

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Edwin S. Tweedy)
60 Cedar Lane)
Ridgefield, CT 06877)
Plaintiff,)

v.)

CITY OF NEW YORK)
NYC Comptroller’s Office)
1 Centre St. Room 1225)
New York, NY 10007)

And)

FIRE DEPARTMENT OF NEW YORK)
CITY)
NYC Comptroller’s Office)
1 Centre St. Room 1225)
New York, NY 10007)

And)

DR. DARIO GONZALEZ)
NYC Comptroller’s Office)
1 Centre St. Room 1225)
New York, NY 10007)

Defendants.)

CASE NO.

JUDGE

**COMPLAINT FOR AGE
DISCRIMINATION**

TRIAL BY JURY DEMAND

INTRODUCTION

Plaintiff, Edwin Tweedy, (hereinafter Plaintiff) for his Complaint against the City of New York, (hereinafter “the City”) the Fire Dept. of New York, (hereinafter FDNY) and Dario Gonzalez (hereinafter Dr. Gonzalez) (collectively referred to as “Defendants”), state and allege as follows:

1. This is an action against the City, the FDNY and Dr. Gonzalez, jointly and

individually, for damages and other relief relating to their continuing discrimination in failing to promote Plaintiff to the position of Rescue Paramedic because of his age.

2. As a result of Defendants' wrongful conduct, Plaintiff has suffered substantial damages, including significant damage to his reputation within the Haz-Tac Paramedic community, and his personal reputation within the community where he lives.

JURISDICTION AND VENUE

3. This Court has jurisdiction over Plaintiff's age discrimination claims under 29 U.S.C § 621 et seq. pursuant to 28 U.S.C. §1331 (federal question).

4. Venue is proper in this District pursuant to, without limitation, 28 U.S.C. § 391(b) because the events giving rise to the claims occurred in this District.

PARTIES

5. Upon information and belief, the defendant, CITY OF NEW YORK, is a domestic municipal corporation created, organized, and existing by virtue of the laws of the State of New York.

6. Upon information and belief, the defendant, THE FIRE DEPARTMENT OF THE CITY OF NEW YORK, is a department of the defendant, CITY OF NEW YORK.

7. Upon information and belief, the defendant, DARIO GONZALEZ, is a natural person residing in the State of New York.

8. Upon information and belief, at all relevant times, the defendant, defendant, DARIO GONZALEZ was an employee of the defendants CITY OF NEW YORK and THE FIRE DEPARTMENT OF THE CITY OF NEW YORK.

FACTS

9. At all relevant times Plaintiff was employed as a Paramedic for the Fire Department

of New York City, and stationed at Station 20 in the Bronx.

10. Plaintiff is 64 years old and was denied training and a promotion to the position of Rescue Medic based solely upon Plaintiff's age.

11. On December 6, 2016, the Fire Dept. issue EMS Order No. 60 – Supplement 2. The Order invited qualified personnel to apply for the position of Rescue Paramedic.

12. In addition, Plaintiff was singled out by his supervisor and the Senior Rescue Instructor, Don Faeth, and was specifically asked to apply for the training and position.

13. Plaintiff met all the criteria for eligibility specified in Section 2 of EMS Order No. 60.

14. Plaintiff passed the required tests and had all the required experience.

15. Plaintiff had completed at least two years of experience as an FDNY/REMAC certified Paramedic.

16. Plaintiff possessed a valid New York State Department of Health EMT-Paramedic and New York City REMAC certifications.

17. Plaintiff was and is able to function safely in chemical protective clothing at heights, in water, on or around rubble, as well as in below grade and in confined spaces.

18. Plaintiff maintained a satisfactory time/leave profile, and Plaintiff had and has no pending or unresolved disciplinary actions, and Plaintiff had no patient care violations or disciplinary actions for the prior two years.

19. Plaintiff received either a "Very Good" or "Outstanding" rating on Plaintiff's most recent performance evaluation.

20. Plaintiff successfully completed a competitive physical agility test.

21. Plaintiff successfully completed ALS Haz-Tac Basic Training.

22. Plaintiff received a recommendation from his Station Commanding Officer and Division Commander.

23. Plaintiff was confirmed to take the December 22, 2016 test at 1600 hours, which Plaintiff passed satisfactorily.

24. Having passed or met all the criteria in Section 2 of EMS Order No. 60, Plaintiff was scheduled for an interview on January 10, 2017 at Haz-Tac Battalion on Randall's Island.

25. On the day before Plaintiff's scheduled interview, Defendant, Dr. Dario Gonzalez arbitrarily disqualified Plaintiff for the position and cancelled Plaintiff's interview.

26. All those that were not disqualified at this time and that were hired for the position were younger than Plaintiff.

27. Plaintiff is in the protected class and was as qualified or more qualified than others that were granted an interview and subsequent admission to the training program and hired for the position that were younger and that were not in the protected class.

28. Plaintiff was denied promotion to the position of Rescue Medic despite meeting and exceeding all of the qualifications necessary for the post and meeting and exceeding the qualifications of others that were selected for the position.

29. Plaintiff was denied the post because of his age.

30. Plaintiff is a graduate of the US Merchant Marine Academy at Kings Point. Kings Point is one of the five federal academies and the only one that requires a US Coast Guard Merchant Marine Officer License to graduate in addition to a BS and a commission in the US Navy.

