

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM FURMAN,)	
)	
Plaintiff,)	Filed via ECF System
)	
v.)	C.A. No.
)	
PENNSYLVANIA STATE POLICE;)	
COLONEL FRANK PAWLOWSKI,)	
Commissioner of Pennsylvania State Police,)	
in his official capacity,)	
)	
Defendants.)	

COMPLAINT IN CIVIL ACTION

1. This action is brought on behalf of William Furman pursuant to Section 504 of the Rehabilitation Act of 1973 (RA), 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, arising from Defendants' refusal to allow Mr. Furman to take the training course required for certification as a police officer in the Commonwealth of Pennsylvania using his hearing aids, and for promulgating discriminatory criteria that prevent him from being eligible for certification. Defendants violated the RA and ADA by denying Mr. Furman the opportunity to become eligible for certification because of a disability and/or perceived disability premised solely upon the fact that Mr.

Furman uses hearing aids. Mr. Furman seeks only declaratory and injunctive relief.

JURISDICTION

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343. Plaintiff's actions are authorized by 29 U.S.C. § 794, 42 U.S.C. § 1983, and 42 U.S.C. § 12133.

3. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) since a substantial part of the events that give rise to this Complaint occurred within the District.

PARTIES

4. Plaintiff, William Furman, is an adult individual who has bilateral hearing loss, and is therefore a person with a disability.

5. Defendant Pennsylvania State Police (PSP) is a law enforcement agency of the Commonwealth of Pennsylvania. The Municipal Police Officers Education and Training Commission (MPOETC) is a department of the Pennsylvania State Police, responsible to promulgate the criteria required for individuals to become certified to work as police officers for municipal police agencies in the Commonwealth. MPOETC receives funding from PSP.

6. Defendant Colonel Frank Pawlowski is the Pennsylvania State Police Commissioner and is responsible for administering that agency, including assuring

that it and its departments comply with federal laws. Defendant Pawlowski is sued solely in his official capacity for actions and omissions taken under color of state law.

FACTUAL ALLEGATIONS

7. Mr. Furman is currently employed as a Parking/Animal Enforcement Officer by the Bellefonte Borough Police Department. He is also a Pennsylvania State Constable. He is trained in handgun retention, handcuffing, crisis intervention, and defensive tactics. He is certified in First Aid/CPR, Management of Aggressive Behavior, Monadnock Expandable Baton, Oleoresin Capsicum Aerosol Training, Act 44 as required as a State Constable in order to arrest individuals, and the use of fire arms. He has experience in police and security procedures, patrolling, law enforcement, incident report writing, and public safety. His current duties, among other things, include contact with the public, serving arrest warrants, using a two-way radio, and assisting police with requests for assistance calls.

8. Mr. Furman was born with bilateral hearing loss. He is substantially limited in the major life activity of hearing.

9. Mr. Furman has used hearing aids since he was four years old. He has had the current Starkey Destiny 1200 aids for approximately five years. He changes the batteries every four days in order to ensure that one does not go bad

during the time he is working. He also brings the hearing aids to his audiologist for all regularly scheduled maintenance. Regular maintenance is generally once per year. He has never had a hearing aid dislodge from either of his ears, and has never had a hearing aid malfunction.

10. In addition, the hearing aids make a warning signal that Mr. Furman can hear when the battery is low. He has a 10-20 minute window before the battery is no longer functional. He always carries extra batteries on his person.

11. Mr. Furman has a second pair of hearing aids located in the patrol bag which is with him during his shift so that, if it ever became necessary, he would be able to change his hearing aid.

12. Under Pennsylvania law, MPOETC must certify individuals who seek to work as municipal police officers in accordance with training criteria and other standards MPOETC has established pursuant to 53 Pa. Cons. Stat. § 2164 (2008).

13. Mr. Furman sought to meet the requirements for certification as a municipal police officer because meeting the requirements would expand the law enforcement jobs for which he would be eligible and would increase his earning capacity.

14. One of the first steps in meeting certification requirements is to enroll in one of the Police Officer Training Academies that are approved by MPOETC. A candidate for certification cannot be certified without successful completion of

the basic police training course given at a MPOETC-certified school. 37 Pa. Code § 203.11(11).

15. Mr. Furman took the required medical forms to the office of his primary care physician, Dr. A. Reauelle King, in June 2009. The physician's assistant performed the required hearing test, known as the "whisper test," allowing Mr. Furman to use his hearing aids. Mr. Furman passed the whisper test. The physician's assistant filled in and signed the medical form noting that Mr. Furman passed the whisper test using aids.

16. Mr. Furman applied to Mansfield University Municipal Police Officers' Training Academy in June 2009. Mr. Furman returned his registration packet to the University in July 2009, including the required physical fitness portion on which it was identified that he passed the whisper test using hearing aids.

17. Mr. Furman was then contacted by Barbara Butcher in order to schedule an interview and psychological evaluation for July 29, 2009. Ms. Butcher is the Director of Law Enforcement & Certification Programs at Mansfield University.

18. Mr. Furman arrived for the scheduled appointment and began the psychological exam. His exam was interrupted by Ms. Butcher asking him to leave the room for questions about his registration documents.

19. Ms. Butcher asked Mr. Furman what the phrase “with aid” meant in the physical fitness part of the registration document. Mr. Furman explained that he has bilateral hearing loss and uses hearing aids.

20. Ms. Butcher then stated that she needed to consult with the Commissioner of the PSP to determine if Mr. Furman could proceed with the scheduled testing.

