

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

ANTHONY PARSONS,

Plaintiff

v.

CITY OF COLORADO SPRINGS,

Defendant.

Complaint

COMES NOW Plaintiff, Anthony Parsons, and for his Complaint against Defendant, alleges the following:

Introduction

1. This is an action brought to remedy disability discrimination pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12101.

Jurisdiction

2. The Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331 & 1343; 42 U.S.C. § 12117; and 42 U.S.C. 2000e-5.

Exhaustion of Administrative Remedies

3. On February 15, 2008, Plaintiff filed a charge of discrimination against Defendant with the Colorado Civil Rights Division alleging disability discrimination and retaliation.

4. Plaintiff received a Right to Sue letter on or about September 18, 2008, allowing him 90 days within which to bring an action under the Americans with Disabilities Act.

5. This action was commenced within that 90 day period.

Parties

6. Anthony Parsons is a resident of Colorado Springs, Colorado, and was formerly employed as a police officer by the Colorado Springs Police Department.

7. The City of Colorado Springs is a home rule city in the State of Colorado.

General Allegations

8. Plaintiff was hired as a police recruit by the Colorado Springs Police Department ("CSPD") on August 12, 1999.

9. On July 26, 2005, Plaintiff suffered an injury during a riot control training exercise which resulted in numerous herniated thoracic discs in his spine.

10. The condition of Plaintiff's spine is permanent.

11. As a result of the herniated thoracic discs, Plaintiff suffers significant chronic pain which interferes with his sleep.

12. The pain Plaintiff suffers causes him to wake up four to five times a night, and limits Plaintiff's ability to sleep.

13. Even when treated with medications, the pain Plaintiff suffers impairs his ability to sleep.

14. Due to his injury, Plaintiff's ability to lift, run, and work as a police officer is substantially limited.

15. Additionally, Plaintiff's range of motion is limited, as is his ability to remain seated, standing, or crouched for extended periods of time.

16. Plaintiff's injury impacted his ability to perform the duties of a patrol officer.

17. Shortly after he suffered the injury to his spine, Plaintiff was placed on a light duty assignment working at a desk.

18. Plaintiff made several attempts to return to regular duty, but was unable to do so due to his medical condition.

19. On March 27, 2007, Deputy Chief Steve Liebowitz sent Plaintiff a letter informing him that the CSPD had received information indicating that Plaintiff had permanent medical restrictions preventing him from running, wearing police protective gear, or making forceful arrests.

20. In his letter, Deputy Chief Liebowitz notified Plaintiff that due to his restrictions, Plaintiff could no longer be employed with the CSPD, but that he may be eligible for leave pursuant to the Family and Medical Leave Act (FMLA), or consideration under the Americans with Disabilities Act (ADA).

21. On March 29, 2007, Plaintiff requested an ADA evaluation to determine if he qualified for a reasonable accommodation. Plaintiff also completed a form requesting a reasonable accommodation under the ADA.

22. On or about May 4, 2007, Defendant's ADA Committee determined that Plaintiff was not disabled for purposes of the ADA.

23. The May 4, 2007 determination that Plaintiff was not disabled amounted to a denial of Plaintiff's request for a reasonable accommodation.

24. On June 12, 2007, Plaintiff submitted an application to Defendant for an open Emergency Response Technician position.

25. Hiring Plaintiff for the Emergency Response Technician position would have been a reasonable accommodation of Plaintiff's disability.
26. Despite his qualifications for Defendant's open Emergency Response Technician position, Plaintiff was not hired.
27. On August 16, 2007, Richard Radabaugh, an attorney representing Plaintiff, sent a letter to Defendant requesting that Defendant reconsider its earlier determination that Plaintiff was not disabled within the meaning of the ADA. With his letter, Mr. Radabaugh included additional medical information about the extent to which Plaintiff's chronic pain affected his ability to sleep.
28. On August 23, 2007, Defendant sent Mr. Radabaugh a letter reaffirming Defendant's position that Plaintiff was not disabled.
29. By taking the position that Plaintiff was not disabled, Defendant again denied Plaintiff's request for a reasonable accommodation.
30. On November 5, 2007, Plaintiff submitted an application to Defendant for an open Chief Probation Officer position.
31. Hiring Plaintiff for the Chief Probation Officer position would have been a reasonable accommodation of Plaintiff's disability.
32. Despite his qualifications for Defendant's open Chief Probation Officer position, Plaintiff was not hired.
33. Plaintiff ultimately exhausted all leave available to him, and was discharged from the CSPD when he could not return to patrol duties.

34. Plaintiff was subjected to unlawful discrimination, was refused accommodations, was rejected from consideration for available jobs, and was terminated because of his disability.

35. As a result of the actions of Defendant, Plaintiff has suffered past and future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, humiliation, and other non-pecuniary losses.

36. Defendant's actions and omissions toward Plaintiff were undertaken willfully, maliciously, with intent to discriminate based on disability, and in gross disregard and reckless indifference to the federally protected rights of Plaintiff.

First Cause of Action (42 U.S.C. § 12112)

37. Plaintiff realleges all prior paragraphs and incorporates them herein.

38. Plaintiff has exhausted his administrative remedies.

39. Plaintiff is a qualified individual with a disability.

40. Defendant's acts and omissions violated Plaintiff's rights under the Americans with Disabilities Act, 42 U.S.C. § 12112.

Prayer for Relief

WHEREFORE, Plaintiff prays for the following relief, pursuant to 42 U.S.C. § 1981a, 1988, 2000e-5(g), and Fed. R. Civ. P. 54:

- a. Nominal damages;
- b. Reinstatement and back pay, including loss of benefits and seniority, or front pay in lieu of reinstatement;
- c. Nonpecuniary and compensatory damages, including damages for emotional distress and consequential damages;

- d. Pre- and post-judgment interest at the highest rate allowed by law;
- e. Costs and reasonable attorneys fees; and
- f. All other legal or equitable relief to which Plaintiff is entitled.

Jury Demand

Plaintiff requests this matter be tried by a jury.

Respectfully submitted this 15th day of December, 2008.

CORNISH & DELL'OLIO

s/Ian D. Kalmanowitz

Ian D. Kalmanowitz, # 32379

431 N. Cascade Ave. Suite 1

Colorado Springs, CO 80903

719-475-1204

719-475-1264 (fax)

ikalmanowitz@cornishanddellolio.com

Attorneys for Plaintiff

Plaintiff's address:
3765 Windmill Court
Colorado Springs, CO 80907