

2023 CA 000505 F - EBBERT, WALTER vs. OCEAN CITY WRIGHT FIRE CONTROL DISTRICT

SUMMARY

Judge: BROWN, JOHN T	Court Type: Circuit Civil	Case Type: DISCRIMINATION - EMPLOYMENT OR OTHER
Case Number: 2023 CA 000505 F	Uniform Case Number: 462023CA000505FXXXXX	Status: OPEN
Clerk File Date: 2/15/2023	Status Date: 2/15/2023	Waive Speedy Trial: <input type="checkbox"/>
Total Fees Due: 0.00	Booking Number:	Agency:
Agency Report Number:	Custody Location:	

PARTIES

TYPE	PARTY NAME	ATTORNEY
PLAINTIFF	EBBERT, WALTER	MATTOX, MARIE A (Main Attorney)
DEFENDANT	OCEAN CITY WRIGHT FIRE CONTROL DISTRICT	3 GORDON, ANDREW M 2 SWANSON, LAUREN

EVENTS

DATE	EVENT	JUDGE	LOCATION	RESULT
No Events on Case				

CASE DOCKETS

DATE	ENTRY
5/23/2023	NOTICE OF APPEARANCE OF COUNSEL AND DESIGNATION OF EMAIL ADDRESSES: ANDREW GORDON ON BEHALF OF DEF
5/23/2023	NOTICE OF APPEARANCE OF COUNSEL AND DESIGNATION OF EMAIL ADDRESSES: LAUREN D SWANSON ON BEHALF OF DEF
5/10/2023	SUMMONS SERVED: THE OCEAN WRIGHT FIRE CONTROL DISTRICT 5/9/2023
5/10/2023	NOTICE OF FINAL SERVICE
5/8/2023	SUMMONS SERVED: DIVISION OF RISK MANAGEMENET DEPARTMENT OF FINANCIAL SERVICES 5/8/2023
5/5/2023	PAYMENT \$420.00 RECEIPT #2023018742
5/5/2023	SUMMONS SERVICE FEE CIRCUIT CIVIL ASSESSED \$10.00
5/5/2023	RECEIPT # 2023006147 MODIFIED: PAYMENT \$0.00 VOID
5/5/2023	EMAIL SENT- RECIPIENTS: MATTOX, MARIE A SUBJECT: SERVICE OF COURT DOCUMENT - 2023 CA 000505 F, EBBERT, WALTER VS. OCEAN CITY WRIGHT FIRE CONTROL DISTRICT ATTACHMENT COUNT: 1 EMAILDOCKETDESCRIPTIONS: SIT-5/5/2023
5/5/2023	SUMMONS ISSUED TO: DIVISON OF RISK MANAGEMENT
5/4/2023	AMENDED COMPLAINT
2/16/2023	PAYMENT \$410.00 RECEIPT #2023006147
2/16/2023	EMAIL SENT- RECIPIENTS: MATTOX, MARIE A SUBJECT: SERVICE OF COURT DOCUMENT - 2023 CA 000505 F, EBBERT, WALTER VS. OCEAN CITY WRIGHT FIRE CONTROL DISTRICT ATTACHMENT COUNT: 3 EMAILDOCKETDESCRIPTIONS: SIT-2/15/2023,RFS-2/15/2023,OPR-2/16/2023
2/16/2023	ORDER TO PLAINTIFF RE REQUIRED REPORTING
2/16/2023	SUMMONS SERVICE FEE CIRCUIT CIVIL ASSESSED \$10.00
2/16/2023	JUDGE BROWN, JOHN T: ASSIGNED
2/15/2023	REQUEST FOR SUMMONS DENIED TO DIVISION OF RISK MANAGEMENT (PARTY NOT LISTED ON COMPLAINT)
2/15/2023	SUMMONS ISSUED TO: THE OCEAN CITY-WRIGHT FIRE CONTROL DISTRICT
2/15/2023	COMPLAINT FOR DAMAGES
2/15/2023	CIVIL COVER SHEET
2/15/2023	CASE FILED 02/15/2023 CASE NUMBER 2023 CA 000505 F

COMPOSITE EXHIBIT "A"

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner with the Clerk of Court for the purpose of reporting uniform data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

IN THE CIRCUIT/COUNTY COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA

Plaintiff

Case # _____

Judge _____

vs.

Defendant

II. AMOUNT OF CLAIM

Please indicate the estimated amount of the claim, rounded to the nearest dollar. The estimated amount of the claim is requested for data collection and clerical processing purposes only. The amount of the claim shall not be used for any other purpose.

