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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JEFFREY D. RYBAK,

Plaintiff,

COMPLAINT AND
JURY DEMAND

-vs-

NEW YORK STATE DEPARTMENT
OF CORRECTIONAL SERVICES,
ATTICA CORRECTIONAL FACILITY

CASE NO.:

Defendant.

Plaintiff, JEFFREY D. RYBAK, by and through his attorneys, MORIARTY & GROCOTT, brings this action for redress for violations of rights guaranteed under the Americans with Disabilities Act of 1990, which incorporates by reference Title VII of the Civil Rights Act of 1964 and the New York State Human Rights Law.

I. JURISDICTION

1. This is an action authorized by and instituted under the Americans With Disabilities Act of 1990, as amended (hereinafter “ADA”), 42 U.S.C. §12111 *et seq.*, which incorporates by reference Title VII of the Civil Rights Act of 1964, as amended (hereinafter “Title VII”), 42 U.S.C. §2000e *et seq.*; and the New York State Human Rights Law, as codified in N.Y. Exec. Law §296 *et seq.*
2. The first, third and fifth causes of action of the Complaint are based on 42 U.S.C. §12112(a). As to such causes of action, the jurisdiction of this Court is invoked by Plaintiff pursuant to 42 U.S.C. §12117(a), 42 U.S.C. §2000e-5(f)(3), and 28 U.S.C. §§1331, 1332 and 1343.

3. The second, fourth and sixth causes of action of the Complaint are based on New York Exec. Law §296(1)(a). As to such causes, the supplemental jurisdiction of this Court is invoked by Plaintiff pursuant to 28 U.S.C. §1367.
4. This Court has jurisdiction over the Defendant because the unlawful discriminatory acts alleged in this Complaint were committed in Wyoming County, New York, which lies within the Western District of New York.

II. VENUE

5. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because the acts complained of by Plaintiff as described herein were committed or occurred within Wyoming County, New York, which lies within the Western District of New York.

III. NATURE OF PROCEEDING

6. This is a proceeding for (a) back pay; (b) front pay; (c) punitive and compensatory damages as they may be provided pursuant to Federal and State laws; (d) counsel fees, and (e) such other and further relief as may be required to secure the Plaintiff the right hereafter to be free of employment discrimination.

IV. PARTIES

7. At all times material herein, the Defendant, NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, ATTICA CORRECTIONAL FACILITY (hereinafter “NYS DEPT OF CORRECTIONS”), has engaged in and employed its employees in industry affecting commerce.
8. Defendant is doing business in the State of New York, with a principal office for the transaction of business located at Exchange Street, Attica, New York 14011.

9. Defendant is, and at all times relevant herein was, an employer with at least fifteen (15) or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.
10. Defendant is, and at all times relevant herein has been, an employer within the meaning of the ADA, 42 U.S.C. §12111(5), within the meaning of Title VII, 42 U.S.C. §2000e(b), and within the meaning of New York Exec. Law §292(5).
11. The Plaintiff is a citizen of the United States, who at all times relevant herein, resided in the State of New York, County of Erie, at 423 Eggert Road, Lower Apartment, Buffalo, New York 14215.
12. At all times relevant herein, the Plaintiff was an employee within the meaning of the ADA, 42 U.S.C. §12111(4), within the meaning of Title VII, 42 U.S.C. §2000e(f), within the meaning of New York Exec. Law §292(5), and was subjected to such adverse employment actions as are described more fully below.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. Plaintiff has exhausted his administrative remedies and has satisfied all of the procedural and administrative requirements as set forth in 42 U.S.C. §2000e-5, to wit:

- (a) Plaintiff has filed a timely charge with the United States Equal Employment Opportunity Commission (hereinafter “EEOC”), which was concurrently filed with the New York State Division of Human Rights (hereinafter “NYSDHR”), a copy of which is annexed hereto as Exhibit “A.”

(b) The above charges were filed more than sixty (60) days prior to the filing of this action.

14. Efforts through those agencies to obtain voluntary compliance with the ADA by the Defendant were unsuccessful. On September 27, 2006, Plaintiff received a determination from the EEOC and on December 22, 2006, Plaintiff received a Notice of Right to Sue from the United States Department of Justice, copies of which are annexed hereto as Exhibit "B" and Exhibit "C", respectively.

