

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

DANIEL HINKSON,

CIVIL

Plaintiff,

DIVISION Case

v.

No. 2:19-cv-1576

UNIVERSITY OF PITTSBURGH,

Defendant.

COMPLAINT AND JURY DEMAND

A. **Preliminary Statement**

1. The plaintiff Daniel Hinkson brings this action under the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. § 12101 *et seq.*, to redress violations of his right to be free from employment discrimination based upon his disability. Because of the violations described herein, this Court is also empowered to exercise pendant jurisdiction pursuant to the Pennsylvania Human Relations Act (“PHRA”), 43 P.S. § 951 *et seq.* A jury trial is demanded.

B. **Jurisdiction**

2. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. § 12117(a), 28 U.S.C. § 1331 and under the doctrine of pendant jurisdiction.

3. On or about June 7, 2019 the plaintiff filed a timely charge alleging discrimination with the Equal Employment Opportunity Commission (“EEOC”), docketed at 533-2019-00016. This charge was simultaneously cross-filed with the Pennsylvania Human Relations Commission.

4. The EEOC issued a Notice of Right to Sue dated November 5, 2019.

5. The plaintiff filed this complaint within 90 days of receipt of the Notice of Right to Sue.

C. ***The parties***

6. The plaintiff Daniel Hinkson is an adult individual who resides at 5 Glasgow Road, Pittsburgh, PA 15221 (Allegheny County).

7. The defendant, University of Pittsburgh, is an entity doing business in the Commonwealth of Pennsylvania, and, specifically, in this district. The defendant maintains a place of business at 3520 Fifth Avenue, Suite 400, Pittsburgh, PA 15213 (Allegheny County).

8. Pitt is an institution of higher learning.

9. At all times material, the defendant employed more than fifteen employees.

10. The defendant was the plaintiff's employer and is an employer within the meaning of the ADA, 42 U.S.C. § 12111(5).

D. **Factual Background**

11. The plaintiff, Daniel Hinkson, was hired by the University of Pittsburgh, Graduate School of Public Health, Department of Infectious Diseases and Microbiology ("Pitt") in December 1999. The plaintiff's position was supported by non-University funds in the form of grants awarded by the Pennsylvania State Department of Health's HIV Prevention and Education program.

12. The program was funded on an annual basis throughout most of the plaintiff's tenure. In April or May 2018, the Department of Health awarded a two-year grant, fully funding the program through May 2020.

13. The plaintiff's position was Program Director/Stakeholder Outreach Specialist.

14. The plaintiff's duties included raising awareness of outreach, initiatives and prevention efforts throughout the Commonwealth, community involvement, and the production of newsletters and surveys to support the goals of the program.

15. As further detailed below, the plaintiff was put on administrative leave in December 2018 and his employment was terminated effective February 1, 2019.

16. At all times relevant, the plaintiff's supervisor was David L. Givens, Project Director.

17. The plaintiff has a disability as defined by the Americans with Disabilities Act ("ADA") and/or was perceived by the employer as having a disability. Specifically, the plaintiff has Asperger Syndrome, a developmental disorder characterized by significant difficulties in social interaction and nonverbal communication. Asperger Syndrome is one of the autism spectrum disorders. In addition, individuals with Asperger Syndrome are highly sensitive to certain stimuli including sounds and smells. The plaintiff was identified as having autism in approximately 1973 or 1974, when he was a child, and was diagnosed as having Asperger Syndrome, specifically, in 2018.

18. During his employment, the plaintiff was able to perform all of the essential functions of his job, either with no accommodations or with reasonable accommodations.

19. In approximately August 2017, the routine regarding cleaning the offices in which the plaintiff worked changed. Instead of cleaning the offices at night, they were now being cleaned in the morning. The plaintiff noticed chemical odors associated with cleaning the offices. These strong odors bothered the plaintiff to the point of making him physically ill.

20. Over the course of the ensuing months, the plaintiff raised the issue of the chemical odors from time to time with Givens and during routine staff meetings, but nothing was done. By late January 2018, the situation was getting to be intolerable for the plaintiff. He again brought it up to Givens. Givens asked why the smells bothered him so much. In response, the plaintiff told Givens that he was non-verbal as a child and that he was identified as having autism

in the early 1970s. He also told Givens that certain strong odors, such as the chemicals that were being used to clean the office, really bothered him and that he suspected this sensitivity was related to autism. Finally, he told Givens that he had scheduled an appointment with a local psychologist for an autism evaluation.

