

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

ALLISON COVINGTON,)
)
 Plaintiff,)
)
 v.)
)
 KEN JOHNSON, individually and in his)
 official capacity,)
)
 Serve at: 1101 Walnut Street)
 Murphysboro, IL 62966)
)
 CHAD ROBERTS, individually and in his)
 official capacity, and)
)
 Serve at: 1101 Walnut Street)
 Murphysboro, IL 62966)
)
 CITY OF MURPHYSBORO, ILLINOIS,)
)
 Service accepted: Courtney Cox, Esq.)
 2015 W. Main Ste. 111)
 Carbondale, IL 62901)
)
 Defendants.)

Case. No.: 18-1076

JURY TRIAL DEMANDED

COMPLAINT

NOW COMES Plaintiff, by her attorneys, and for her complaint against Ken Johnson, individually and in his official capacity, Chad Roberts, individually and in his official capacity, and City of Murphysboro, Illinois, an Illinois Municipality, states as follows:

Introduction

1. This matter arises under Title VII of the Civil Rights Act as amended, 42 U.S.C. § 2000e *et seq.*, the Americans with Disabilities Act as amended, 42 U.S.C. § 12111, *et. seq.*, the Illinois Human Rights Act, 775 Ill. Comp. Stat. Ann. 5/1-101 *et. seq.*, and the Fourteenth Amendment of the Constitution of the United States. Plaintiff was employed as a dispatcher by the

Murphysboro Police Department. While Plaintiff was employed by the Murphysboro Police Department, she was subjected to sexual harassment by Defendants Ken Johnson and Chad Roberts. Plaintiff was also subjected to demeaning comments and verbal abuse due to her diagnosis of Attention Deficit Hyperactivity Disorder by Defendant Johnson. Defendant Johnson refused to train Plaintiff after learning of her diagnosis. Plaintiff was terminated in retaliation for reporting and opposing Defendant Johnson's sexual comments and advances and discrimination and verbal abuse.

Jurisdiction and Venue

2. Plaintiff invokes this Court's jurisdiction under 28 U.S.C. § 1331, 1343(a), and 42 U.S.C. § 2000e-5 to hear and decide claims under federal law. Plaintiff invokes supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367(a) to hear and decide Plaintiff's claims under Illinois state law.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and 42 U.S.C. § 2000e-5(f)(1)(B)(3) because all events giving rise to this action occurred within the Southern District of Illinois.

4. On July 11, 2017, Plaintiff cross-filed a charge against Defendant City of Murphysboro, Illinois with the Equal Employment Opportunity Commission ("EEOC") and the Illinois Department of Human Rights ("IDHR") alleging sex discrimination, disability discrimination, and retaliation. On February 12, 2018, Plaintiff received a Right to Sue letter. This action is filed within 90 days of receipt of the foregoing notice. Plaintiff has complied fully with the administrative exhaustion requirements of Title VII, the ADA, and the Illinois Human Rights Act.

Parties

5. Plaintiff Allison Covington is a 34-year-old female person who resides at 609 Vickie Lane Herrin, IL 62948.

6. Plaintiff has a diagnosis of Attention Deficit Hyperactivity Disorder (“ADHD”). Plaintiff manages her diagnosis by taking medication. As explained more fully below, her diagnosis did not impact her ability to perform the essential functions and duties of her job.

7. Defendant Ken Johnson is a telecommunications officer for the city of Murphysboro, Illinois. At all relevant times herein, Defendant Johnson acted as Plaintiff’s supervisor. Defendant Johnson was acting under color of law and within the scope of his employment as an employee of the Murphysboro Police Department. He is being sued in his individual and official capacity. Upon information and belief, Defendant Johnson is a resident of Murphysboro, Illinois.

8. Defendant Chad Roberts is the police chief for the city of Murphysboro Illinois. At all relevant times herein, Defendant Roberts was acting under color of law and within the scope of his employment as the police chief. At all relevant times herein, Defendant Roberts was the chief and head of the chain of command for the Murphysboro Police Department and was responsible as head supervisor for all employees, including Defendant Johnson and Plaintiff. Defendant Roberts is being sued in his individual and official capacities. Upon information and belief, Defendant Roberts is a resident of Murphysboro, Illinois.

