J-08

TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney LGB
DATE: September 5, 2012
SUBJECT: Todd Michael v. City of Troy et. al

Enclosed please find a copy of a lawsuit that was recently filed against the City of Troy by Todd Michael, who has been on leave without pay status from the Troy Police Department since January 24, 2010. Mr. Michael was originally hired by the City of Troy as a police officer in 1987. In this lawsuit, Mr. Michael alleges discrimination in violation of the Americans with Disabilities Act, 42 U.S.C. Section 12101 et. seq.. These allegations are similar to claims Mr. Michael has already raised with the Equal Employment Opportunity Commission. The EEOC declined to pursue this matter after its investigation.

A resolution authorizing our office to defend the City's interest is proposed for your consideration. If you have any questions concerning the above, please let me know.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

TODD MICHAEL,

Plaintiff,

Case No.:

v.

Hon.:

CITY OF TROY, a Michigan public corporation,
CITY OF TROY POLICE DEPARTMENT, and
GARY G. MAYER, and individual,

Defendants.
_____/

SHEEHAN & ASSOCIATES, PLC
Robert D. Sheehan (P44634)
Shawn R. Cioffi (P61914)
Attorneys for Plaintiff
1460 Walton Blvd., Suite 102
Rochester Hills, MI 48309
248-650-5366

PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, Todd Michael ("Plaintiff"), by and through his attorneys Sheehan & Associates, PLC and for his Complaint against Defendants City of Troy and City of Troy Police Department, and Gary G. Mayer, states as follows.

PARTIES, JURISDICTION, AND VENUE

1. This is a disability discrimination action brought pursuant to the Americans with Disabilities Act, 42 USC §12101 ("ADA").

2. In this action Plaintiff seeks equitable relief and legal damages to enforce his rights under the ADA to be free from discrimination in employment on the basis of disability, perceived disability and the association with person with disabilities.
3. Plaintiff is and individual who resides in Oakland County, Michigan.
4. Defendant City of Troy is a Michigan public corporation located in Oakland County, Michigan.
5. Defendant City of Troy Police Department is a department of the City of Troy located in Oakland County, Michigan.
6. Defendant Gary G. Mayer, is an individual who resides in Macomb County, Michigan and was at all times relevant to this action, employed as the Chief of Police of the City of Troy Police Department.
7. The Court has subject matter jurisdiction over Plaintiff's claims because they arise under federal law.
8. This Court has personal jurisdiction over the Defendants because the Defendants all reside with the Eastern District of Michigan.
9. Venue is proper in the Eastern District of Michigan, Southern Division, because the events giving rise to the action occurred in this district and division.
10. Plaintiff exhausted his administrative remedies by filing a timely charge of disability discrimination with the Equal Employment Opportunity Commission ("EEOC").
11. The Plaintiff timely filed a Charge of Discrimination based on Disability with the EEOC against the City of Troy Police Department. As a result of its investigation, the EEOC found reasonable cause to believe that the Plaintiff was suspended, ultimately constructively discharged and/or prevented from working in violation of the ADA.

12. This Complaint is filed within ninety days of Plaintiff's receipt of a notice of right-to-sue from the Equal Employment Opportunity Commission. A copy of the notice of right-to-sue is attached as Exhibit "A."

FACTS

13. The Plaintiff was hired as a police officer in 1987 by the Defendant City of Troy.
14. The Plaintiff was treated for certain medical condition in 2000, 2001 and again in 2009.
15. During his recent 2009 treatment, he received short term disability through Standard Insurance, the insurer carrier for such coverage provided for by Defendant City of Troy.
16. In July 2009, the Plaintiff received a return to work document from the physician who had treated all three of the Plaintiff's medical conditions. The physician cleared the Plaintiff to return to work.
17. Notwithstanding the fact that his physician had cleared him to return to work, the Defendants refuse to permit the Plaintiff to return to work.
18. Instead, the Defendants required the Plaintiff to submit to fitness for duty examination. That examination as conducted in an incomplete and inadequate manner and did not comply with the requirements of the requirements of the collective bargaining agreement (CBA) between Defendant City of Troy and the Plaintiff's union, Troy Police Officers Association. The Defendants should not have relied upon the report generated by the examination.
19. Following that examination, the Defendants did not return the Plaintiff to work. Furthermore, there was no indication in the report that the Plaintiff would be incapable of performing desk duties, but he Defendants did not make such work available to him.

