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FILED ORIGINAL
THE UNITED STATES DISTRICT COURT for
THE WESTERN DISTRICT OF MICHIGAN

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U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

DENICE & PATRICK O'HERON

Case No:

Plaintiffs

1:05 CV 0556

Hon.

CALVIN COLLEGE

Robert Holmes Bell
Chief, U.S. District Judge

Defendant

PLAINTIFF'S COMPLAINT AND JURY DEMAND

Parties

1) Plaintiff, Denice O'Heron, (hereinafter Plaintiff) is a resident of Kent County Michigan, and was so at all times relevant to this Complaint.

2) Plaintiff, Patrick O'Heron, is the lawfully married husband of Plaintiff Denice O'Heron, and was so, as well as a resident of Kent County Michigan, at all times relevant to this Complaint.

3) Defendant, Calvin College, is a college/educational non-profit institution, registered with the State of Michigan as a Domestic Non-profit corporation, No. 747622 located in Kent County, Grand Rapids, Michigan, providing educational/instructional services to its students, and employs more than 15 employees.

Jurisdiction

4) Plaintiff was at all times relevant to this Complaint, a qualified person with a disability, as defined by 42 USC 12102(2), who was employed by Defendant.



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5) Plaintiff is also a person with a disability as defined by the Michigan Persons with Disabilities Civil Rights Act (PDCRA), MCL 37.1103(h).

6) Defendant is a covered employer or covered entity under the Americans with Disability Act, 42 USC 12111(2), employing more than 15 employees.

7) Defendant is an employer under the Michigan Persons with Disabilities Civil Rights Act (PDCRA), MCL 37.1101 et seq.

8) Plaintiff filed a complaint as to her ADA claims with the EEOC on March 3, 2005. **(Attached as Exhibit 1)**

9) A Right to Sue Letter was issued by the EEOC on or about May 20, 2005, and received in the mail by Plaintiff on May 23, 2005. **(Attached as Exhibit 2)**

10) This Court has jurisdiction over violations of the Americans with Disabilities Act, supplemental jurisdiction over Michigan state law PWDCR claims.

Facts

11) Plaintiff was continuously employed by Defendant from 1997 until her constructive discharge June 4, 2004, in various capacities.

12) Plaintiff first worked as the Admissions Office secretary half time, and eventually also worked half time in the Science Office.

13) In 1998, Plaintiff became a full time employee, shared by both the Science Division/Physics as a secretary, and the Admissions office.

14) On August 2, 1999, she was hired as the full-time secretary for the English Department, working 40 hours per week at \$11.68 per hour.

15) Plaintiff worked very well, and fulfilled the duties of her positions more than satisfactorily, with very exceptional and outstanding performance appraisals in

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1997, 1998, 1999.

16) Plaintiff received glowing letters and pay increases related to her outstanding performance, including discretionary pay increases awarded by her supervisors for exceptional work in 2000-2002.

17) Plaintiff was first diagnosed with a generalized anxiety disorder and depressive disorder, in 2001 and 2002, by her internist, Peter A. Kuhl, M.D.

18) Dr. Kuhl prescribed various anti-depressants and sleep medicines, as these conditions were impairing Plaintiff's ability sleep, eat, concentrate at work, and otherwise function normally in various daily activities.

19) Plaintiff received a very negative personnel performance review in 2002 from then Chair of the English Department, Dean Ward after a lengthy delay by Ward in getting the review completed.

20) Plaintiff informed Defendant employer through her supervisors and Human Resources officials that she had been diagnosed with depression in 2002.

21) Plaintiff was shocked by the tone of the review, and very upset.

22) The review noted that she performed her job very well, but that her attitude and demeanor was negative and abrupt.

23) Plaintiff discussed the review with outgoing Chair Ward, and incoming Chair John Netland.

24) Plaintiff's depression symptoms were worsened and aggravated by the content of the report, and Plaintiff discussed her depression diagnosis with both Ward and Netland as being an explanation for her what was described as "poor attitude."

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25) Netland encouraged Plaintiff to share her depression diagnosis with the members of the English department so they were aware that her failure to be as pleasant as they wanted her to be related to her medical condition.

26) Netland prepared a written notice to the members of the English Department that Plaintiff was suffering from depression, upon information and belief, with the knowledge and approval of Human Resources official, Deirdre Honner, which was disseminated to all members of the Department in mid-August 2002.

27) Plaintiff was placed on a "Personal Development Plan" by Netland and Ward, and told that her employment would be terminated if there was no improvement.

28) Ward shared with Plaintiff emails and letters from faculty members detailing their dissatisfaction with her attitude and demeanor, but would not reveal who had said what.

29) Plaintiff was deeply upset and hurt by the comments and evaluation, and embarrassed that the faculty had all become aware of her mental health problems.

30) Plaintiff received an excellent and much improved performance evaluation in December 2002, and the faculty members treated her better for a few months.

31) On June 3, 2003, Plaintiff received a very favorable performance evaluation, with her Department Chair, John Netland, praising her for her efforts to improve her attitude.

