

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

JOSEPH M. DERESH,

Plaintiff,

v.

CITY OF PITTSBURGH,

Defendant.

Civil Action

No. *GD-22-3456*

CIVIL COMPLAINT

Code No. 009

Filed on behalf of Plaintiff,
Joseph M. Deresh

Counsel of Record for this Party:

Samuel J. Cordes
Pa. I.D. No. 54874

Cristina S. Correnti
Pa. I.D. No. 325702

Rothman Gordon, P.C.
310 Grant Street
Third Floor - Grant Building
Pittsburgh, PA 15219
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Attorney for Plaintiff

JURY TRIAL DEMANDED

FILED

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DEPT OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

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30 March 2022

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GD-22-003456

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NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney, and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral Service
Allegheny County Bar Association
400 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
Telephone: (412) 261-5555
Email: LRS@acba.org

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CIVIL COMPLAINT

Plaintiff, Joseph M. Deresh, by undersigned counsel files this Civil Complaint and alleges the following:

I. Procedural History

1. Plaintiff has satisfied all administrative requirements set forth in the Americans with Disabilities Act (ADA) and Pennsylvania Human Relations Act (PHRA), in that:

- a. Plaintiff filed a timely Charge of Discrimination with the Equal Employment Opportunity Commission on April 6, 2020 and timely dual-filed with the Pennsylvania Human Relations Commission, which acknowledged the charge on April 28, 2020;
- b. On August 25, 2021, the EEOC found cause to believe that Defendant subjected Deresh to employment discrimination on the basis of his disability, by subjecting him to a medical examination by its physician and using disability-connected reasons for denying him a promotion to Captain;
- c. The EEOC issued a Notice of Right to Sue on January 12, 2022;
- d. This action was filed within 90 days of receipt of that Notice; and
- e. More than one year has lapsed since the filing of Plaintiff's PHRC charge.

II. Parties

2. Plaintiff Joseph M. Deresh is an adult individual who resides at 4717 Lougean Avenue, Pittsburgh, Pennsylvania 15207.

3. Defendant City of Pittsburgh is a municipal entity located at 414 Grant Street, Suite 313, Pittsburgh, Pennsylvania 15219.

4. Defendant is a “covered entity” within the meaning of the ADA, 42 U.S.C. §§ 12111(2) and 12111(5)(A) because it is engaged in an industry affecting commerce and has 15 or more employees for each working day in each of 20 or more calendar weeks in the current and/or preceding calendar year.

5. Defendant is also an employer within the meaning of the PHRA, 43 Pa. Cons. Stat. Ann. § 954(b).

III. Factual Background

6. Deresh was employed by Defendant’s Bureau of Fire from July 7, 1997 until July 2021. His last position, which he held at all times relevant to this action, was Lieutenant Firefighter.

7. Deresh has Post-Traumatic Stress Disorder (PTSD), a mental condition that substantially limits him in performing one or more major life activities, including brain function.

8. Deresh is, and at all times during his employment was, qualified to perform all of the essential functions of both the Lieutenant and Captain positions, with or without reasonable accommodation.

9. Deresh notified Defendant’s Bureau of Fire Chief Darryl Jones in December 2018 of his PTSD diagnosis and indicated that he had sought treatment through his healthcare provider and union.

10. In May 2019, Defendant's Fire Chief Darryl Jones stated to Deresh: "I don't know much about PTSD except those guys coming back from Vietnam had it and otherwise you were just considered 'soft.'"

11. In Spring 2019, Deresh was on the eligibility list to be promoted to Captain.

12. On June 11, 2019, Deresh was directed to submit to examination by Defendant's doctor regarding his PTSD.

13. Deresh received a letter dated June 17, 2019 notifying him that he had been passed over for promotion to Captain.

14. The decision to pass Deresh over for promotion was made by Chief Jones.

15. Defendant's Director of Public Safety Wendell Hissrich testified that it is "rather rare" for an eligible firefighter to be passed over for promotion.

16. Deresh has served as acting Captain on numerous occasions, including during the year preceding Defendant's refusal to promote him. There were no disciplinary actions, complaints or allegations of unbecoming conduct against Deresh in connection with his conduct while performing the duties of either the Captain or Lieutenant positions.

17. In June 2021, Deresh elected disability retirement due to a shoulder condition sustained over time in connection with his employment as a firefighter. Had Defendant promoted Deresh to Captain, a more office-based role than the Lieutenant position, he would have been able to continue working.

Count I
Americans with Disabilities Act - Discrimination

18. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 17 as if fully restated herein.

19. Deresh is an individual with a disability, Defendant perceived Deresh as having a disability, and Deresh has a record and history of having a disability.

20. Deresh was qualified for the position of Captain because he was able to perform the essential functions of that position with or without reasonable accommodation, and therefore, is a qualified individual as defined by the ADA, 42 U.S.C. § 12111(8).

21. Defendant discriminated against Deresh, in violation of 42 U.S.C. § 12112(a), by requiring Deresh to submit to examination by its doctor and subsequently failing and refusing to promote Deresh to the position of Captain because of his disability, Defendant's perception of him as disabled, and/or Deresh's record or history of having a disability.

