Wagner's office provided him with a 24-hour blood pressure monitor to determine whether he had high blood pressure or if he was suffering from "white coat hypertension."

15. White coat hypertension is a phenomenon where patients in a clinical setting exhibit a blood pressure level above the normal range. The patients usually do not show high blood pressure in other situations and settings.

16. Less than twelve (12) hours after receiving the 24-hour blood pressure monitor, the monitor malfunctioned and stopped recording his blood pressure. The monitor indicated that there was a "battery error code."

17. Dias returned the 24-hour blood pressure monitor to the clinic on August 5, 2016. Dr. Wagner then prescribed him a daily dose of amlodipine, a blood pressure medication. He then made another stress test appointment for August 16, 2016.

18. Dias continues to take the blood pressure medication prescribed by Dr. Wagner.

19. On August 10, 2016, Dias received a letter from the Bridgeport Civil Service Commission stating that he was approved and certified his acceptance as an Entry Level Firefighter.

20. On or around August 15, 2016, Dias took both self-administered and pharmacy-administered blood pressure readings. During these tests his blood pressure was below 120/80.

21. On August 16, 2016, Dias reported to his stress test appointment with Dr. Wagner. The clinic staff informed him that his blood pressure was too high to perform a stress test.

22. On August 19, 2016, Dias received a letter from the Bridgeport Civil Service Commission disqualifying him from the position of Entry Level Firefighter because he did not pass the stress test.

23. New recruits were scheduled to report to BFD Headquarters for orientation on August 22, 2016 before continuing with the training program at the Connecticut Fire Academy in Meriden, CT. The BFD disqualified Dias from the reporting class because of the failure to have a properly administrated stress test.

24. The Plaintiff filed an appeal of the BFD's decision to disqualify him from the training program at the Connecticut Fire Academy.

25. The Bridgeport Civil Service Commission sent Dias a letter on September 27, 2016, informing him that he had an appeal date of October 11, 2016.

26. On October 4, 2016, Dias passed a stress test administered by Dr. Manual Pun, M.D., F.A.C.C (“Dr. Pun”) of Yale New Haven Health’s Northeast Medical Group.

27. At his October 11, 2016 Appeals Hearing, the Appeals Board affirmed Dias’ disqualification as an Entry Level Firefighter based on Dr. Wagner’s failure to administer a stress test. The Appeals Board refused to consider the successful stress test conducted by Dr. Pun.

28. Dr. Pun sent a letter to Bridgeport’s Personnel Director, David J. Dunn, which states “Mr. Antonio Dias has controlled hypertension and atypical chest pain with a normal stress test.” (emphasis is original). Dr. Pun added that “Mr. Antonio Dias is clear from a cardiac standpoint to become a Bridgeport Firefighter.” Dr. Pun enclosed a copy of the stress test with the report.

29. During Dias’ October 11, 2016 Appeal Hearing, individuals on the Appeals Board repeatedly expressed concerns about the perceived health risks potentially associated with hypertension. Mr. Dunn stated that the Fire Department’s stress test was implemented after two firefighters died in 2011, and the BFD would not make an exception to their requirement that their physicians confirm that the candidate passed the stress test.

30. On October 31, 2016, Dr. Wagner gave him a twenty-four (24) hour blood pressure monitor test. The machine worked properly and Dias had zero (0) hypertensive blood pressure readings.

31. On November 11, 2016, Dr. Wagner – the BFD’s physician – conducted a follow-up stress test. Dias passed the stress test and was fully cleared and endorsed by Dr. Wagner to be a firefighter with no restrictions.

32. Dr. Wagner stated in a letter dated November 11, 2016, that:

The patient has been recently diagnosed with elevated blood pressures, therefore, we started him on a low-dose of an anti-hypertensive medication. We performed a 24-hour ambulatory blood pressure monitoring, which confirmed that the patient's blood pressure is under excellent control. Today, we performed a treadmill exercise stress test. The patient had an excellent exercise capacity without any evidence of inducible ischemia. His blood pressure response was appropriate.