32) Plaintiff continued to treat for her depression and anxiety with

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medications, but as her symptoms worsened in 2003 after a slip and fall accident at work where Plaintiff sustained a head injury, Dr. Kuhl referred Plaintiff to Pine Rest for treatment by a psychiatrist.

33) Defendant's English Department Chair, John Netland, urged Plaintiff to seek a psychiatrist's care, and urged her to make appointments to see the doctors Dr. Kuhl suggested at Pine Rest.

34) Plaintiff presented for an initial assessment at Pine Rest in November 2003, noting that her ongoing depression and anxiety was causing her to be irritable to her coworkers and making it difficult to concentrate on her work.

35) Plaintiff was referred to Dr. Michael Thebert, M.D., a psychiatrist with the Pine Rest Caledonia clinic.

36) Dr. Thebert diagnosed Plaintiff with Major Depressive Disorder, recurrent, DMS IV Code 296.32, and Panic Disorder without agoraphobia, 300.01.

37) Dr. Thebert increased her dosage of certain anti-depressants she was already taking, and continued to see her on a regular basis.

38) Plaintiff also saw a mental health therapist at Pine Rest, at her Department Chair's request.

39) 40) Plaintiff had to take time off work to leave for her appointments during the day, which was approved by her Chairman, John Netland originally.

41) After a few weeks of Plaintiff's visits to her therapist and doctor, Netland and other faculty members became irritated at Plaintiff not being in the office continually during the day.

42) Plaintiff's doctor also sent a letter to Defendant advising that due to a

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worsening of Plaintiff's depression, she had to work on a part-time basis.

43) Defendant refused to honor the request for restricted work hours initially, and her internal medicine doctor re-drafted the request a second time, after which a reduced work schedule of 1-5pm was approved by Defendant.

44) Plaintiff was then diagnosed with a possible pulmonary lesion in her throat, and had to undergo various diagnostic tests.

45) Plaintiff missed work for the testing, which was approved.

46) Some of the 25-30 English Department members criticized Plaintiff for missing work for her various medical conditions, including her depression.

47) Plaintiff's treatment required that she take time off of work.

48) Dr. Thebert adjusted her medications for sleep, anxiety and depression, and Plaintiff's symptoms seemed to improve over the course of the early months of 2004.

49) Chairman John Netland began to meet with Plaintiff weekly, and advised her that various faculty members of the Department were unhappy with her glum and sad demeanor, and wanted her to smile more, and "get over it."

50) Plaintiff became very upset and more depressed, and was told by Netland that she had to deal with what he called a "personality conflict" with one professor, Karen Saupe.

51) Professor Saupe had been refusing to speak to Plaintiff.

52) Plaintiff was afraid to confront her, but asked that the Professor discuss whatever problems she had with her work performance.

53) Professor Saupe met with Plaintiff in her office privately, at Plaintiff's

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request.

54) Professor Saupe angrily berated Plaintiff, and told her that everyone there wanted to see her leave, and that no one there liked her.

55) She told Plaintiff she was sick of walking on eggshells around her because of her depression and bad moods, and accused Plaintiff of holding everyone emotionally hostage because of claimed emotional and medical conditions.

56) The professor told Plaintiff to shut up and not speak to her ever again.

57) Plaintiff made a complaint to the Human Resources Department and Chairman John Netland about the Professor's behavior, and similar behavior from a male professor.

58) Plaintiff's restricted work hours were not honored by the Department, and she was forced to come in early in the morning and beyond her work hours or face complaints and anger from the faculty.

59) Netland became irate with Plaintiff's reduced work hours, which he had approved, and told her she had to be there when work needed to be done, regardless of what her doctor told them.

60) Netland told Plaintiff that some of the faculty resented all the time Plaintiff was taking off and felt that her moodiness was just too disruptive to the office.

61) Netland told Plaintiff she had to just show up for work, no matter her condition, and act more pleasant, no matter how depressed she was.

62) Plaintiff complained to Defendant's Human Resources official Deirdre

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Honner, in person, and explained all of these events, and asked that she help stop the harassment and treatment she was receiving.

63) Plaintiff's psychiatrist urged her to take a medical leave of absence from work, as he saw that her depression symptoms were worsening with the workplace environment.

64) Plaintiff was afraid to ask for any more time off due to the very negative reaction she was receiving for taking even part time off work.

65) On June 3, 2004, Plaintiff received a very negative performance evaluation which cited her lack of a positive demeanor and attitude as reasons for dissatisfaction with her performance.

66) Plaintiff was highly upset by this evaluation, and decided to leave her work the next day, being reasonably unable to bear the work environment any longer.

67) Plaintiff has worked from her home on a freelance basis since her departure from Defendant's employment.

68) Plaintiff's depression and anxiety symptoms dramatically improved once she left the work environment with Defendant.

69) Defendant's real reason for continued negative workplace treatment of Plaintiff was her depression and anxiety diagnoses and her ongoing need for medical treatment, regarded by Defendant as a disability, or alternatively, her use of time off.