VI. STATEMENT OF CLAIMS

15. Plaintiff began employment with the Defendant, NYS DEPT OF CORRECTIONS, in or around April, 2000.

16. Plaintiff suffers from a disability, obesity, related to his diagnosis of hyperthyroidism, which slows the metabolism, makes it difficult to lose weight, causes excessively dry skin, hair loss, excessive sweating and other physical symptoms.

17. Additionally, Plaintiff suffers from depression, which is a recognized symptom of hyperthyroidism, and Plaintiff has also been diagnosed as hypertensive.

18. Plaintiff is, and at all time relevant herein, a qualified individual with disability and was capable of performing the essential job functions of his position with or without a reasonable accommodation at the time of Defendant's discriminatory action.

19. Since October 15, 2002, Plaintiff has been assigned to the Defendant's ATTICA CORRECTIONAL FACILITY as a Correctional Officer.

20. Upon transferring to Defendant's ATTICA CORRECTIONAL FACILITY, Plaintiff was classified as "various/various," which means he may be assigned various jobs at various locations within the facility.
21. On January 14, 2004, Plaintiff was assigned by SGT. ANTHONY SEBASTIAN to work as a trainee in the Arsenal.
22. Although Plaintiff had previously worked in the Arsenal at Defendant's Five Points Correctional Facility, Plaintiff was assigned to train in the Arsenal at Defendant's ATTICA CORRECTIONAL FACILITY on at least two (2) previous occasions.
23. On January 14, 2004, Plaintiff was assigned to work with CO. KIM JAMES, the 3:00-11:00 p.m. Arsenal First Officer and wife of Deputy Superintendent for Security, RANDY JAMES (hereinafter "DSS JAMES").
24. On January 14, 2004, CO. ED NOWAK, 3:00-11:00 p.m. Arsenal Second Officer, stated that he would train Plaintiff, as CO. JAMES had previously stated, during Plaintiff's second training day, that she refused to train Plaintiff, although she provided no reason for such refusal.
25. On January 14, 2004, Plaintiff RYBACK accompanied CO. NOWAK to the key drop window and began to process returning keys and equipment.
26. Plaintiff assisted CO. NOWAK by logging the times that each key was returned, as well as checking in radios and handcuffs.
27. On January 14, 2004, at approximately 3:30 p.m., a half hour into the shift, CO. JAMES approached Plaintiff and stated, "You should go tell SGT. SEBASTIAN that you don't want to work in here because I can be mean."

28. Following CO. JAMES' statement, CO. JAMES abruptly walked over to a desk approximately 25 feet away from Plaintiff and sat down.
29. Shortly after CO. JAMES' statement, Plaintiff answered an incoming phone call, at which time CO. JAMES yelled, "From now on, you will not answer any calls you fat nasty f--k."
30. Approximately 45 minutes later, a total of one hour and 15 minutes into the shift, Plaintiff received a phone call from SGT. SEBASTIAN telling him to report to A-Block to work as an extra.
31. Plaintiff then reported to A-Block as ordered.
32. Approximately 20 minutes after Plaintiff's arrival at A-Block, Plaintiff was approached by CO. CRAIG BALCZER, the individual who trained Plaintiff on Plaintiff's first day in the Arsenal approximately one month earlier, wherein CO. BALCZER asked why Plaintiff had been assigned in A Block rather than to the Arsenal.
33. Plaintiff explained that he was not aware of the reason for his removal from the Arsenal, at which time CO. BALCZER went to speak to SGT. SEBASTIAN to discuss the circumstances of Plaintiff's reassignment.
34. Following the conversation between CO. BALCZER and SGT. SEBASTIAN, CO. BALCZER returned and told Plaintiff that Plaintiff was removed from the Arsenal because DSS JAMES said Plaintiff was "sweaty" and "stunk".
35. After Plaintiff was notified of DSS JAMES' reasons for his removal, the Plaintiff left A-Block and went to the chart office to speak with SGT. SEBASTIAN.

