

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND DIVISION

JAY W. KELLER : Case No.: _____ - CV _____
c/o The Stone Law Firm, Ltd. :
840 So. Sandusky Avenue : Hon. Judge _____
Bucyrus, Ohio 44820 :
: Hon. Magistrate _____

Plaintiff

vs. : **CIVIL COMPLAINT FOR DAMAGES**

THE CITY OF BUCYRUS, :
By and through Robert Ratliff, Esq. :
Bucyrus City Law Director :
500 So. Sandusky Avenue :
Bucyrus, Ohio 44820 : **[Jury Demand Endorsed Hereon]**

And :

HON. MAYOR JEFFREY RESER, :
both individually and in his capacity as :
Mayor of the City of Bucyrus :
500 So. Sandusky Avenue :
Bucyrus, Ohio 44820 :

And :

HON. MR. JEFFREY WAGNER, :
Both individually and in his capacity as :
Service Safety Director for City of Bucyrus :
500 So. Sandusky Avenue :
Bucyrus, Ohio 44820 :

PRELIMINARY STATEMENT

This is an action for economic damages in an amount not less than \$1,000,000.00 and declaratory relief under R.C. 4112.02 (A), brought under the federal jurisdiction of the Americans with Disabilities Act of 1990 and A.D.E.A. subject to all amendments thereto.

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The Plaintiff is Jay W. Keller, acting in both his capacity as the Chief of the Bucyrus Fire Department and as individual.

Plaintiff, Chief Jay W. Keller is a contracted employee with the City of Bucyrus. On July 20, 2017, he was notified and disciplined - while on disability leave for major surgery to his back - in accordance with the due process afforded him under his contract. Unnamed employees accused Chief Keller of essentially using racially insensitive slurs in the workplace and "bullying" employees/ member of the Bucyrus City Fire Department.

Thereafter, the City of Bucyrus - under the leadership and direction of Defendant Mayor Jeffrey Reser and Defendant Safety-Service Director Jeffrey Wagner - engaged in a pattern of conduct, using the disciplinary notice of July 20, 2017 as its basis, that created a hostile work environment for Chief Jay W. Keller, violated the terms and conditions of the Defendant City of Bucyrus and Plaintiff's contract, and engaged in age discrimination and violations of the Americans with Disabilities Act and its state analogue.

Over the course of nearly a year, in order to mitigate his damages and maintain his employment with the Defendant City of Bucyrus, Chief Keller was required by Defendant Mayor Jeffrey Reser and Defendant Safety-Service Director Jeffrey Wagner to undergo unnecessary, age and disability inappropriate trainings and certification for which Plaintiff is now economically liable and for which he has been damaged; Chief Keller was not paid during periods of his contract when he was, in fact, due his normal and regular salary; he was not allowed to work on or otherwise be around the Bucyrus Fire Department for which he was ultimately accountable as chief; he was disciplined for using a device necessary to meet his disability needs in a Defendant City of Bucyrus administrative meeting to which he was invited despite being on leave and under disciplinary sanctions.

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As such, Defendant City of Bucyrus - Defendant Mayor Jeffrey Reser - and Defendant City Safety Director Jeffrey Wagner are liable to Plaintiff Jay W. Keller for breach of contract, violations of the Americans with Disabilities Act (including overt acts of state age and disability discrimination), and violations of the Age Discrimination in Employment Act.

STATEMENT OF THE PARTIES

1. Plaintiff Jay W. Keller is and was at all times relevant to this cause of action a contracted employee with City of Bucyrus and a resident of Crawford County, Ohio subject to the laws and protections of the Ohio Constitution and Ohio Revised Code, as well as United States Constitution and United States Code; and
2. Defendant City of Bucyrus is a unit of local government organized under the laws of the State of Ohio. Defendant City of Bucyrus is and was, at all times relevant to this Complaint, a "municipal corporation" for the purposes of the R.C.§715.01 and received federal funding such that said Defendant is subject to the laws of the of the Ohio Constitution and Ohio Revised Code, as well as United States Constitution and United States Code.

STATEMENT OF JURISDICTION

3. The United States District Court for the Northern District of Ohio has personal jurisdiction and subject matter jurisdiction in this matter because the primary acts that gave rise to the following causes of action occurred substantially within the jurisdiction of United States District Court for the Northern District of Ohio; and
4. The causes of action herein include primarily violations of the Americans with Disabilities Act of 1990 and violations of the Age Discrimination in Employment Act, including claims of age and disability discrimination that fall under violations of the United States Constitution and United States Code accordingly; and the Court has supplemental jurisdiction of the common law and state claims provided hereunder.

