

**UNITED STATES DISTRICT COURT
For the
DISTRICT OF RHODE ISLAND**

)	
LORI FRANCHINA,)	Civil Action No.:
<i>Plaintiff,</i>)	
vs.)	
)	
THE CITY OF PROVIDENCE,)	
<i>Defendant.</i>)	
)	

COMPLAINT

THE PARTIES

1. The plaintiff, Lori Franchina, is an individual residing at 36 Medieval Way, West Warwick, Kent County, Rhode Island 02893.
2. The defendant, City of Providence, is a Rhode Island political subdivision with its principal offices at Town Hall, 25 Dorrance St, Providence, RI 02903

FACTS

3. The plaintiff was a Rescue Lieutenant with the Providence Fire Department (“PFD”).
4. The plaintiff started her employment with the defendant on March 18, 2002.
5. The plaintiff filed for accidental disability benefits on January 21, 2011, alleging a permanently disabling disability that was substantially caused by workplace harassment and discrimination, in addition to other job-related incidents.

6. The plaintiff was evaluated by a number of Independent Medical Examiners, all of whom agreed that the plaintiff was permanently and totally disabled, and all of whom opined that the work-related incidents and/or “difficulty” with her co-workers/superiors were substantial causing factors of her disability.
7. Notwithstanding the overwhelming medical evidence establishing the plaintiff’s disability and its cause, the City of Providence Retirement Board (“Board”) denied her application on October 26, 2011.
8. The plaintiff petitioned the Rhode Island Supreme Court for judicial review of the Board’s denial, but the petition for Writ of Certiorari was denied.
9. In July, 2012, the plaintiff filed a federal lawsuit alleging gender-based harassment and retaliation.
10. The City denied all wrongdoing and denied that the plaintiff was harassed.
11. The lawsuit gained widespread media coverage in Rhode Island, including front-page stories in the Providence Journal and featured reports on all major local news outlets.
12. On April 25, 2013, the Chief of the PFD submitted an application for the plaintiff to be retired with ordinary disability benefits, which provide substantially less value than accidental disability benefits.
13. Again, the plaintiff was evaluated by three independent medical examiners. Again, all three confirmed that the plaintiff was permanently and totally disabled and all three attributed workplace conflict, in one way or another, as a substantial causing factor of her disability.

14. The Board granted the plaintiff ordinary disability benefits on December 18, 2013.
15. Thereafter, on April 18, 2016, a jury awarded the plaintiff substantial damages for her gender-discrimination and retaliation claims.
16. During the trial, two treating doctors opined that the plaintiff was permanently and totally disabled and that the cause of the disability was gender-based workplace harassment and other work-related incidents. That testimony was un rebutted.
17. The jury award was highly publicized, dominating local news outlets for several days after being reported nationally in the Washington Post and on both CNN and Fox News.
18. In February, 2019, the plaintiff petitioned the Board to re-open her application for accidental disability pension benefits.
19. Hearings were held in May and September, 2019, where the plaintiff and her attorney presented un rebutted and unequivocal evidence that her disability was caused by workplace harassment and other work-related incidents.
20. The plaintiff is currently, as of the filing of this complaint, unable to work in any capacity. She is in long-term, intensive outpatient psychiatric treatment all day, five days per week. She has had multiple inpatient stays for treatment. She is incapable of sleeping, has night terrors, and has at times been suicidal.
21. On January 30, 2020, the Board refused to reopen the plaintiff's petition for accidental disability benefits, claiming that her application "had been litigated to conclusion."

22. Notably, the Board's Findings of Fact denying the petition specifically reference the plaintiff's sexual harassment lawsuit and jury verdict, even though that trial had nothing to do with her petition to reopen the application for accidental disability benefits.
23. Upon information and belief, the Board has no evidence (because none exists) that the plaintiff's disability was caused by anything other than workplace harassment and other work-related incidents.
24. Upon information and belief, the Board routinely and customarily grants accidental disability benefits to members of the Fire Department who suffer from physical disabilities, as opposed to psychological disabilities.
25. Upon information and belief, the plaintiff presented the Board with overwhelming and un rebutted evidence that she was entitled to accidental disability benefits based on her psychiatric disability, and the Board's refusal to grant her petition to reopen the application was discriminatory and retaliatory.
26. As a result, the plaintiff earns ordinary disability benefits that are barely above poverty level when she is entitled to accidental disability benefits, which would permit her to enjoy a higher quality of life.