- \$8,000 or less
- \$8,001 - \$30,000
- \$30,001- \$50,000
- \$50,001- \$75,000
- \$75,001 - \$100,000
- over \$100,000.00

III. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x on both the main category and subcategory lines.

CIRCUIT CIVIL

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence—other
 - Business governance
 - Business torts
 - Environmental/Toxic tort
 - Third party indemnification
 - Construction defect
 - Mass tort
 - Negligent security
 - Nursing home negligence
 - Premises liability—commercial
 - Premises liability—residential
- Products liability
- Real Property/Mortgage foreclosure
 - Commercial foreclosure
 - Homestead residential foreclosure
 - Non-homestead residential foreclosure
 - Other real property actions
- Professional malpractice
 - Malpractice—business
 - Malpractice—medical
 - Malpractice—other professional
- Other
 - Antitrust/Trade regulation
 - Business transactions
 - Constitutional challenge—statute or ordinance
 - Constitutional challenge—proposed amendment
 - Corporate trusts
 - Discrimination—employment or other
 - Insurance claims
 - Intellectual property
 - Libel/Slander
 - Shareholder derivative action
 - Securities litigation
 - Trade secrets
 - Trust litigation

COUNTY CIVIL

- Small Claims up to \$8,000
- Civil
- Real property/Mortgage foreclosure

- Replevins
- Evictions
 - Residential Evictions
 - Non-residential Evictions
- Other civil (non-monetary)

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes No

IV. REMEDIES SOUGHT (check all that apply):

- Monetary;
- Nonmonetary declaratory or injunctive relief;
- Punitive

V. NUMBER OF CAUSES OF ACTION: []

(Specify)

1

VI. IS THIS CASE A CLASS ACTION LAWSUIT?

- yes
- no

VII. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- no
- yes If “yes,” list all related cases by name, case number, and court.

VIII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- yes
- no

IX. DOES THIS CASE INVOLVE ALLEGATIONS OF SEXUAL ABUSE?

- yes
- no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature: s/ Marie A Mattox
Attorney or party

Fla. Bar # 739685
(Bar # if attorney)

Marie A Mattox
(type or print name)

02/15/2023
Date

IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL CIRCUIT, IN AND
FOR OKALOOSA COUNTY, FLORIDA

WALTER EBBERT,

Plaintiff,

v.

OCEAN CITY WRIGHT FIRE
CONTROL DISTRICT,

Defendant.

CASE NO.: 23-CA-^{2023 CA 000505 F}
FLA BAR NO.: 0739685

SUMMONS

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint or petition in this action on Defendant:

**THE OCEAN CITY-WRIGHT FIRE CONTROL DISTRICT
C/O MARK BUNDRICK - CHIEF
2 RACETRACK ROAD NE
FORT WALTON BEACH, FLORIDA 32547**

Each defendant is required to serve written defenses to the complaint or petition on **Marie A. Mattox, P. A.**, Plaintiff's attorney, whose address is **203 North Gadsden Street, Tallahassee, FL 32301**, within 20 days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court, either before serve on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED on 2/16/2023 [REDACTED]

CLERK OF THE CIRCUIT COURT

By:  _____

“If you are a person with disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact:

**Court Administration, ADA Liaison
Okaloosa County
1940 Lewis Turner Boulevard
Fort Walton Beach, Florida 32547
Phone (850) 609-4700 Fax (850) 651-7725
ADA.Okaloosa@flcourts1.gov**

At least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.”

**IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL CIRCUIT, IN AND
FOR OKALOOSA COUNTY, FLORIDA**

WALTER EBBERT,

Plaintiff,

v.

**OCEAN CITY WRIGHT FIRE
CONTROL DISTRICT,**

Defendant.

CASE NO.: [REDACTED] 2023 CA 000505 F
FLA BAR NO.: 0739685

COMPLAINT

Plaintiff, WALTER EBBERT, hereby sues Defendant, OCEAN CITY WRIGHT FIRE CONTROL DISTRICT, and alleges:

NATURE OF THE ACTION

1. This is an action brought under the Florida Civil Rights Act, codified at Chapter 760, Florida Statutes.
2. This action involves claims which are, individually, in excess of Fifty Thousand Dollars (\$50,000.00), exclusive of costs and interest.

