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U.S. DISTRICT COURT
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CATHERINE A. MOBLEY,)
)
 Plaintiff,)
)
 vs.) Cause No. _____
)
 ALLSTATE INSURANCE COMPANY)
 a/k/a ALLSTATE PROPERTY AND)
 CASUALTY INSURANCE COMPANY,)
)
 Defendant.)

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COMPLAINT FOR DAMAGES AND DEMAND FOR TRIAL BY JURY

Plaintiff Catherine A. Mobley, by counsel, for her Complaint for Damages and Demand for Trial by Jury states as follows:

I. INTRODUCTION

1. This is an action brought by CATHERINE A. MOBLEY (“Ms. Mobley”) against Defendant ALLSTATE INSURANCE COMPANY a/k/a ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY (“Allstate”), between which parties there was an employment relationship. Defendant violated the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.* (“ADEA”), and the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* (“ADA”), by terminating Ms. Mobley’s employment relationship. Defendants acted deliberately and violated the civil rights of Ms. Mobley on the basis of her age, which was 51 at the time of her termination, and on the basis of her disability. Further, Allstate retaliated against Ms. Mobley after she invoked her federally protected rights under the ADA in violation of 42 U.S.C. § 12203.

II. EEOC COMPLIANCE

2. Ms. Mobley exhausted all of the administrative proceedings available to her by timely filing a Charge of Discrimination on the basis of age, disability and retaliation with the U.S. Equal Employment Opportunity Commission (“EEOC”).

3. Ms. Mobley filed her Charge of Discrimination with the EEOC on or about December 17, 2003. A copy of Ms. Mobley’s Charge is attached hereto and marked as Exhibit 1.

4. Ms. Mobley’s Charge was filed in compliance with 42 U.S.C. § 2000e-5.

5. Ms. Mobley received a Dismissal and Notice of Right to Sue on June 17, 2004, which was dated June 16, 2004. A true and accurate copy of the Dismissal and Notice of Right to Sue is attached hereto and marked as Exhibit 2.

6. This action was timely filed within ninety (90) days of receipt by Ms. Mobley of the Dismissal and Notice of Right to Sue.

III. JURISDICTION

7. Jurisdiction of the Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, and 1343. This action is authorized and instituted pursuant to 42 U.S.C. § 2000e-3 and 29 U.S.C. § 623.

8. The ADEA claim is authorized and instituted pursuant to Section 7(c) of the ADEA, 29 U.S.C. § 626(c).

9. The ADA claim is authorized and instituted pursuant to 42 U.S.C. § 12101 *et seq.*

10. The retaliation claim is authorized and instituted pursuant to 42 U.S.C. § 12203.

11. Jurisdiction to grant injunctive and declaratory equitable relief as well as to award damages is invoked pursuant to 29 U.S.C. § 626(c)(1) and 42 U.S.C. § 12117.

12. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Southern District of Indiana, Indianapolis Division.

IV. VENUE

13. Ms. Mobley is a resident of Morgan County in the State of Indiana, and is a citizen of the United States of America.

14. Allstate is an insurance company that maintains an office in Indianapolis, Indiana.

15. The unlawful employment practices under the ADEA and the ADA alleged below arose in Marion County, Indiana. Marion County is located in the Southern District of Indiana; thus, this cause of action is properly venued in the Southern District of Indiana under 28 U.S.C. § 1391(b), which allows for an action to be brought in the district where the defendant resides or in which the cause of action arose.

V. PLAINTIFF

16. Ms. Mobley is a citizen of the United States, and is currently, as she was during all times relevant to this Complaint, a resident of Morgan County in the State of Indiana.

17. Ms. Mobley was born on August 1, 1952.

18. Ms. Mobley resides at 2695 Leonard Road, Martinsville, Indiana 46151.

VI. DEFENDANTS

19. Allstate is an Illinois corporation with its corporate headquarters located at 3075 Northbrook, Illinois, 60062-7127.

