

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DAVID IGASAKI)
)
 Plaintiff,)
)
)
 v.)
)
)
 ILLINOIS DEPARTMENT OF)
 FINANCIAL AND PROFESSIONAL)
 REGULATIONS)
)
 Defendant.)

**Case No. 15 CV 3693
Honorable Judge Andrea Wood**

**FIRST AMENDED COMPLAINT FOR AGE DISCRIMINATION, RACE
DISCRIMINATION, DISABILITY DISCRIMINATION AND RETALIATORY
DISCHARGE**

Plaintiff DAVID IGASAKI (“Plaintiff”) brings forth the following cause of action and allegations against the ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATIONS (“IDFPR” or “Defendant”), and states the following:

INTRODUCTION

1. This action is brought by Plaintiff to secure redress for Defendant’s violation of his civil right to be free from employment discrimination on the basis of his race, sex, disability and age.

2. Plaintiff was a staff attorney for the medical prosecutions unit (“Unit”) at the IDFPR. Plaintiff was the only homosexual Asian staff attorney in the Unit and all his supervisors were Caucasian. Further, Plaintiff suffers from Gout and is over the age of forty (40) years old.

3. After working for Defendant for approximately twenty (20) years with a long history of good performance reviews, Plaintiff was suddenly unlawfully suspended and subsequently terminated based on his race, sex, disability and age.

JURISDICTION AND VENUE

4. This court has jurisdiction over Defendant pursuant to 28 U.S.C. § 1331 and 1337 on that this case arises under federal law, specifically, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq* (“Title VII”); Title I of the Americans with Disability Act, 42 U.S.C. § 12101 *et seq* (“ADA”); the Age Discrimination of Employment Act, 29 U.S.C. § 623(a) (“ADEA”); and retaliatory discharge in violation of Title VII. Venue is proper in the Northern District of Illinois, Eastern Division since the unlawful practices occurred within this District pursuant to 28 U.S.C. § 1391(b) and (c). There is supplemental jurisdiction over the state law claims.

PARTIES

5. Plaintiff is a 62 year-old Japanese American citizen of the United States, residing in the city of Chicago, Illinois, Cook County. Plaintiff worked as an Advanced Program Specialist or Staff Attorney for the Defendant’s Medical Prosecutions Unit (“Unit”). Plaintiff’s job was to try disciplinary hearings and defend against petitions to restore professional licenses in front of the IDFPR’s administrative tribunals. Further, to conduct Informal Conferences and to draft and negotiate Consent Orders and other settlement agreements. Finally, to draft Complaints against professional licensees where appropriate.

6. The IDFPR is a government agency that regulates Illinois professionals for the benefit of Illinois consumers. The Unit conducts investigations and prosecutes medical doctors for violating Illinois law.

7. At all times relevant, the IDFPR continuously had in excess of twenty (20) employees working in the Northern District of Illinois.

8. At all times relevant, Forester is a Caucasian American citizen of the United states, resident of Illinois, and was employed as, Chief of Medical Prosecutions at the IDFPR, where some or all of the events in question transpired. At all times relevant, Forester was an attorney practicing law at the IDFPR.

STATEMENT OF FACTS

9. Plaintiff is a Japanese American citizen of the United States and thus belongs to a protected class of workers under Title VII.

10. Plaintiff consistently scored satisfactory or excellent reviews throughout his twenty (20) year career with the IDFPR. Plaintiff had never once been disciplined.

11. In 2011, Laura Forester (“Forester”) became Plaintiff’s immediate supervisor when the IDFPR hired her as its new Chief of Medical Prosecutions.

12. On February 16, 2012, Forester gave Plaintiff a good annual 2011 review (“2011 Review”), indicating that Plaintiff “exceeded expectations” or “met expectations”. However, as a means of degrading Plaintiff, Forester claimed the only reason Plaintiff received this good review was because she had reviewed an “even worse attorney” than the Plaintiff. Plaintiff is a competent and well-reviewed attorney who happens to be slight and soft spoken. Further Plaintiff forms intimate relationships with men rather than women.

13. In the year following the February 2011 Review, Forester developed a close relationship with Vladimir Lavosky (“Lovosky”) another staff attorney in the Unit. Lovosky was the only other person in the Unit who knew Plaintiff was a man associated with a man in a romantic relationship.

14. On or about January 31, 2013, Forester gave an extremely bad 2012 performance review to Plaintiff (“2012 Review”).

15. The 2012 Review included alleged 2011 incidents which were never mentioned in her 2012 Review.

16. Furthermore, the 2012 Review was vague and never specified the cases that Forester claims that Plaintiff performed poorly on.