THE PARTIES

3. At all times pertinent hereto, Plaintiff, WALTER EBBERT, has been a resident of the State of Florida and was employed by Defendant. Plaintiff is a member of a protected class because of his disability, Defendant's perception of Plaintiff as being disabled and/or his record of having an impairment.
4. At all times pertinent hereto, Defendant, OCEAN CITY WRIGHT FIRE CONTROL DISTRICT, has been organized and existing under the laws of the State of Florida. At

all times pertinent to this action, Defendant has been an “employer” as that term is used under the applicable laws identified above. Defendant was Plaintiff’s employer as it relates to these claims.

CONDITIONS PRECEDENT

5. Plaintiff has satisfied all conditions precedent to bringing this action, if any.

STATEMENT OF THE ULTIMATE FACTS

6. Plaintiff began his employment with Defendant in February 2008, and held the position of Division Chief, EMS Administration at the time of his wrongful termination on March 17, 2022.

7. Despite his stellar work performance during his employment with Defendant, Plaintiff was subjected to disparate treatment, different terms, and conditions of employment, and was held to a different standard because of his disability.

8. The disparate treatment and retaliation came at the hands of specifically but not limited to Deputy Chief Jeff Wagner and Fire Chief Mark Bundrick.

9. Billy Lord was the Fire Chief from around 2007 until around 2019 when he retired.

10. In or around 2019, Plaintiff was assigned an unfilled position of Fire Marshall with a pay increase. Thereafter, Plaintiff began performing both the duties of the Fire Marshall and his former duties as the Division Chief.

11. Lord told Plaintiff that he had selected him for this position because of his competence and ability to manage people and that he knew that he would get the job done.

12. After Lord retired, Bundrick, who had been in an equivalent position to the Division Chief position that Plaintiff held, was promoted to the position as Fire Chief.

13. By that time, Plaintiff had been successfully performing the Fire Marshall responsibilities for at least one year.

14. After Bundrick became the Fire Chief and had been in that position for a relatively short time, during a meeting between Bundrick, Plaintiff and Wagner on February 10, 2020, Bundrick removed the Fire Marshall position from Plaintiff and returning him to the Division Chief, EMS Administration position only. Bundrick also attempted to remove certain other responsibilities including the SWAT medic responsibilities from Plaintiff's day to day duties at work but Plaintiff successfully convinced Bundrick to allow him to continue on the SWAT team. However, Bundrick removed Plaintiff's teaching responsibilities at Northwest Florida State College, a job that Plaintiff held for at least one year. He enjoyed great success teaching and received good reviews.

15. Bundrick told Plaintiff that this was not a decision based on his capabilities, and further explained that the Division Chief, EMS Administration position was a 40 plus hour a week job. However, Plaintiff had been successfully doing all of the job duties of SWAT, teaching, his Division Chief and the Fire Marshall for at least one year without complaint.

16. Bundrick expressed to Plaintiff that he wanted more accountability, and asserted that Plaintiff was more than capable of performing well within the EMS Chief position alone. Wagner told Plaintiff that he was getting too many privileges in performing all of the job duties that he had been performing.

17. Bundrick also stated that Plaintiff was suited to do grant writing, EMS training, and representing the department as the Accreditation manager.

18. Plaintiff did not understand why, if Bundrick wanted accountability from Plaintiff in his Division Chief position, was he assigned multiple other duties in addition to that job alone.

19. Bundrick's comments to Plaintiff and the change in his responsibilities were supported by Wagner, as he was present at the meeting and stated to Plaintiff that he has more potential and capabilities than 98% of the employees in the department.

20. On February 28, 2020, Plaintiff was picking up his children from school, as per his normal schedule, when he received a call from Bundrick in which he was cussing at Plaintiff. Later that same day, Bundrick told Plaintiff that his hours had been changed from 7:00 a.m.-3:00 p.m. to 7:00 a.m.-4:00 p.m. and that he needed to take an hour lunch. Bundrick also threatened to remove Plaintiff's SWAT team responsibilities.

21. During a meeting that occurred on April 15, 2020, Bundrick and Wagner met with Plaintiff and discussed the Defendant's students who were attending classes and asked him to develop a plan that would help the students be more successful. He actually said that "we need to do something to help these dumbasses get through class."

22. As a result of this request, Plaintiff located online paramedic preparatory courses that had a proven track record to assist the students' eventual passage of the National Registry Exam.

23. Wagner and Bundrick, however, determined that this was not sufficient and that they wanted Plaintiff to instead develop a program on his own that could be taught within Defendant.

