

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Benjamin P. Noyes, Plaintiff *
*
v. * Case No.
* **JURY TRIAL REQUESTED**
*
City of Dover and Paul Haas, Defendants *

COMPLAINT

NOW COMES the plaintiff Benjamin P. Noyes, by and through his attorneys Douglas, Leonard & Garvey, P.C., and respectfully submits the within Complaint, stating as follows:

I. Parties

1. The plaintiff, Benjamin Noyes, resides at 47 Williamine Drive, Newton, NH 03858.

2. Mr. Noyes was a full time firefighter employed by the City of Dover, Fire & Rescue Department, from August 2014 until May 2015.

3. The defendant, City of Dover [hereafter “Dover”], is a New Hampshire municipality which has a primary administrative office located at 288 Central Ave. Dover, NH.

4. Dover employs greater than fifteen (15) full time employees.

5. Paul Haas is currently employed by Dover as Assistant Chief of the Fire and Rescue Department He formerly supervised the plaintiff as captain for the Department.

II. Jurisdiction and Venue

6. Dover is a public corporation, capable of suing and being sued, under RSA 33:1 and RSA 44:1.

7. The Court has subject matter jurisdiction over the plaintiff's Americans With Disabilities Amendments Act claim pursuant to 42 U.S.C. §12117. The Court may exercise pendent jurisdiction over the plaintiff's State law claims. The Court may exercise personal jurisdiction over the defendants because they are residents of New Hampshire.

8. Venue is proper because the acts and omissions forming the grounds of the plaintiff's claims occurred in New Hampshire.

III. Facts

9. Effective November 10, 2009, Dover promulgated a "Harassment Policy" applicable to all of its employees and the general public, prohibiting harassment proscribed by state law to include "intimidating, offensive or hostile [work] environment[s]... based on age."

10. The defendant City of Dover hired Mr. Noyes to the position of probationary firefighter effective on or about August 11, 2014.

11. Mr. Noyes is also a certified paramedic.

12. Mr. Noyes was hired upon the decision of the Chief of Dover Fire and Rescue.

13. Mr. Noyes was 21 years old at the time.

14. Mr. Noyes was able to perform the essential functions of his job, as reflected by the performance review contained in his personnel file recognizing his "good base of EMS skills" and his "good ability to diagnose patient issues on scene."

15. Mr. Noyes was assigned to work on "Shift B," a team of firefighters supervised by Defendant Haas [hereafter "Captain Haas"].

16. Mr. Noyes met Captain Haas prior to his first day of employment to pick up his gear, at which time Captain Haas informed him that he believed Mr. Noyes was "too young" for the firefighter position.

17. Captain Haas explained that he didn't believe Mr. Noyes had experienced sufficient adversity in his young life to prepare him to be a good firefighter. Captain Haas said words to the effect: "I have to be honest with you. I think you are way too young. I only want guys with real life experience on my shift."

18. The Dover Fire Department's animus towards the young as employees was also expressed to Mr. Noyes by another Fire Department employee, who told Mr. Noyes words to the effect, "We don't like you guys here. The last guy your age quit after four months."

19. During Mr. Noyes' first week of employment, pursuant to Department policy, Mr. Noyes was to complete a standard orientation week requiring him to perform a different training exercise with a different shift team each day of the week.

20. The exercises were to comply with National Fire Protection Association (NFPA) standards, which included safety requirements such as "rehab," or rest and re-hydration periods, during the exercises.

21. Mr. Noyes performed well in orientation for three days, and on about the fourth day he met his shift B team-members and worked for Captain Haas for the first time.

22. The training exercise set for that day was "ladders." Captain Haas directed Mr. Noyes to lift a ladder weighing approximately 75 pounds by himself and extend it against the wall of the South Side station.

23. Captain Haas deviated from Department protocol and NFPA safety standards where he authorized staff to direct Noyes to support the ladder during extension with his own body weight and not use the station wall for support.

24. Captain Haas also violated NFPA standards where he demanded that Mr. Noyes perform this task in full gear, in 90 degree weather, dozens of times, without any opportunity for rest or water.

25. Due to the oppressive heat Mr. Noyes began to pull at his equipment to get air, and he bent to his knees, in heat exhaustion. Neither Captain Haas nor his team members came to his aid.

26. Instead Captain Haas bent to ask Noyes if he could “keep going.” When Mr. Noyes failed to respond, Captain Haas ordered Mr. Noyes to ascend the ladder to the black-tar roof to clean out gutters.

