

LAW OFFICES OF BRIAN M. CIGE
7 East High Street
Somerville, New Jersey 08876
(908) 685-3775
Attorney for Plaintiff

PATRICIA DELVECCHIO

Plaintiff,

vs.

TOWNSHIP OF BRIDGEWATER,
TOWNSHIP OF BRIDGEWATER POLICE
DEPARTMENT, CHIEF RICHARD
BORDEN, EDWIN J. SKIDMORE, CATHY
HAMILTON and WILLIAM CONNIFF

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSET COUNTY
DOCKET NO. SOM-L-

Civil Action

**FIRST AMENDED
COMPLAINT, JURY DEMAND AND
DESIGNATION OF TRIAL COUNSEL**

Plaintiff, PATRICIA DELVECCHIO (hereinafter known as "Plaintiff"), by way of First Amended Complaint against Defendants, TOWNSHIP OF BRIDGEWATER (hereinafter known as "Defendant Township"), TOWNSHIP OF BRIDGEWATER POLICE DEPARTMENT (hereinafter known as "Defendant Department"), CHIEF RICHARD BORDEN (hereinafter known as "Defendant Chief"), EDWIN J. SKIDMORE (hereinafter known as Defendant Skidmore), CATHY HAMILTON (hereinafter known as Defendant Hamilton) and WILLIAM CONNIFF (hereinafter known as Defendant Conniff), says:

JURISDICTION

1. Plaintiff resides at 800 Robin Road in the Township of Hillsborough, County of Somerset and State of New Jersey.
2. Defendant Township has its principal office at 700 Garretson Road in the Township of Bridgewater, County of Somerset and State of New Jersey.
3. Defendant Department has its principal office at 505 Route 202-206 in the Township of Bridgewater, County of Somerset and State of New Jersey.
4. Defendant Chief's principal place of employment is located at 505 Route 202-206 in the Township of Bridgewater, County of Somerset and State of New Jersey.
5. Defendant Skidmore resides at 173 Buffalo Hollow Road in the Township of Glen Gardner, County of and State of New Jersey.
6. Defendant Hamilton's principal place of employment is located at 505 Route 202-206 in the Township of Bridgewater, County of Somerset and State of New Jersey.
7. Defendant Conniff's principal place of employment is located at 505 Route 202-206 in the Township of Bridgewater, County of Somerset and State of New Jersey.

FIRST COUNT

8. Plaintiff was hired by Defendants as a 911 Operator/Dispatcher on 18 February 1999.
9. For all relevant times, Defendant Hamilton was Plaintiff's immediate supervisor.
10. For all relevant times, Defendant Skidmore was Defendant Hamilton's immediate supervisor.

11. For all relevant times, Defendant Chief was Defendant Skidmore's immediate supervisor.

12. Plaintiff's job duties and responsibilities in the full-time Dispatcher position included, but were not limited to, receiving 911 emergency and non-emergency calls, dispatching police response, monitoring the status of units and maintaining related records.

13. Plaintiff was diagnosed with Irritable Bowel Syndrome in 2004 by Dr. Gary Cambotti, her gastroenterologist.

14. He recommended, at that time, that Plaintiff be re-assigned to day shifts only because of this disability.

15. Rather than accommodating Plaintiff as sought, or engaging in the otherwise required interactive process to determine whether she could perform the essential functions of her job if accommodated, Plaintiff was subjected to a hostile work environment and retaliated against.

16. Defendants' hostile work environment and retaliation caused Plaintiff additional suffering which required treatment by Dr. Joseph Rochford, a psychiatrist.

17. On 21 December 2006, Dr. Joseph Rochford provided a note for Plaintiff to submit to Defendants, which she did, again formally requesting accommodation, assigning her to the day shift.

18. This request was also illegally ignored.

19. As a consequence of her continuing pain and suffering, Plaintiff was caused to see her cardiologist, Dr. Rachana Kulkarni, who concurred with the need for accommodation previously formally determined medically necessary by Dr. Gary Cambotti and Dr. Joseph Rochford.

20. Defendants continued to refuse to transfer Plaintiff to the day shift as requested or otherwise engage in the required interactive process to determine that Plaintiff could perform the essential functions of her job with other accommodations.

21. The doctors' notes were each contemporaneously provided to Plaintiff's immediate supervisors at the time, first Senior Dispatcher Kathy O'Connor, then her replacement, Defendant Hamilton, her immediate supervisor, Defendant Skidmore, his immediate supervisor, Defendant Chief, as well as to William Conniff, responsible for Human Resources for Defendant Township and Defendant Department.

22. As part of Defendants' continuing harassment and retaliation, they required Plaintiff to involuntarily submit to a psychological fitness evaluation by Dr. Jack Aylward, which took place on 27 December 2006.