24. Plaintiff had already attempted, with a sincere effort, to design a course but ultimately determined that the courses that were already in existence were better than anything he could develop as they had been tested, time and time again, to be successful. These were online courses that were developed specifically by nationally recognized testing and student development entities for students like those who were employed with Defendant.

25. Plaintiff informed Bundrick and Wagner of this and asked for assistance but was ignored.

26. Soon after this discussion, Plaintiff provided an idea of including subordinate firefighter paramedics to get involved in the skill and test prep aspects of paramedic student training. There was no meaningful response to this idea by Wagner or Bundrick during a meeting on May 15, 2020 other than for Plaintiff to develop a Standard Operating Procedure (SOP) on quality assurance, which was a separate area from student education.

27. On May 29, 2020, Bundrick and Wagner had a meeting with Plaintiff where he was told that he was not performing to their expectations and was causing the division to be stagnant and not progressing forward. Bundrick and Wagner expressed these sentiments to Plaintiff despite all the tasks that he had been given having already being completed besides creating a course for the paramedic students, discussed above.

28. During a meeting on October 2, 2020, Bundrick and Wagner removed the monthly EMS Training from Plaintiff's responsibility and gave it to two colleagues, Zach Litgen and Chris Budd, which was one of the suggestions that Plaintiff made in May, 2020. Plaintiff still attempted to offer assistance with the training but was told by Bundrick that he wanted them to handle the training on their own. The problem with this was that the EMS division was still under Plaintiff's supervision but oversight of the training was removed from him.

29. During a meeting on December 9, 2021, with Wagner and HR Manager, Jennifer Rimes, Wagner expressed frustration at the fact that a list of tasks provided to Plaintiff was not completed. However, all the tasks had been completed by Plaintiff, apart from teaching new paramedics how to take tests, which was the issue the year before on the training.

30. Plaintiff had, on multiple occasions, informed Wagner and Bundrick, that he needed assistance with the task of training new paramedics on how to take the tests. They still wanted Plaintiff to teach the students how to take the tests but Plaintiff only knew what the experts in testing taught him and the students. Plaintiff does not have a degree in teaching or education and there were professionals who would have been available to assist with this, as Plaintiff told Wagner and Bundrick.

31. Later during this same meeting, Plaintiff told Wagner that he was completing all of his tasks other than training the students how to take tests, which Wagner said was just an excuse by Plaintiff for not doing his job. Plaintiff addressed the issue of changing priorities which was impacting his ability to complete all of his tasks. Plaintiff was then falsely accused of not asking for help and not prioritizing his work assignments. The problem was that when Plaintiff asked for help, he was told to “be a man and do your job.”

32. Wagner proceeded to stand up and state, “I told you this was a stupid idea”, meaning that Plaintiff would integrate Captains and other paramedics to assist in the quality assurance process, and went on to say that Plaintiff doesn’t do as he is told. Wagner also falsely stated that Plaintiff failed to prioritize his tasks according to what the Chief wanted, and that Plaintiff just does as he pleases. Wagner continued to attack Plaintiff’s character as he told him that “He needs to be a man, and to do the job”.

33. In response to this outburst by Wagner, Plaintiff explained that he needs more time and that his requests for help were usually ignored by him and Bundrick. Wagner disregarded this response by stating that whatever reason that Plaintiff provides for needing help to get a job completed will never be a good enough reason.

34. Wager further stated that excuses and reasons are not Chief Officer solutions.

35. After this meeting when Wagner was yelling at Plaintiff, Plaintiff talked to Jennifer Rimes and told her about his disabilities discussed below. He told Rimes that the actions of Wagner and Bundrick were adversely affecting him and exacerbating his disabilities. He also showed Rimes that all of the assignments other than the test taking by the students and quality assurance had been completed.

36. On January 11, 2022, Plaintiff met with Wagner and Bundrick with a proposed plan for completing the task list, but Bundrick brought up issues from two years before and described how Plaintiff's plan wouldn't work. Plaintiff attempted to express his problems and issues once again by creating a plan for training and was met with a head shake and overall demeaning body language from Wagner. Wagner began to state that Plaintiff's struggles were not valid, and that the department has grown, but Plaintiff's effort has not grown. Wagner and Bundrick both agreed upon the notion that Plaintiff should be present at work on Saturdays and Sundays in an effort to stay caught up with his tasks.

37. Wagner continued to ask if the pressure of being overwhelmed, paralyzed Plaintiff, and Plaintiff refuted this by saying that it just slows him down. Wagner continued to state that Plaintiff's intentions were not meant to make the department better and that he doesn't apply himself.