27. Captain Haas ordered Mr. Noyes to continue cleaning gutters for nearly an hour.

28. When Captain Hass finally permitted Noyes to descend the ladder, the Captain permitted the shift members to drink water in front of Mr. Noyes but denied Mr. Noyes any water.

29. After this incident of hazing, Mr. Noyes confided in his “mentor,” fellow paramedic Craig Comeau, that he had been traumatized as a teenager by bullying, and that he was again feeling bullied by Captain Haas.

30. Mr. Comeau had been selected to mentor Mr. Noyes because both men were paramedics, and it was Department practice to match mentees with mentors holding the same certifications.

31. As a mentor, Mr. Comeau was obligated to report Mr. Noyes’ progress in “probation,” including Mr. Noyes’ emotional status, to Captain Haas, and Mr. Comeau did so.

32. Notwithstanding this, in late October or early November of 2014, Captain Haas demanded that Mr. Noyes arrive for his 24-hour shift two (2) hours early, such that Mr. Noyes would be the only “probie” working on the shift.

33. After Mr. Noyes arrived, he was called to a sounding alarm in a vacant building which purportedly had recently been treated for bedbug infestation.

34. Against all protocols, Mr. Noyes was sent to crawl into the building, alone, to determine the reason for the alarm.

35. Mr. Noyes found no infestation and no emergency giving rise to the alarm. When Mr. Noyes and the team returned to the station, however, Captain Haas demanded that Mr. Noyes strip naked before entering the station out of purported concern for bedbugs.

36. After Mr. Noyes stripped and entered the station house, he was met by the shift team with which he was working, its Captain, Shift B team members then starting their shift, and Captain Haas.

37. The approximate eight (8) firefighters and two (2) Captains immediately began taunting Mr. Noyes, photographing him, and video-recording him with their cell phones. Captain Haas video-recorded the naked Mr. Noyes, creating a record of the “probie’s” humiliation.

38. As Captain Haas kept filming his movie of Mr. Noyes’ degradation, another firefighter sprayed water on Mr. Noyes with a hose while others demanded that he spin for the cameras, and still another firefighter shook “Ben Gay” powder on Mr. Noyes and threw it in his face.

39. Mr. Noyes again confided in Mr. Comeau that he felt traumatized by this incident, who in turn informed Captain Haas.

40. Shortly thereafter, Captain Haas removed Mr. Comeau from his role as Mr. Noyes' mentor and replaced him with Captain Haas' "best friend," Engineer Erik Anderson. This switch contravened Department practice because Mr. Anderson was not a paramedic.

41. Captain Haas explained the switch by stating that he knew that Mr. Anderson would be "as hard on" Mr. Noyes as the Captain himself would be.

42. In or around late November 2014, Mr. Noyes was called to respond to a serious car accident.

43. Captain Haas accused the driver at the scene of being intoxicated. The driver angrily responded "No I am not, you pig!"

44. Furious at the driver's disrespect, Captain Haas demanded that the driver be aggressively ripped from the vehicle and that Mr. Noyes and other firefighters "hog-tie" the driver face down on a back board to punish the driver.

45. Mr. Noyes refused to do so, advising Captain Haas that this was against standards of care and that hog-tying the patient could impede the patient's breathing and exacerbate his injuries.

46. Captain Haas grabbed Mr. Noyes and screamed in his face "you will do as I say!" and next demanded that two (2) other firefighters ride with Mr. Noyes and the patient in the back of the transport ambulance to ensure that Mr. Noyes did not remove the hog-tie restraints. Captain Haas told Mr. Noyes that he did not care what the hospital thought about the hog-tying, nor did he care about the legality of hog-tying the patient. "This is a brotherhood," Captain Haas yelled.

47. Captain Haas thus forced Mr. Noyes to watch helplessly as the helpless patient writhed and screamed in agony.

48. Later, Captain Haas forced Mr. Noyes to sign a false emergency response report for the patient. This report eliminated any reference to the abusive treatment the patient suffered and certified that Mr. Noyes, not Captain Haas, had been responsible for the patient's care.

49. Captain Haas reprimanded Mr. Noyes for taking a patient's side "over the brotherhood."

50. Additionally throughout the period of October 2014 through January 2015, with Captain Haas' awareness and approval, shift B employees mocked Mr. Noyes, ubiquitously referring to him as "probie-bitch" and hanging up signs in the station house, mocking his youth and body type. Exhibit A.

51. This pervasive harassment, along with the severe hazing incidents (including the "ladder" and video-taping incidents) and Captain Haas' inexplicable reprimands of Mr. Noyes for performing his job duties according to standards or as directed, caused Mr. Noyes to experience severe emotional distress.