22. Defendant's violation of the ADA was intentional and with reckless disregard of Deresh's federally protected right to be free from discrimination on the basis of his disability.

23. As a direct and proximate result of Defendant's actions, Deresh has suffered and continues to suffer damages, including but not limited to:

- a. Lost wages and benefits;
- b. Emotional distress, anxiety, humiliation, and inconvenience;
- c. Costs and expenses of litigation; and
- d. Attorney fees.

WHEREFORE, Plaintiff demands judgment against Defendant for Defendant's violation of the Americans with Disabilities Act and damages in an amount exceeding \$50,000, as follows:

- a. The difference in back pay and benefits between the Lieutenant and Captain positions, from the time Defendant refused to promote Plaintiff, with interest;
- b. An injunction precluding Defendant from discriminating or retaliating against Plaintiff in any manner prohibited by the Americans with Disabilities Act;
- c. Placement of Plaintiff in the position of Captain;
- d. Compensatory damages for Plaintiff's emotional distress, anxiety, humiliation and inconvenience;
- e. Punitive damages for Defendant's reckless disregard of Plaintiff's federally protected rights;
- f. Reasonable attorneys' fees and costs and expenses of litigation; and
- g. Such other legal and equitable relief as the Court deems just and proper.

Count II
Pennsylvania Human Relations Act

24. Plaintiff incorporates by reference the allegations in paragraphs 1 through 23 as if fully restated herein.

25. Defendant's requiring Deresh to submit to a medical examination and its subsequent failure and refusal to promote Deresh violated the PHRA, 43 Pa. C.S.A. §§ 955(a) and 955(b)(1).

26. As a direct result of Defendant's violation, Deresh has lost wages, other economic benefits of employment, and status, in addition to suffering emotional distress, anxiety, inconvenience and humiliation.

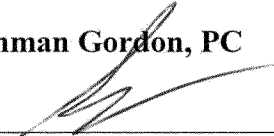
WHEREFORE, Deresh requests damages in an amount exceeding \$50,000, as follows:

- a. That the Court enter a judgment declaring Defendant's actions to be unlawful and in violation of the Pennsylvania Human Relations Act;
- b. That Defendant be enjoined from discrimination against Plaintiff in any manner that violates the Pennsylvania Human Relations Act;
- c. That Defendant be ordered to place Plaintiff in the position of Captain;

- d. That Defendant be ordered to compensate Plaintiff for the difference in back pay and benefits between the Lieutenant and Captain positions, from the date of discrimination, with interest;
- e. That the Court award Plaintiff compensatory damages for emotional distress, anxiety, humiliation and inconvenience resulting from Defendant's discrimination;
- f. That Defendant be required to pay Plaintiff's costs of litigating this action and reasonable attorneys' fees; and
- g. That the Court grant any additional relief deemed just and proper.

Respectfully submitted,

Rothman Gordon, PC



Samuel J. Cordes

Cristina S. Correnti

Pa. I.D. 54874 (Cordes)

Pa. I.D. 325702 (Correnti)

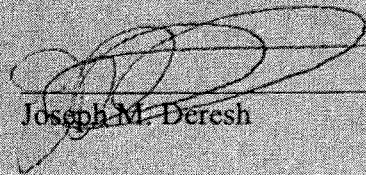
310 Grant Street
Third Floor, Grant Building
Pittsburgh, PA 15219
(412) 338-1163

Attorneys for Plaintiff

VERIFICATION

I, Joseph M. Deresh, declare under penalty of perjury, and subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities, that the statements set forth in the **Civil Complaint** are true and correct to the best of my knowledge, information and belief.

3/30/22
Date


Joseph M. Deresh

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Samuel J. Cordes

Signature:  _____

Name: Samuel J. Cordes

Attorney No. (if applicable): 54874

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Allegheny County

For Prothonotary Use Only:

Docket No:

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Petition <input type="checkbox"/> Transfer from Another Jurisdiction <input type="checkbox"/> Declaration of Taking	
Lead Plaintiff's Name: <u>Joseph M. Deresh</u>	Lead Defendant's Name: <u>City of Pittsburgh</u>
Are money damages requested? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Dollar Amount Requested: (check one) <input type="checkbox"/> within arbitration limits <input checked="" type="checkbox"/> outside arbitration limits
Is this a Class Action Suit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this an MDJ Appeal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name of Plaintiff/Appellant's Attorney: <u>Samuel J. Cordes & Cristina S. Correnti</u> <input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)	

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort) <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/ Defamation <input checked="" type="checkbox"/> Other: _____	CONTRACT (do not include Judgments) <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other <input checked="" type="checkbox"/> Employment Dispute: <u>Discrimination</u> <input type="checkbox"/> Employment Dispute: Other <input type="checkbox"/> Other: _____	CIVIL APPEALS Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: _____
MASS TORT <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____	REAL PROPERTY <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____	MISCELLANEOUS <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input type="checkbox"/> Other: _____
PROFESSIONAL LIABILITY <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: _____		