38. The focus of the meeting was about Plaintiff being unable to train the paramedics and live up to the responsibilities of his position, which could not be further from the truth. Plaintiff defended himself by stating that he wanted a further explanation of their expectations, which caused Bundrick to raise his voice and counter by stating "You don't need to know why, you just need to do it". He also told Plaintiff that he needed to figure this out on his own.

39. By this time, Plaintiff was suffering significantly based on the way that both Wagner and Bundrick were treating him.

40. On January 13, 2022, Plaintiff met with Wagner and explained that he was having a difficult time focusing on his tasks. Plaintiff informed Wagner that he made an appointment with his primary care physician to discuss his issues. Plaintiff also opened up and informed Wagner that he had been diagnosed with a traumatic brain injury (TBI) after being exposed to an IED explosion while in Iraq. Wagner asked about the specifics of Plaintiff's day to day medical issues, and he told him about his ears ringing, constant headaches, and shoulder, back, and neck pains. Plaintiff explained that he is struggling with all of these day to day issues and suffers from PTSD that causes him to shut down. Moreover, Plaintiff mentioned to Wagner that he is working on his ADHD issues and that he had an upcoming appointment with his physician to be evaluated for problems that had developed.

41. All of these medical/disabling conditions had been dormant until he began to be abused and falsely accused of not performing his job with no help forthcoming.

42. On January 31, 2022, Plaintiff presented his quality assurance (QA) plan to Wagner and Bundrick, and was told that it was perceived to be nonfunctional. Plaintiff explained that the plan was fluid and going forward, changes could be implemented if necessary.

43. On March 9, 2022, Plaintiff met with Wagner in his office to give him an update on the QA process and his military reserve duty orders for April and May, 2022. Plaintiff explained the QA reports and how he was working on them.

44. Wagner told Plaintiff he was the third highest paid person in the department, and he just does what he wants while failing to prioritize QA. Plaintiff responded by explaining that all tasks besides QA have been completed and priorities always change by the week due to

additional tasks given by the Chief. Plaintiff attempted to explain that he was doing the QA later that day, but Wagner ignored this and stated that Plaintiff was not acting how a Chief Officer should act and that a Chief Officer should be able to work independently. Wagner ignored that Plaintiff always worked independently and was a self-starter.

45. While Plaintiff was responding saying that the QA plan was fluid as he previously stated, Wagner raised his voice and shouted at Plaintiff stating, “get out of here, this conversation is over.”

46. On March 17, 2022, Plaintiff was called into Bundrick office, with Wagner and Rimes present, and told that “this is not working out.” Plaintiff was thus fired on the spot. No explanation was given but he was told that if he did not sign severance papers, he would not get paid his annual leave or around \$18,000. Plaintiff refused to sign.

47. Without question, and it could not be clearer that, Plaintiff was fired because of his disability.

48. Plaintiff has retained the undersigned to represent his interests in this cause and is obligated to pay a fee for these services. Defendant should be made to pay said fee under the laws referenced above.

COUNT I
DISABILITY DISCRIMINATION

49. Paragraphs 1 through 48 are realleged and incorporated herein by reference.

50. This is an action against Defendant for disability discrimination brought under Chapter 760, Florida Statutes.

51. Plaintiff has been the victim of discrimination on the basis of his disability or perceived disability. During the course of Plaintiff’s employment with Defendant, he was treated differently than similarly situated nondisabled/perceived-as-disabled employees.

52. Defendant is liable for the differential treatment and its refusal to accommodate Plaintiff, as well as its failure to engage in the interactive process with Plaintiff, which adversely affected the terms and conditions of Plaintiff's employment with Defendant. Defendant controlled the actions and inactions of the persons making decisions affecting Plaintiff or it knew or should have known of these actions and inactions and failed to take prompt and adequate remedial action or took no action at all to prevent the abuses to Plaintiff.

53. In essence, the actions of agents of Defendant, which were each condoned and ratified by Defendant, were disability/perceived-disability based and in violation of the laws set forth herein.

54. The discrimination complained of herein affected a term, condition, or privilege of Plaintiff's continued employment with Defendant. The events set forth herein lead, at least in part, to Plaintiff's termination.

55. Defendant's conduct and omissions constitutes intentional discrimination and unlawful employment practices based upon disability or perceived disability or his record of having an impairment under the laws enumerated herein.

