

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Christopher Gallagher,

Plaintiff,

v.

Town of Surfside Beach,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
C.A. No. 2018-CP-26-

**SUMMONS
(Jury Trial Demanded)**

TO: DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action. A copy of the Complaint is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorneys for the Plaintiff within thirty (30) days after the service hereof, exclusive of the day of service, at 12019 Ocean Highway, Post Office Box 1885, Pawleys Island, South Carolina 29585.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

HOPKINS LAW FIRM, LLC

s/ J. Clay Hopkins

William E. Hopkins, Jr. (SC Bar # 66474)

J. Clay Hopkins (SC Bar # 102053)

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ATTORNEYS FOR PLAINTIFFS

Pawleys Island, South Carolina
June 19, 2018

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Christopher Gallagher,
Plaintiff,

v.

Town of Surfside Beach,
Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
C.A. No. 2018-CP-26-

**COMPLAINT
(Jury Trial Demanded)**

Christopher Gallagher (hereinafter referred to as “Plaintiff”), complaining of Town of Surfside Beach (“Defendant”), would allege as follows:

JURISDICTION AND PARTIES

1. Plaintiff is a resident and citizen of Horry County, South Carolina.
2. All discriminatory employment practices alleged herein were committed within the State of South Carolina.
3. Defendant is a municipality located in Horry County, South Carolina.
4. Plaintiff’s claims arise under South Carolina and Federal statutory law. Plaintiff alleges discrimination and retaliation under the Americans with Disabilities Amendments Act, 42 U.S.C. § 12101, *et seq.* (“ADAAA”).
5. All conditions precedent to jurisdiction have occurred or been complied with.
 - a. A charge of employment discrimination on basis of age and disability discrimination and retaliation was filed by the Plaintiff with the United States Equal Employment Opportunity Commission.
 - b. Notification of the Right to Sue was received from EEOC on or about April 4, 2018.
 - c. This Complaint has been filed within the 90 days of receipt of EEOC's Dismissal and Notice of the Right to Sue.

6. Defendant is a “person” within the meaning of 42 U.S.C. §12111.

7. Defendant is an “industry” that “affects commerce” within the meaning 42 U.S.C. §12111.

8. At all times relevant herein, Defendant employed at least fifteen (15) employees and is an “employer” within the meaning of 42 U.S.C. §12111.

FACTS

9. Plaintiff reiterates and realleges each and every allegation as if fully set forth herein.

10. Defendant employed Plaintiff as a volunteer firefighter.

11. In March of 2017, Defendant posted a new position for a Fire Engineer. The position required a written test and physical test.

12. Plaintiff has dyslexia, a qualified condition under the ADA. He notified his supervisor of his condition, and was not given any accommodation for the written examination.

13. However, during the examination, a coworker yelled toward Plaintiff, “That guy is an idiot! What’s he got? Dyslexia?” Plaintiff had not informed anyone beyond his supervisors of his condition.

14. Plaintiff and one (1) other candidate passed the physical examination – Coner Clendennin. However, Clendennin was less qualified than Plaintiff for the position in that Clendennin did not have the prerequisite education and continuing education required for the Engineer position, which Plaintiff did in fact have.

15. Despite being more qualified than Clendennin, Plaintiff was placed third on Defendant’s eligibility list – behind a candidate who failed the written **and** physical examination.

16. Thereafter, Defendant hired Clendennin and was required to find another person to cover his position while Defendant paid for him to receive the prerequisite training and education.

17. During this time, though, Plaintiff heard from a supervisor that Prentice Williams – a captain for the fire department – and Chief Kevin Otte had a conversation where Williams declared, “We’re not hiring someone who can’t read.”

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT
(Disability Discrimination)

18. Plaintiff reiterates and realleges each and every allegation as if fully set forth herein.

19. From the date of his hire until Defendant failed to promote him to a position he was more qualified for, Plaintiff was disabled, or otherwise regarded by Defendant as disabled, having a condition that substantially affected major life activities.

20. At all times relevant hereto, Plaintiff was the most qualified applicant for Defendant’s Engineer.

21. Defendant failed to hire Plaintiff for the position, and even selected and promoted less qualified individuals, because of his disability.

22. Defendant’s wrongful discrimination, preferential treatment and inappropriate behaviors as set forth aforesaid constituted a discrimination of Plaintiff due to his disability.

23. Defendant’s conduct described herein was reckless, wanton, and intentional and Plaintiff is entitled to recover punitive damages for the same. Defendant has caused, and Plaintiff is also entitled to recover, back pay, front pay, back benefits, front benefits, pain and suffering, emotional distress, stress and anxiety, and the reasonable costs and attorney’s fees of bringing this action. Plaintiff also requests pre-judgment interest on these damages.

FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT
(Disability Retaliation and Coercion)

24. Plaintiff reiterates and realleges each and every allegation as if fully set forth herein.

25. Plaintiff engaged in activities protected under the ADA by complaining about

the treatment he received due to his disability.

26. Plaintiff was informed that his disability would not be discussed with anyone else and that he would receive fair treatment thereafter during his application process. However, Plaintiff's disability was the ultimate reason or determining factor in Defendant's failure to promote him. The same constitutes unlawful coercion, intimidation, and interference with Plaintiff's ADAAA rights.

27. Because Plaintiff opposed these practices he was not given a fair opportunity to get a job where he was the most qualified applicant.

28. Defendant failed to give Plaintiff a position in violation of the Anti-Retaliation provision of the ADAAA and caused Plaintiff damages that he is entitled to recover as a result of the same including back pay, front pay, back benefits, front benefits, pain and suffering, emotional distress, stress and anxiety, and the reasonable costs and attorney's fees of bringing this action. Plaintiff is also entitled to punitive damages for Defendant's willful, wanton, and intentional conduct alleged herein. Plaintiff also requests prejudgment interest on these damages.

WHEREFORE, having set forth his Complaint, Plaintiff would respectfully request judgment against Defendant, to be determined by the trier of fact; for the costs and disbursements of this action; for trial by jury, for actual and compensatory damages, punitive damages, costs, attorney's fees, prejudgment interest, and any other relief the Court may deem just and equitable.

Plaintiff requests a jury trial on all counts so triable.

[Signature on Following Page]

HOPKINS LAW FIRM, LLC

s/ J. Clay Hopkins

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