23. While Plaintiff has yet to be provided with a written copy of his report, she was told directly by Dr. Aylward, at that time, that she was "fine."

24. Plaintiff continued to complain to Defendants about their failure to accommodate and assign her to day shift, and then brought these complaints to the New Jersey Division on Civil Rights in May 2007 (Docket No. ET066HM-53106), while Defendants were made aware of.

25. By 28 February 2008, in violation of the New Jersey Law Against Discrimination N.J.S.A. 10:5-12, Plaintiff was unexpectedly, and without legitimate cause, handed a termination notice.

26. At that time, Plaintiff inquired whether a transfer was available to a comparable position since Defendants continued to refuse to assign her to the day shift.

27. Rather, Defendants arbitrarily forced Plaintiff to choose between resigning or accepting a demotion/transfer, to work in the Records Department, acting in bad faith, without sufficient legitimate reason and without just cause, in violation of Defendants' duty of good faith and fair dealing and in violation of public policy because of her disability and/or perception of disability.

28. Prior to this demotion/transfer, Plaintiff was earning an annual base salary of \$50,000.00 plus overtime and benefits.

29. After the demotion/transfer, Plaintiff was only allowed to earn an annual base salary of \$35,000.00, no overtime and less benefits.

30. Plaintiff was not subjected by Defendants to a hostile working environment from then until 14 August 2009, when her attendance was raised by Defendant's as a disciplinary issue.

31. Prior, on 13 August 2009, Plaintiff was given a commendation for job performance by her immediate supervisor, Laura Keheler.

32. The next day, Defendants not being pleased that Plaintiff was being recognized positively, began a plan to investigate, harass, criticize and discipline Plaintiff, in an effort to threaten her employment and cause her distress.

33. On 14 August 2009, Plaintiff was provided with a Counseling Conference Performance Notice because she had taken fourteen (14) sick days, not even exhausting her available fifteen (15).

34. Plaintiff received a Notice of Termination dated 16 September 2009, effective immediately, by Defendant Chief and Defendant Conniff.

35. The reason was purportedly because Plaintiff had by then exceeded allocated sick time in 2009, for the past three (3) years.

36. This reason was pretextual as Plaintiff's attendance improved each year over the past three (3) and her current discipline preceded any excessive use.

37. Plaintiff's immediate supervisor testified that she was directed by Defendants to provide this Notice.

38. Defendants changed their sick policy, only as it applied to Plaintiff, in an effort to calculate Plaintiffs' use of sick time as excessive.

39. Plaintiff's last pay check confirms that she not only had available vacation and personal time but sick time available to her, for which she was compensated, at the time she was fired.

40. Plaintiff challenged her termination of employment administratively to Mayor Flannery of Defendant Township who heard compelling evidence to reverse and rescind the challenged termination but with reckless indifference failed and refused to do so.

41. The termination decision by Defendants expectedly caused an increase in Plaintiff's pay and back pay economic damages, and non-economic damages, for pain and suffering, previously sought by the filing of the initial Complaint on 24 December 2008.

42. As a result of the above-described discrimination and wrongful demotion/transfer and/or termination, Plaintiff has been deprived of income in the form of wages and costs that should have been covered by benefits, has suffered consequential economic damage to her pension and continues to be otherwise damaged.

43. As a result of the above described discrimination and wrongful demotion/transfer and/or termination, Plaintiff has suffered and continues to suffer non-economic damages, pain and suffering, requiring medical attention and other stress related residuals including those identified in Tarr v. Bob Ciasulli's Mack Auto Mall, Inc., 181 N.J. 70 (2003), seeing Dr. Joseph Rochford as needed and continuing treatment with Angela Calva, a social worker.

WHEREFORE Plaintiff demands judgment against Defendants, jointly and/or severally, for compensatory damages, including but not limited to lost income and pension contributions, non-economic damages for pain and suffering, punitive and statutory damages, statutory penalties (N.J.S.A. 10:5-14.a), reinstatement to her previous position, assigned to the day shift, with commensurate compensation and benefits, attorneys fees and other costs of suit pursuant to N.J.S.A. 10:5-27.1, and any such other relief determined just and equitable by the court.

SECOND COUNT

44. Plaintiff hereby repeats and reiterates the allegations contained in the First Count of this Complaint as if fully set forth herein.

45. Plaintiff requested reasonable accommodations because of her disability.

46. By failing and refusing to engage in the required, good faith interactive process, by failing and refusing to reasonably accommodate Plaintiff, not transferring her to an open, or by reassigning a less senior dispatcher potentially available, day shift as a Dispatcher, or to her current position while maintaining her prior level of compensation and benefits, which accommodations would not have imposed an undue hardship to Defendants, acting separately or in concert, each violated the NJLAD.

