

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

JOSEPH LEOPOLD, on behalf of himself and  
others similarly situated,

Charging Party,

-against-

CITY OF NEW YORK, and FIRE  
DEPARTMENT OF THE CITY OF NEW  
YORK,

Respondents.

No.

State of New York            )  
  )       : ss  
County of New York        )

**AFFIDAVIT OF JOSEPH LEOPOLD**

1. My name is Joseph Leopold. I am a military veteran who was diagnosed with Post-Traumatic Stress Disorder (PTSD).

2. As explained below, I believe that the City of New York and the Fire Department of the City of New York (FDNY) (collectively FDNY) have discriminated against me because of this disability diagnosis.

3. My situation is similar to Julio Andrade. He filed an EEOC Charge on September 9, 2017. I would like to join that case.

4. In particular, the FDNY applied a policy requiring “100% improvement” from PTSD before a Fire Fighter is cleared for duty. (Exhibit 1 at 1, emphasis added)

5. I have spoken with representatives from veterans’ groups, who tell me that other veterans have had similar experiences. Specifically, I understand that veterans are being questioned about PTSD and VA disability ratings, and are receiving psychological

disqualifications from FDNY Fire Fighter jobs without individual evaluation of whether they are qualified for the job.

6. I served in the Marine Corps from 2001 to 2005, including three deployments, two of which were combat tours in Iraq. I was honorably discharged at the end of my service obligation.

7. I got out of the Marine Corps with a dream of becoming a New York City Fire Fighter. I took the exam in 2007 and was on that list until it expired.

8. While trying to become a Fire Fighter, I continued working full time. I worked for Blackwater doing security work in the Middle East for several years. I now work full time as a truck driver for a welding supply company and also do iron work on weekends.

9. From 2005 to about 2012, I was a volunteer Fire Fighter with the Ridge Volunteer Fire Department in Ridge, New York, responding to calls as well as participating in training and community service events.

10. In about 2011, I took the examination (Exam No. 2000) to become a Fire Fighter for the FDNY.

11. In 2014 I applied for service-connected disability benefits from the Veterans Administration and received benefits based on a 30% service-connected disability rating.

12. I told the FDNY about the VA disability rating, claiming a “Disabled Veterans Credit.” The FDNY awards this credit in its selection process to veterans with a “service connected disability incurred in a Time of War [including the Persian Gulf War], which has been rated at least 10 percent by the U.S. Department of Veterans Affairs (V.A).” NYC Citywide Administrative Services, *Special Circumstances* (4/6/2017), at [http://www.nyc.gov/html/dcas/downloads/pdf/misc/pdf\\_c\\_special\\_circumstances\\_guide.pdf](http://www.nyc.gov/html/dcas/downloads/pdf/misc/pdf_c_special_circumstances_guide.pdf).

13. In 2016, I was called in to complete physical and psychological medical screening with the FDNY.

14. I was told that I passed my physical evaluation. I took the written psychological test, which I understand shows normal results.

15. The FDNY, however, disqualified me based on an additional psychological evaluation.

16. Dr. Kevin Kelly, an FDNY psychiatrist, spoke with me briefly. His interview lasted no more than about 10 minutes.

17. Dr. Kelly's report makes it clear that his evaluation was based on my receipt of disability benefits from the VA, not an individual evaluation of my ability. The report admits that I do not report any disqualifying symptoms, then concludes: "Marked conflict between VA evaluation and his current self-report indicates that he (Joseph Leopold) is either disabled or dishonest." (Exhibit 2 at 1)

18. The FDNY issued a "Notice of Proposed Disqualification—Psychological." I appealed the disqualification.

19. I sent the FDNY a letter dated November 12, 2016 from Joseph M. Gagliano, LCSW-R, who evaluated me and reviewed Dr. Kelly's report. The letter urged the FDNY to reconsider its disqualification. I also submitted four letters of support from work supervisors and friends, including from experienced FDNY veterans. One letter was from the Chief of the Ridge Volunteer Fire Department, who noted "Joseph kept a high percentage of calls throughout his time with the Ridge Fire Department" and "I recommend him for a position on the FDNY."

20. The FDNY denied my appeal and issued a final disqualification.

21. I appealed to the New York City Civil Service Commission. In response to an order of that Commission, the FDNY maintained its disqualification on February 22, 2017 in a statement by Dr. Kerry Kelly, FDNY Chief Medical Officer. (“February 22 Disqualification”) (Exhibit 1).

22. The Civil Service Commission upheld the disqualification on March 3, 2017, under New York Civil Service Law. (Exhibit 3)

23. My appeal pointed out that many active and successful FDNY Firefighters have PTSD. The Civil Service Commission asked the FDNY to respond to this point. The February 22 Disqualification responds, “Members [having difficulty with work] would be directed to seek treatment for their mental health issues. A member would not return to full duty unless each problem had resolved to 100% improvement.” (Ex. 1 at 1, emphasis added)

24. The FDNY explained that they believe they are justified in barring entrance to all veterans with PTSD because “the tasks of firefighting reproduce many of the PTSD symptoms that have haunted our veterans ....” (Exhibit 1 at 2)

25. The FDNY never discussed reasonable accommodations with me.

26. I would like to be a Fire Fighter, and to receive compensation for the FDNY’s discriminatory decision to disqualify me because I had been diagnosed with PTSD.

27. I believe I am fully competent and qualified for the FDNY job of Fire Fighter.

28. I request that the EEOC investigate all of the claims I make in this Charge on a class-wide basis.

Dated: December 10, 2017

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph Leopold

Sworn to before me this 10<sup>th</sup> Day  
of December, 2017.

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(Notary Public)