

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

CASE NO.: 4:22-cv-00056-TWP-DML

TOWN OF CLARKSVILLE, INDIANA,

Defendant

DEFENDANT’S ANSWER TO PLAINTIFF’S COMPLAINT

Defendant, Town of Clarksville, Indiana (“Clarksville”), by counsel, and for its Answer to Plaintiff’s Complaint, states as follows:

1. With regard to the allegations contained in paragraph 1 of Plaintiff’s Complaint, Clarksville denies it violated the Americans with Disabilities Act (“ADA”), denies it violated Title VII of the Civil Rights act of 1964 (“Title VII”), denies the merits of Plaintiff’s allegations and denies any allegation contained in said paragraph that is inconsistent with the foregoing or not specifically referenced herein.

JURISDICTION AND VENUE

2. With regard to the allegations contained in paragraph 2 of Plaintiff’s Complaint, the Town admits the Court has jurisdiction over the matter based upon the allegations in the Complaint, denies the merits of Plaintiff’s allegations and denies any allegation contained in said paragraph that is inconsistent with the foregoing or not specifically referenced herein.

3. With regard to the allegations contained in paragraph 3 of Plaintiff's Complaint, the Town admits the Court has authority to grant a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and authority to grant equitable relief and monetary damages pursuant to 42 U.S.C. § 12117 in certain instances, denies such relief is warranted in this instance or that Plaintiff is entitled to such relief against the Town, and denies any allegation contained in said paragraph that is inconsistent with the foregoing or not specifically referenced herein.

4. With regard to the allegations contained in paragraph 4 of Plaintiff's Complaint, the Town admits that the allegations contained in Plaintiff's Complaint occurred in this judicial district and that venue is proper in this district but denies the merits of said allegations and denies any allegation contained in said paragraph that is inconsistent with the foregoing or not specifically referenced herein.

PARTIES

5. The Town admits the allegations contained in paragraph 5 of Plaintiff's Complaint.

6. The Town admits the allegations contained in paragraph 6 of Plaintiff's Complaint.

7. The Town admits the allegations contained in paragraph 7 of Plaintiff's Complaint.

FACTS

8. The Town is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of Plaintiff's Complaint.

9. The Town denies the allegations contained in paragraph 9 of Plaintiff's Complaint.

10. The Town is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of Plaintiff's Complaint.

11. The Town is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of Plaintiff's Complaint.

12. The Town admits the allegations contained in paragraph 12 of Plaintiff's Complaint.

13. The Town admits the allegations contained in paragraph 13 of Plaintiff's Complaint.

14. With regard to the allegations contained in paragraph 14 of Plaintiff's Complaint, the Town admits that at the time it gave the Complainant a conditional offer of employment it believed Complainant was qualified to perform the essential functions of a police officer, admits that at the time the Clarksville Metropolitan Board of Fire, Police and Safety Commissioners ("the Board") rescinded the Complainant's conditional offer of employment the Board was under the reasonable belief that Complainant did not satisfy the state's medical requirements for the position which he was applying and therefore could not perform an essential function of the job, admits that at the time the Board voted to reinstate the Complainant to the hiring pool that it was under the reasonable belief that Complainant was qualified to perform the essential functions of a police officer, and is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of Plaintiff's Complaint.

15. With regard to the allegations contained in paragraph 15 of Plaintiff's Complaint, the Town admits that Plaintiff's offer of employment was contingent upon Complainant passing a medical examination which was mandated by Indiana statutes and regulations and denies any

allegations to the extent they are inconsistent with the foregoing and not referenced specifically herein.

16. The Town is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of Plaintiff's Complaint.

17. The Town is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of Plaintiff's Complaint.

18. With regard to the allegations contained in paragraph 18 of Plaintiff's Complaint, the Town admits that the medical examiner advised, in part, that the Complainant did not meet the statewide medical standards due to the risk of substantial harm to the health and safety of co-workers as well as members of the public with whom the candidate will come in contact, and denies any allegations to the extent they are inconsistent with the foregoing or not specifically referenced herein.