9. Defendant City of Murphysboro, Illinois, is an Illinois municipal corporation that has the capacity to sue and be sued. Its main offices are located at 1101 Walnut Street, Murphysboro, IL 62966.

Statement of Facts Common to All Counts

10. Plaintiff began her first day of work at the Murphysboro Police Department on October 22, 2016.

11. Plaintiff was hired as a dispatcher. Her job duties included aiding officers during traffic stops, and other daily tasks by providing backup information from the office via telephone.

12. During her employment, Plaintiff made \$12.94 an hour.

13. Plaintiff did not receive sexual harassment training at any time during her employment.

14. At hiring, Defendant Roberts assigned Plaintiff to Defendant Ken Johnson for training.

15. Defendant Roberts is the Police Chief and is the head of the chain of command for all employees in the Police Department. Defendant Roberts has ultimate decision-making authority regarding hiring, firing, or discipline for employees, including Plaintiff.

16. Defendant Johnson was responsible for all Plaintiff's training, teaching, instruction, feedback, and assistance.

17. Plaintiff reported to Defendant Johnson each day upon arriving to work. Defendant Johnson controlled Plaintiff's daily tasks.

18. Defendant Johnson was responsible for Plaintiff's evaluations. If Defendant Johnson consistently gave Plaintiff bad evaluations, or would not sign off on Plaintiff's evaluations, she would be terminated.

19. Defendant Johnson had seniority in the office and all other employees, including the Chief, listened to his suggestions or comments. For example, Defendant Johnson told Plaintiff within several weeks of her employment that she was hired on his suggestion.

20. When Plaintiff arrived at work on her first day, she was greeted by a giant photograph of herself, which was hanging on the wall. Plaintiff asked Defendant Johnson about the photograph. Defendant Johnson told Plaintiff, "I creeped your Facebook and found it. I wanted to show all the police officers our cute new dispatcher we were getting from Missouri."

21. Plaintiff's first day of work set the tone for the uncomfortable atmosphere in which she would work while employed by Defendant Murphysboro. Thereafter, Defendant Johnson subjected Plaintiff to repeated comments of a sexual and inappropriate nature.

22. Within several weeks of being hired, Defendant Johnson brought his personal laptop to work. Johnson performed google searches on his laptop of women's underwear to show Plaintiff.

23. At that same time, Defendant Johnson began to discuss oral sex and describe his wife's sex organs. Defendant Johnson told Plaintiff, "I don't go down on my wife because of the way she smells. I wish she was cleaner. Does your husband go down on you?"

24. Defendant Johnson also talk about women's underwear. Defendant Johnson told Plaintiff, "My wife only wears full back underwear. She only wears cotton panties. I want her to wear satin panties because I like the way they feel when I rub her butt." Defendant Johnson then told Plaintiff, "Do you wear thongs? You must wear thongs, because I can't see any underwear lines through your khakis."

25. Plaintiff felt extremely uncomfortable by those comments and questions. At first, Plaintiff nervously laughed off Defendant Johnson's comments or changed the subject to something work related.

26. Plaintiff feared upsetting Defendant Johnson, since Defendant Roberts told her within several weeks of hiring that Defendant Johnson's step-father, a judge, was a very important

figure in Jackson County. Plaintiff felt Defendant Roberts was trying to intimidate Plaintiff into not complaining about Johnson by expressing how important his step-father was to the Police Department.

27. However, Plaintiff grew increasingly frustrated and upset with the way Defendant Johnson treated her. On December 3, 2016, Plaintiff told Defendant Johnson that the way spoke to her was unacceptable. She also disclosed that she had Attention Deficit Hyperactivity Disorder (“ADHD”) after he observed her taking medication during the day and asked her why she was “always taking medication.” Defendant Johnson told Plaintiff the way he treated her was simply “the way he was” and informed her, “This is my way of teaching you.”

28. Thereafter, things became worse between Plaintiff and Defendant Johnson. He began to call her “retarded,” “brainless,” and “dumb.” He exclaimed, “You’re fucking retarded!” or “Figure shit out for yourself!” when she asked him questions. Defendant Johnson told Plaintiff, “You’re like my sister,” referring to his sister with mental disabilities. Defendant Johnson also told Plaintiff that his wife, a nurse, said having a coworker with ADHD would get someone killed.