Based on the examination, Dr. Wagner concluded that "[G]iven the results of the most recent testing, I see no contraindication for the patient to become a firefighter."

33. On November 18, 2016, Dias informed the Bridgeport Civil Service Commission via email and regular mail that Dr. Wagner had conducted a stress test and concluded that the plaintiff was cleared to work as a firefighter with no restriction.

34. On November 21, 2016, the Bridgeport Civil Service Commission denied Dias' request to be returned to the list of successful candidates to begin the class of firefighters who would be hired as Entry Level Firefighters.

35. On November 30, 2016, Attorney Thomas Bucci sent a letter on Plaintiff's behalf to the Bridgeport Civil Service Commission requesting a second hearing based on Dr. Wagner's recommendation.

36. On December 19, 2016, Dias was notified that his request for a second hearing before the Bridgeport Civil Service Commission was denied.

37. At all relevant times, Dias was able to perform the essential functions of the position of an Entry Level Firefighter, with or without a reasonable accommodation.

38. Under both Section 504 and the ADA, an employer can only withdraw an offer of employment due to a medical condition if, as a result of the effects of the medical

condition, the individual poses a “direct threat,” which is defined as a “significant risk of substantial harm to the health or safety of themselves or others which cannot be eliminated by reasonable accommodation.” 42 U.S.C. § 12113(.b); 42 U.S.C. § 12113(b). Determining whether the individual poses a “direct threat” depends on an “individualized assessment of the individual’s present ability to safely perform the essential functions of the job.” 29 C.F.R. § 1630.2.

39. As long as he takes the prescribed blood pressure medication, Dias does not pose a significant risk of substantial harm to himself or others.

40. The Defendant did not conduct an individualized assessment to determine whether Dias posed a significant risk to himself or others.

41. Both the Plaintiff’s physician, Dr. Pun, and the Defendant’s physician, Dr. Wagner, concluded that Dias could perform the essential functions of the firefighter position without any restrictions.

42. The Defendant perceived Dias as being disabled as a result of his initial inability to pass a stress test. Therefore, the Plaintiff was “regarded as” disabled by the Defendant.

43. Dias’ perceived disability was a substantial factor which led the Defendant to disqualify him from the hiring process and to deny his request to be returned to the list of eligible entry level firefighters. As a result, the Defendant’s actions violated Section 504.

44. The Defendant discriminated against Dias by revoking his conditional offer of employment and by not returning him to the list of Entry Level Firefighters based its perception that he was a person with a disability as a result of initially not passing the

stress test and having hypertension even though he subsequently did pass the stress test.

**IV. LEGAL CLAIM – SECTION 504**

45. Paragraphs 1-44 are hereby incorporated as Paragraphs 1-44 of this Count.

46. As a result of the Defendant's perception about the Plaintiff's hypertension, Dias is an "individual with a disability," as defined by Section 504.

47. Dias was a "qualified individual with a disability," as defined by Section 504.

48. The Defendant violated Section 504.

49. As a result of the Defendant's violation of Section 504, Dias is entitled to be restored to the list of Entry Level Firefighters and to recover lost wages, front pay, compensatory damages and attorney's fees.

### PRAYER FOR RELIEF

**WHEREFORE**, after due proceedings are had, Plaintiff requests by way of relief:

1. To be restored to the list of Entry Level Firefighters;
2. An award of damages for lost past and future income, and benefits and other entitlements due to Plaintiff in accordance with the terms and conditions of his employment by Defendant;
3. An award of compensatory damages for loss of reputation, emotional distress, humiliation, pain and suffering;
4. An award of attorneys' fees and costs;
5. An award of such other and further relief as may be allowed by law or equity and which the Court deems just and proper.

By: /s/ Gary Phelan  
Gary Phelan (ct03670)  
Mitchell & Sheahan, P.C.  
80 Ferry Blvd., Suite 216  
Stratford, CT 06615  
Tel. 203-873-0240  
Fax:203-873-0235  
gphelan@mitchellandsheahan.com  
Counsel for A