52. Mr. Noyes reported this distress to his new mentor Mr. Anderson and also reported his distress directly to Captain Haas repeatedly.

53. Mr. Noyes reported to each supervisor that the harassment he was suffering at the Department was particularly traumatic due to his previous experiences with harassment.

54. Captain Haas initially responded by stating simply that firefighting was a "tough job."

55. Eventually Captain Haas referred Mr. Noyes to Dover's employee assistance program, but he took no steps to stop Mr. Noyes' hazing and abuse, and in fact, as of April 25 2015, Captain Haas reported to his supervisors that he found Mr. Noyes to be "irritating."

56. In addition to being exposed to extreme and outrageous conduct as described herein, Mr. Noyes was subjected to discrimination based on age and disability that was likewise at times extreme and outrageous.

57. Captain Haas repeatedly commented that he believed that Mr. Noyes was too young to work in the Dover Fire Department as a firefighter and paramedic. Captain Haas said to Mr. Noyes words to the effect, “I think you are in this way too early, you are very young, and lack the life experience that the rest of us had before joining the Department.” Additionally, in Mr. Noyes’ performance review, Captain Haas told Mr. Noyes that the Captain thought that Mr. Noyes was “way too young” for the job. “You’re too young, you’re too immature,” Captain Haas said. “I don’t know how to fix you.”

58. In connection with the performance review, Captain Haas asked Mr. Noyes to prepare a report on his thoughts for how he could improve. Mr. Noyes stated in his report that he thought the Captain was discriminating against him because of his age. After Captain Haas read the report, he screamed at Mr. Noyes to tell him that Mr. Noyes knew the Captain was not discriminating against “the probie” on the basis of age because age discrimination was illegal. Mr. Noyes was overwhelmed by the screaming and simply said, “OK.”

59. Mr. Noyes’ ultimate termination from the Dover Fire Department was preceded by an incident in which he was poisoned on a Dover Fire Department drinking expedition to Boston—an expedition planned by Captain Haas. On or about May 8, 2015, Mr. Noyes left Dover with several colleagues from the Fire Department, including Captain Haas, to celebrate the retirement of Craig Croteau, a fellow firefighter/paramedic. The Dover Fire Department personnel left Dover at 8:30 a.m. on a train and arrived in Boston in the 11 o’clock hour. During

the trip, two (2) firefighters, Alex Reynolds and Pat Simmons, joked about “roofing” a firefighter. “Wonder who’s going to get roofed today,” Reynolds said.

60. The Dover firefighters visited drinking establishments in Boston for several hours. At times Mr. Noyes left his drink unattended with the other firefighters, not believing that they would actually drug him.

61. Towards the end of the drinking expedition, Dover Fire Department personnel (including Pat Simmons, Alex Reynolds and Jen Myers) gave Mr. Noyes cigars and instructed him to smoke them. Mr. Noyes began to feel strange afterwards. As he traveled back to Dover with the other Dover Fire Department personnel on the train, he felt sensations of his environment spinning, and he experienced auditory hallucinations and heard echoing voices.

62. As Mr. Noyes walked off the train, he said to Captain Haas, “I’ve been drugged.” Captain Haas said to Mr. Noyes, “Don’t worry about getting fired. You’re one of us now.”

63. When Mr. Noyes arrived in Dover, his girlfriend picked him up and drove him to Portsmouth Regional Hospital. Mr. Noyes presented to the emergency room disoriented. While in the emergency room, Mr. Noyes suffered an episode of seizure. His body flipped about in his bed while his eyes stared blankly. He became unresponsive.

64. Mr. Noyes was hospitalized from May 8, 2015, through May 12, 2015, relative to the seizure event. The seizure event substantially limited Mr. Noyes in several major life activities, including breathing, moving, standing, walking, thinking, concentrating and communicating.

65. After Mr. Noyes suffered his seizure, Mr. Noyes’ girlfriend contacted Captain Haas to advise him that Mr. Noyes would not be reporting for his scheduled shift on May 10,

2015. Captain Haas laughed at the news, commenting that Mr. Noyes' predicament was a ploy to get out of work.

66. Mr. Noyes was discharged from Portsmouth Regional Hospital on May 12, 2015. In the discharge summary, Dr. Keith Robinson stated that he believed that Mr. Noyes "likely did receive some toxin, causing hallucinations as well as seizures." The doctor noted that "there are some synthetic illegal drugs [such as] bath salts or others that can cause hallucinations as well as seizures."