29. Defendant Johnson told Plaintiff, “I will not train someone with your disease.” Instead, he began to play games on his personal laptop at work in lieu of training Plaintiff.

30. In December 2016, Plaintiff also told Lieutenant Michael Laughland about her diagnosis after the abuse from Defendant Johnson began. Plaintiff’s diagnosis became common knowledge in the office shortly after that. Katie Ehlers, another dispatcher, told Plaintiff that Lieutenant Laughland told the other employees they needed to watch Plaintiff for any signs or symptoms of ADHD.

31. Defendant Johnson’s comments and insults toward Plaintiff became so obvious that a supervising sergeant, Sergeant Craig Smelter, became concerned. On December 20, 2016,

Sergeant Smelter took Plaintiff on a ride along. In the car and away from Defendant Johnson, Sergeant Smelter told Plaintiff, "Okay, here's the deal. I want you to know I've noticed how Ken treats you. Are you okay?" Plaintiff disclosed everything Defendant Johnson said and did, including the verbal abuse and sexual harassment.

32. After Plaintiff reported Defendant Johnson's behavior to Sergeant Smelter, Sergeant Smelter told Plaintiff he was going to report Defendant Johnson to Defendant Roberts and Lieutenant Laughland.

33. However, Defendant Chief Chad Roberts subjected Plaintiff to inappropriate and unwelcome sexual comments as well.

34. For example, on October 31, 2017, after an organized safety evaluation exercise, Defendant Roberts took Plaintiff on an unplanned drive with him instead of returning her to the station after the exercise. Defendant Roberts drove Plaintiff to his house, which is located down a wooded driveway and off the main road. While in the car, Defendant Roberts told Plaintiff that his wife was not home, and then described his bedroom to her. Plaintiff was uncomfortable and said nothing until Defendant Roberts eventually drove back to the station. Defendant Roberts did not give Plaintiff an explanation as to why he was taking her to his house and did not go to any other employee's home during that drive.

35. Defendant Roberts observed Plaintiff on the phone with a suicidal resident who frequently called 9-1-1. Defendant Roberts told Plaintiff, "You know, Allison, he would probably stop calling if you would stop having fucking phone sex with him, I mean, shit!" Sergeant Tim Legere witnessed this interaction between Defendant Roberts and Plaintiff. Sergeant Legere told Defendant Roberts, "You can't say that!" Defendant Roberts retreated to his office and slammed the door.

36. On December 21, 2016, Defendant Roberts and Lieutenant Laughland met with Plaintiff after talking with Sergeant Smelter about Defendant Johnson. Defendant Roberts and Lieutenant Laughland told Plaintiff she would be transferred to a different shift that same evening. Defendant Roberts told Plaintiff this transfer was due to the hostile work environment created by Defendant Johnson.

37. Defendant Johnson was not reprimanded, disciplined or removed from his position for his misconduct.

38. During one of Plaintiff's evening shifts after December 21, 2016, another dispatcher with the Murphysboro Police Department confided in Plaintiff she was also a victim of Defendant Johnson's verbal abuse. This dispatcher told Plaintiff that she kept a log of the horrible things Defendant Johnson said to her and often cried in the bathroom during her lunch breaks because of the abuse. She told Plaintiff, "I know it is hard, but you are on probation for a year, and if you say anything they'll find a reason to fire you."

39. Immediately after her transfer, Defendant Johnson grew increasingly hostile towards Plaintiff. He began to throw out her food, hide cups and mugs from her on shelves too high to reach, and refused to speak to her.

40. Two weeks later, in January 2017, Lieutenant Laughland told Plaintiff she would be returned to Defendant Johnson. Plaintiff told Lieutenant Laughland she thought she had been transferred because working under Defendant Johnson created a hostile work environment. She also told him Defendant Johnson now treated her worse and refused to speak to her or sign off on her training. Plaintiff made it clear she did not feel comfortable working directly under Defendant Johnson.

41. Shortly after that conversation, on January 17, 2017 Defendant Roberts and Lieutenant Laughland terminated Plaintiff for “failing to respond to training.”

42. Plaintiff was qualified for her job and able to perform the duties of her job in satisfactory manner.

43. For example, on an evaluation dated November 24, 2016, given by Ashley Etherton, Plaintiff was marked as “exceeding expectations” in nearly every aspect of her job. Further, on an evaluation dated December 21, 2016, also given by Ms. Etherton, Plaintiff did not “need improvement” in any aspect of her job, and was progressing satisfactorily or exceeding expectations in everything.