20. Allstate maintains an office in Indianapolis, Marion County, Indiana and conducts business in the State of Indiana.

21. At all times relevant to this action, Allstate was the employer of Ms. Mobley.

VII. STATEMENT OF FACTS

22. Ms. Mobley began working for Allstate on September 27, 1987, almost 17 years ago.

23. Ms. Mobley first worked as a supervisor in customer service. During her employment, Ms. Mobley was promoted numerous times and upon her termination held the position of Staff Claims Service Adjuster.

24. As a Staff Claims Service Adjuster, Ms. Mobley investigated, evaluated and negotiated claims involving bodily injury where legal representation had been sought by the injured party.

25. Through March of 2001, Ms. Mobley had received all positive evaluations regarding her work performance at Allstate.

26. In March, 2001, Ms. Mobley was diagnosed with severe depression and obsessive/compulsive disorder, and she was forced to take approximately five months off work.

27. In June, 2001, Ms. Mobley began experiencing tremors and involuntary muscle jerks.

28. Ms. Mobley received treatment for her depression and returned to work in mid-August, 2001.

29. Upon her return to work in August, 2001, Ms. Mobley had difficulty concentrating and staying awake at work.

30. At that time, she was treated by her doctor for the tremors she had begun to experience in June of 2001.

31. As time passed and Ms. Mobley's concentration and drowsiness did not improve, she was referred to a neurologist for treatment.

32. In July, 2002, she underwent a sleep study and was eventually diagnosed with nocturnal myoclonus. Nocturnal myoclonus results in constant jerking during sleep, so that Ms. Mobley had difficulty sleeping and did not sleep effectively for more than approximately 2 or 3 hours a night.

33. This lack of sleep resulted in difficulty staying awake and concentrating during daytime hours.

34. Throughout this time, Nancy Brechbuhl was Ms. Mobley's direct supervisor.

35. In March of 2002, Ms. Mobley received an annual performance evaluation in which she was told that she required improvement. This was the first time during her employment at Allstate that she had received an annual performance evaluation that Allstate did not consider satisfactory.

36. At that time, Ms. Mobley discussed with Ms. Brechbuhl, her direct supervisor, that her performance was being affected by her health issues. Ms. Mobley told Ms. Brechbuhl that she was suffering from drowsiness and lack of concentration which she believed to be a result of health issues.

37. Following her sleep study in July, 2002, Ms. Mobley informed Ms. Brechbuhl that she had been diagnosed with a sleep disorder.

38. Around that time, Ms. Mobley asked Ms. Brechbuhl to accommodate her disability by allowing her to work from home one or two days a week or adjusting her job responsibilities to allow her to focus on doing bodily injury evaluations for the whole unit.

39. Ms. Brechbuhl responded that she would have to check with other management.

40. However, Ms. Brechbuhl never got back with Ms. Mobley, and Ms. Mobley's job responsibilities were never adjusted and she was not allowed to work from home.

41. Following her diagnosis, Ms. Mobley again met with Ms. Brechbuhl and requested accommodations for her disability, including a request to allow Ms. Mobley to work in an area of the office that was quiet and had fewer distractions.

42. Ms. Brechbuhl responded that she had discussed Ms. Mobley's requests with the office manager, Alex Balatsoukas, and Ms. Balatsoukas would not agree to any of them.

43. Ms. Mobley repeatedly asked Ms. Brechbuhl to reconsider her requests for accommodation.

44. Ms. Brechbuhl would respond that she was "working on" Ms. Balatsoukas to try to obtain an accommodation, but the requests were making Ms. Balatsoukas angry.

45. Even though Allstate would not grant Ms. Mobley's requests for accommodation, it allowed a non-disabled employee to work from home several afternoons a week and subsequently assigned another non-disabled employee to focus on doing bodily injury evaluations for the whole unit.

46. Ms. Mobley continued to seek treatment for her disability, but the medications she took were not immediately improving her condition.

47. By this time, Ms. Mobley's performance was being evaluated monthly, because Allstate considered her performance unsatisfactory.

48. On October 30, 2002, Ms. Mobley responded to one of her performance evaluations and attached her medical records regarding her sleeping disorder.

49. Ms. Mobley was advised that Ms. Balatsoukas destroyed the medical records and would not send them to human resources.