17. Forester admonished and publically shamed Plaintiff for this alleged poor performance, but to Plaintiff's knowledge Forester never actually submitted the 2012 Review to the Springfield, Illinois offices as required under department protocol.

18. Additionally, Forester created impossible deadlines for Plaintiff alone.

19. Forester constantly humiliated Plaintiff by undermining his authority to direct investigations assigned to him.

20. Furthermore, Plaintiff was the most senior staff attorney working in the Unit and to Plaintiff's knowledge had one of the largest caseloads in the Unit.

21. Despite his seniority and case load, Defendant provided him with the smallest and least accommodating work station. In this regard, even law students were assigned substantially larger work stations than Plaintiff.

22. On or about February 19, 2013, Defendant imposed a six (6) month Corrective Action Plan ("CAP") solely on Plaintiff.

23. From about April 27, 2013, Forester singled out Plaintiff and began to subject him to increasingly longer and more probing case reviews. The reviews increased from forty five (45) minutes in length to four and a half (4 ½) hours in length.

24. On or about August 13, 2013, Defendant extended the CAP for another six (6) months due to Forester's false claims that Plaintiff failed to comply with the CAP.

25. Sometime shortly after Plaintiff complained to IDFPR about the extended CAP, Forester imposed even more work and impossible deadlines on Plaintiff.

26. On or about December 12, 2013, Forester gave Plaintiff another poor evaluation (“December 2013 Evaluation”). Plaintiff responded in opposition to the poor evaluation, but Defendant never replied.

27. Sometime shortly thereafter, Plaintiff immediately filed a complaint with his union steward.

28. In early 2014, Forester manufactured a policy in which employees could not work past normal business hours (“No Work Late Policy”) and imposed the No Work Late Policy solely on the Plaintiff. Foster publically reprimanded Plaintiff for violating the No Work Late Policy and ordered Plaintiff alone to leave the office on multiple occasions.

29. Other similarly situated employees regularly violated the No Work Late Policy without reprimand.

30. Around this time the entire floor that Plaintiff worked on became infested with bedbugs. As a result, the bedbugs eventually were transmitted into Plaintiff’s home.

31. Upon information and belief, other similarly situated employees may have also faced similar bedbug issues.

32. Despite Plaintiff curing the bedbug issue on March 3, 2014 via a licensed exterminator, Defendant barred only Plaintiff from the work place (“Involuntary Leave”) for the bedbug issue from March 19, 2014 through August 25, 2014.

33. Defendant forced Plaintiff to use five (5) months of his voluntary leave days for the Involuntary Leave.

34. Further, Defendant ordered Plaintiff to obtain a second, third, and fourth extermination service for bed bugs that no longer existed before allowing him to return to work.

35. For the third extermination, Defendant forced Plaintiff to allow the use of dogs to inspect Plaintiff's home for bed bugs. The exterminator and the dogs were present in Plaintiff's home for over four (4) hours.

36. Although, the third exterminator reported Plaintiff was in compliance, the Defendant never-the-less rejected the report and did not allow Plaintiff to return to work.

37. On or about August 15, 2014, Plaintiff ordered a fourth exterminator report. The report again indicated Plaintiff was in compliance.

38. On or about August 19, 2014, Defendant indicated Plaintiff was finally clear to return to work, but did not allow him to start until August 25, 2014.

39. On or about October 8, 2014, Forester ordered Plaintiff to report a two hour lunch period even though Plaintiff had only taken a one hour lunch. Plaintiff refused to falsify his timecard to reflect a two hour lunch. In response, Forester refused to approve Plaintiff's timecard and directed Plaintiff to alter his timecard at least three times thereafter.

40. On or about September 11, 2014, Plaintiff filed a claim with the Illinois Department of Human Rights ("IDHR") and requested a cross claim with the Equal Employment Opportunity Commission ("EEOC").

41. Shortly thereafter, Plaintiff's work environment became even more hostile as Defendant increased Plaintiff's caseload with impossible deadlines and continued to prohibit him to work late.

42. On or about December 11, 2014, Plaintiff received a poor evaluation ("December 2014 Evaluation") from Defendant.

43. The December 2014 Evaluation included information that Forester admitted was irrelevant and also included dates for wrongdoings which occurred when Plaintiff was on leave.

44. On or about January 27, 2015, Defendant extended the CAP again, which included false accusations.

45. On or about January 27, 2015, Plaintiff submitted a request for reasonable accommodation based on his Gout diagnosis.

46. On or about January 29, 2015, Plaintiff submitted a response to the false accusation listed in the January 26, 2015 CAP.

47. On January 29, 2015 Plaintiff received his right to sue letter. This action is filed within 90-days of Plaintiff receipt of the Right to Sue Letter.