36. SGT. SEBASTIAN told the Plaintiff that DSS JAMES had told CAPTAIN TOM STICHT that he wanted the Plaintiff removed from the Arsenal because he was unhygienic and unfit.
37. Plaintiff immediately asked SGT. SEBASTIAN to inspect him in accordance with the Department of Corrections Directive No. 3083, Uniform Standards, at which time SGT. SEBASTIAN performed said inspection and found the Plaintiff to be fit for duty, in no way unhygienic, or had any issues whatsoever.
38. Prior to Plaintiff's January 14, 2004 removal from the Arsenal, Plaintiff had absolutely no contact with DSS JAMES other than seeing him through the key drop window as DSS JAMES dropped off his keys at approximately 3:30 p.m. on the day of Plaintiff's removal.
39. Even at that time, Plaintiff was at least 10 feet away from the window, which is made of bulletproof glass, at least one inch in thickness and has a very small recessed opening through which keys are deposited.
40. Moreover, CO. NOWAK was standing directly in front of Plaintiff at the time DSS JAMES deposited his keys.
41. By the window's very design, air flows inward into the Arsenal, and not outward into the corridor.
42. Therefore, it was not possible that DSS JAMES could have seen Plaintiff for any length of time to assess him as being unhygienic or unfit, and he could certainly not have been able to smell anything in order to determine that Plaintiff "stunk".
43. CO. KIM JAMES made it known that she did not want Plaintiff in the Arsenal and upon information and belief, Plaintiff believes that CO. JAMES called her

husband, DSS JAMES, and complained about the Plaintiff being assigned to the Arsenal.

44. Upon information and belief, DSS JAMES, acting upon his wife's request, ordered the removal of the Plaintiff from the Arsenal and reassignment to A-Block.
45. After the Plaintiff's conversation and inspection with SGT. SEBASTIAN, the Plaintiff became extremely upset, felt humiliated and embarrassed, and requested that he be allowed to leave work for the remainder of the shift.
46. A grievance was subsequently filed on Plaintiff's behalf by his union representatives, New York State Correctional Officers and Police Benevolent Association (hereinafter "NYSCOPBA").
47. During the first phase of Plaintiff's grievance, Step 1 Hearing, CO. TESSMER and Plaintiff were present with CAPTAIN STICHT, who was responsible for conducting the Hearing.
48. Approximately 90 minutes following the Hearing, CO. TESSMER was called into CAPTAIN STICHT'S office, wherein CAPTAIN STICHT stated, "You know Dave [TESSMER], my senses are not the best, but I can smell [Plaintiff] when you guys walked into the office."
49. Plaintiff continues to work at Defendant's ATTICA CORRECTIONAL FACILITY and since his removal from the Arsenal on January 14, 2004, has not been assigned to same.
50. In addition to the facts set forth above, since Plaintiff's removal from the Arsenal, Plaintiff has suffered from repeated name-calling, mockery and personal attacks

that have resulted in depression, anxiety, sleepless nights, nightmares, humiliation and embarrassment.

51. More specifically, Plaintiff has been given the nickname “dishrag” because Plaintiff carries a washcloth in his pants pocket to help keep his face dried off and to hide some of the excessive sweating caused by his obesity, thyroid condition and/or medications.
52. Additionally, throughout the facility, there are metal stools and hard plastic chairs that have “dishrag’s chair” written on them.
53. On at least one occasion, when Plaintiff asked an officer about the writing on the chairs, Plaintiff was told that no one wants Plaintiff to break any chairs, presumably on account of Plaintiff’s obesity.
54. Plaintiff has also suffered from comments such as, “I’m going to have to stand downwind from you” and “You should never have been given this job.”
55. Further, Plaintiff has been yelled at by fellow officers for sitting in “their” chairs because they don’t want him to “stink them up.”
56. Despite Plaintiff’s complaints regarding the discrimination and harassment, the actions of DSS JAMES and the lack of response and corrective action by Defendant have condoned same toward Plaintiff.

**VII. AS AND FOR A FIRST CAUSE OF ACTION
ALLEGING DISABILITY DISCRIMINATION
IN VIOLATION OF THE ADA**

57. Plaintiff JEFFREY D. RYBAK repeated and realleges each and every allegation contained in Paragraphs “1” through “56” as if set forth fully herein.