50. In December of 2002, Ms. Mobley was advised that she could begin working in a small conference room to see if that would make a difference in her performance.

51. By February, 2003, Ms. Mobley's performance had improved to a level that Allstate considered satisfactory.

52. Ms. Mobley was then told that she could no longer use the conference room because her performance had improved and the accommodation was not needed.

53. Ms. Mobley was also told by Ms. Balatsoukas not to work any more than the normal business hours for the office, because Ms. Balatsoukas thought that Ms. Mobley was tired from working too much.

54. As a result of Allstate's refusal to continue accommodating Ms. Mobley's disability, Ms. Mobley's performance declined to a level that Allstate did not consider satisfactory.

55. At the end of April, 2003, Ms. Mobley made a complaint directly to Allstate's human resources department as part of Allstate's complaint resolution procedure.

56. Toward the end of May, 2003, Ms. Mobley was again allowed to work in the small conference room, but she was still not allowed by Ms. Balatsoukas to work any more than normal business hours.

57. Ms. Brechbuhl agreed with Ms. Mobley that Ms. Mobley's job could not be completed to Allstate's satisfaction by only working during normal business hours.

58. Despite Ms. Balatsoukas' direction, Ms. Mobley was determined to bring her performance up to a level that Allstate considered satisfactory, so in July, 2003, she began taking work home with her.

59. Ms. Mobley had almost brought her performance to a level that Allstate considered satisfactory, when she was informed that her position was being eliminated.

60. On October 22, 2003, Ms. Mobley was terminated from her employment because of her age and disability.

61. Despite diligent efforts to secure comparable employment, Ms. Mobley was forced to accept a job at a significantly lower rate of pay.

VIII. STATEMENT OF CLAIMS

COUNT I

*(Discrimination under the Americans with Disabilities Act,
42 U.S.C. § 12101 et seq.)*

62. Ms. Mobley incorporates the allegations of paragraphs 1 through 61 above and, in addition, states that Defendant's acts and omissions in this matter discriminated against her because of her disability, her record of disability, and/or being regarded as having a disability.

63. Defendant is engaged in an industry affecting commerce.

64. Defendant has employed fifteen (15) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding year.

65. Defendant is an "employer" within the meaning of Section 101 of the ADA, 42 U.S.C. § 12111(5)(a).

66. Ms. Mobley at all times relevant herein suffered and continues to suffer a physical impairment that substantially limits one or more major life activities.

67. Furthermore, Ms. Mobley at all times relevant herein had the requisite skill, experience, education and other job-related requirements of the position she held with Defendant.

68. Consequently, Ms. Mobley is a qualified individual with a disability under 42 U.S.C. § 12111(8).

69. Ms. Mobley is disabled within the meaning of the ADA; that is, she has a physical impairment, has a record of, and/or is regarded as having a physical impairment that substantially limits a major life activity.

70. At all times relevant herein, Allstate was aware of Ms. Mobley's disability.

71. Allstate intentionally discriminated against Ms. Mobley when it failed to accommodate her and terminated employment because of her disability in violation of the ADA.

72. Allstate's termination of Ms. Mobley's employment was an adverse employment action taken against her because of her disability.

73. The reasons given for Ms. Mobley's termination are a pretext for disability discrimination.

74. As a result of Defendant's discriminatory acts and omissions, Ms. Mobley has suffered and will continue to suffer monetary damages and damages for mental anguish and humiliation unless and until the Court grants relief.

COUNT II

*(Discrimination under the Age Discrimination in Employment Act,
29 U.S.C. § 621 et seq.)*

75. Plaintiff incorporates the allegations set forth in paragraphs 1 through 74 above and, in addition, states that Defendant's acts and omissions in this matter discriminated against her because of age.

76. Allstate is engaged in an industry affecting commerce, as defined in Section 11(h) of the ADEA, 29 U.S.C. § 630(h).

77. Allstate has employed twenty (20) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding year.

78. Allstate is an "employer" within the meaning of Section 11(b) of the ADEA, 29 U.S.C. § 630(b).

79. Ms. Mobley was 51 years of age at the time Defendant terminated her employment.

80. Ms. Mobley and other long term Allstate employees were terminated from their positions, allegedly because of a reduction in force.

