

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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Charging Party

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Charging Party's Attorney

Fire Department of the City of New York
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Brooklyn, NY 11201

Respondent

Charge # 520-2017-03589

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 (FDNY). He and all other applicants had been advised that they would receive credit in the selection process if they were disabled veterans. Accordingly, he disclosed that he had the service-connected disabilities of PTSD (Post Traumatic Stress Disorder) and SPTBI (Status Post Traumatic Brain Injury). These diagnoses by the Veterans Administration dated from 2009, six years earlier, and had not been re-evaluated. Mr.

██████████ passed his physical and his written psychological evaluations but was disqualified from employment as a firefighter based on an oral psychological exam conducted by the FDNY psychiatrist.

The interview of Mr. ██████████ by Respondent psychiatrist took about fifteen minutes and focused heavily on his military service and traumatic experiences of the time, according to the charge. He states that the doctor made such generalized statements to him as "people with PTSD can't socialize" and "having a job is difficult" if you suffer from PTSD. On September 4, 2015, FDNY disqualified Mr. ██████████ citing its psychiatric evaluation. The document summarizes his medical history, quoting at length from the 2009 VA letter explaining his PTSD status, including "nightmares avoidance of stimuli associated with trauma irritability or outbursts of anger ... difficulty concentrating," etc., concluding that he was given a 90% disability rating, 30% of which was for PTSD. The letter also states that he has been unemployed since 2009 while continuing to collect disability compensation. (In fact, Mr. ██████████ was in school full time.) It was observed that there is "no evidence on interview of current thought disorder or HIF impairment," the only reference to his current medical status. The recommendation was that he be disqualified "as evidenced by his own claim of disability and his history of PTSD, which predisposes him to relapse in the setting of firefighting." About five months later, in February 2016, Charging Party received official notification that he had been disqualified based on the psychiatric evaluation.

Charging Party then met with a clinical psychologist of his choosing. Following a 4 1/2 -hour interview and a review of the FDNY report, the psychologist provided a written statement declaring that Mr. ██████████ did not display "ANY of the criteria for intrusive and other symptoms" of PTSD. Tests for depression and anxiety revealed that he was not experiencing these conditions. Mr. ██████████ then appealed his disqualification, providing the FDNY with the new report. Several months later, he was granted a "re-evaluation" interview by the FDNY psychiatrist. Mr. ██████████ asserts that the re-evaluation interview also took about 15 minutes during which the psychiatrist asked whether he was receiving disability pay and observed that "it doesn't look good" regarding his eligibility. Again, there was no evaluation of his current medical status. A week later, he was again disqualified, which action was upheld in March 2017 by the New York City Civil Service Commission. Charging Party claims that he has been discriminated against in that he is perceived as disabled on account of his history of disability.

Respondent, in its position statement, confirms the chronology offered by Mr. ██████████ and also confirms that he was the victim of discrimination. Its EEO office commenced an examination of Mr. ██████████ history and concluded, in September 2017, that he was not accorded an independent assessment of his current condition with respect to PTSD nor did the Department revisit its rejection upon receipt of Mr. ██████████ independent assessment.

FDNY asserts that it then began remedial actions, describing a new procedure wherein a candidate facing rejection for psychological reasons is offered the opportunity to select a private provider and submit another assessment which must be taken into account by FDNY in making its final determination. Charging Party was then offered and accepted the opportunity

to re-apply from the start and his application would be considered within the "new" psychological evaluation procedure.

In rebuttal, Charging Party asserts that the "new" procedure is not, in fact, different from the one in effect that resulted in discrimination against him. He further states that the offer to reconsider his application, even (purportedly) in a new light, does not compensate him for the years improperly lost to the discriminatory system then in place. Finally, he points out that, even if his situation is corrected, albeit belatedly, there are many others who received PTSD diagnoses upon exiting the military and who applied to and were rejected by the FDNY using the same deficient procedure, constituting a class.

In response to an EEOC investigative request, Respondent has provided a breakdown of Exam 2000 candidates similarly situated to Mr. [REDACTED] 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 it, 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, the identity of class members among the fourteen other candidates who, like Mr. [REDACTED] were rejected improperly or illegally on account of their PTSD status, is not available at this time.

Respondent FDNY fails in its defense of its actions in initially rejecting Charging Party for employment; its subsequent admission that he was, in fact, qualified does not reverse the harm he experienced as a result of his initial rejection nor does it include the other class members rejected on account of a history of PTSD. Many, perhaps all, doubtless were also medically qualified upon application but FDNY, relying on outdated medical information and speculation as to possible current or future psychological weaknesses, rejected them for employment. Such rejections of class members, with no current, medically rigorous information and no procedure for obtaining an independent assessment, violates the Americans with Disabilities Act, as amended, on account of disability, 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 letter outlining 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: 