48. On or about February 6, 2015, Defendant partially denied Plaintiff's request for reasonable accommodations.

49. On or about February 13, 2015, Plaintiff responded to the Defendant partial denial of his request for reasonable accommodations.

50. On or about March 26, 2015, Defendant terminated Plaintiff's employment.

**COUNT I RACE DISCRIMINATION IN VIOLATION OF
TITLE VII OF THE CIVIL RIGHTS ACT OF 1964,
AS AMENDED 42 U.S.C § 2000(e) et seq.**

51. Plaintiff hereby incorporates and re-alleges the allegations of paragraphs 1 through 50 as if the allegations are set forth herein.

52. Plaintiff is a Japanese American citizen of the United States and is thus a member of a protected class based on race.

53. Plaintiff suffered adverse employment action when Forester wrongfully accused Plaintiff of poor job performance, Defendant imposed a CAP on Plaintiff, forced Plaintiff to take

Voluntary Leave pay for the Involuntary Leave imposed on him, and Defendant terminated Plaintiff's employment.

54. Defendant treated other similarly situated Caucasian employees more favorably by providing them with larger work stations, reasonable deadlines, and did not undermine the authority given to them.

55. Further in addition to imposing impossible deadlines on the Plaintiff, Forester also enforced the No Work Late Policy only on the Plaintiff alone. As a proximate result of Defendant actions, Plaintiff has suffered severe economic losses, including loss of employment, damage to his professional reputation, future pay, overtime pay, vacation days, and benefits.

WHEREFORE, Plaintiff prays this Court enters judgment against Defendant and in favor of Plaintiff in an amount of no less than \$100,000 to be determined at trial, award Plaintiff attorney's fees and all costs incurred in pursuing this matter, and any other relief this Honorable Court deems appropriate.

**COUNT II SEX DISCRIMINATION IN VIOLATION OF TITLE VII OF
THE CIVIL RIGHTS ACT OF 1964, AS AMENDED 42 U.S.C § 2000(e) et seq.**

56. Plaintiff hereby incorporates and re-alleges the allegations of paragraphs 1 through 50 as if the allegations are set forth herein.

57. Plaintiff is a male citizen of the United States and is thus a member of a protected class based on his sex. Plaintiff does not conform to male stereotypes as he is slight, soft spoken and forms relationships with other males. Forester's bias against Plaintiff due to this gender nonconformity was at least a motivating factor in the discriminatory conduct that transpired. In addition to degrading Plaintiff's accomplishment as a well-reviewed employee and attorney, Plaintiff constantly undermined Plaintiff's authority because his approach did not conform to preconceived notions of masculinity.

58. Further, Defendant and Forester created a hostile work environment and took adverse employment action against Plaintiff, because Plaintiff failed to conform to their perception of acceptable gender roles.

59. All other employees conform to the sex-role expectation that women should be attracted to and date only men, and that men should be attracted to and date only women. Since Plaintiff failed to conform to either Defendant's or Forester's preconceived definition of male they treated him not only less favorably but with contempt.

60. As a proximate result of Defendant's actions, Plaintiff has suffered severe economic losses, including loss of employment, damage to his professional reputation, future pay, overtime pay, vacation days, and benefits.

WHEREFORE, Plaintiff prays this Court enters judgment against Defendant and in favor of Plaintiff in an amount of no less than \$100,000 to be determined at trial, award Plaintiff attorney's fees and all costs incurred in pursuing this matter, and any other relief this Honorable Court deems appropriate.

**COUNT III AGE DISCRIMINATION IN VIOLATION OF
THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S.C. § 623(a)**

61. Plaintiff hereby incorporates and re-alleges the allegations of paragraphs 1 through 50 as if the allegations are set forth herein.

62. At 62 years old, Plaintiff is covered by ADEA's protected class of workers over 40. Plaintiff was the oldest employee in the Unit at the time of discharge. The remaining employees were all in their early 30's to mid-40's.

63. Plaintiff is well qualified for his position as a Staff Attorney in the Unit.

64. Plaintiff suffered a hostile work environment and adverse employment action when Forester wrongfully accused Plaintiff of poor job performance, Defendant imposed a CAP

on Plaintiff, forced Plaintiff to take Voluntary Leave pay for the Involuntary Leave imposed on him, and Defendant terminated Plaintiff's employment

65. Upon information and belief, Defendant has replaced Plaintiff with an employee who is in their early thirties.

66. Defendant unlawfully discriminated against Plaintiff when it created a hostile work environment against the Plaintiff and terminated him based on his age.

67. As a proximate result of Defendant's actions, Plaintiff has suffered severe economic losses, including loss of employment, damage to his professional reputation, future pay, overtime pay, vacation days, and benefits.