21. Givens became visibly upset when the plaintiff disclosed his disability and his plans to see a psychologist. He extended his arm and put his finger within a foot of the plaintiff's face and demanded that the plaintiff be seen by Pitt's Employment Assistance Program ("EAP"). The plaintiff questioned why going to EAP was necessary. However, Givens would not relent; he stood up, and leaned toward the plaintiff from across the desk and responded that he had to go to EAP because he was the plaintiff's supervisor and that is what he was mandating.

22. Acquiescing to Givens' demands, the plaintiff scheduled and went to a meeting with EAP, meeting with Andrea Kellman, EAP Manager on February 5, 2018. Kellman asked why the plaintiff had come to see her. The plaintiff told her about the explosive conversation that he had with Givens when he disclosed his disability and his decision to see a psychologist for a formal evaluation as an adult. Kellman noted that the paperwork she received from Pitt indicated that he was there for "presence of stress and emotional anguish", which was not entirely accurate. It was determined that the plaintiff would consult with Holly Marra, a psychotherapist who worked with individuals with autism.

23. On February 23, 2018, the plaintiff met with Jane Volk, Director of Employee and Labor Relations, to discuss the situation with Givens. He discussed his issues in the workplace and with Givens. She recommended that the plaintiff contact the Office of Disability Resources and Services, specifically, Leigh Culley, Director. She suggested that a possible accommodation

would to have a “space he could retreat to” and described the process he should follow to secure such or another accommodation. She also told the plaintiff that she would talk to Givens about the situation.

24. The plaintiff met with Marra four times, once a week for hourly appointments, and they discussed the situation at work, including being sick from cleaning chemical smells and how Givens’ aggressive treatment (including the physical intimidation and sticking his finger in the plaintiff’s face) had affected him. Marra concluded that the plaintiff had Asperger Syndrome and she drafted a report supporting this diagnosis.

25. After the plaintiff’s meeting with Volk, he noticed that the situation with Givens improved. They were able to talk openly about workplace issues and much of the conversation had to do with him being less confrontational and demanding of answers that, in the past, would lead him to “freeze up” and impede his ability to do his work efficiently.

26. In July 2018, the plaintiff met with Givens for the annual employee review. The plaintiff received a satisfactory job performance review and was given an increase in pay.

27. Starting in late August/early September, Givens’ treatment of the plaintiff reverted back to hostility and confrontation. Givens was overly demanding and constantly belittling towards the plaintiff and, on at least two occasions, again stuck his finger in the plaintiff’s face in fits of anger. The plaintiff believes that Givens was aware that this gesture was triggering for the plaintiff and that he did it purposefully. The last time he did this – in late September – the plaintiff told Givens to not put his finger in his face.

28. The plaintiff contacted Volk via email on Friday, September 28, 2018 advising her of the deteriorating situation involving Givens. She responded that she could meet with the

plaintiff on the following Monday or Tuesday; October 1 or 2. However, the plaintiff had a bad cold over the weekend and was unable to go in to meet her.

29. Givens was upset with the plaintiff for missing time from work and send him an email accusing him of failing to follow “office protocol” regarding the missed time. However, the plaintiff had followed the appropriate protocol in calling off of work.

30. On October 3, 2018, the plaintiff sent another email to Volk identifying his concerns. In pertinent part, the plaintiff wrote as follows:

[Givens] has become more confrontational with me in the weeks leading up to the email I sent to you on Friday. Last Thursday he again put his finger in my face and used a loud voice while scolding me for missing a meeting. It was the fourth tome [*sic*] he brought up that incident and I again reminded him that I followed the protocol for reporting out of work as being sick.

...

[Givens’] constant demanding and belittling behavior towards me in the weeks prior to me reaching out to you makes my autism symptoms worse and has caused me many stress-related shutdowns during the past few weeks. I think it’s best probably best for me to get set up with FMLA for my autism and to prevent any further retaliation from [Givens] which could jeopardize my employment.