56. As a direct and proximate result of Defendant's conduct described above, Plaintiff has suffered emotional distress, mental pain and suffering, past and future pecuniary losses, inconvenience, bodily injury, mental anguish, loss of enjoyment of life and other non-pecuniary losses, along with lost back and front pay, interest on pay, bonuses, and other benefits. These damages have occurred in the past, are permanent and continuing. Plaintiff is entitled to injunctive/equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant for the following:

- (a) that process issue and this Court take jurisdiction over this case;
- (b) that this Court grant equitable relief against Defendant under the applicable counts set forth above, mandating Defendant's obedience to the laws enumerated herein and providing other equitable relief to Plaintiff;
- (c) enter judgment against Defendant and for Plaintiff awarding all legally-available general and compensatory damages and economic loss to Plaintiff from Defendant for Defendant's violations of law enumerated herein;
- (d) enter judgment against Defendant and for Plaintiff permanently enjoining Defendant from future violations of law enumerated herein;
- (e) enter judgment against Defendant and for Plaintiff awarding Plaintiff attorney's fees and costs;
- (f) award Plaintiff interest where appropriate; and
- (g) grant such other further relief as being just and proper under the circumstances, including but not limited to reinstatement.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues herein that are so triable.

DATED this 15th day of February 2023.

Respectfully submitted,

/s/ Marie A. Mattox

Marie A. Mattox [FBN 0739685]

MARIE A. MATTOX, P. A.

203 North Gadsden Street

Tallahassee, FL 32301

Telephone: (850) 383-4800

Facsimile: (850) 383-4801

Marie@mattoxlaw.com

Secondary emails:

marlene@mattoxlaw.com

michelle@mattoxlaw.com

ATTORNEYS FOR PLAINTIFF

**IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL CIRCUIT, IN AND
FOR OKALOOSA COUNTY, FLORIDA**

WALTER EBBERT,

Plaintiff,

v.

**OCEAN CITY WRIGHT FIRE
CONTROL DISTRICT,**

Defendant.

**CASE NO.: 23-CA-505
FLA BAR NO.: 0739685**

_____ /

AMENDED COMPLAINT

Plaintiff, WALTER EBBERT, hereby sues Defendant, OCEAN CITY WRIGHT FIRE CONTROL DISTRICT, and alleges:

NATURE OF THE ACTION

1. This is an action brought under the Florida Civil Rights Act, codified at 42 U.S.C. §12101 et seq and Chapter 760, Florida Statutes.
2. This action involves claims which are, individually, in excess of Fifty Thousand Dollars (\$50,000.00), exclusive of costs and interest.

THE PARTIES

3. At all times pertinent hereto, Plaintiff, WALTER EBBERT, has been a resident of the State of Florida and was employed by Defendant. Plaintiff is a member of a protected class because of his disability, Defendant's perception of Plaintiff as being disabled and/or his record of having an impairment.
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all times pertinent to this action, Defendant has been an “employer” as that term is used under the applicable laws identified above. Defendant was Plaintiff’s employer as it relates to these claims.

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7. Despite his stellar work performance during his employment with Defendant, Plaintiff was subjected to disparate treatment, different terms, and conditions of employment, and was held to a different standard because of his disability.

8. The disparate treatment and retaliation came at the hands of specifically but not limited to Deputy Chief Jeff Wagner and Fire Chief Mark Bundrick.

9. Billy Lord was the Fire Chief from around 2007 until around 2019 when he retired.

10. In or around 2019, Plaintiff was assigned an unfilled position of Fire Marshall with a pay increase. Thereafter, Plaintiff began performing both the duties of the Fire Marshall and his former duties as the Division Chief.

11. Lord told Plaintiff that he had selected him for this position because of his competence and ability to manage people and that he knew that he would get the job done.

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27. On May 29, 2020, Bundrick and Wagner had a meeting with Plaintiff where he was told that he was not performing to their expectations and was causing the division to be stagnant and not progressing forward. Bundrick and Wagner expressed these sentiments to Plaintiff despite all the tasks that he had been given having already being completed besides creating a course for the paramedic students, discussed above.

28. During a meeting on October 2, 2020, Bundrick and Wagner removed the monthly EMS Training from Plaintiff's responsibility and gave it to two colleagues, Zach Litgen and Chris Budd, which was one of the suggestions that Plaintiff made in May, 2020. Plaintiff still attempted to offer assistance with the training but was told by Bundrick that he wanted them to handle the training on their own. The problem with this was that the EMS division was still under Plaintiff's supervision but oversight of the training was removed from him.

