

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

New York District Office

33 Whitehall Street, 5th floor
New York, NY 10004-2112
Phone: (212) 336-3620
General Fax: (212) 336-3625
TTY: (212) 336-3622

Joseph Leopold

Charging Party

Disability Rights Advocates
655 Third Ave., 14th floor
Attn: Maia Goodell Esq.
New York, NY 10017

Charging Party's Attorney

Fire Department of the City of New York
Attn: Christine Meyer Esq.
9 Metrotech Center
Brooklyn, NY 11201

Respondent

Charge # 520-2018-01250

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission the following determination on the merits of the subject charge filed under the Americans with Disabilities Act, as amended. Respondent is an employer within the meaning of the ADA. All requirements for coverage have been met.

Charging Party took Exam Number 2000 in 2011 as application for the position of firefighter with Respondent New York City Fire Department. He and all other applicants were advised that they would receive credit in the selection process if they were disabled veterans. Accordingly, he requested evaluation by the Veterans Administration in 2014 and was diagnosed with the service-connected disability of PTSD (Post Traumatic Stress Disorder) in 2014. Mr. Leopold was told that he passed his physical evaluation and he took the written psychological test which,

according to his charge, showed normal results. But in April 2016, after a brief interview with the FDNY psychiatrist, he was disqualified based on his PTSD status. The FDNY report notes a "marked conflict" between his current self-report and his VA evaluation. The following month, he provided a letter from a social worker in support of his qualifications but nevertheless received a final disqualification; his March 2017 appeal to the Civil Service Commission was similarly unavailing. Charging Party claims that he has been discriminated against on account of his disability or perceived disability.

Respondent, in its position statement, confirms the chronology offered by Mr. Leopold, adding that the independent assessment of his psychological condition that he submitted did not contain any clinical observations or evidence that analysis or testing was conducted, nor were there statements of treatment.

In rebuttal, Charging Party asserts that the FDNY policy and practice of requiring that firefighters be 100% free of disability is tantamount of an admission of violating the Americans with Disabilities Act, as amended, in that it lacks evidence-based testing and evaluation that is job-related and consistent with business necessity. Mr. Leopold asserts that he is a member of a class of applicants who received PTSD diagnoses following military service and who applied to and were rejected by the FDNY based on a deficient and discriminatory procedure.

In response to an EEOC investigative request, Respondent has provided a breakdown of Exam 2000 candidates similarly situated to Mr. Leopold in that they reported PTSD upon application. Of the total of twenty (all but two were veterans), fourteen were disqualified and six deemed qualified. No details were supplied as to the identity of the candidates or their specific medical conditions at the time of application. The Commission requested such specific individual information, but Respondent failed and refused to provide the individual data required, claiming that the laws protecting the privacy of personal health information forbid such disclosure. The Commission's reminder that this was an administrative request for law enforcement purposes was unavailing. Instead, FDNY provided a chronology of each candidate's passage through the entire screening process, but no individual medical information or identity. Accordingly, without additional enforcement measures, the Commission is not able to identify members of the class, that is, other candidates who were rejected improperly or illegally on account of their PTSD status, as was (admittedly) [REDACTED] (see EEOC charge # 520-2017-03589), who applied for the same position under the same system and was initially rejected for the same reason.

Respondent FDNY's position that Charging Party was medically unqualified to be a firefighter solely because of his diagnosis of PTSD violates the Americans with Disabilities Act in that it was not based on the specific essential functions of the job and did not reflect an independent assessment of his condition. Charging Party Leopold is one of many candidates who were rejected under the same deficient procedure relying on a record of disability and a perception of disability.

This determination is final. Section 706(b) of Title VII requires that, if the Commission determines that there is reasonable cause to believe that violations have occurred, it shall endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation and persuasion. Enclosed is a document setting forth the proposed terms of conciliation.

Disclosure of information obtained by the Commission during the conciliation process will be made in accordance with Section 706(b) of Title VII and Section 1601.26 of the Commission's Procedural Regulations. Where the Respondent declines to enter into settlement discussions, or where the Commission's representative for any other reason is unable to secure a settlement acceptable to the Office Director, the Director shall so inform the parties in writing and advise them of the court enforcement alternative available to the Charging Party and the Commission.

On behalf of the Commission:


KEVIN J. BERRY
Director, New York District Office

Date: *June 13, 2015*