58. Defendant, NYS DEPT OF CORRECTIONS, acting through its employees and agents, discriminated against Plaintiff in a manner which deprived him of employment opportunities, and otherwise adversely affected him because of his disability (obesity, hypothyroidism, depression and hypertensive), all in violation of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12111 *et seq.*
59. On or about January 14, 2004, the Defendant unlawfully reassigned Plaintiff and otherwise discriminated against Plaintiff because of his disability.
60. Defendant discriminated against Plaintiff with respect to the terms, conditions and privileges of employment solely on the basis of his disability in violation of the ADA, 42 U.S.C. §12111 *et seq.*
61. Plaintiff has been damaged as a direct and proximate result of Defendant's actions. He has suffered injuries including but not limited to lost wages and benefits, mental anguish and suffering, embarrassment and humiliation.
62. The discriminatory actions of the Defendant against Plaintiff were both willful and intentional, and demonstrated a complete disregard for Plaintiff's civil rights. As such, Plaintiff is entitled to punitive damages.

**VIII. AS AND FOR A SECOND CAUSE OF ACTION
ALLEGING DISABILITY DISCRIMINATION IN
VIOLATION OF NEW YORK HUMAN RIGHTS LAW**

63. Plaintiff JEFFREY D. RYBAK repeats and realleges each and every allegation contained in Paragraphs "1" through "59" as if set forth fully herein.
64. Defendant, NYS DEPT OF CORRECTIONS, acting through its employees and agents, discriminated against Plaintiff in a manner which deprived him of

employment opportunities, and otherwise adversely affected him, because of his disability, all in violation of the New York Human Rights Law, as codified in NY Exec. Law §296 *et seq.*

65. On or about January 14, 2004, the Defendant unlawfully reassigned Plaintiff and otherwise discriminated against Plaintiff because of his disability.

66. Defendant discriminated against Plaintiff with respect to the terms, conditions and privileges of employment solely on the basis of his disability in violation of the New York Human Rights Law, as codified in NY Exec. Law §296 *et seq.*

67. Plaintiff has been damaged as a direct and proximate result of Defendant's actions. He has suffered injuries including but not limited to lost wages and benefits, mental anguish and suffering, embarrassment and humiliation.

68. The discriminatory actions of the Defendant against Plaintiff were both willful and intentional, and demonstrated a complete disregard for Plaintiff's civil rights.

**IX. AS AND FOR A THIRD CAUSE OF ACTION
ALLEGING A HOSTILE WORK ENVIRONMENT BASED
UPON DISABILITY IN VIOLATION OF THE ADA**

69. Plaintiff JEFFREY D. RYBAK repeats and realleges each and every allegation contained in Paragraphs "1" through "68" as if set forth fully herein.

70. Defendant, NYS DEPT OF CORRECTIONS, acting through its employees and agents, discriminated against Plaintiff, and otherwise adversely affected him, by subjecting him to a severe and pervasive hostile work environment on the basis of his disability in violation of the ADA, 42 U.S.C. §12111 *et seq.*

71. On or about January 14, 2004, and continuing thereafter, the Defendant subjected Plaintiff to name calling, mockery, insults and personal attacks because of Plaintiff's disability.
72. Defendant discriminated against Plaintiff with respect to the terms, conditions and privileges of employment on the basis of disability in violation of the ADA, 42 U.S.C. §12111 *et seq.*
73. Plaintiff has been damaged as a direct and proximate result of Defendant's actions. He has suffered injuries including but not limited to lost wages and benefits, mental anguish and suffering, embarrassment and humiliation.
74. The discriminatory actions of the Defendant against Plaintiff were both willful and intentional, and demonstrated a complete disregard for Plaintiff's civil rights. As such, Plaintiff is entitled to punitive damages.