20. The Defendants also determined that it would not give the Plaintiff an opportunity to work for the police department in any other capacity, such as performing desk duty.
21. The Plaintiff was placed on paid administrative leave for the time of his 2009 surgery through January 2010. But for over two years since that time, he has not been paid by the City of Troy.
22. Contrary to the determination so improperly made by the City of Troy, the long term disability insurance carrier, Standard Insurance, made its own decision that the Plaintiff was not disabled and could return to work as a police officer. The carrier denied him any long-term disability benefits.
23. The Defendant City of Troy Police Department has adopted Administrative Rules and Regulations which prohibit a police officer from engaging in off-duty employment unless the officer has obtained prior approval from the Chief of Police.
24. Following the City of Troy's denial of the Plaintiff's right to return to work, and the refusal to give him desk duty, the Plaintiff four times asked the Chief of Police to approve his request to engage in outside employment.
25. All of the Plaintiff's requests for accommodation or for permission to work outside the police department were denied.
26. As a result of the foregoing, the Plaintiff finds himself wrongfully denied the opportunity to work as a police officer for the City of Troy, and not permitted to earn a paycheck outside of the police department. He is receiving no long-term disability benefits because the carrier has decided that he is capable of returning to work and should be employed by the City as a police officer.

27. As a result, the only way that the Plaintiff can earn a paycheck is to resign his position, thus waiving substantial rights to which he is otherwise entitled. Because he has been so effectively presented from earning a living unless he quits the police force, the Plaintiff has been constructively discharged.
28. The Defendants have acted so wrongfully toward the Plaintiff in order to retaliate against him and punish him for asserting and exercising rights which are protected by law, or alternatively based upon unproven allegations and unsubstantiated beliefs and opinions and not for any reason related to the performance of his duties, his fitness for duty or any other reason permissible by law.
29. The Plaintiff is a qualified individual for the purposes of the ADA because while he has no disability, the Defendants perceive and treat him as though he were disabled.
30. The Defendants are employers under the ADA.
31. The Plaintiff physical and mental status has been fully disclosed to the Defendants pursuant to multiple physical and mental evaluations.
32. The Defendants were informed of the Plaintiff's multiple surgeries.
33. Multiple times through 2009 and 2010, the Plaintiff requested reasonable accommodation in light of his perceived disability and medical condition.
34. The specific accommodation requested by the Plaintiff was desk work or release to work outside the police department. All accommodation was denied.
35. During his employment with the Defendants, the Plaintiff's primary job responsibilities including policing as a patrol officer.
36. During his 23 year history of employment with the Defendants, the Plaintiff's performance was satisfactory and he met all legitimate expectations of his employment.

37. After his request for accommodation, the Defendants retaliated against the Plaintiff by arbitrarily changing his status to unpaid leave.

38. As a direct result of the adverse treatment experienced in connection with the constructive termination of his employment, the Plaintiff has experience and will continue to experience economic damages, including lost wages and benefits, and other forms of economic and non-economic damages including emotional distress, anguish and pain and suffering.

COUNT I

VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

DISABILITY DISCRIMINATION

39. The Plaintiff incorporates all of the foregoing paragraphs of this complaint by reference as if stated in full herein.

40. The ADA makes it unlawful for an employer to discriminate against a qualified individual with a disability or a perceived disability because the individual has a disability, a record of disability or because the employer regards the person as disabled.

41. The ADA requires employers to provide reasonable accommodations to qualified individuals with disabilities to ensure that they can perform the essential functions of their job, unless providing the reasonable accommodation would impose an undue hardship on the employer.

42. Failure to provide a reasonable accommodation for an employee's disability constitutes disability discrimination in violation of the Act.

43. The ADA further prohibits retaliation against employees who exercise their rights under the ADA, including persons that request reasonable accommodations from their employer.

44. Notwithstanding its obligations under the ADA, and in willful violation thereof, the Defendants discriminated against the Plaintiff because of a disability, record of disability, perceived disability, and in retaliation for his exercise of ADA rights, by constructively terminating the Plaintiff's employment.

45. In furtherance of its decision to discriminate against the Plaintiff because of disability, the Defendants willfully refused and failed to provide the Plaintiff with permission to work outside of the police department.

