

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

JULIO ANDRADE, 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 JULIO ANDRADE**

1. My name is Julio Andrade. I am a military veteran who was diagnosed with Post-Traumatic Stress Disorder (PTSD) and Status Post Traumatic Brain Injury (SPTBI) in 2009.

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 these 2009 disability diagnoses.

3. 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.

4. I served in the Marine Corps from 2005 to 2009. I completed two tours in Iraq, including active combat duty. I was honorably discharged at the end of my service obligation and coded as eligible for reenlistment.

5. In 2009, based on a pre-discharge examination, the Veterans Administration (VA) determined that my PTSD and SPTBI were service-connected, and assigned disability ratings of 30% and 10% respectively.

6. The VA has not reevaluated my disability rating since 2009.

7. In the Fall of 2015, I took the examination (Exam No. 2000) to become a Fire Fighter for the FDNY.

8. As part of my application, I disclosed that I was a disabled veteran, 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).

9. I was close to completing my degree in Kinesiology at Penn State University when I was selected and called in to complete physical and psychological medical screening with the FDNY.

10. I was told that I passed my physical evaluation and the written psychological test.

11. The FDNY, however, disqualified me based on an oral psychological evaluation.

12. In September 2015, Dr. Kevin Kelly, an FDNY psychiatrist, spoke with me. His interview lasted about 15 minutes.

13. Dr. Kelly’s questions focused heavily on my military service and traumatic experiences at that time.

14. Dr. Kelly’s written report (Exhibit 1), which I received only much later, also focuses heavily on my military service and the VA disability report from 2009.

15. At the time of this first interview with Dr. Kelly, I had withdrawn from school and was not working because I thought I would start at the FDNY shortly. I explained this to Dr. Kelly.

16. Dr. Kelly made generalized statements to the effect that “people with PTSD can’t socialize,” and “having a job is difficult” for people with PTSD.

17. On February 29, 2016, the FDNY issued a “Notice of Proposed Disqualification—Psychological.” I retained an attorney to appeal the proposed disqualification.

18. The FDNY did not allow me to see a copy of Dr. Kelly’s report, which was its basis for disqualifying me from the job. The FDNY would only send the records to a mental health professional. As noted above, I received a copy much later, through my lawyer.

19. I hired Dr. Mark Lerner to review the FDNY disqualification. The FDNY sent him Dr. Kelly’s report.

20. Dr. Lerner reviewed the records and met with me for about 4½ hours over two days.

21. On March 30, 2016, Dr. Lerner wrote a report explaining that I did not currently have “ANY of the criteria for intrusive symptoms” of PTSD. (Exhibit 2)

22. On May 2, 2016, I submitted an appeal to the FDNY’s proposed disqualification, including Dr. Lerner’s report.

23. On January 17, 2017, I had a “re-evaluation” interview with Dr. Kelly at the FDNY. Again it lasted about 10-15 minutes.

24. I explained that I was now working full-time as a personal trainer.

25. Dr. Kelly asked if I still had a VA disability rating and received any disability pay from the VA. I said I did.

26. Dr. Kelly told me that as long as I had a VA disability rating “it doesn’t look good,” for him to qualify me for the FDNY Fire Fighter position.

27. On January 23, 2017, the FDNY responded to my appeal, maintaining the disqualification. Dr. Kerry Kelly, Chief Medical Officer of the FDNY, signed the report, nothing that it was based on Dr. Kevin Kelly’s interview.

28. The FDNY’s January 23, 2017 disqualification (Exhibit 3) was based entirely on generalizations. With no individual evaluation, the report stated about me: “His history of PTSD does predispose him to relapse in a setting of firefighting.”

29. The FDNY’s disqualification also stated: “Brain injury problems remain as a significant issue in an individual who will be exposed to daily life-threatening situations including additional trauma to the brain...” (Exhibit 3)

30. The FDNY’s January 23, 2017 disqualification questioned why I had not notified the VA that I was “no longer disabled.” (Exhibit 3)

31. I am not aware of any requirement or procedure to notify the VA of changes in my condition. I also do not think I need to be “no longer disabled” in order to be qualified to be a Fire Fighter.

32. On March 29, 2017, the New York City Civil Service Commission upheld the disqualification, adopting the FDNY’s report.

33. 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 and SPTBI.

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

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

Dated: September 14, 2017

          /s/            
Julio Andrade

Sworn to before me this 14<sup>th</sup> day  
of September, 2017.

          /s/            
(Notary Public)