67. On or about May 13, 2015, Mr. Noyes reported to the Dover Fire Department and presented the Chief with a doctor's note authorizing him to return to work on May 18, 2015, but restricting him from driving until authorized to do so by a neurologist. The Chief told Mr. Noyes that he looked like "sh*t" and that the Chief would not permit Mr. Noyes to return to work until he could drive.

68. Importantly, the Fire Chief did not tell Mr. Noyes in the May 13, 2015, conversation, or at any other time, that the Chief was in any way restricting Mr. Noyes from discussing his medical condition with anyone else at the Fire Department.

69. On or about May 14, 2015, Mr. Noyes called the Chief and informed him that Mr. Noyes' neurologist wanted to run tests on Monday, May 18, 2015. Mr. Noyes and the Chief agreed in the conversation that Mr. Noyes would return to work as soon as possible thereafter.

70. On or about May 17, 2015, however, Mr. Noyes realized that he was unclear as to whether he was scheduled to be out of work all of the day on May 18 or only part of the day. Mr. Noyes called the Fire Department and spoke to Lieutenant Chabot, who advised Mr. Noyes that he was scheduled to be out the full day.

71. A neurologist examined Mr. Noyes on or about May 18, 2015, and cleared him to resume work full time.

72. On Mr. Noyes' first day back from his seizure-related absence, the Chief advised him that the Chief was ending his probation and that Mr. Noyes could resign or be terminated. The Chief stated words to the effect: "Taking the medical aspect out of this, you have had trouble following orders and listening to what we say, for example I told you to contact me, and you went and called another officer and got other people involved in this that didn't need to be."

73. Mr. Noyes responded to the news by saying words to the effect, "It's pretty convenient how this happens on my first day back from the hospital." The Chief acknowledged that the circumstances were odd.

74. While Captain Haas was not present in the termination meeting, he influenced the termination decision.

74. Mr. Noyes timely filed a Charge of Discrimination with the New Hampshire Commission for Human Rights on June 24, 2015, alleging disability discrimination and age discrimination. Exhibit B. The Charge was dually filed with the United States Equal Employment Opportunity Commission (EEOC).

75. Mr. Noyes' Charge of Discrimination was pending at the administrative agencies for more than six (6) months.

76. The EEOC has issued Mr. Noyes a Notice of Right to Sue dated August 9, 2017. Exhibit C. This Complaint is being filed within 90 days of receipt of such Notice of Right to Sue, as required.

COUNT I

(Intentional Infliction of Emotional Distress Against All Defendants)

77. The allegations contained in the preceding paragraphs are incorporated herein by reference.

78. Captain Haas intentionally engaged in the following extreme and outrageous conduct:

a) demanding that Mr. Noyes repeatedly extend a seventy-five pound ladder and work on a roof, in extreme heat and in full gear, while denying Mr. Noyes rest and water, which was enjoyed in front of him by onlooking co-workers;

b) directing the hog-tying of an injured patient face down on a stretcher board in front of Mr. Noyes, a paramedic, and disallowing him to intervene, but demanding that Mr. Noyes document that he was the care provider of record;

c) facilitating Mr. Noyes' singular exposure to bedbugs and then demanding that he strip naked, so that Captain Haas could video record his humiliation as co-workers doused him with a fire-hose and taunted him;

d) endorsing the pervasive shaming of Mr. Noyes in the workplace, to include referring to Mr. Noyes as "probie bitch" and posting mocking images referring to Mr. Noyes in the workplace; and

e) knowingly permitting Mr. Noyes' co-workers, to compel him to smoke unknown and potentially dangerous substances, which ultimately caused Mr. Noyes serious physical injury;

79. Captain Haas engaged in this conduct with the intent to cause Mr. Noyes distress and with knowledge that Mr. Noyes was susceptible to emotional distress.

80. Captain Haas did not have a reasonable belief in the lawfulness of his conduct in light of Dover's policies against harassment.

81. Captain Haas in fact caused Mr. Noyes profound emotional distress with his conduct.

82. The defendant City of Dover is vicariously liable for Captain Haas' actions where Captain Haas engaged in the alleged outrageous conduct, as part of his training of his probationary employee, and which was within the scope of his employment duties.

83. As a direct and proximate result of the defendants' intentional infliction of emotional distress, Mr. Noyes has suffered and continues to suffer damages, including counseling expenses, emotional distress, humiliation, inconvenience and loss of enjoyment of life. Mr. Noyes is further entitled to enhanced compensatory damages based on the wanton, malicious and oppressive nature of the defendants' conduct.