19. With regard to the allegations contained in paragraph 19 of Plaintiff's Complaint, the Town admits it justifiably relied upon the medical examiner's "thorough review of the applicant's medical history" and knowledge, education, training and experience in the medical field which the Town did not possess, admits that said medical examiner's medical opinion and testimony constitutes "medical evidence," and denies any allegations to the extent they are inconsistent with the foregoing.

20. With regard to the allegations contained in paragraph 20 of Plaintiff's Complaint, the Town denies the medical examiner made no individualized findings about the Complainant's then-present ability to safely perform the essential functions of the job, admits the medical examiner offered the opinion that the Complainant could not satisfy Indiana's legal requirements

for membership in the 1977 Fund, which is a legal requirement for being a police officer in the State of Indiana, and denies any allegations to the extent they are inconsistent with the foregoing.

21. With regard to the allegations contained in paragraph 21 of Plaintiff's Complaint, the Town denies the medical examiner determined the Complainant was not able from a physical standpoint to perform the job duties of a police officer, admits the medical examiner determined the Complainant did not satisfy the medical standards and requirements which were required by law to be a police officer in the state of Indiana, is without knowledge or information sufficient to admit or deny any allegations with respect to whether the determination was "at odds with objective evidence" as it is unaware of which evidence the Plaintiff is referring and denies any allegations to the extent they are inconsistent with the foregoing or not specifically referenced herein.

22. With regard to the allegations contained in paragraph 22 of Plaintiff's Complaint, the Town admits that on November 17, 2015, Clarksville's Police Chief, recommended the Board rescind the Complainant's conditional offer of employment due to the medical examiner's determination that the Complainant did not satisfy the state's legal medical requirements, denies the Clarksville Police Chief recommended the Complainant be terminated as a reserve police officer, admits he offered the Complainant the chance to retest at the Complainant's expense, and denies any allegations to the extent they are inconsistent with the foregoing or not specifically referenced herein.

23. The Town admits the allegations contained in paragraph 23 of Plaintiff's Complaint.

24. With regard to the allegations contained in paragraph 24 of Plaintiff's Complaint, the Town admits that it justifiably and reasonably relied upon the medical opinion of a qualified

physician regarding whether the Complainant met the state's legal standards and requirements, is without the medical knowledge, education, experience or information sufficient to admit or deny whether said medical opinion was "erroneous," denies its decision to withdraw the conditional offer was erroneous, admits the Police Chief offered the Complainant a chance to be re-examined at the Complainant's expense, admits in August 2016, the Complainant was re-examined at which time the medical examiner determined he passed the statewide medical requirements and shortly thereafter, the Indiana Public Retirement System approved the Complainant's membership in the 1977 Police Officers' and Firefighters' Pension and Disability fund, admits that upon receiving said approval and in September 2016, the Board unanimously voted to put him back on the hire list, is without knowledge or information sufficient to admit or deny when the Complainant began the process of attempting to be medically re-examined or how long said process took, and denies any allegations to the extent they are inconsistent with the foregoing or not specifically referenced herein.

25. With regard to the allegations contained in paragraph 25 of Plaintiff's Complaint, the Town admits as soon as a qualified medical provider certified the Complainant passed the statewide medical requirements and the Indiana Public Retirement System approved the Complainant's membership in the 1977 Police Officers' and Firefighters' Pension and Disability fund (which said membership is required by Indiana law) the Board unanimously voted to put the Complainant back on the hire list, and denies any allegations to the extent they are inconsistent with the foregoing or not specifically referenced herein.

26. With regard to the allegations contained in paragraph 26 of Plaintiff's Complaint, the Town admits Complainant was never given a second conditional offer of employment, admits Complainant was placed in the Town's police department's hiring order and at the next

available job opening was notified via certified mail at the address he had on file with the Town of the date, time and place of the physical agility test which was required to be considered for rehire, admits the Complainant did not report for said test such that he was removed from the hiring order, and denies any allegations to the extent they are inconsistent with the foregoing or not specifically referenced herein.