PLAINTIFF'S CLAIMS

COUNT I

VIOLATION OF RHODE ISLAND GENERAL LAWS § 28-5-7 (1)
DISABILITY DISCRIMINATION

27. The plaintiff repeats and realleges the above paragraphs as if each were set forth here in its entirety.
28. At all times relevant hereto, the defendant, as Rhode Island political subdivision, is an “employer” as that term is defined in Rhode Island General Laws § 28-5-6 (8)(i).
29. At all times relevant hereto, the plaintiff was an “employee” as that term is defined in Rhode Island General Laws § 28-5-6 (7).
30. The plaintiff is a member of a protected class (disability) as that term is defined in Rhode Island General Laws § 42-87-1.
31. In violation of Rhode Island General Laws § 28-5-7 (1)(ii), the defendant discriminated against the plaintiff with respect to compensation, on the basis of her psychological disability.
32. As a direct and proximate result, the plaintiff has suffered damages including, but not limited to, loss of earnings and emotional distress.

WHEREFORE, the plaintiff demands judgment against the defendant and an award of damages, fees, costs, interest, and further relief to which she is entitled.

COUNT II
VIOLATION OF RHODE ISLAND GENERAL LAWS § 28-5-7 (5)
GENDER DISCRIMINATION

33. The plaintiff repeats and realleges the above paragraphs as if each were set forth here in its entirety.
34. At all times relevant hereto, the defendant, as Rhode Island political subdivision, is an “employer” as that term is defined in Rhode Island General Laws § 28-5-6 (8)(i).
35. At all times relevant hereto, the plaintiff was an “employee” as that term is defined in Rhode Island General Laws § 28-5-6 (7).
36. The plaintiff is a member of a protected class (sex) under Rhode Island General Laws § 28-5-7.
37. In violation of Rhode Island General Laws § 28-5-7 (5), the defendant discriminated against the plaintiff because she made a charge and testified as to the defendant’s practices of gender discrimination and retaliation, evidenced, at least in substantial part, by the Board’s specific reference to her prior lawsuit and jury verdict; neither of which are remotely related to her claim for accidental disability benefits.
38. As a direct and proximate result, the plaintiff has suffered damages including, but not limited to, loss of earnings and emotional distress.

WHEREFORE, the plaintiff demands judgment against the defendant and an award of damages, fees, costs, interest, and further relief to which she is entitled.

COUNT III
VIOLATIONS OF 42 U.S.C. 12111, et. seq. TITLE I OF THE AMERICANS WITH
DISABILITIES ACT (“ADA”), AS AMENDED BY THE AMENDMENTS ACT OF
2008 (“ADAA”)

39. The plaintiff repeats and realleges the above paragraphs as if each were set forth here in its entirety.
40. The defendant is an “employer” as that term is defined in 42 U.S.C. § 12111 (5)(A).
41. The plaintiff is an “employee” as that term is defined in 42 U.S.C. § 12111 (4).
42. In violation of 42 U.S.C. § 12112(a), the defendant discriminated against the plaintiff on the basis of her disability in regard to her compensation because of its disparate treatment of psychiatric disabilities in comparison to physical disabilities.
43. Each and every ordinary disability paycheck since 2009 constitutes a continuing, actionable violation of ADAA under the Lilly Ledbetter Fair Pay Act because the disparate pay is either an act of gender discrimination or disparate treatment of psychiatric disabilities in comparison to physical disabilities or both.
44. As a direct and proximate result, the plaintiff has suffered damages including, but not limited to, loss of earnings and emotional distress.

WHEREFORE, the plaintiff demands judgment against the defendant and an award of damages, fees, costs, interest, and further relief to which she is entitled.

