

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ALCUIN MITCHELL,	:	
	:	
Plaintiff,	:	No. 2:19-cv-00525-MRH
	:	
v.	:	
	:	
UNIVERSITY OF PITTSBURGH,	:	<b>JURY TRIAL DEMANDED</b>
	:	
Defendant.	:	

**AMENDED COMPLAINT**

Plaintiff Alcuin Mitchell (“Officer Mitchell”) hereby files this Amended Complaint:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* (the “ADEA”), as well as 28 U.S.C. §§ 1331 and 1343(a)(3) and (4). This Court has supplemental jurisdiction over the state law claims brought pursuant to the Pennsylvania Human Relations Act, 43 Pa.C.S.A. § 951, *et seq.* (the “PHRA”), under 28 U.S.C. § 1367.

2. Venue is proper pursuant to 28 U.S.C. § 1391(b) because each claim arose in the Western District of Pennsylvania and because Officer Mitchell resides in this District.

**PARTIES**

3. Officer Mitchell is an adult individual residing in the Western District of Pennsylvania who, at all relevant times, was over 40 years of age.

4. Defendant University of Pittsburgh (“PITT”) is a public university with a principal place of business at 4200 Fifth Avenue, Pittsburgh, PA 15260. PITT maintains and operates the University of Pittsburgh Police Department (the “PITT PD”) at 3412 Forbes Avenue, Pittsburgh, Pennsylvania 15213.

### EXHAUSTION

5. Officer Mitchell exhausted all necessary administrative remedies before the Equal Employment Opportunity Commission at EEOC Docket No. 533-2018-01724.

### FACTS

6. At all relevant times, Officer Mitchell was at least 59 years old.

7. At all relevant times, Officer Mitchell was the oldest supervising officer in PITT PD by at least five years.

8. Officer Mitchell became employed with PITT PD as a security guard in 1979.

9. Officer Mitchell was promoted from patrol officer to sergeant in 2007.

10. Prior to James Loftus (“Loftus”) becoming the Chief of PITT PD, Officer Mitchell had never been reprimanded and only received positive performance reviews.

11. On February 18, 2018, Officer Mitchell responded to a call of a suspicious person where he ultimately determined that the person about whom the call was made was not a suspect and; therefore, he chose not to engage him in an investigative detention or to arrest him.

12. At all relevant times, Officer Mitchell was vested with full authority and discretion on whether he had a constitutional basis upon which to detain or investigate the suspect in question.

13. At that time, it was common knowledge that Officer Mitchell responded to and initiated more responses for arrests than any other supervisor in PITT PD.

14. Following the call on February 18, 2018, Loftus berated Officer Mitchell for exercising his discretion in the way he responded on scene, while no other officer had been subjected to scrutiny for failing to make an arrest in the way that Loftus scrutinized Officer Mitchell over this incident.

15. Moreover, arrest rates for PITT PD had been declining for years (and continue to decline) and no other officer was ever disciplined for failing to make an arrest, as stated below.

16. The next day, on February 19, 2018, Officer Mitchell was made aware that he was only one of two individuals who qualified for the lieutenant's promotion in PITT PD, a position that Officer Mitchell had been actively seeking within the department.

17. The other qualifying candidate for lieutenant, Bryan Luczak ("Luczak"), was in his late 30's or early 40's, significantly younger than Officer Mitchell, and for whom, in fact, Officer Mitchell had served as his initial training officer when he became employed by PITT PD.

18. On February 20, 2018, Loftus removed Officer Mitchell's name from the promotion list for lieutenant, citing the February 18, 2018 incident.

19. Loftus simultaneously suspended Officer Mitchell with pay, retroactive for the period February 12 to March 8, 2018, again citing the February 18, 2018 incident.

20. Around March 8, 2018, after serving his suspension, Loftus demoted Officer Mitchell from sergeant to patrol officer, which included a corresponding deduction in pay.