46. As a result of the violations of the ADA described herein, Plaintiff has suffered and will continue to suffer damages as described above.

COUNT II

VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

RETALIATION

47. The Plaintiff incorporates all of the foregoing paragraphs of this complaint by reference as if stated in full herein.

48. The ADA further prohibits retaliation against employees who exercise their rights under the ADA, including persons that request reasonable accommodations from their employer.

49. Notwithstanding its obligations under the ADA, and in willful violation of thereof, the Defendants retaliated against the Plaintiff because he engage in activity protected by the ADA, by requesting accommodations, a return to assignment, or a release to work outside the police department.

50. The Defendants retaliated by relegating the Plaintiff to an unpaid status that resulted in constructive termination, by denying accommodation, by refusing a return to Plaintiff's duties, and by refusing to permit outside employment.

51. As a result of the violations of the ADA described herein, Plaintiff has suffered and will continue to suffer damages described above.

REQUEST FOR RELIEF

Based on the violations of the ADA alleged above, the Plaintiff requests the following relief from the Court:

A. Equitable relief including reinstatement to his former position, or to a comparable position, in order to make him whole;

B. Front pay in lieu of reinstatement;

C. Compensation in the form of all lost wages, benefits, and other forms of compensation, both economic and non-economic, past and future, resulting from the discriminatory treatment described in this charge;

D. Punitive damages;

E. Costs, interests, and attorney fees; and

F. Other relief as the Court deems just and equitable.

Respectfully submitted,

SHEEHAN & ASSOCIATES, PLC

/s/Shawn R. Cioffi
Shawn R. Cioffi (P61914)
Robert D. Sheehan (P44634)
Attorneys for Plaintiff
1460 Walton Blvd., Suite 102
Rochester Hills, MI 48309
Tel.: 248-650-5366
Fax: 248-650-5368
sheehanlawyers@aol.com

Dated: July 27, 2012

I declare the foregoing as true and accurate.

/s/Todd Michael

Todd Michael

PLAINTIFF'S JURY DEMAND

Plaintiff Todd Michael hereby demands a trial by jury of all issues to the within cause of action.

Respectfully submitted,

SHEEHAN & ASSOCIATES, PLC

/s/Shawn R. Cioffi
Shawn R. Cioffi (P61914)
Robert D. Sheehan (P44634)
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1460 Walton Blvd., Suite 102
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Dated: July 27, 2012

EXHIBIT A

U.S. Department of Justice
Civil Rights Division

Disability Rights Section - NYA
950 Pennsylvania Ave, NW
Washington, DC 20530

May 3, 2012

Received 5/5/12

DJ# 205-37-0

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Todd Michael
9546 Westwood Circle
Clarkston, Michigan 48348

Re: EEOC Charge Against: City of Troy Police Department
EEOC No.: 471-2010-03577
DJ#: 205-37-0

Dear Mr. Michael:

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

It has been determined that the Department of Justice will not file suit on the above-referenced charge of discrimination that was referred to us by the Equal Employment Opportunity Commission (EEOC). This should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charge is meritorious.

You are hereby notified that conciliation on your case was unsuccessful by the EEOC. You are further notified that you have the right to institute a civil action under Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12111, et seq., against the above-named respondent. If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

Therefore, if you wish to pursue this matter, you should consult an attorney at your earliest convenience. If you are unable to locate an attorney, you may wish to contact the EEOC or apply to the appropriate court, since that court may appoint an attorney in appropriate circumstances under Section 706(f)(1) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1), referenced in Section 107(a) of the ADA, 42 U.S.C. § 2117(a).

We are returning the files in this matter to EEOC's District Office. If you or your attorney have any questions concerning this matter or wish to inspect the investigative file, please address your inquiry to:

Webster N. Smith
District Director
Equal Employment Opportunity Commission
Indianapolis District Office
101 West Ohio Street, Suite 1900
Indianapolis, Indiana 46204

We are forwarding a copy of this Notice of Right to Sue to the Respondent in this case.

Sincerely,

Thomas E. Perez
Assistant Attorney General

BY: _____
Eugenia Esch
Attorney
Disability Rights Section

cc:
City of Troy Police Department
Craig W. Lange, Esq.