**X. AS AND FOR A FOURTH CAUSE OF ACTION
ALLEGING A HOSTILE WORK ENVIRONMENT ON
THE BASIS OF DISABILITY IN VIOLATION OF
NEW YORK HUMAN RIGHTS LAW**

75. Plaintiff JEFFREY D. RYBAK repeats and realleges each and every allegation contained in Paragraphs "1" through "74" as if set forth fully herein.
76. Defendant, NYS DEPT OF CORRECTIONS, acting through its employees and agents, discriminated against Plaintiff, and otherwise adversely affected him, by subjecting him to a severe and pervasive hostile work environment on the basis of his disability in violation of the ADA, 42 U.S.C. §12111 *et seq.*
77. On or about January 14, 2004, and continuing thereafter, the Defendant subjected the Plaintiff to name calling, mockery, insults and personal attacks on the basis of

his disability in violation of the New York Human Rights Law, as codified in NY Exec. Law §296 *et seq.*

78. Plaintiff has been damaged as a direct and proximate result of Defendant's actions. He has suffered injuries including but not limited to lost wages and benefits, mental anguish and suffering, embarrassment and humiliation.

79. The discriminatory actions of the Defendant against Plaintiff were both willful and intentional, and demonstrated a complete disregard for Plaintiff's civil rights.

**XI. AS AND FOR A FIFTH CAUSE OF ACTION
ALLEGING RETALIATION IN VIOLATION OF THE ADA**

80. Plaintiff JEFFREY D. RYBAK repeats and realleges each and every allegation contained in Paragraphs "1" through "79" as if set forth fully herein.

81. Defendant, NYS DEPT OF CORRECTIONS, acting through its employees and agents, retaliated against Plaintiff in a manner which deprived him of employment opportunities, and otherwise adversely affected him, because he opposed the unlawful discriminatory practices of the Defendant, all in violation of the ADA, 42 U.S.C. §12111 *et seq.*

82. Defendant retaliated against Plaintiff with respect to the terms, conditions and privileges of employment on the basis of his opposing Defendant's discriminatory acts in violation of the ADA, 42 U.S.C. §12111 *et seq.*

83. Plaintiff has been damaged as a direct and proximate result of Defendant's actions. He has suffered injuries including but not limited to lost wages and benefits, mental anguish and suffering, embarrassment and humiliation.

84. The retaliatory actions of the Defendant against Plaintiff were both willful and intentional, and demonstrated a complete disregard for Plaintiff's civil rights. As such, Plaintiff is entitled to punitive damages.

**XII. AS AND FOR A SIXTH CAUSE OF ACTION
ALLEGING RETALIATION IN VIOLATION
OF NEW YORK HUMAN RIGHTS LAW**

85. Plaintiff JEFFREY D. RYBAK repeats and realleges each and every allegation contained in Paragraphs "1" through "85" as if set forth fully herein.

86. Defendant, NYS DEPT OF CORRECTIONS, acting through its employees and agents, retaliated against Plaintiff in a manner which deprived him of employment opportunities, and otherwise adversely affected him, because he opposed the unlawful discriminatory practices of the Defendant, all in violation of New York Human Rights Law, as codified in NY Exec. Law §296 *et seq.*

87. Defendant retaliated against Plaintiff with respect to the terms, conditions and privileges of employment on the basis of his opposing Defendant's discriminatory acts in violation of the New York Human Rights Law, as codified in NY Exec. Law §296 *et seq.*

88. Plaintiff has been damaged as a direct and proximate result of Defendant's actions. He has suffered injuries including but not limited to lost wages and benefits, mental anguish and suffering, embarrassment and humiliation.

89. The retaliatory actions of the Defendant against Plaintiff were both willful and intentional, and demonstrated a complete disregard for Plaintiff's civil rights.

XIII. DEMAND FOR A JURY TRIAL

90. Plaintiff hereby demands a jury trial on all issues raised herein

WHEREFORE, Plaintiff prays that this Court shall:

- a. Assume jurisdiction of this cause and set the same down for trial;
- b. Declare the conduct of the Defendant to be in violation of Federal and State law;
- c. Award Plaintiff actual damages payable by the Defendant for loss of back pay and front pay, salary, earnings and other benefits denied him because of Defendant's discriminatory conduct;
- d. Award Plaintiff compensatory damages;
- e. Award Plaintiff punitive damages based on the Defendant's willful and intentional violation of Plaintiff's civil rights;
- f. Award Plaintiff reasonable attorneys fees in the action;
- g. Award such other and further relief as the Court shall deem just and proper.

DATED: Buffalo, New York
March 19, 2007

Yours, etc.,

/s/ Steven H. Grocott

STEVEN H. GROCOTT, ESQ.
MORIARTY & GROCOTT
Attorney for Plaintiff
1109 Delaware Avenue
Buffalo, New York 14209
(716)881-6400

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:
CITY OF BUFFALO)

I, JEFFREY D. RYBAK, being duly sworn, deposes and says: That deponent is the Plaintiff in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to deponent’s own knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters, deponent believes it to be true.

/s/ Jeffrey D. Rybak

JEFFREY D. RYBAK

Sworn to before me this
19th day of March, 2007

/s/ Steven H. Grocott

Steven H. Grocott
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 5/15/2010

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY

CHARGE NUMBER

FEPA
 EEOC

1105-2004-00923

NEW YORK STATE DIVISION OF HUMAN RIGHTS

and EEOC

State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.)

HOME TELEPHONE (Include Area Code)

Paul F. Murak, Esq., on behalf of Jeffrey Ryback

STREET ADDRESS

CITY, STATE AND ZIP CODE

DATE OF BIRTH

300 Main Street

Buffalo, New York 14202

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

NUMBER OF EMPLOYEES, MEMBERS

TELEPHONE (Include Area Code)

NYS Dept. of Corrections

RECEIVED

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

Attica Correctional Facility, Exchange Street, Attica, New York 14011

Wyoming

NAME

TELEPHONE NUMBER (Include Area Code)

RECEIVED

13 APR 2004

E.E.O.C. BULD

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

13 APR 2004

E.E.O.C. BULD

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

DATE DISCRIMINATION TOOK PLACE
EARLIEST LATEST

RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (Specify)

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): The charging party is a 34 year old white male who has been employed by the NYS Department of Corrections since April 2000. Since October 15, 2002, he has been assigned to the Attica State Correctional Facility. His position is Correctional Officer. Since transferring to Attica, he has been classified "various/various"; meaning, due to lack of seniority, he is assigned various jobs at various locations within the facility.

In January 2004, he was assigned by his Sergeant to work in the armory. He had worked in the armory at the Five Points Correctional Facility previously. During his training period, he was told he would be reassigned due to complaints that he was "unfit for duty". When the charging party inquired further, he was told that the Deputy Superintendent, Randy James, had said he was obese and had unpleasant body odor. Since that time, the charging party has been subjected to cruel comments about his physical appearance on a daily basis, by employees at the facility and has not been allowed to work in the armory.

The charging party has been discriminated against because of a disability or perceived disability, i.e., his obesity, in violation of the Americans With Disabilities Act and other Federal statutes. The charging party continues to be subjected to a hostile, offensive and intimidating work environment.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

Date 4/6/04

Jeffrey R. Ryback
Charging Party (Signature)

Paul F. Murak

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE 4/2/04

CHERYL MEYERS BUTH
Notary Public, State of New York
Qualified in Erie County

My Commission Expires July 5, 2005

EXHIBIT "A"



Elizabeth Cadle
Director

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Buffalo Local Office**

6 Fountain Plaza, Suite 350
Buffalo, NY 14202
(716) 551-4441
TTY (716) 551-5923
FAX (716) 551-4387

Charge No. 165-2004-00923

Jeffrey Ryback
423 Eggert Road (lower apartment)
Buffalo, New York 14215

Charging Party

State of New York
Department of Correctional Services
The Harriman State Campus
1220 Washington Avenue
Albany, New York 12226-2050

Respondent

DETERMINATION

I issue the following determination on the merits of the charge.

Respondent is an employer within the meaning of the Americans with Disabilities Act and all requirements for coverage have been met. Charging Party alleged he was discriminated against because of a perceived disability when Respondent declared him as being "unfit for duty". Charging Party further alleged that he was subjected to a hostile work environment.

The investigation revealed that the Charging Party, a qualified individual with a disability, was hired by the Respondent in April 2000. His position is that of Correctional Officer where he is classified as "various/various", meaning he is given various assignments.