21. After speaking with the PSP Commissioner’s office, Ms. Butcher informed Mr. Furman that he could not proceed with the testing because of his use of hearing aids. When Mr. Furman requested that he be allowed to proceed using his hearing aids, he was told that he could continue the testing if he removed his hearing aids.

22. Ms. Butcher also informed Mr. Furman that even if he completed the Training Academy courses, the Commissioner’s office had said he would never be certified, because he would not be able to pass the whisper test.

23. The whisper test established by MPOETC for certification requires “audio acuity sufficient to distinguish a normal whisper at a distance of 15 feet.”

37 Pa. Code § 203.11(6)(vi).

24. To pass the whisper test, “[t]he applicant may not use a hearing aid or other aid to perform the test.” 37 Pa. Code § 203.11(6)(vi).

25. If an applicant fails the whisper test he is then required to take and pass a decibel audio test. 37 Pa. Code § 203.11(6)(vi).

26. It is the opinion of Mr. Furman’s audiologist, Dr. Robert Campbell, that Mr. Furman would be able to perform the duties of a police officer as well as a person who does not use hearing aids.

27. As a direct result of the Defendants' conduct, Mr. Furman has suffered loss of earning capacity and has been deprived of the opportunity to work in an occupation for which he is physically qualified and capable.

CLAIMS

COUNT I -- SECTION 504 OF THE REHABILITATION ACT

28. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

29. This Count is brought solely against Defendant Pennsylvania State Police. Plaintiff seeks declaratory and injunctive relief under this Count.

30. Mr. Furman is a person with a disability who is protected against discrimination by Section 504 the Rehabilitation Act, 29 U.S.C. §§ 705(20)(B), 794(a). Mr. Furman has an actual disability because his bilateral hearing loss, without use of mitigating measures, substantially limits his ability to perform the

major life activity of hearing.

31. Mr. Furman is a qualified person with a disability under Section 504 of the Rehabilitation Act, because he can perform the essential functions of a municipal police officer and satisfies all non-discriminatory requirements for certification as a municipal police officer established by PSP's agent, MPOETC.

32. Defendant PSP receives federal financial assistance.

33. Defendant PSP, through its agents at MPOETC, violated Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, by:

a. denying Mr. Furman, based solely on his disability, the opportunity to benefit from MPOETC's mandatory certification process;

b. using criteria and methods of administration that have the effect of subjecting individuals with disabilities, including Mr. Furman, to discrimination based solely on their disabilities by refusing to allow an individual with hearing loss the use of hearing aids to meet the requirement for audio acuity;

c. using criteria and methods of administration that have the purpose or effect of defeating or substantially impairing with respect to individuals with disabilities, including Mr. Furman, the objectives of PSP's program to certify qualified municipal police officers;

d. administering the certification program for municipal police officers in a manner that subjects qualified individuals with disabilities, including

Mr. Furman, to discrimination;

e. refusing to make reasonable modifications in its policies, practices, or procedures when necessary to avoid discriminating against Mr. Furman on the basis of disability; and

f. imposing or applying unnecessary eligibility criteria that screen out or tend to screen out individuals with disabilities, including Mr. Furman, from fully and equally enjoying the benefits of PSP's municipal police officers' certification program.

COUNT II -- TITLE II OF THE AMERICANS WITH DISABILITIES ACT

34. Paragraphs 1 through 33 are incorporated by reference as if fully set forth herein.

35. This Count is brought solely against Defendant Pawlowski in his official capacity as Commissioner of the PSP for actions and inactions taken under color of state law. Plaintiff seeks solely declaratory and injunctive relief under this Count.

36. Mr. Furman is a person with a disability who is protected against discrimination by the Americans with Disabilities Act, 42 U.S.C. § 12102(1). Mr. Furman has an actual disability because he has bilateral hearing loss that, without use of mitigating measures, substantially limits his ability to perform the major life activity of hearing.

37. Mr. Furman is a qualified person with a disability under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131(2), because he can perform the essential functions of a municipal police officer and satisfies all non-discriminatory requirements for certification as a municipal police officer established by PSP's agent, MPOETC.

38. PSP, operated and administered by Defendant Pawlowski, is a public entity subject to Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131(1)(B).

39. Defendant, through his agents at MPOETC, violated Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132, by:

a. denying Mr. Furman, based on his disability, the opportunity to benefit from MPOETC's mandatory certification process;

b. using criteria and methods of administration that have the effect of subjecting individuals with disabilities, including Mr. Furman, to discrimination based on their disabilities by refusing to allow an individual with hearing loss the use of hearing aids to meet the requirement for audio acuity;

c. using criteria and methods of administration that have the purpose or effect of defeating or substantially impairing with respect to individuals with disabilities, including Mr. Furman, the objectives of PSP's program to certify qualified municipal police officers;

d. administering the certification program for municipal police officers in a manner that subjects qualified individuals with disabilities, including Mr. Furman, to discrimination;

e. refusing to make reasonable modifications in its policies, practices, or procedures when necessary to avoid discriminating against Mr. Furman on the basis of disability; and

f. imposing or applying unnecessary eligibility criteria that screen out or tend to screen out individuals with disabilities, including Mr. Furman, from fully and equally enjoying the benefits of PSP's municipal police officers' certification program.

RELIEF REQUESTED

40. Plaintiff respectfully requests that the Court grant the following relief:

a) an order declaring that Defendants PSP's and Pawlowski's discriminatory practices as set forth above violate, respectively, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act, 42 U.S.C. §12132.

b) an order for appropriate injunctive relief;

c) an award of reasonable attorneys' fees, litigation expenses, and costs; and

d) all other relief that the Court finds necessary and appropriate.

Date: June 16, 2010

Respectfully submitted,

/s/ Carol Horowitz

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