44. Plaintiff was also complimented on her performance. For example, on December 22, 2016, Ms. Etherton told Plaintiff she “rocked it!” while handling her first 9-1-1 call.

45. Because of the sexual harassment, discrimination, hostile work environment, and termination, Plaintiff has sustained lost wages and other benefits of employment, emotional distress such as pain and suffering, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

46. Defendant City of Murphysboro, Illinois, has a policy and practice of fostering a culture ripe with sexual harassment and discrimination, as seen by the unwelcome sexual advances and comments, and verbal abuse by its employees, including Defendants Johnson and Roberts.

47. Defendant City of Murphysboro, Illinois has a policy and practice of discovering but failing to remedy ongoing sexual misconduct by its employees, including Defendants Johnson and Roberts.

48. Defendant City of Murphysboro, Illinois has a policy and practice of discovering but failing to remedy ongoing discrimination by its employees, including Defendant Johnson.

49. Defendant City of Murphysboro, Illinois has a policy and practice of allowing an employee code of silence, where its employees and others in the police chain of command refuse to report or otherwise cover-up instances of sexual misconduct and discrimination by its employees and others in the police chain of command, despite obligation under the law, thereby causing the type of injuries described above.

50. As proximate result of the misconduct by Defendants Ken Johnson, Chad Roberts, and City of Murphysboro, IL as described above, Plaintiff has lost wages and benefits, and has suffered pain, humiliation, and mental anguish.

**Count I – Title VII
Against Defendant City of Murphysboro**

51. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.

52. Plaintiff is an employee as defined by 42 U.S.C. § 2000e(f)

53. Defendant is an employer as defined by 42 U.S.C. § 2000e(b).

54. As supervisors, Defendants Roberts and Johnson had the power to take tangible employment actions against Plaintiff.

55. Defendants Roberts and Johnson subjected Plaintiff to vulgar, humiliating, severe and pervasive harassment based upon her gender and disability throughout her employment. Their actions created a hostile working environment for Plaintiff.

56. Defendant City of Murphysboro has engaged in intentional gender discrimination in the terms and conditions of Plaintiff's employment, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1).

57. Defendant City of Murphysboro terminated Plaintiff from her position of dispatcher in retaliation for reporting sexual harassment by its employees and opposing unwelcome sexual comments, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a).

58. This misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

**Count II – The Americans With Disabilities Act
Against Defendant City of Murphysboro**

59. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.

60. Plaintiff is a person with a disability within the meaning of 42 U.S.C. § 12102(1).

61. Defendant City of Murphysboro, Illinois, is an employer within the meaning of 42 U.S. Code § 12111(5)(A).

62. Defendant City of Murphysboro perceived Plaintiff to be an individual with a disability.

63. Defendant City of Murphysboro, Illinois discriminated against Plaintiff, a person with a disability who was qualified to perform the dispatcher job, and violated Title I of the Americans With Disabilities Act (“ADA”).

64. At all relevant times herein, Defendant Johnson was assigned by Defendant City of Murphysboro, Illinois to train plaintiff and provide her instruction. Immediately after learning of her diagnosis, Defendant Johnson made cruel, demeaning remarks to Plaintiff’s mental ability and refused to train Plaintiff, as described in paragraphs 28-30. Plaintiff no longer received adequate training due to her disability in violation of 42 U.S.C. § 12112(b). Defendant Johnson’s actions created a hostile working environment for Plaintiff.

65. Defendant City of Murphysboro has engaged in disability discrimination in the terms and conditions of Plaintiff's employment, in violation of Title I of the Americans With Disabilities Act ("ADA").

66. Defendant City of Murphysboro terminated Plaintiff from her position of dispatcher in retaliation for reporting disability discrimination by its employees and opposing Defendant Johnson's discriminatory comments, in violation of 42 U.S.C. § 12203.

67. This misconduct described in this Count severely limited Plaintiff's opportunities and status on the basis of her disability.

**Count III – 42 U.S.C. § 1983 - Equal Protection
Against All Defendants**

68. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.

69. As described more above, Defendants Johnson and Roberts denied Plaintiff equal protection of the law in violation of her rights under the Fourteenth Amendment of the Constitution of the United States.