COUNT I: BREACH OF CONTRACT

5. Plaintiff and Defendant City of Bucyrus entered into a duly executed and voluntary contract on under terms and conditions that included standards affording Plaintiff certain rights to due process prior to placing Plaintiff on Administrative Leave without Pay;
6. On or about July 20, 2017 Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus, breached the parties' contract by forcing Plaintiff on Administrative Leave without Pay without affording him the due process expressly provided for in his contract and without having justifiable cause for doing so;

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7. On or about July 20, 2017 Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus, breached the parties' contract by forcing Plaintiff to pay for professional development that Defendants required Plaintiff to undergo and successfully complete in order to keep maintain his employment with the Defendant City of Bucyrus;
8. On March 18, 2018 Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus, breached the parties' contract by forcing Plaintiff to undergo a physical training exercise to determine his fitness to return to duty that did not conform to any of the duties and responsibilities incumbent with his position as the Chief of the Bucyrus Fire Department.
9. As a direct and proximate result of the collective Defendants breach of the parties' contract, Plaintiff was economically damaged in an amount in excessive of \$75,000.00, including damages for emotional pain and suffering to be determined.

COUNT II: STATE AGE DISCRIMINATION

10. R.C.§ 4112.02(N) provides that complaints of age discrimination may be brought directly for judicial review without exhaustion of administrative remedies. See *Dworning v. City of Euclid*, 8th Dist. Cuyahoga No. 87757, 2006-Ohio-6772.
11. Plaintiff is 53 years old and has been a firefighter for the City of Bucyrus for approximately thirty (30) years, and has served as Chief of the Bucyrus City Fire Department for 16 years;
12. During the period of time that Plaintiff has acted as Chief of the Bucyrus City Fire Department, he has had 5 total surgeries for various job and personal related injuries;
13. Prior to the actions leading up to this cause of action, Plaintiff has never been required to undergo a physical training examination to return to duty as Chief of the Bucyrus City Fire Department;
14. Despite prior injuries and surgeries to the Plaintiff, as well as other employees of the Bucyrus City Fire Department, no other known employee - certainly not the Chief of the Bucyrus City Fire Department with his specific duties and responsibilities - has been required to undergo such physically rigorous and inapplicable physical examination in order to return to duty;
15. On March 18, 2018 Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus, engaged in age discrimination by forcing Plaintiff to undergo a physical training exercise to determine his fitness to return to duty that did not conform to any of the duties and responsibilities incumbent with his position as the Chief of the Bucyrus Fire Department;
16. The physical training exercise that Plaintiff was forced by Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus forced Plaintiff to undergo was an initial fitness examination

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for firemen who have never served in duty and had little to no application to the duties and responsibilities set forth in the Defendant City of Bucyrus' job description for Chief of the Bucyrus City Fire Department; and

17. As a direct and proximate result of the collective Defendants age discrimination, Plaintiff was economically and physically damaged in an amount in excessive of \$75,000.00, including damages for emotional pain and suffering to be determined.

COUNT III: STATE DISABILITY DISCRIMINATION

18. R.C.§4112.99 affords Plaintiff a private cause of action for violations of both the state and federal disability discrimination;
19. R.C.§4112.99 affords Plaintiff a private cause of action for discrimination based upon Plaintiff's physical handicaps. See *Dworming v. City of Euclid*, 8th Dist. Cuyahoga No. 87757, 2006-Ohio-6772.
20. Plaintiff has been a firefighter for the City of Bucyrus for approximately thirty (30) years, and has served as Chief of the Bucyrus City Fire Department for 16 years;
21. During the period of time that Plaintiff has acted as Chief of the Bucyrus City Fire Department, he has had 5 total surgeries for various job and personal related injuries;
22. Prior to the actions leading up to this cause of action, Plaintiff has never been required to undergo a physical training examination to return to duty as Chief of the Bucyrus City Fire Department;
23. Plaintiff was severely injured on March 8, 2017 in the course of his employment in such a way that affected his major bodily function and major life activities such that he was disabled and underwent surgery to aid in his recovery of those activities and functions.
24. During the period of time that Plaintiff was recovering from those injuries and subsequent surgery, Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus, engaged in disability discrimination in contravention of the Americans with Disabilities Act;
25. On March 8, 2018 Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus, engaged in disability discrimination by forcing Plaintiff to undergo a physical training exercise to determine his fitness to return to duty that did not conform to any of the duties and responsibilities incumbent with his position as the Chief of the Bucyrus Fire Department;
26. The physical training exercise that Plaintiff was forced by Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus forced Plaintiff to undergo was an initial fitness examination for firemen who have never served in duty and had little to no application to the duties

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and responsibilities set forth in the Defendant City of Bucyrus' job description for Chief of the Bucyrus City Fire Department; and

27. As a direct and proximate result of the collective Defendants disability discrimination, Plaintiff was economically and physically damaged in an amount in excessive of \$75,000.00, including damages for emotional pain and suffering to be determined.