COUNT II

(Violation of Americans With Disabilities Amendments Act Against Defendant City of Dover)

84. The allegations of the preceding paragraphs are incorporated herein by reference.

85. As a result of the May 8, 2015, incident, Mr. Noyes suffered disabling impairments that substantially limited him in several major life activities, including without limitation breathing, moving, standing, walking, thinking and concentrating.

86. Mr. Noyes could perform the essential functions of his job with reasonable accommodation, including allowance of leave time to receive necessary medical treatment.

87. Instead of reasonably accommodating Mr. Noyes' need for leave to attend necessary medical treatment, the defendant breached its obligation of reasonable accommodation to Mr. Noyes, committing disability discrimination, by subjecting Mr. Noyes to an adverse

employment action (namely, a firing), in response to his taking of leave to attend necessary medical treatment.

88. The defendant further committed disability discrimination by firing Mr. Noyes because he suffered disabling impairments, because he had a record of suffering from disabling impairments, and because the defendant regarded him as having disabling impairments.

89. As a direct and proximate result of the defendant's disability discrimination in violation of the Americans With Disabilities Amendments Act, Mr. Noyes has suffered and continues to suffer damages, including without limitation lost wages, lost employment benefits, lost earning capacity, emotional distress, humiliation, inconvenience and loss of enjoyment of life, plus attorney's fees, interest and costs.

COUNT III

(Violation of RSA 354-A---Disability Discrimination---Against Defendant City of Dover)

90. The allegations of the preceding paragraphs are incorporated herein by reference.

91. As a result of the May 8, 2015, incident, Mr. Noyes suffered disabling impairments that substantially limited him in several major life activities, including without limitation breathing, moving, standing, walking, thinking and concentrating.

92. Mr. Noyes could perform the essential functions of his job with reasonable accommodation, including allowance of leave time to receive necessary medical treatment.

93. Instead of reasonably accommodating Mr. Noyes' need for leave to attend necessary medical treatment, the defendant breached its obligation of reasonable accommodation to Mr. Noyes, committing disability discrimination, by subjecting Mr. Noyes to an adverse employment action (namely, a firing), in response to his taking of leave to attend necessary medical treatment.

94. The defendant further committed disability discrimination by firing Mr. Noyes because he suffered disabling impairments, because he had a record of suffering from disabling impairments, and because the defendant regarded him as having disabling impairments.

95. As a direct and proximate result of the defendant's disability discrimination in violation of the New Hampshire Law Against Discrimination, Mr. Noyes has suffered and continues to suffer damages, including without limitation lost wages, lost employment benefits, lost earning capacity, emotional distress, humiliation, inconvenience and loss of enjoyment of life, plus attorney's fees, interest and costs.

COUNT IV

(Violation of RSA 354-A---Age Discrimination---Against Defendant City of Dover)

96. The allegations of the preceding paragraphs are incorporated herein by reference.

97. Mr. Noyes was qualified for his position as a firefighter and paramedic, as evidenced by the comments in his performance review that he had a "good base of EMS skills" and a "good ability to diagnose patient issues on scene."

98. The defendant discriminated against Mr. Noyes in the terms, conditions or privileges of employment, and ultimately discharged Mr. Noyes from employment, because of his age.

99. The defendant filled the vacancy created by Mr. Noyes' discharge.

100. As a direct and proximate result of the defendant's age discrimination in violation of the New Hampshire Law Against Discrimination, Mr. Noyes has suffered and continues to suffer damages, including without limitation lost wages, lost employment benefits, lost earning capacity, emotional distress, humiliation, inconvenience and loss of enjoyment of life, plus attorney's fees, interest and costs.

WHEREFORE, the plaintiff Benjamin Noyes respectfully prays this Honorable Court:

- A. Schedule this matter for trial by jury, and after trial:
- B. Find the defendants liable for intentional infliction of emotional distress;
- C. Find the defendant City of Dover liable for violation of the Americans With Disabilities Amendments Act;
- D. Find the defendant City of Dover liable for disability discrimination in violation of RSA 354-A;
- E. Find the defendant City of Dover liable for age discrimination in violation of RSA 354-A;
- F. Award the plaintiff damages for his lost wages, lost employment benefits, lost earning capacity and counseling expenses;
- G. Award the plaintiff damages for his emotional distress, humiliation, inconvenience, and loss of enjoyment of life;
- H. Award the plaintiff enhanced compensatory damages;
- I. Award the plaintiff his reasonable attorney's fees;
- J. Award the plaintiff interest and costs; and
- K. Grant such other and further relief as is just and equitable.

Respectfully submitted,
BENJAMIN P. NOYES
By his attorneys,
DOUGLAS, LEONARD &
GARVEY, P.C.

Date: October 6, 2017

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