29. During a meeting on December 9, 2021, with Wagner and HR Manager, Jennifer Rimes, Wagner expressed frustration at the fact that a list of tasks provided to Plaintiff was not completed. However, all the tasks had been completed by Plaintiff, apart from teaching new paramedics how to take tests, which was the issue the year before on the training.

30. Plaintiff had, on multiple occasions, informed Wagner and Bundrick, that he needed assistance with the task of training new paramedics on how to take the tests. They still wanted Plaintiff to teach the students how to take the tests but Plaintiff only knew what the experts in testing taught him and the students. Plaintiff does not have a degree in teaching or education and there were professionals who would have been available to assist with this, as Plaintiff told Wagner and Bundrick.

31. Later during this same meeting, Plaintiff told Wagner that he was completing all of his tasks other than training the students how to take tests, which Wagner said was just an excuse by Plaintiff for not doing his job. Plaintiff addressed the issue of changing priorities which was impacting his ability to complete all of his tasks. Plaintiff was then falsely accused of not asking for help and not prioritizing his work assignments. The problem was that when Plaintiff asked for help, he was told to “be a man and do your job.”

32. Wagner proceeded to stand up and state, “I told you this was a stupid idea”, meaning that Plaintiff would integrate Captains and other paramedics to assist in the quality assurance process, and went on to say that Plaintiff doesn’t do as he is told. Wagner also falsely stated that Plaintiff failed to prioritize his tasks according to what the Chief wanted, and that Plaintiff just does as he pleases. Wagner continued to attack Plaintiff’s character as he told him that “He needs to be a man, and to do the job”.

33. In response to this outburst by Wagner, Plaintiff explained that he needs more time and that his requests for help were usually ignored by him and Bundrick. Wagner disregarded this response by stating that whatever reason that Plaintiff provides for needing help to get a job completed will never be a good enough reason.

34. Wager further stated that excuses and reasons are not Chief Officer solutions.

35. After this meeting when Wagner was yelling at Plaintiff, Plaintiff talked to Jennifer Rimes and told her about his disabilities discussed below. He told Rimes that the actions of Wagner and Bundrick were adversely affecting him and exacerbating his disabilities. He also showed Rimes that all of the assignments other than the test taking by the students and quality assurance had been completed.

36. On January 11, 2022, Plaintiff met with Wagner and Bundrick with a proposed plan for completing the task list, but Bundrick brought up issues from two years before and described how Plaintiff's plan wouldn't work. Plaintiff attempted to express his problems and issues once again by creating a plan for training and was met with a head shake and overall demeaning body language from Wagner. Wagner began to state that Plaintiff's struggles were not valid, and that the department has grown, but Plaintiff's effort has not grown. Wagner and Bundrick both agreed upon the notion that Plaintiff should be present at work on Saturdays and Sundays in an effort to stay caught up with his tasks.

37. Wagner continued to ask if the pressure of being overwhelmed, paralyzed Plaintiff, and Plaintiff refuted this by saying that it just slows him down. Wagner continued to state that Plaintiff's intentions were not meant to make the department better and that he doesn't apply himself.

38. The focus of the meeting was about Plaintiff being unable to train the paramedics and live up to the responsibilities of his position, which could not be further from the truth. Plaintiff defended himself by stating that he wanted a further explanation of their expectations, which caused Bundrick to raise his voice and counter by stating "You don't need to know why, you just need to do it". He also told Plaintiff that he needed to figure this out on his own.

39. By this time, Plaintiff was suffering significantly based on the way that both Wagner and Bundrick were treating him.

40. On January 13, 2022, Plaintiff met with Wagner and explained that he was having a difficult time focusing on his tasks. Plaintiff informed Wagner that he made an appointment with his primary care physician to discuss his issues. Plaintiff also opened up and informed Wagner that he had been diagnosed with a traumatic brain injury (TBI) after being exposed to an IED explosion while in Iraq. Wagner asked about the specifics of Plaintiff's day to day medical issues, and he told him about his ears ringing, constant headaches, and shoulder, back, and neck pains. Plaintiff explained that he is struggling with all of these day to day issues and suffers from PTSD that causes him to shut down. Moreover, Plaintiff mentioned to Wagner that he is working on his ADHD issues and that he had an upcoming appointment with his physician to be evaluated for problems that had developed.

41. All of these medical/disabling conditions had been dormant until he began to be abused and falsely accused of not performing his job with no help forthcoming.