70. The misconduct described in this Count was motivated by gender and disability animus and constituted purposeful discrimination.

71. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

72. This misconduct described in this Count was undertaken by Defendants Johnson and Roberts within the scope of their employment and under color of law such that their employer, Defendant City of Murphysboro, Illinois is liable for their actions.

73. The misconduct described in this Count was undertaken pursuant to the policies and practices of the Defendant City of Murphysboro, Illinois in the manner described more fully above.

**Count IV – Illinois Human Rights Act – Disability Discrimination
Against All Defendants**

74. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.

75. Plaintiff is a person with a disability within the meaning of 775 ILCS 5/1-103(I). Plaintiff's diagnosis is Attention Deficit Hyperactivity Disorder ("ADHD").

76. Plaintiff's disability is unrelated to her ability to perform the duties of the dispatcher job.

77. Defendant Johnson discriminated against Plaintiff by refusing to train Plaintiff because of her disability and repeatedly making cruel and demeaning comments to Plaintiff about her diagnosis, in violation of the IHRA, 775 ILCS 5/1-102(A) and 5/2-102(A).

78. Defendant City of Murphysboro, Illinois is an employer within the meaning of the IHRA, 775 ILCS 5/2-101(B)(1)(c).

79. Defendants Chad Roberts and City of Murphysboro, Illinois terminated Plaintiff in retaliation for her opposition to discrimination by Defendant Johnson and for reporting the discrimination by Defendant Johnson. Her termination constitutes retaliation in violation of the IHRA, 775 ILCS 5/6-101(A).

**Count V – Illinois Human Rights Act - Sex Discrimination
Against All Defendants**

80. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.

81. Defendant Johnson committed sexual harassment against Plaintiff, and violated the Illinois Human Rights Act (“IHRA”) by engaging in continuous unwanted, unwelcome sexual advances toward Plaintiff as described above. At all relevant times herein, he acted as Plaintiff’s immediate supervisor. His actions created a hostile working environment for Plaintiff and adversely affected her performance, in violation of the IHRA, 775 ILCS 5/2-102(D).

82. Defendant Roberts committed sexual harassment against Plaintiff by engaging in continuous unwanted, unwelcome sexual advances toward Plaintiff as described above. At all relevant times herein, he was Plaintiff’s supervisor. His actions created a hostile working environment for Plaintiff and adversely affected her performance, in violation of the IHRA, 775 ILCS 5/2-102(D).

83. Defendant City of Murphysboro, Illinois is an employer within the meaning of the IHRA, 775 ILCS 5/2-101(B)(1)(c).

84. Defendant City of Murphysboro, Illinois was aware of the sexual misconduct and hostile work environment caused by its employees and failed to take reasonable corrective measures, in violation of the IHRA, 775 ILCS 5/2-102(D).

85. Defendants Chad Roberts and City of Murphysboro, Illinois terminated Plaintiff in retaliation for her opposition to the multiple instances of discriminatory abuse by both Defendant Johnson and Defendant Roberts and for reporting the misconduct of Defendant Johnson. Her termination constitutes retaliation in violation of the IHRA, 775 ILCS 5/6-101(A).

Conclusion

86. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendants Ken Johnson, Chad Roberts, and City of Murphysboro, IL, awarding lost wages and benefits, reinstatement, front wages, emotional distress damages, compensatory

damages, punitive damages, pre- and post-judgment interest, and attorney's fees and costs, as well as any other relief this Court deems may be just and proper.

Jury Demand

87. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff respectfully demands a trial by jury on all issues triable by a jury.

Respectfully submitted,

/s/ Sarah Jane Hunt

Thomas E. Kennedy

Sarah Jane Hunt

Law Offices of Thomas E. Kennedy, III, L.C.

906 Olive St., Ste. 200

St. Louis, MO, 63101

314-872-9041 telephone

314-872-9043 fax

tkennedy@tkennedylaw.com

sarahjane@tekennedylaw.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true copy of the foregoing was served upon the following via U.S. and electronic mail on May 7, 2018.

Courtney Cox
Sandberg Phoenix & Von Gontard, PC
2015 W. Main Ste. 111
Carbondale, IL 62901
Tel: 618-351-7200
ccox@sandbergphoenix.com

/s/ Sarah Jane Hunt _____