27. The Town is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 27 of Plaintiff's Complaint.

28. The Town denies the allegations contained in paragraph 28 of Plaintiff's Complaint.

29. The Town denies the allegations contained in paragraph 29 of Plaintiff's Complaint.

30. With regard to the allegations contained in paragraph 30 of Plaintiff's Complaint, the Town admits the Complainant filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission, admits said charge speaks for itself, denies any allegations to the extent they conflict with said charge and denies any allegations to the extent they are inconsistent with the foregoing or not specifically referenced herein.

31. With regard to the allegations contained in paragraph 31 of Plaintiff's Complaint, the Town admits the EEOC investigated the Complainant's charge and issued findings, admits said findings speak for themselves, denies any allegations to the extent they are inconsistent with said findings and denies any allegations to the extent they are inconsistent with the foregoing or not specifically referenced herein.

32. The Town is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 32 of Plaintiff's Complaint.

33. The Town is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 33 of Plaintiff's Complaint.

CAUSE OF ACTION
Violation of Title I of the Americans with Disabilities Act

34. The foregoing paragraphs are incorporated herein.

35. With regard to the allegations contained in paragraph 35 of Plaintiff's Complaint, the Town admits that the statutes and regulations cited therein speak for themselves, denies any allegations to the extent they are inconsistent with said statutes or regulations, deny it discriminated against any qualified individuals on the basis of disability, and denies any allegations to the extent they are inconsistent with the foregoing.

36. The Town is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 36 of Plaintiff's Complaint.

37. With regard to the allegations contained in paragraph 37 of Plaintiff's Complaint, the Town denies it discriminated against the Complainant, denies it violated any statutes or regulations, and denies it withdrew the Complainant's conditional offer of employment as a police officer on the basis of a disability or his HIV status, admits it withdrew the Complainant's conditional offer of employment after it was informed by a medical professional that he did not satisfy the medical standards and legal requirements for the job and relied on said opinion, and denies any allegations to the extent they are inconsistent with the foregoing or not specifically referenced herein.

WHEREFORE, the Defendant respectfully requests the Plaintiff take nothing by way of its Complaint, for Judgment in its favor, for its costs expended in this action and for all other just and proper relief in the premises.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff failed to exhaust his administrative remedy.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim which would permit the award of pre- or post-judgment interest.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were caused in whole or in part by his own actions and/or failure to mitigate damages.

FIFTH AFFIRMATIVE DEFENSE

The Town may be entitled to the defenses set forth in 42 U.S.C. § 12113(a)—namely, the Town applied qualification standards, tests, or selection criteria that was job-related and consistent with business necessity.

SIXTH AFFIRMATIVE DEFENSE

The Town may be entitled to the affirmative defense of bona fide occupational qualification.

SEVENTH AFFIRMATIVE DEFENSE

The Town may be entitled to the affirmative defenses set forth in 42 U.S.C. § 12113(a)-(b) and 42 U.S.C. § 12111(3)—namely, its qualification standards included a requirement necessary to prevent an individual from posing a “direct threat” to the health or safety of other individuals.

EIGHTH AFFIRMATIVE DEFENSE

The Town may be entitled to the affirmative defense of “undue hardship” in that it is not required to provide an accommodation that will impose an undue hardship on the operation of its business.

NINTH AFFIRMATIVE DEFENSE

The Town may be entitled to the affirmative defense of “undue burden” in that it is not required to undergo significant burdens or expense.

TENTH AFFIRMATIVE DEFENSE

The Town justifiably relied on a medical examiner’s examination, evaluation, education, training and experience in making its employment decision in this instance.

ELEVENTH AFFIRMATIVE DEFENSE

The Town justifiably relied upon and followed state law with regard to its employment decisions.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff may not have been a “qualified individual” at the time the Town made its employment decision.

THIRTEENTH AFFIRMATIVE DEFENSE

The Town reserves the right to supplement and amend its Answer, and additional defenses, pursuant to further discovery, and case management in the progress of this suit.

JURY TRIAL REQUEST

The Defendant, by counsel, respectfully requests a jury trial on all issues so triable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of June, 2022, a copy of the foregoing Answer was filed electronically with the Court. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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