42. On January 31, 2022, Plaintiff presented his quality assurance (QA) plan to Wagner and Bundrick, and was told that it was perceived to be nonfunctional. Plaintiff explained that the plan was fluid and going forward, changes could be implemented if necessary.

43. On March 9, 2022, Plaintiff met with Wagner in his office to give him an update on the QA process and his military reserve duty orders for April and May, 2022. Plaintiff explained the QA reports and how he was working on them.

44. Wagner told Plaintiff he was the third highest paid person in the department, and he just does what he wants while failing to prioritize QA. Plaintiff responded by explaining that all tasks besides QA have been completed and priorities always change by the week due to

additional tasks given by the Chief. Plaintiff attempted to explain that he was doing the QA later that day, but Wagner ignored this and stated that Plaintiff was not acting how a Chief Officer should act and that a Chief Officer should be able to work independently. Wagner ignored that Plaintiff always worked independently and was a self-starter.

45. While Plaintiff was responding saying that the QA plan was fluid as he previously stated, Wagner raised his voice and shouted at Plaintiff stating, “get out of here, this conversation is over.”

46. On March 17, 2022, Plaintiff was called into Bundrick office, with Wagner and Rimes present, and told that “this is not working out.” Plaintiff was thus fired on the spot. No explanation was given but he was told that if he did not sign severance papers, he would not get paid his annual leave or around \$18,000. Plaintiff refused to sign.

47. Without question, and it could not be clearer that, Plaintiff was fired because of his disability.

48. Plaintiff has retained the undersigned to represent his interests in this cause and is obligated to pay a fee for these services. Defendant should be made to pay said fee under the laws referenced above.

COUNT I
DISABILITY DISCRIMINATION

49. Paragraphs 1 through 48 are realleged and incorporated herein by reference.

50. This is an action against Defendant for disability discrimination brought under Chapter 760, Florida Statutes and 42 U.S.C. §12101 et seq.

51. Plaintiff has been the victim of discrimination on the basis of his disability or perceived disability. During the course of Plaintiff’s employment with Defendant, he was treated differently than similarly situated nondisabled/perceived-as-disabled employees.

52. Defendant is liable for the differential treatment and its refusal to accommodate Plaintiff, as well as its failure to engage in the interactive process with Plaintiff, which adversely affected the terms and conditions of Plaintiff's employment with Defendant. Defendant controlled the actions and inactions of the persons making decisions affecting Plaintiff or it knew or should have known of these actions and inactions and failed to take prompt and adequate remedial action or took no action at all to prevent the abuses to Plaintiff.

53. In essence, the actions of agents of Defendant, which were each condoned and ratified by Defendant, were disability/perceived-disability based and in violation of the laws set forth herein.

54. The discrimination complained of herein affected a term, condition, or privilege of Plaintiff's continued employment with Defendant. The events set forth herein lead, at least in part, to Plaintiff's termination.

55. Defendant's conduct and omissions constitutes intentional discrimination and unlawful employment practices based upon disability or perceived disability or his record of having an impairment under the laws enumerated herein.

56. As a direct and proximate result of Defendant's conduct described above, Plaintiff has suffered emotional distress, mental pain and suffering, past and future pecuniary losses, inconvenience, bodily injury, mental anguish, loss of enjoyment of life and other non-pecuniary losses, along with lost back and front pay, interest on pay, bonuses, and other benefits. These damages have occurred in the past, are permanent and continuing. Plaintiff is entitled to injunctive/equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant for the following:

- (a) that process issue and this Court take jurisdiction over this case;
- (b) that this Court grant equitable relief against Defendant under the applicable counts set forth above, mandating Defendant's obedience to the laws enumerated herein and providing other equitable relief to Plaintiff;
- (c) enter judgment against Defendant and for Plaintiff awarding all legally-available general and compensatory damages and economic loss to Plaintiff from Defendant for Defendant's violations of law enumerated herein;
- (d) enter judgment against Defendant and for Plaintiff permanently enjoining Defendant from future violations of law enumerated herein;
- (e) enter judgment against Defendant and for Plaintiff awarding Plaintiff attorney's fees and costs;
- (f) award Plaintiff interest where appropriate; and
- (g) grant such other further relief as being just and proper under the circumstances, including but not limited to reinstatement.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues herein that are so triable.

DATED this 4th day of May 2023.

Respectfully submitted,

/s/ Marie A. Mattox

Marie A. Mattox [FBN 0739685]

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