31. Plaintiff also has a Master of Science Degree in Transportation Management/International Trade from SUNY Maritime College.

32. As the merchant marine is a private industry commercial profit driven enterprise, merchant ships have small crews/minimal manning standards. This requires a great deal of training and flexibility. Kings Point emphasizes practical seamanship skills. Kings Point requires its midshipman to spend a full year at sea on commercial merchant vessels to graduate.

33. Plaintiff went to sea as a merchant ship's officer, a Third Mate.

34. Plaintiff was in the Dual License (Deck and Engine) program at the Academy, thus was thoroughly knowledgeable in steam and diesel engine room operations, cargo operations (container, bulk, tanker, LPG/LNG), fire and damage control/systems, ship's medicine, navigation, seamanship, port security, harbor operations, maritime contract law, and the like.

35. Plaintiff spent most of his career in the shipping and energy industries and has commercial and practical knowledge of the various petroleum terminals, power plant dock and storage facilities, barge/tug operations, dry bulk and container operations.

36. Plaintiff was very familiar with New York Harbor and the other North American ports/terminals.

37. Plaintiff created and taught courses for commercial and practical aspects of the shipping industry at the University of Houston, Kings Point, various industry seminars and as a consultant to shipping and commercial chartering personnel.

38. Following the tragedy of September 11, 2001, in order to publicly serve the City of New York and its people, Plaintiff resigned from his prior occupation, applied to the FDNY, and was hired as a Paramedic.

39. Plaintiff's education, training, and experience qualified Plaintiff for the position of Rescue Medic.

40. If not for the arbitrary, capricious, and discriminatory decision of Dr. Dario Gonzalez, based upon his age, Plaintiff should have received an appointment for admission to the Rescue Paramedic Basic Program, and should have been hired for the position.

41. The FDNY and Dr. Gonzalez, pursuant to their discriminatory customs, practices and policies, hired one or more individuals under 40 years of age, even though Plaintiff was more qualified than the younger Paramedics that were hired instead of Plaintiff.

42. Plaintiff resigned from the FDNY in February of 2018 because Plaintiff was denied promotion and was discriminated against because of his age. After making complaints and filing an EEOC complaints regarding defendants' age discrimination, defendants retaliated against the defendant by again denying him the position of Rescue Paramedic. Plaintiff would not have resigned had it not been for the discriminatory and retaliatory actions of Defendants.

43. The FDNY and the City were Plaintiff's "employer" within the meaning of federal age discrimination statutes.

44. As such, the City and the FDNY are liable for Plaintiff's 29 U.S.C. § 621 et seq. claims of age discrimination, and there is a direct causal link between the City's and FDNY's policy, practice or custom of discriminating against Paramedics on the basis of age and Plaintiff's damages.

45. Defendant, Dario Gonzalez, was one of Plaintiff's supervisory employees and is also liable to Plaintiff under 29 U.S.C. § 621 et seq. for his acts of age discrimination and aiding and abetting age discrimination as alleged herein.

46. Defendants, created a culture where age factored into or controlled hiring decisions, rather than establishing and utilizing hiring practices designed to identify and hire those candidates having the best credentials and professional qualifications.

47. Moreover, Defendants failed to initiate an investigation as to Plaintiff's complaint of age discrimination as required by City and FDNY policy and attempted to cover up their wrongful activity by failing to investigate Plaintiff's claims of discrimination.

48. All Defendants have acted with malice and/or reckless disregard for the rights of Plaintiff.

CAUSE OF ACTION
(Age Discrimination - ADEA)

49. Plaintiff hereby incorporates by reference each of the allegations in the foregoing paragraphs as if fully rewritten herein.

50. Defendants discriminated against Plaintiff Ed Tweedy on the basis of his age as alleged herein by failing to promote him in December of 2016, when he was over the age of 40, and by promoting individuals younger than him and under the age of 40.

51. Plaintiff was qualified for the position of Rescue Paramedic for which he sought promotion from Defendants.

52. Although Plaintiff was as qualified or more qualified than other candidates for the position of Rescue Paramedic, Defendants hired less qualified individuals significantly younger than the Plaintiff.

53. Plaintiff alleges that age was a factor in Defendants' employment decisions relating to him.

54. Defendants' actions were willful, wanton, malicious and/ or in reckless disregard

to the rights of Plaintiff.

55. Plaintiff received his Notice of Suit Rights dated February 7, 2018 from the EEOC in relation to EEOC Charge No. 520-2017-02992.

56. As a direct and proximate result of Defendants' conduct, Plaintiff has been damaged and will continue to be damaged in an amount to be determined at trial.

WHEREFORE, Plaintiff demands judgment against Defendants jointly and severally for the following: such legal or equitable relief as may be appropriate including, without limitation, lost wages and compensation, back pay, promotion to the position of Rescue Paramedic, front pay, compensatory damages, punitive damages and for such other and further relief as is just under law or equity.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury of all claims herein.

Dated: February 19, 2018
Brooklyn, NY

Respectfully Submitted,



Daniel Shimko, Esq.

Shimko Law P.C.

300 Cadman Plaza West

One Pierrepont Plaza, 12th FL

Brooklyn, NY 11201

T. (718) 504-5533

C. (617) 817-1132

dshimko@shimkolaw.com

Counsel for Plaintiff, Edwin Tweedy