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IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

STEVEN T. BRELAND,	)	C.A. No: 2:12-cv-00633-PMD-BHH
	)	
Plaintiff	)	
	)	COMPLAINT
	)	
v.	)	(JURY TRIAL DEMANDED)
	)	
ALLSTATE INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

INTRODUCTION

1. This is an action to redress disability discrimination, failure to accommodate, and retaliation for complaints about discrimination arising out of the employment practices of the Defendant. The Plaintiff seeks relief which includes reinstatement to his former position, and injunctions from further discrimination; lost wages and benefits; future wages and benefits if reinstatement is determined to be inappropriate; compensatory and punitive damages and attorney's fees and costs for the prosecution of this action, pursuant to the American with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et. seq.* (hereinafter "ADA") and the American with Disabilities Act Amendments Act of 2008 (hereinafter "ADAAA"); and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000 *et. seq.* (hereinafter "Title VII").

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343(a) (4); 42 U.S. C. §12117(a) and 28 U.S.C. § 1343(3) and §1343(4) conferring jurisdiction upon this court of any civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights, under the Declaratory Judgment Statute, 22 U.S.C.

§2201 and 29 U.S.C. §623(a) and “powers, remedies and procedures” set forth in Title VII of the Civil Rights Act of 1964 at 42 U.S.C. § 2000 e-5 and as amended in the Civil Rights Act of 1991.

3. Venue for all causes of action stated herein is proper under 28 U.S.C. §1391 as Defendant’s actions herein took place within the boundaries of this District. Plaintiff lived in Mt. Pleasant, Charleston County South Carolina during the entire period of employment with the Defendant, and was based out of his home. Plaintiff received job assignments via computer, and traveled by vehicle from his home in Charleston County to locations within the district of South Carolina, North Carolina and Georgia to investigate the claims; and returned to his home to process the paperwork associated with the claims.

PARTIES

4. Plaintiff, Steven T. Breland, (“Plaintiff”), is a citizen of the United States and a resident of the State of South Carolina, County of Charleston. Plaintiff is a person entitled to protection pursuant to the provisions of 42 U.S.C. §12111(8).

5. The Plaintiff suffers from a lifelong speech disorder, stuttering, limiting a major life activity, speech.

6. Defendant, Allstate Insurance Company, an Illinois Corporation, is registered with the South Carolina Department of Insurance and engaged in the business of providing insurance coverage in South Carolina. Allstate is a private employer with fifteen or more employees and is therefore prohibited pursuant to the ADA, and ADAAA from discriminating against otherwise qualified people with disabilities in the terms or conditions of employment.

CONDITIONS PRECEDENT

7. Prior to filing this action, Plaintiff timely filed a charge of discrimination against the Defendant simultaneously with the Equal Employment Opportunity Commission (“EEOC”) and the South Carolina Human Affairs Commission (“SCHAC”) within three hundred days of the denial of his accommodation request, and filed again within three hundred days of his termination. The charges of discrimination are attached as Exhibit “A” to this Complaint. Said Exhibit “A” is incorporated herein as though set forth in full.

8. The EEOC issued a “Notice of Right to Sue” mailed on December 8, 2011, based on the original charge of discrimination and retaliation. Plaintiff received this “Notice of Right to Sue” on December 12, 2011, permitting Plaintiff to file this action in federal district court within 90 days of receipt of this letter. A copy of this “Notice of Right to Sue” is attached as Exhibit “B”. Plaintiff has fulfilled all conditions precedent and Plaintiff has duly exhausted all administrative remedies and procedures in accordance with law, prior to the institution of this lawsuit.

FACTUAL ALLEGATIONS

9. Plaintiff was hired by the Defendant on April 1, 1985, and worked for the Defendant for twenty five years and five months as a claims adjuster for property losses.

10. In July 1997, Plaintiff requested a reasonable accommodation for his disability, stuttering, when he asked that he not be forced to use a script when interacting with customers, but instead be allowed to continue his own successful method which allowed him to get information in advance and prepare his response before speaking to his customers over the phone.

11. In this manner, Plaintiff continued to perform the essential functions of his job as an adjuster in an exemplary and professional manner.

12. In 2004, Plaintiff e-mailed the Defendant's Resolution Line to request an accommodation in the form of additional training/assistance in negotiating re-inspections because the process required him to respond in 'real time' without allowing him to prepare before responding.
13. Plaintiff's supervisor, Martha Gibson, was informed by Defendant that Plaintiff had complained to the Resolution Line, and told Plaintiff she was upset and angry that he had made his complaints through the Resolution Line.
14. In 2008, Defendant initiated a new software program, Work Force Management System (WFMS), to be used on the laptops of the field adjusters including Plaintiff Breland. The program, also known as Next Generation (Next Gen), tracked claims assigned to the field adjusters and was also used in evaluating annual performance.
15. Upon information and belief, the WFMS software was implemented in stages throughout the company, and in 2007 was implemented in the Southeastern Property MCO where Plaintiff worked.
16. On November 29, 2007 the Plaintiff received an Unacceptable Performance Notification from his supervisor in the area of customer service where his prior performance was always exceptional.
17. During this same performance evaluation period, Defendant required Plaintiff to accept more claims because the Defendant was short an adjuster in Breland's territory.
18. Plaintiff had a larger geographical territory and served more customers than any other claims adjuster in the region.
19. Prior to his November 29, 2007 evaluation, Plaintiff asked for additional time to meet with his customers as an accommodation for his communication handicap.

20. The Plaintiff again contacted Defendant's Resolution Line of the Human Resource department to ask for assistance.
21. Defendant responded to Plaintiff's request by giving him one day per week without any claims to allow him more time to meet with customers and process their claims.
22. During 2008, the state of Georgia experienced a significant wind and hail event and the Plaintiff was assigned to process disaster insurance claims out of state. Plaintiff drove from Mt. Pleasant, SC to the Georgia disaster area each week to meet with customers and process the claims. Plaintiff also was assigned claims in South Carolina and North Carolina.
23. Defendant allowed the Plaintiff one-day each week for travel time. The additional time was necessary to meet with the customers, travel and process the claims. Plaintiff received an "Achieved" rating for his 2008 Performance Evaluation.
24. In 2009, Plaintiff returned to processing property claims in coastal South Carolina.
25. Defendant, through its managers, significantly increased the size of Plaintiff's territory, thus significantly increasing the driving time required for the assessment of claims.
26. Defendant's WFMS software system failed to factor in the increased driving time required and it failed to factor in any additional time for Breland to visit a claimant.
27. Plaintiff requested additional time to process claims and meet with Allstate customers.
28. Management denied Plaintiff's request for additional time and began assigning Breland "Fast Track" claims to handle during the first part of the work-week along with property claims assigned to him from Wednesday through Friday. The assignment of the Fast Track claims exceeded the number of claims assigned to other field adjusters who were not disabled.
29. On September 9, 2009, Defendant, through supervisor Martha Gibson, placed Plaintiff on an Unacceptable Performance Notification.

30. On or around October 19, 2009, Defendant managers informed Plaintiff that he should not contact Human Resources or the Resolution Line regarding his requests for accommodations.

31. On or about October 23, 2009, Plaintiff made another formal written request for accommodations to Ron Waters, Market Claims Manager for Defendant. Plaintiff requested additional time to meet with Allstate customers, and removal from the assignment of Fast Track claims.

32. Upon information and belief, Defendant had removed Fast Track assignments from other adjusters.

33. Attached to the formal request for an accommodation was a letter from Plaintiff's treating psychiatrist indicating that Plaintiff had been diagnosed with a communication disorder caused by stuttering.

34. Defendant, through its Market Claim Manager, Ron Waters, denied Plaintiff's accommodation request for more time with customers and travel time on or about January 5, 2010.

35. Following this January 6, 2010 denial of accommodations, Defendant retaliated against Plaintiff. Examples of retaliation include, but are not limited to:

- a. Changing Plaintiff's Fast track schedule and adding new types of assignments without reducing his non-Fast Track work load or travel times to assess non-Fast Track claims;
- b. Failing to train Plaintiff in the new processes, but requiring him to implement the new processes and handle the new types of claims without training;
- c. Assigning him new Fast Track claims on days that he was out in the field, or late on his Fast Track days where he was assigned to assess claims in the field early

the next morning, and threatening disciplinary action if he did not complete the tasks immediately;

- d. Failing to respond to his complaints about the excessive number of claims he was assigned and refusing him to allow time away from the field in order to process these claims;
 - e. Changing Plaintiff's Fast Track assignment so that he would handle more claims by telephone;
 - f. Removing claims from another experienced adjuster and adding them to Plaintiff's duties despite the fact that Plaintiff already handled more claims than other adjusters in his district;
 - g. Failure to repair and/or reload programs required for Plaintiff to complete his duties;
 - h. Failing to have management ride along with Plaintiff in May, 2010 in order to assess difficulties, while management did ride-alongs with all other adjusters;
 - i. Assigning unrealistic time estimates for performing each inspection.
36. On or about February 1, 2010, in response to Plaintiff's request for accommodations, Defendant demanded that Plaintiff have his physician fill out a "Workplace Assistance Form", but did not allow Plaintiff to schedule any paid time off to see his physician.
37. Plaintiff was eventually able to schedule an after hours appointment.
38. Plaintiff returned the completed form to management on or about April 21, 2010.
39. On or about May 3, 2010, Plaintiff responded to Defendant's request for feedback on how to improve his performance. Plaintiff responded by reasserting the accommodations that he had requested.

40. On or about May 17, 2010, Market Claim Manager, Ron Waters offered the Plaintiff a position in Charlotte, NC as a staff claim service adjuster, a position that would require Plaintiff to talk on the telephone extemporaneously with skilled contractors whose claims had been denied.

41. Defendant informed Plaintiff that he would be responsible for all moving costs for the move to Charlotte, NC.

42. By offering Plaintiff this transfer, Defendant targeted the Plaintiff for termination and denied him an accommodation where Defendant was aware that this position would exacerbate Plaintiff's disability, as it knew the position would require the Plaintiff to talk via extemporaneous telephone communication with contractors every workday on an hourly basis without pre-preparation or advance notice of the contractor customer's concerns.

43. Plaintiff had no choice but to decline the transfer because he knew his stuttering would be exacerbated in that position and that it would be difficult for him to succeed.

44. On June 18, 2010 Plaintiff filed his Charge of Discrimination claim with the South Carolina Human Affairs Commission alleging disability discrimination.

45. On July 24, 2010, Plaintiff again requested reasonable accommodations, including but not limited to, administrative time off the road on some afternoons so that he could speak with customers over the phone during the time of day when his stutter was less of an issue; and additional time allotted to each inspection so that he could do them properly, resulting in less need for him to make additional customer phone calls.

46. On August 16, 2010 Defendant, through managers Ron Waters and Martha Gibson, terminated Breland from his employment with Defendant.

47. On October 5, 2010 Defendant filed his amended Charge of Discrimination claim with the EEOC alleging retaliation for his termination of employment from Defendant.

48. Based on information and belief, Plaintiff was replaced by an individual who did not have a disability as defined by the ADAAA.

49. At all times mentioned herein the acts and conduct performed by the servants, agents and employees of Defendant Allstate were at all times acting within the scope and course of their agency and employment, and their actions were expressly authorized by and ratified by Defendant Allstate.

FIRST CAUSE OF ACTION
(Discrimination and Failure to Accommodate in Violation of the Americans with Disabilities Act as Amended)

50. Plaintiff incorporates by reference all prior paragraphs as though fully set forth herein.

51. Defendant violated Plaintiff's rights under the ADAAA where it refused to afford Plaintiff reasonable accommodations or initiate the interactive process in good faith, where it knew that Plaintiff had disabilities.

52. Defendant violated Plaintiff's rights under the ADAAA where it subjected Plaintiff to disparate treatment and made employment decisions on the basis of his disabilities.

53. By the practices described above, Defendant has discriminated against the Plaintiff, deprived him of equal employment opportunities, and adversely affected his status as an employee because of his disability.

54. As a result of Defendant's acts, Plaintiff has suffered and endured humiliation, damage to his reputation, mental and emotional distress, loss of esteem in the community, and pain and suffering.

55. Defendant's acts constitute gross, wanton, reckless, and/or intentional violation of his rights under the ADAAA, entitling him to punitive damages.

56. As a result of Defendant's acts, Plaintiff has suffered and will continue to suffer in the future actual damages in the form of lost wages, benefits, loss of earning capacity, loss of career opportunity, loss of seniority, cost of seeking alternative income, mental anguish, emotional distress, embarrassment, humiliation, loss of enjoyment of life and in all respects sustaining damages all in the amount yet to be determined but not less than \$75,000.

SECOND CAUSE OF ACTION
(Retaliation in Violation of the Americans with Disabilities Act as Amended)

57. Plaintiff incorporates by reference all prior paragraphs as though fully set forth herein.

58. Defendant violated Plaintiff's rights under the ADAAA where it retaliated against him on the basis of his protected activity.

59. By the practices described above, Defendant has retaliated against the Plaintiff, deprived him of equal employment opportunities, and adversely affected his status as an employee because of his disability and his participation and opposition to discrimination.

60. As a result of Defendant's acts, Plaintiff has suffered and endured humiliation, damage to his reputation, mental and emotional distress, loss of esteem in the community and pain and suffering.

61. Defendant's acts constitute gross, wanton, reckless, and/or intentional violation of his rights under the ADAAA, entitling him to punitive damages.

62. As a result of Defendant's acts, Plaintiff has suffered and will continue to suffer in the future actual damages in the form of lost wages, benefits, loss of earning capacity, loss of career opportunity, loss of seniority, cost of seeking alternative income, mental anguish, emotional distress, embarrassment, humiliation, loss of enjoyment of life and in all respects sustaining damages all in the amount yet to be determined but not less than \$75,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment for him and against Defendant as follows:

- a. For a declaration that Plaintiff was denied reasonable accommodations and terminated illegally in violation of his statutory rights pursuant to ADA and ADAAA;
- b. For an award of back pay and benefits compensating Plaintiff for the wages, benefits, and compensation he would have received if he had continued working for Defendant from July 16, 2010 to the date of trial for violation of the ADA and ADAAA;
- c. For a permanent injunction for reinstatement to the position Plaintiff held prior to his termination with full seniority and other benefits as if he had never been discharged, or, if reinstatement is inappropriate, for an appropriate amount of front pay to be established at trial for violation of the ADA and ADAAA;
- d. To award Plaintiff compensatory damages for the humiliation, damage to his reputation, mental and emotional distress, and pain and suffering that he has experienced and endured as a result of the discriminatory actions of Defendant for violation of the ADA and ADAAA;
- e. To award Plaintiff punitive damages for the Defendant's willful and wanton actions, pursuant to 42 U.S.C. § 12117;
- f. For attorney's fees and costs for violations of the ADA and ADAAA; and
- g. For such other and further relief as to the Court appears proper and just.

<SIGNATURE BLOCK ON PAGE FOLLOWING>

Respectfully submitted,

s/Nancy A. Chiles

NANCY A. CHILES, ESQUIRE

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JURY TRIAL DEMAND

Plaintiff respectfully requests this matter be tried before a Jury.

s/Nancy A. Chiles

Dated this the 4th day of March, 2012 at
Charleston, South Carolina

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