70) Defendant supervisors perceived Plaintiff as being "disabled" due to her depression and mental health treatment.

71) Defendant appeared to regard Plaintiff as unable to perform the functions of her position due to her depression and/or perceived disability, despite their agreement that her technical proficiency was excellent.

72) Defendant also used Plaintiff's legitimate use of available sick leave, and her stated need to use it in the future as the reason to discriminate against her

Count One: Violation of the Americans with Disabilities Act, 42 USC Sec. 12112(a) et seq.

73) Plaintiff hereby incorporates paragraphs 1-72 as if stated in full herein.

74) Plaintiff is a person with a disability, major depression and anxiety, chronic conditions which at times, substantially impairs her various major life activities, such as sleeping, eating, walking, talking, working, thinking and interacting normally with her family.

75) Plaintiff has a long record, since 2002 of having depression and its attendant impairments, known to Defendants.

76) Plaintiff also has been regarded by Defendant's agents and employees as having chronic depression, a disability.

77) Plaintiff was able to fulfil the essential duties of her position with Defendant with and without the reasonable accommodation of intermittent leave for treatment, with no undue hardship to Defendant associated with this accommodation.

78) Defendant has unlawfully discriminated against Plaintiff by constructively discharging Plaintiff-making her work conditions unbearable solely because of her disability and or her perceived disability and need for ongoing treatment.

79) Plaintiff has been damaged by the loss of her position, and has incurred



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substantial emotional distress.

80) Plaintiff has lost her income and benefits, and continues to incur significant medical expenses related to her ongoing treatment.

81) Plaintiff has sought freelance work, but has been unable to secure comparable employment and income.

82) Plaintiff's position was filled after she was fired with a non-disabled person.

83) Plaintiff continues to suffer emotional distress, detriment to her relationship with her spouse, and has incurred loss of back pay and front pay and the value of benefits, including retirement.

WHEREFORE, THE ABOVE CONSIDERED, Plaintiff requests entry of a Judgment against Defendant for all compensatory and punitive damages and relief allowable under the Americans with Disabilities Act, along with all equitable remedies afforded under the Act, as well as attorneys fees and experts costs.

Count Two: Violation of the Persons with Disabilities Civil Rights Act, MCLA 37.1101 et seq.

84) Plaintiff hereby re-incorporates paragraphs 1-84 as if set forth in full herein.

85) Plaintiff has a disability, depression and anxiety, which has and does substantially limit major life activities.

86) Plaintiff also, or in the alternative, has a history of having depression and anxiety, a substantially limiting mental characteristic, which is a also a substantially limiting characteristic.

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87) Plaintiff also, or in the alternative, was regarded as having a disability by her employer, Defendant.

88) Plaintiff was able to fulfill the essential duties of her job as administrative assistant to Defendant's English Department with accommodation, namely, intermittent leave for treatment.

89) Defendant terminated the Plaintiff on the basis of her disability and need for accommodation.

90) Plaintiff continues to suffer emotional distress, and has incurred loss of back pay and front pay and the value of benefits, including retirement.

WHEREFORE, THE ABOVE CONSIDERED, Plaintiff requests entry of a Judgment against Defendant for all compensatory and equitable remedies and relief allowable under the Persons with Disabilities Civil Rights Act, along with attorneys fees and experts costs.

Count Three: Loss of Consortium

91) Paragraphs 1-90 are hereby incorporated herein as if set forth in full.

92) Plaintiff Partrick O'Heron is the husband of Plaintiff and has been at all times relevant to this Complaint.

95) As a result of Defendant's actions and omissions as outlined above, Plaintiffs have both suffered a loss of consortium, affection, companionship and other benefits of their marriage due to the emotional distress and anxiety inflicted upon Plaintiff as outlined above.

Wherefore, the above considered, Plaintiffs request Judgment against all Defendants, jointly and severally, for actual and exemplary damages allowable

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under law.

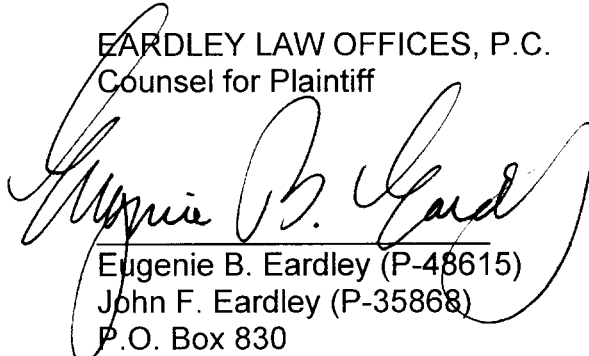
DEMAND FOR JURY

WHEREFORE, the above considered, the above Plaintiffs requests entry of a Judgment against all Defendant(s), and an award of all damages and equitable relief recoverable which flow from the acts and omissions of Defendants, as well as award of consequential damages, attorneys fees, costs and interest, and such other relief as the Court deems meet, including exemplary damages. Plaintiffs request a jury trial on all issues.

August 18 , 2005

Respectfully Submitted,

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