Charging Party was assigned to work in the armory. During his training period he was told that he was being reassigned due to complaints that he was "unfit for duty". Further evidence revealed that the Charging Party was subjected to personal attacks with specific reference to name calling where he is commonly referred to as "dishrag", a derogatory reference to symptoms of his disability. This has created a hostile work environment as his protests have not resulted in effective corrective action by Respondent.

EXHIBIT "B"

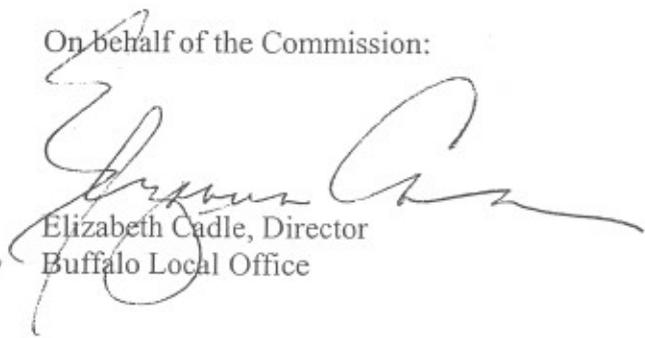
Respondent based its decision to remove Charging Party from the armory based on unsubstantiated beliefs with reference to Charging Party being "fit for duty". Respondent can not show a legitimate, nondiscriminatory reason for removing the Charging Party from his position in the armory. Respondent's decision was based on prejudicial beliefs toward persons with certain disabilities.

Based on this analysis, I conclude that the evidence obtained during the investigation establishes a violation of the statute as alleged.

Upon finding that there is reason to believe that violations have occurred, the Commission will attempt to eliminate the alleged unlawful practices by informal methods of conference, conciliation, and persuasion. Therefore, the Commission now invites the Respondent to join with it in a collective effort toward a just resolution of this matter.

If the Respondent declines to discuss settlement or when, for any reason a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. If the Respondent does not contact this office and indicate a willingness to enter into the conciliation process, I will assume that conciliation has failed and dismiss the charge, and in accordance with Commission regulations inform the parties in writing of the court enforcement alternative available to the Charging Party, and the Commission.

On behalf of the Commission:



Elizabeth Cadle, Director
Buffalo Local Office

Date: SEP 27 2006



U.S. Department of Justice

Civil Rights Division

Disability Rights Section - NYA
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

December 22, 2006

DJ# 205-50-0

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jeffrey Ryback
423 Eggert Road (Lower Apt.)
Buffalo, New York 14215

Re: EEOC Charge Against: New York State Department of
Corrections
EEOC No.: 165-2004-00923
DJ#: 205-50-0

Dear Mr. Ryback:

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

It has been determined that the Department of Justice will not file suit on the above-referenced charge of discrimination that was referred to us by the Equal Employment Opportunity Commission (EEOC). This should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charge is meritorious.

You are hereby notified that conciliation on your case was unsuccessful by the EEOC. You are further notified that you have the right to institute a civil action under Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12111, et seq., against the above-named respondent. If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

Therefore, if you wish to pursue this matter, you should consult an attorney at your earliest convenience. If you are unable to locate an attorney, you may wish to contact the EEOC or apply to the appropriate court, since that court may appoint an attorney in appropriate circumstances under Section 706(f)(1) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1), referenced in Section 107(a) of the ADA, 42 U.S.C. § 12117(a).

EXHIBIT "C"

We are returning the files in this matter to EEOC's District office. If you or your attorney have any questions concerning this matter or wish to inspect the investigative file, please address your inquiry to:

Spencer H. Lewis, Jr.
District Director
Equal Employment Opportunity Commission
New York District Office - 520
33 Whitehall Street, 5th Floor
New York, New York 10004

We are forwarding a copy of this Notice of Right to Sue to the Respondent in this case.

Sincerely,

Wan J. Kim
Assistant Attorney General

BY: 

Allison J. Nichol
Deputy Chief
Disability Rights Section

C:
New York State Department
of Corrections

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SELL YOUR OWN SAMPLES

(help others get the justice that they deserve)



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