21. At the time of his demotion, Loftus provided Officer Mitchell with a copy of his union contract, told Officer Mitchell that, as a patrol officer, he was now a union member and no longer staff, and stated to him that he "may want to think about his retirement."

22. Prior to this incident, a younger sergeant, Ben Salvio ("Salvio"), who was in his late 30's or early 40's, approved a "bad arrest" that should have resulted in greater discipline than that received by Officer Mitchell, including potential termination, but Salvio was re-trained with pay and then put back in his regular position with PITT PD as sergeant.

23. This “bad arrest” later resulted in Loftus actively seeking to have the criminal charges in that case withdrawn and/or dismissed, and led to the voluntarily resignation of Michael Rosfeld (“Rosfeld”), who was provided with a clean disciplinary record by PITT PD upon his resignation, even though Rosfeld violated clear policy.

24. Unlike Officer Mitchell, Rosfeld, who is believed to be in his 30’s, was never disciplined for this incident.

25. Salvio’s pay or position were never reduced within PITT PD.

26. In May 2019, Luczak was promoted to lieutenant.

27. At the time that Luczak was promoted to lieutenant, Officer Mitchell remained more qualified in experience and credentials for the promotion and should have been promoted to lieutenant instead of Luczak.

28. Once the lieutenant promotional list is published, the list remains intact for two years; however, Loftus intentionally removed Officer Mitchell from that list when he was suspended and so he was no longer considered a candidate for that promotion.

29. Moreover, Officer Mitchell had just recently been provided with his 2018 performance review as a patrol officer, in which he received a score exceeding expectations.

30. At the same time, Andy Redman (“Redman”), a lieutenant within PITT PD who is in his late 30’s or early 40’s, was moved to a newly created office position with no demotion in rank or pay, even though he was accused of, and has a history of complaints of, acting in a discriminatory and derogatory manner to fellow officers based on sex, race and religion.

31. Redman was another officer at PITT PD who was previously under Officer Mitchell’s supervision but had been promoted to a supervisory position over him.

32. In addition, Redman had previously failed to appropriately and adequately respond to an active shooter situation the prior year and, instead of being disciplined or reprimanded the way that Officer Mitchell was suspended and demoted, Redman was provided with commendations from PITT PD.

33. Because of the conduct described herein, Officer Mitchell has suffered lost wages and other remuneration, as well having suffered embarrassment, humiliation and other emotional distress.

## **COUNT I**

### **Age Discrimination under the ADEA**

34. All paragraphs herein are incorporated by reference.

35. At all relevant times, Officer Mitchell was at least 59 years old, making him a member of a protected class under the ADEA because of his age.

36. Officer Mitchell was qualified to perform the essential functions of his job as a sergeant and/or lieutenant.

37. Officer Mitchell suffered an adverse employment decision because of PITT's discrimination against him because of his age, thus not promoting him to the rank of Lieutenant and demoting him from the rank of sergeant to patrol officer.

38. PITT's conduct as described herein was willful and reckless.

## **COUNT II**

### **Age Discrimination under the PHRA**

39. All paragraphs herein are incorporated by reference.

40. For all the same reasons as described in Count I above, PITT discriminated against Officer Mitchell because of his age.

**PRAYER FOR RELIEF**

WHEREFORE, Officer Mitchell requests that this Court grant the following relief where applicable:

- a. That PITT be required to compensate him for back pay, front pay and other damages in the form of lost wages, and lost or reduced benefits, with interest until the date of any verdict as to be determined at trial;
- b. That PITT compensate him for all other applicable compensatory damages in an amount to be determined at trial
- c. Liquidated damages in an amount to be determined at trial;
- d. Attorney's fees and costs; and
- e. All other relief this Court deems just and proper.

Respectfully submitted,

THE LAW OFFICES OF TIMOTHY P. O'BRIEN

/s/ Alec B. Wright

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*Counsel for Plaintiff, Alcuin Mitchell*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on all parties and counsel of record via this Court's CM/ECF electronic filing system.

/s/ Alec B. Wright  
Alec B. Wright, Esquire  
*Counsel for Plaintiff*