COUNT IV
VIOLATION OF TITLE VII
GENDER DISCRIMINATION

45. The plaintiff repeats and realleges the above paragraphs as if each were set forth here in its entirety.
46. At all times relevant hereto, the defendant has been and is an employer as that term is defined in Title VII.
47. In violation of 42 U.S.C. § 2000e-3, the defendant discriminated against the plaintiff because she made a charge and testified as to the defendant's practices of gender discrimination and retaliation, evidenced, at least in substantial part, by the Board's specific reference to her prior lawsuit and jury verdict; neither of which are remotely related to her claim for accidental disability benefits.
48. Each and every ordinary disability paycheck since 2009 constitutes a continuing, actionable violation of Title VII under the Lilly Ledbetter Fair Pay Act because the disparate pay is either an act of gender discrimination or disparate treatment of psychiatric disabilities in comparison to physical disabilities or both.
49. As a direct and proximate result, the plaintiff has suffered damages including, but not limited to, loss of earnings and emotional distress.

WHEREFORE, the plaintiff demands judgment against the defendant and an award of damages, fees, costs, interest, and further relief to which she is entitled.

COUNT V
VIOLATION OF THE LILLY LEDBETTER FAIR PAY ACT

50. The plaintiff repeats and realleges the above paragraphs as if each were set forth herein in its entirety.
51. Upon information and belief, each and every ordinary disability paycheck sent to the plaintiff has been a violation of the Lilly Ledbetter Fair Pay Act because the disparate pay is either an act of gender discrimination or disparate treatment of psychiatric disabilities in comparison to physical disabilities.
52. As a direct and proximate result, the plaintiff has suffered damages including, but not limited to, loss of earnings and emotional distress.

WHEREFORE, the plaintiff demands judgment against the defendant and an award of damages, fees, costs, interest, and further relief to which she is entitled.

COUNT VI – VIOLATION OF 5 U.S.C. ch. 5, subch. I § 500 et. seq.
THE ADMINISTRATIVE PROCEDURES ACT (APA)

53. The plaintiff repeats and realleges the above paragraphs as if each were set forth herein in its entirety.
54. Alternatively, if Board is not considered the plaintiff's "employer" under state or federal law, the Board's decision violates the Administrative Procedures Act (APA).

WHEREFORE, the plaintiff demands judgment against the defendant and an award of damages, fees, costs, interest, and further relief to which she is entitled.

PRAYER FOR RELIEF

The plaintiff respectfully requests that this Honorable Court enter judgment in her favor on all claims and:

- a. Award plaintiff compensatory, special, and punitive damages;
- b. Award the plaintiff her attorney's fees; and
- c. Enter any other equitable relief that this Court deems fair and just.

JURY DEMAND

The plaintiff demands a jury trial on all claims so triable.

Respectfully submitted,
The Plaintiff,
By her attorneys,

/s/ John T. Martin
John Martin; BBO #676344,
pro hac vice pending
jmartin@kjclawfirm.com
Michaela M. Weaver; BBO #705985
pro hac vice pending
mweaver@kjclawfirm.com,
KJC Law Firm, LLC
One Exchange Place, 2nd Level
Worcester, Massachusetts 01609
(617) 720-8447
and

/s/ David S. Cass
David S. Cass, #5044
One Davol Square, 4th Floor
Providence, RI 02903
(508) 889-2674
Fax: (401) 272-2708
david@davidcasslaw.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

LORI FRANCHINA

(b) County of Residence of First Listed Plaintiff Kent (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

David Cass, One Davol Sq., PH, Providence, RI 02903 (508) 889-2674

DEFENDANTS

CITY OF PROVIDENCE

County of Residence of First Listed Defendant Providence (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC §12111, 42 USC §200e-3

Brief description of cause: Discrimination in pension determination

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Judge McConnell DOCKET NUMBER 16-2401

DATE 8/23/2021 SIGNATURE OF ATTORNEY OF RECORD /s/ David S. Cass

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE