

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DARLENE L. HARRIS,	)	
	)	
Plaintiff,	)	CIVIL ACTION
	)	FILE NO.
v.	)	
	)	<b>JURY TRIAL REQUESTED</b>
CITY OF ATLANTA,	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff Darlene L. Harris (“Plaintiff” or “Harris”) files this Complaint against Defendant, City of Atlanta (“Defendant”), alleging as follows:

**Introduction**

1. Plaintiff, an African-American female, is employed as a police officer with the Atlanta Police Department (“APD”), a department of the Defendant City of Atlanta government (“the City”).

2. Plaintiff began her employment as a police officer with APD on June 15, 2003, and was employed as the Gay Lesbian Bisexual Transgender (GLBT) Liaison Officer from November 2005 until April 2010, when the City forced her out on unpaid medical leave for six months.

3. Plaintiff has dedicated over 10 years of her life to APD and serving the citizens of the City of Atlanta.

4. During her employment as a police officer, Plaintiff suffered from two grand mal seizures.

5. Plaintiff's condition constitutes a disability as defined by the Americans with Disabilities Act, as amended by the ADA Amendments Act of 2008 ("ADAAA"), 42 U.S.C. § 12101 *et seq.*

6. Plaintiff requested a reasonable accommodation for her disability, and complained to the City about APD's failure to accommodate her disability.

7. During her employment, Plaintiff was also subjected to discriminatory gender-stereotype based comments by an APD civilian employee, and complained to Human Resources ("HR") regarding the discriminatory comments that were made to her.

8. Defendant forced Plaintiff to take involuntary and unpaid medical due to her disability, her request for an accommodation, and in retaliation for her complaints regarding the discriminatory comments made to her, and APD's failure to accommodate her disability.

9. As a result of these events, Plaintiff asserts a claim for retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42

U.S.C. § 2000e *et seq.* Plaintiff also asserts claims for discrimination, retaliation, and failure to accommodate in violation of the ADAAA.

10. Plaintiff seeks injunctive, declaratory, and other equitable relief; back pay and restoration of lost benefits; compensatory damages; and attorney's fees and costs of litigation.

### **Jurisdiction and Venue**

11. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343 (civil rights).

12. The unlawful violations of Plaintiff's civil rights were committed within the Northern District of Georgia. Venue is proper in this Court under 28 U.S.C. § 1391.

### **The Parties**

13. Plaintiff is now, and was at all times relevant to this action, a resident of the State of Georgia.

14. Plaintiff is employed by Defendant and is an "employee" as defined by Title VII and the ADAAA.

15. Plaintiff is and, at all times relevant hereto, was an individual with a disability as that term is defined under 42 U.S.C. § 12102(1).

16. Plaintiff was a person with a disability because she had an actual physical impairment substantially limiting one or more major life activities and because she had a record of impairment.

17. Defendant City of Atlanta is a political subdivision of the State of Georgia and is subject to the jurisdiction of this Court.

18. Defendant City of Atlanta is a covered employer under Title VII and the ADAAA, as it employs more than 15 people.

19. Defendant City of Atlanta may be served with process by serving Mayor Kasim Reed at the Office of the Mayor, Executive Offices, 55 Trinity Avenue, Atlanta, Georgia 30303.

#### **Exhaustion of Administrative Proceedings**

20. Plaintiff satisfied all administrative prerequisites to perfect her claims under Title VII and the ADAAA. Specifically, Plaintiff timely filed Charges of Discrimination with the Equal Employment Opportunity Commission (“EEOC”), and the United States Department of Justice issued notices of right to sue for both charges and amended charges.

21. Plaintiff brings this suit within ninety (90) days of receipt of her notices of right to sue.

**Statement of Facts**

22. Plaintiff began her employment as a police officer with APD on June 15, 2003.

23. From November 2005 until approximately April 2010, Plaintiff was assigned to the Office of the Chief of Police as the GLBT Liaison Officer.

24. As the GLBT Liaison, Plaintiff acted as the liaison for the GLBT community, the Director of Interns, and the Director of the Junior Cadets. Plaintiff performed her role admirably and was well-loved in the community.

25. In December 2009, Plaintiff suffered a grand mal seizure.

26. Plaintiff informed APD of her disability (seizure disorder) on or about December 20, 2009 and January 4, 2010.

27. In January 2010, Plaintiff explained to Defendant that she could not drive a patrol car with the lights flashing, and requested a reasonable accommodation for her disability.

28. APD initially allowed Plaintiff to return to work as the GLBT Liaison and did not require her to drive a patrol car.

29. Plaintiff was able to perform the essential functions of the GLBT Liaison position without driving a patrol car.

30. On February 18, 2010 and April 13, 2010, Plaintiff was subjected to derogatory sex-stereotype based comments by Sandy Bradley, an APD Administrative Assistant.

31. Ms. Bradley said to Plaintiff, “Why you gay, I don’t understand?” “you confused,” “why can’t you settle in with a man and get the same feelings or emotions from a heterosexual relationship,” “I want to tell you something Harris, I really like you, but what I don’t like about you is that you walk around here like a fucking man without a dick.”

32. Ms. Bradley also told Plaintiff that “if she ever had kids at the APD she would not be comfortable having her kids around” Plaintiff.

33. On April 14, 2010, Plaintiff suffered another grand mal seizure.

34. The next day, Plaintiff informed Sergeant Sturdivant that she had a seizure.

35. On April 16, 2010, Plaintiff complained to HR about Ms. Bradley’s statements, and stated that she was being discriminated against based on sex stereotyping.

36. On April 18, 2010, Sergeant Sturdivant and Major Erika Shields sent Plaintiff home from work, and Major Shields told Plaintiff to “get better.”

37. Plaintiff was not informed when she could return to work, or why she was being sent home.

38. At the time Plaintiff was forbidden to return to work, both Sergeant Sturdivant and Major Shields were aware that Plaintiff had reported Ms. Bradley's derogatory comments to HR.

39. On or about April 28, 2010, Plaintiff spoke with Alfred Elder, HR Assistant Commissioner. Plaintiff complained to Mr. Elder about Ms. Bradley's derogatory sex stereotype comments and retaliation, and APD's failure to accommodate her disability. Plaintiff again requested a reasonable accommodation.

40. The Office of Professional Standards (OPS) division of the APD investigated and eventually sustained Plaintiff's complaint, finding that Ms. Bradley's statement that Plaintiff did "not have a dick" was inappropriate, particularly given Ms. Bradley's knowledge of Plaintiff's sexual orientation.

41. On or about July 2010, while Plaintiff was still out on forced and unpaid medical leave, she asked Sergeant Sturdivant if she could use donated time to cover the leave period.

42. Both Sergeant Sturdivant and Mr. Elder refused to allow Plaintiff to use donated time to cover the forced medical leave, claiming that it was “not catastrophic,” and Plaintiff’s doctor released her to return to work.

43. At the time Sergeant Sturdivant and Mr. Elder refused to allow Plaintiff to use donated time, she was aware that Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) against Defendant.

44. Upon information and belief, on or about 2010 or 2011, Police Officer Adam Pierce was approved to use donated time when he took medical leave for an off-duty injury and had exhausted all of his leave time and borrowed advance time.

45. On July 7, 2010, and September 3, 2010, Plaintiff again requested a reasonable accommodation and asked that Plaintiff be returned to work immediately.

46. Plaintiff was not allowed to return to work until October 2010.

47. From April to October 2010, Plaintiff was forced out of her position as GLBT Liaison and placed on an involuntarily medical leave despite being capable of performing the essential functions of her job as GLBT Liaison. During this six month time period, Plaintiff was not allowed to return to work, was not compensated, and was denied donated leave time.

48. On or about August 31, 2010, Mayor Kasim Reed announced that he was creating a second GLBT Liaison position at APD.

49. Plaintiff required only one accommodation to perform the essential function of her job – she could not drive a patrol car with the lights flashing.

50. In Plaintiff's role as GLBT liaison, the essential functions of her job did not require her to drive a patrol car with the lights flashing.

51. Despite APD having two GLBT Liaison positions, Defendant never allowed Plaintiff to return to her position as GLBT Liaison.

52. Both GLBT Liaison positions were filled by non-disabled employees who had not filed charges of discrimination.

53. When Defendant finally allowed Plaintiff to return to work in October 2010, her title was a police officer, and from October 2010 through August 2012, Defendant continually attempted to demote her to a civilian position and cut her pay.

54. On February 21, 2011, Plaintiff had a meeting with Sergeant Sturdivant, Derris Mitchell, Angela from HR, and other APD personnel.

55. Plaintiff was informed that in Plaintiff's Fitness for Duty Examination with Dr. Alton Greene (taken on October 14, 2011), Dr. Greene deemed Plaintiff unfit for duty. Plaintiff was informed that she had until March 7, 2011 to accept

Dr. Greene's finding or to fight it, and that if she accepted the finding she needed to resign or she would be terminated.

56. Angela from HR informed Plaintiff that if she could not drive a car with the lights flashing, she was not fit for duty, and that if she did not take a civilian dispatcher position, which would result in a pay cut, Plaintiff would be terminated.

57. Angela from HR also told Plaintiff that because police officers serve at the discretion of Police Chief Turner, at any point in time he could remove Plaintiff from a position that she is capable of performing without an accommodation and return her to a patrol officer position.

58. On March 7, 2011, Plaintiff advised Defendant that she contested Dr. Greene's finding and would be meeting with another doctor.

59. On April 5, 2011, Plaintiff underwent a second Fitness for Duty Examination where she was deemed conditionally fit for duty as a police officer but was advised not to drive a patrol car with flashing lights.

60. On or about May 2011, Sergeant Sturdivant informed Plaintiff that she had a meeting with Deputy Chief Jones and Major Williams, that Deputy Chief Jones was adamant that he would not accommodate Plaintiff's request for

accommodation, and that Plaintiff would be demoted to a civilian position with lower pay.

61. On May 11, 2011, the City informed Plaintiff that they would attempt to find a suitable placement for Plaintiff, and again failed to accommodate Plaintiff's requested reasonable accommodation.

62. On May 31, 2011, the City offered a vacant civilian dispatcher position to Plaintiff, which would result in a decrease in salary.

63. On June 17, 2011, Plaintiff again requested the same reasonable accommodation to the City of Atlanta.

64. Throughout 2011 and 2012, Plaintiff applied to civilian positions on the City of Atlanta's website but insisted that she wanted Defendant to return her to the GLBT Liaison position, and asked Defendant to accommodate her disability.

65. On January 17, 2012, Plaintiff was informed by Sergeant Sturdivant that if Plaintiff did not take a civilian dispatcher position with the City, which would result in a salary decrease, Plaintiff would be terminated.

66. On May 8, 2012, Plaintiff met with the City's HR Commissioner Yancy, who informed Plaintiff that she had a disability under the ADAAA and APD needed to accommodate her disability.

67. On July 3, 2012, Plaintiff again requested a reasonable accommodation for her disability and explained that she has been seizure free for over two years.

68. On or about August 2012, the City failed to accommodate Plaintiff by re-classifying her to a civilian Code Enforcement position and refusing to place her back in her position as GLBT Liaison Officer.

**COUNT I**  
**RETALIATION IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964,**  
**AS AMENDED, 42 U.S.C. § 2000E, ET SEQ.**

69. Plaintiff incorporates by reference all preceding paragraphs of the Complaint.

70. Plaintiff engaged in protected activity under Title VII by making internal complaints to APD HR and the Office of Professional Standards, and to Alfred Elder, APD's Assistant Commissioner of HR and Diversity Manager, regarding derogatory sex stereotype comments made to her by APD civilian employee Sandy Bradley.

71. Plaintiff also engaged in protected activity when she filed charges of discrimination with the EEOC.

72. Defendant retaliated against Plaintiff by, among other things, forcing her on unpaid medical leave, refusing to allow her the use of borrowed or loaned

leave, repeatedly threatening to demote her to a civilian position and reduce her pay, refusing to reinstate her to her GLBT liaison position, and overall creating a retaliatory hostile working environment.

73. The reasons given by Defendant for the adverse employment actions, retaliatory hostile working environment, and failure to accommodate Plaintiff are a pretext designed to cover up Defendant's retaliatory motive.

74. Defendant's retaliatory actions against Plaintiff were in violation of Title VII and were in bad faith.

75. Defendant willfully and wantonly disregarded Plaintiff's rights.

76. As a result of Defendant's retaliatory actions against Plaintiff, Plaintiff has suffered lost compensation and benefits, suffered emotional distress, inconvenience, humiliation, and other indignities.

77. Pursuant to Title VII, Plaintiff is entitled to damages including but not limited to, back pay and lost benefits, reinstatement, compensatory damages, equitable relief, attorney's fees, costs of litigation, and all other relief recoverable under Title VII.

## **COUNT II**

### **Violation of the ADAAA – Disability Discrimination/Failure to Accommodate**

78. Plaintiff incorporates by reference the preceding Paragraphs of this Complaint.

79. Plaintiff is and, at all times relevant hereto, was a qualified individual with a disability as that term is defined under 42 U.S.C. § 12102(1).

80. Plaintiff is a person with a disability inasmuch as she has a physical impairment causing substantial limitation in one or more major life activities.

81. Plaintiff also has a record of impairment during her employment with Defendant.

82. At all times relevant hereto, Plaintiff was able to perform the essential functions of her job as GLBT Liaison with or without an accommodation.

83. On or about December 2009 and April 2010, Defendant became aware of Plaintiff's disability when she suffered seizures, and she immediately informed Defendant of her disability.

84. Plaintiff requested a reasonable accommodation that would have allowed her to continue to perform the essential functions of her job as GLBT Liaison Officer.

85. Defendant repeatedly refused to grant the accommodation, and instead forced her to take involuntary and unpaid medical leave for six months, refused to allow her to use loaned leave time for her forced leave, and continuously threatened to cut her pay and demote her title.

86. Defendant discriminated against Plaintiff and repeatedly refused to accommodate Plaintiff because of her disability.

87. Defendant's actions violate the ADAAA, which prohibits intentional discrimination on the basis of disability.

88. As a direct and proximate result of the Defendant's intentional discrimination, Plaintiff has suffered out-of-pocket losses and Defendant has deprived her of income in the form of her full wages and benefits, all in an amount to be established at trial.

89. In addition, Defendant's actions have caused, continue to cause, and will cause Plaintiff to suffer damages for emotional distress, mental anguish, loss of enjoyment of life, and other non-pecuniary losses all in an amount to be established at trial. Plaintiff is also entitled to be reinstated as GLBT Liaison by Defendant.

**COUNT III**  
**RETALIATION IN VIOLATION OF THE ADAAA**

90. Plaintiff incorporates by reference all of the preceding paragraphs of the Complaint.

91. Plaintiff was a qualified individual with a disability, having suffered from seizures and a seizure disorder.

92. Plaintiff's disability substantially limited one or more of her major life activities.

93. Beginning in or about January 2010 and continuing to the present, Plaintiff requested a reasonable accommodation: that she could not drive a patrol car with the lights flashing.

94. Plaintiff was able to perform the essential functions of her job as GLBT Liaison with Defendant.

95. Plaintiff also filed charges of discrimination with the EEOC based on Defendant's failure to accommodate her disability and disability discrimination.

96. Plaintiff's request for a reasonable accommodation constitutes protected conduct under the ADAAA, as does the charges she filed with the EEOC.

97. Defendant retaliated against Plaintiff by, among other things, forcing her on unpaid medical leave, refusing to allow her the use of borrowed or loaned leave, repeatedly threatening to demote her to a civilian position and reduce her pay, refusing to reinstate her to her GLBT liaison position, and overall creating a retaliatory hostile working environment.

98. The reasons given by Defendant for the adverse employment actions, retaliatory hostile working environment, and failure to accommodate Plaintiff are a pretext designed to cover up Defendant's retaliatory motive.

99. Defendant's retaliatory actions against Plaintiff were in violation of the ADAAA and were in bad faith.

100. Defendant willfully and wantonly disregarded Plaintiff's rights.

101. As a result of Defendant's retaliatory actions against Plaintiff, Plaintiff has suffered lost compensation and benefits, suffered emotional distress, inconvenience, humiliation, and other indignities.

102. Pursuant to the ADAAA, Plaintiff is entitled to damages including but not limited to, back pay and lost benefits, reinstatement, compensatory damages, equitable relief, attorney's fees, costs of litigation, and all other relief recoverable under the ADAAA.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands a TRIAL BY JURY and requests the following relief:

a. A declaratory judgment that Defendant violated Title VII and the ADAAA;

b. A permanent injunction, prohibiting Defendant from engaging in unlawful employment practices in violation of Title VII and the ADAAA;

c. Full back pay and/or lost benefits for the period Defendant forced Plaintiff to take involuntary and unpaid medical leave, taking into account all raises to which Plaintiff would have been entitled, and all fringe and pension benefits of employment, with prejudgment interest thereon;

d. Reinstatement to Plaintiff's former position with Defendant at the same pay grade;

e. Compensatory damages in an amount to be determined by the enlightened conscience of the jury, for Plaintiff's emotional distress, suffering, inconvenience, mental anguish, loss of enjoyment of life and special damages;

f. Attorney's fees and costs; and

g. All other equitable and other further relief as this Court deems just and proper.

Respectfully submitted this 23rd day of July, 2014.

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