COUNT III: FEDERAL AGE DISCRIMINATION, A.D.E.A. 26 U.S.C. 621, et seq.

28. During the period of time that Plaintiff - more than 40 years of age - has acted as Chief of the Bucyrus City Fire Department, he has had 5 total surgeries for various job and personal related injuries;
29. Prior to the actions leading up to this cause of action, Plaintiff has never been required to undergo a physical training examination to return to duty as Chief of the Bucyrus City Fire Department;
30. On March 18, 2018 Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus, engaged in age discrimination by forcing Plaintiff to undergo a physical training exercise to determine his fitness to return to duty that did not conform to any of the duties and responsibilities incumbent with his position as the Chief of the Bucyrus Fire Department;
31. Despite prior injuries and surgeries to the Plaintiff, as well as other employees of the Bucyrus City Fire Department, no other known employee - certainly not the Chief of the Bucyrus City Fire Department with his specific duties and responsibilities - has been required to undergo such physically rigorous and inapplicable physical examination in order to return to duty;
32. The physical training exercise that Plaintiff was forced by Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus forced Plaintiff to undergo was an initial fitness examination for firemen who have never served in duty and had little to no application to the duties and responsibilities set forth in the Defendant City of Bucyrus' job description for Chief of the Bucyrus City Fire Department; and
33. As a direct and proximate result of the collective Defendants age discrimination, Plaintiff was economically and physically damaged in an amount in excessive of \$75,000.00, including damages for emotional pain and suffering to be determined.

COUNT IV: FEDERAL DISABILITY DISCRIMINATION

34. Plaintiff has been a firefighter for the City of Bucyrus for approximately thirty (30) years, and has served as Chief of the Bucyrus City Fire Department for 16 years;
35. During the period of time that Plaintiff has acted as Chief of the Bucyrus City Fire Department, he has had 5 total surgeries for various job and personal related injuries;

36. Prior to the actions leading up to this cause of action, Plaintiff has never been required to undergo a physical training examination to return to duty as Chief of the Bucyrus City Fire Department;
37. Plaintiff was severely injured on March 8, 2017 in the course of his employment in such a way that affected his major bodily function and major life activities such that he was disabled and underwent surgery to aid in his recovery of those activities and functions.
38. During the period of time that Plaintiff was recovering from those injuries and subsequent surgery, Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus, engaged in disability discrimination in contravention of the Americans with Disabilities Act;
39. On March 18, 2018 Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus, engaged in disability discrimination by forcing Plaintiff to undergo a physical training exercise to determine his fitness to return to duty that did not conform to any of the duties and responsibilities incumbent with his position as the Chief of the Bucyrus Fire Department;
40. The physical training exercise that Plaintiff was forced by Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus forced Plaintiff to undergo was an initial fitness examination for firemen who have never served in duty and had little to no application to the duties and responsibilities set forth in the Defendant City of Bucyrus' job description for Chief of the Bucyrus City Fire Department; and
41. As a direct and proximate result of the collective Defendants disability discrimination, Plaintiff was economically and physically damaged in an amount in excessive of \$75,000.00, including damages for emotional pain and suffering to be determined.

PRAYER FOR RELIEF/ DAMAGES

WHEREFORE, Plaintiff requests as follows:

- (A) A finding that Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus violated the Americans with Disabilities Act in violation of federal law;
- (B) A finding that Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus violated the Age Discrimination in Employment Act in violation of federal law;
- (C) A finding that Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus violated R.C.§4112.02 in engaging in age and disability discrimination in violation of state law;

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- (D) A finding that Defendants Mayor Reser and Safety Service Director Wagner, acting in their professional capacities on behalf of the Defendant City of Bucyrus violated breached the contract between the municipality and the Plaintiff;
- (E) An award of economic damages in an amount not less than \$1,000,000.00, including damages for emotional pain and suffering; and
- (F) That the Court award Plaintiff court costs, reasonable attorneys' fees and for other just and equitable relief as the Court deems necessary.

Respectfully Submitted,

THE STONE LAW FIRM, Ltd.

By: /s/ Adam Charles Stone

Adam Charles Stone (S.Ct. #0085414)

Attorney for *Plaintiff, Jay Keller*

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PLAINTIFF'S JURY DEMAND

The plaintiff, Jay Keller, hereby demands a jury trial be held on the merits of this Complaints.

/s/ Adam Charles Stone

Adam Charles Stone (S.Ct.#0085414)

THE STONE LAW FIRM, Ltd.

Counsel for *Plaintiff, Jay Keller*

PROOF OF SERVICE

I hereby certify on September 24, 2018 that a true and accurate copy of the foregoing will be sent by certified mail to the Defendants at the addresses indicated . All other parties will be served by email and/or Regular U.S. Mail, if necessary.

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/s/ Adam Charles Stone

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Counsel for *Plaintiff, Jay Keller*