47. As a result of the above-described discrimination and wrongful demotion/transfer and/or termination, Plaintiff has been deprived of income in the form of wages and costs that should have been covered by benefits, has suffered consequential economic damage to her pension and continues to be otherwise damaged.

48. As a result of the above described discrimination and wrongful demotion/transfer and/or termination, Plaintiff has suffered and continues to suffer non-economic damages, pain and suffering, requiring medical attention and other stress related residuals including those identified in Tarr v. Bob Ciasulli's Mack Auto Mall, Inc., 181 N.J. 70 (2003), seeing Dr. Joseph Rochford as needed and continuing treatment with Angela Calva, a social worker.

WHEREFORE Plaintiff demands judgment against Defendants, jointly and/or severally, for compensatory damages, including but not limited to lost income and pension contributions, and non-economic damages for pain and suffering, punitive and statutory damages, statutory penalties (N.J.S.A. 10:5-14.a), reinstatement to her previous position, assigned to the day shift, with commensurate compensation and benefits, attorneys fees and other costs of suit pursuant to N.J.S.A. 10:5-27.1, and any such other relief determined just and equitable by the court.

THIRD COUNT

49. Plaintiff hereby repeats and reiterates the allegations contained in the First and Second Counts of this Complaint as if fully set forth herein.

50. As a result of Plaintiff's complaints regarding the hostile work environment caused

by Defendants' discrimination, and subsequent to her complaints to Defendants and/or to the New Jersey Division on Civil Rights, she was retaliated against and/or wrongfully demoted/transferred, then fired.

51. Defendants' acts of retaliation also included, but are not limited to: negative approaches, being required to submit to a punitive psychological evaluation, being subject of an internal investigation and demotion/transfer, because of Plaintiff's disability and/or Defendants' perception of it.

52. This retaliation against Plaintiff had little to do with her performance and had everything to do with her disability and/or Defendants' perception of her disability, and in retaliation for her complaining about said illegal and discriminatory treatment by Defendants, in violation of the NJLAD, N.J.S.A. 10:5-12(d), and they are each individually liable by statute.

53. As a result of the above-described discrimination and wrongful demotion/transfer and/or termination, Plaintiff has been deprived of income in the form of wages and costs that should have been covered by benefits, has suffered consequential economic damage to her pension and continues to be otherwise damaged.

54. As a result of the above described discrimination, illegal retaliation and wrongful demotion/transfer and termination, Plaintiff has suffered and continues to suffer non-economic damages, pain and suffering, requiring medical attention and other stress related residuals including those identified in Tarr v. Bob Ciasulli's Mack Auto Mall, Inc., 181 N.J. 70 (2003), seeing Dr. Joseph Rochford as needed and continuing treatment with Angela Calva, a social worker.

WHEREFORE Plaintiff demands judgment against Defendants, jointly and/or severally, for compensatory damages, including but not limited to lost income and pension contributions, non-economic damages for pain and suffering, punitive and statutory damages, statutory penalties (N.J.S.A. 10:5-14.a), reinstatement to her previous position, assigned to the day shift, with commensurate compensation and benefits, attorneys fees and other costs of suit pursuant to N.J.S.A. 10:5-27.1, and any such other relief determined just and equitable by the court.

JURY DEMAND

Plaintiff demands a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

PURSUANT to the provision of Rule 4:5-1(a)(2)(c), the court is advised that Brian M. Cige, Esq., is hereby designated as trial counsel.

DEMAND FOR INSURANCE COVERAGE

Pursuant to R. 4:10-2(b) demand is hereby made that you disclose **within ten (10) days** to the undersigned whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the Judgment.

YES() NO()

If the answer is "yes" attach a copy of each or in the alternative state, under oath or certification (a) number (b) name and address of insurer or issuer (c) inception and expiration dates (d) names and addresses of all persons insured thereunder (e) personal injury limits (f) property damage limits (g) medical payments limits (h) name and address of person who has custody and possession thereof (i) where and when each policy or agreement can be inspected and copied (j) to whom claims are or may be submitted.

CERTIFICATION

Pursuant to Rule 4:5-1(b)(2), I certify that to the best of my knowledge, information and belief, this action is not now subject of any other litigation or arbitration nor is any contemplated at this time. I know of no other party who should be joined in this action. I certify that the above statements are true and acknowledge that if they are willfully false, that I may be subject to punishment.

LAW OFFICES OF BRIAN M. CIGE
Attorney for Plaintiff

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BRIAN M. CIGE, ESQ.

DATED: 28 November 2009