WHEREFORE, Plaintiff prays this Court enters judgment against Defendant and in favor of Plaintiff in an amount of no less than \$100,000 to be determined at trial, award Plaintiff attorney's fees and all costs incurred in pursuing this matter, and any other relief this Honorable Court deems appropriate.

**COUNT V. RETALIATION IN VIOLATION OF TITLE VII
OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED,
42 USC § 2000e-3(a). WHISTLEBLOWER PROVISIONS**

68. Plaintiffs hereby incorporate and re-allege the allegations of paragraphs 1 through 50 as if the allegations are set forth herein.

69. On or about September 11, 2014 Plaintiff engaged in a statutorily-protected expression by filing a complaint to the IDHR and the EEOC concerning discrimination covered under Illinois Statute and Title VII as referenced above.

70. Shortly thereafter, Plaintiff's work environment worsened dramatically. Forester sharply increased Plaintiff's workload, made Plaintiff's deadlines even more impossible, and ordered Plaintiff to complete tasks outside his job description.

71. Furthermore, Forester's December 11, 2014 evaluation of Plaintiff included false accusations and events which occurred when Plaintiff was on leave.

72. On or about January 23, 2015, due to an unknown problem at the IDHR, which shares the same building as the IDFPR, Plaintiff had to refile his claim with the EEOC.

73. On or about January 26, 2015, Defendant renewed Plaintiff's wrongfully imposed CAP and included false and unfair accusations.

74. Moreover, Forester imposed even more impossible deadlines and humiliated Plaintiff by publically forcing only him to leave the office under the No Work Late Policy when other staff attorneys were allowed to stay.

75. Plaintiff suffered further adverse employment action when Defendant eventually terminated his employment on March 26, 2015.

76. At the time of his termination, Defendant were fully aware that Plaintiff filed a claim to the EEOC complaining of discrimination protected under Title VII.

77. As a direct result, Defendant terminated Plaintiff for the sole purpose of retaliating against him for reporting Defendant to the EEOC.

78. Defendant's actions constitute unlawful retaliation in violation of the Title VII.

79. Defendant's actions were willful within the meaning of Title VII justifying the imposition of liquidated damages.

80. As a proximate result of Defendant actions, Plaintiff has suffered severe economic losses, including loss of employment, damage to his professional reputation, future pay, overtime pay, vacation days, and benefits.

WHEREFORE, Plaintiff prays this Court enters judgment against Defendant and in favor of Plaintiff in an amount of no less than \$100,000 to be determined at trial, award Plaintiff

attorney's fees and all costs incurred in pursuing this matter, and any other relief this Honorable Court deems appropriate.

COUNT IV DISABILITY DISCRIMINATION
IN VIOLATION OF TITLE I OF THE ADA,
42 U.S.C. § 12101 et seq

81. Plaintiffs hereby incorporate and re-allege the allegations of paragraphs 1 through 50 as if the allegations are set forth herein.

82. Plaintiff has a disability as he was diagnosed with Gout in the hand and wrist which is a permanent and substantially limiting impairment.

83. Plaintiff is able to perform the essential functions of the job with reasonable accommodations.

84. Plaintiff made a request for reasonable accommodations to the Defendant, thus Defendant was aware of Plaintiff's disability.

85. Defendant partially denied Plaintiff's request and thus failed to make a reasonable accommodation to Plaintiff's known disability.

WHEREFORE, Plaintiff prays this Court enters judgment against Defendant and in favor of Plaintiff in an amount of no less than \$100,000 to be determined at trial, award Plaintiff attorney's fees and all costs incurred in pursuing this matter, and any other relief this Honorable Court deems appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that, after trial by jury, this court grant her relief as follows:

A. Award Plaintiff compensatory damages equal to the additional pay, additional overtime pay, vacation days, and benefits he would have been entitled but for Defendant race discrimination, sex discrimination, age discrimination and retaliatory actions;

C. Award Plaintiff front pay damages equal to the lost future wages and benefits that he will be deprived of as a result of the Defendant retaliatory actions;

D. Award Plaintiff liquidated damages in an amount equal to two times Plaintiff compensatory or economic loss damages;

E. Reinstate Plaintiff in his former position as staff attorney at the IDFPR.

F. Awarding Plaintiff all reasonable costs and attorney's fees incurred herein, including reasonable attorneys' fees as authorized by 42 U.S.C. § 1988;

G. Award pre-judgment and post-judgment interest as provided by law; and

H. Award such other relief as this Court deems just and appropriate.

SHAW LEGAL SERVICES LTD.,

By: /s/ Caryn I. Shaw
One of its Attorneys

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