31. Volk referred this matter to Stephanie Varholak, Employee Relations Specialist, in the Employee & Labor Relations Department.

32. The plaintiff’s concerns about his continuing employment were well founded. On October 8, 2018, Givens met with the plaintiff to discuss the plaintiff’s performance. Mack Friedman, Principal Investigator, was also present. Givens put the plaintiff on a comprehensive Performance Improvement Plan (“PIP”) and gave him until November 30, 2018 to complete all aspects of the PIP. The purpose of this PIP was to retaliate against the plaintiff for bringing his concerns about Givens’ discriminatory and harassing treatment of him to the attention of the human relations department.

33. Varholak advised the plaintiff that the best he could do was to complete the PIP successfully.

34. The plaintiff met with Friedman in October and advised him regarding the problems he was having with Givens and how Givens was treating him hostilely because of his disability. Upon information and belief, Friedman talked to Givens about the situation, which only made Givens more upset. Throughout October, Givens was even less congenial towards the plaintiff in one-on-one settings. The plaintiff reported this to Varholak and advised her that he was concerned that Givens was retaliating against him.

35. Throughout October and November, the plaintiff worked very hard to satisfy the onerous PIP and Givens noted improvement during their regular meetings on the subject. On November 29, 2018, Givens advised the plaintiff that the PIP would be extended through December 6, 2018 and that they would meet on December 7, 2018 to discuss the determination regarding his performance and continued employment.

36. Despite the plaintiff's continuing diligent efforts during the last week of November into the first week of December, Givens determined that the plaintiff was not making progress and that he was not fulfilling the goals of the PIP.

37. Givens met with the plaintiff on December 11 or 12 and was told that he did not satisfy the terms of the PIP and that, effective immediately, he was being put on paid administrative leave. Sarah Krier, Principal Investigator, was also present at the meeting. Givens told the plaintiff that the human resources department was made aware of this determination and that someone in that department would be in touch with him. No one from human resources ever contacted the plaintiff.

38. On January 29, 2019, Givens sent the plaintiff a termination letter. In pertinent part, Givens wrote:

This letter is official notification that your position as a Program Director in the GSPH-Infectious Diseases & Microbiology at the University of Pittsburgh will end February 1, 2019. Your position was supported by non-University funds and has been eliminated as a result of the changing operational needs of the department to support the evolving programmatic mission.

39. The plaintiff was terminated was because of his disability and in retaliation for raising issues regarding Givens' discriminatory treatment of the plaintiff based on his disability with Pitt; any other reasons advanced by Pitt for his termination were nothing more than pretexts.

FIRST CAUSE OF ACTION

40. The plaintiff has a disability and thus is protected against discrimination under the ADA.

41. The plaintiff was qualified for his position.

42. The plaintiff was able to perform his position with or without a reasonable accommodation.

43. Despite his qualifications, the plaintiff was terminated. The reasons given for discharge were a pretext.

44. The defendant terminated the plaintiff's employment and otherwise discriminated against and harassed him in the terms and conditions of his employment because of his disability.

45. At all times relevant, the defendant knew of the plaintiff's disability and/or regarded the plaintiff to be a disabled individual.

46. Further, the plaintiff was terminated in retaliation for raising issues regarding Givens' discriminatory treatment of the plaintiff based on his disability.

47. The defendant's violation of the ADA was committed with intentional or reckless disregard for the plaintiff's federally protected right to work in an environment free of discrimination.

SECOND CAUSE OF ACTION

48. The preceding paragraphs are incorporated herein by reference as if they were set forth at length.

49. The defendant terminated the plaintiff's employment, retaliated against him and otherwise discriminated against and harassed him in the terms and conditions of his employment because of his disability, in violation of the PHRA, 43 Pa. C.S. § 951 *et seq.*

WHEREFORE, the plaintiff respectfully requests judgment be entered in his favor and against the defendant and that the defendant be required to provide all appropriate remedies under the ADA and the PHRA, including back pay, front pay, compensatory damages, punitive damages and attorney's fees and costs.

Respectfully submitted,

/s/ Michael J. Bruzzese

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