81. Prior to her termination, Allstate had made it impossible for Ms. Mobley to perform her job to Allstate's satisfaction; otherwise, she would have met Allstate's expectations.

82. Defendant's termination of Ms. Mobley's employment was an adverse employment action taken against Ms. Mobley because of her age.

83. By terminating Ms. Mobley based on her age and by failing to reinstate her, Defendant is engaging in on-going discriminatory conduct. Further, there is a threat of repeated, future discriminatory conduct.

84. As a result of Defendant's discriminatory actions, Ms. Mobley has suffered and will continue to suffer monetary damages and damages for mental anguish and humiliation unless and until the Court grants relief.

COUNT III
(Retaliation)

85. Ms. Mobley incorporates the allegations of paragraphs 1 through 84 above, and, in addition, states that Defendant's conduct in this matter constituted retaliation against Ms. Mobley following her complaints and requests for accommodation under the ADA.

86. Beginning in July of 2002, Ms. Mobley requested reasonable accommodations from Defendants because of her disability.

87. When Allstate would not accommodate Ms. Mobley, she complained to her supervisor about the treatment she received; this was protected activity.

88. Despite her requests for reasonable accommodation because of her disability, Allstate refused to grant Ms. Mobley's requests even though Allstate allowed non-disabled persons to work from home and to focus on bodily injury evaluations for the entire unit.

89. Allstate made it impossible for Ms. Mobley to perform her job to Allstate's satisfaction, because it refused to accommodate her disability.

90. Because Ms. Mobley complained and requested accommodation under the ADA, Allstate terminated her employment; this was adverse action by Allstate.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Catherine A. Mobley prays for a judgment in her favor against Defendant Allstate Insurance Company a/k/a Allstate Property and Casualty Insurance Company, and prays that the following relief be awarded:

- (a) Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in age and disability discrimination and any other employment practice, which discriminates on the basis of age and disability, and from engaging in retaliation.
- (b) Order Defendant to institute and carry out policies, practices and programs which provide equal employment opportunities for disabled and older individuals, and which eradicate the effects of its past and present unlawful employment practices.
- (c) Order Defendant to make whole Ms. Mobley by providing appropriate back pay and front pay for actual damages with pre-judgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to Ms. Mobley's pecuniary losses.
- (d) Order Defendant to make whole Ms. Mobley by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, including medical expenses, in amounts to be determined at trial.
- (e) Order Defendant to make whole Ms. Mobley by providing compensation for past and future non-pecuniary losses resulting from the unlawful employment practices complained of above, including emotional pain, suffering, inconvenience, loss of enjoyment of life and humiliation, in amounts to be determined at trial.

- (f) Order Defendant to pay Ms. Mobley punitive damages for its malicious and/or reckless conduct described above, in amounts to be determined at trial.
- (g) Order Defendant to pay Ms. Mobley her special damages, in amounts to be determined at trial.
- (h) Order Defendant to pay damages to Ms. Mobley for any and all injuries to her career, in amounts to be determined at trial.
- (i) Award Ms. Mobley the costs of this action including reasonable attorneys' fees and any such further relief as the Court may deem just, proper and equitable.
- (j) Grant such further relief as the Court deems necessary and proper in the public interest.

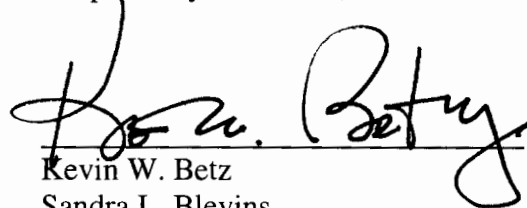
X. RESERVATION OF RIGHTS

Pursuant to the rules of pleading and practice, Plaintiff reserves the right to assert additional violations of federal and state law.

XI. JURY TRIAL

Plaintiff demands trial by jury on all issues so triable.

Respectfully submitted,



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