

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-00493-RPM

EUGENE HOWARD,

Plaintiff,

v.

CITY OF FORT COLLINS, and
KATHLEEN WALKER,

Defendants.

**DEFENDANTS' ANSWER AND JURY DEMAND TO PLAINTIFF'S COMPLAINT AND
JURY DEMAND**

Defendants, City of Fort Collins and Kathleen Walker (“Defendants”), by and through their attorneys, Cathy Havener Greer, and Katherine M.L. Pratt of Wells, Anderson & Race, LLC, and Jenny Lopez Filkins, Assistant City Attorney, City of Fort Collins, for its and her Answer to Plaintiff’s Complaint and Jury Demand (“Complaint”) state:

PARTIES AND JURISDICTION

1. With regard to the allegations of Paragraph 1 of Plaintiff’s Complaint, Defendants admit Plaintiff, Eugene Howard (“Mr. Howard”), is a citizen of the United States and the State and District of Colorado, and that he is African American.

2. With regard to the allegations of Paragraph 2 of Plaintiff’s Complaint Defendants admit the City of Fort Collins is a home rule city, municipal corporation, political subdivision of

the State of Colorado and is an employer within the meaning of 42 U.S.C. §2000e., the remaining allegation of Paragraph 2 of Plaintiff's Complaint calls for legal conclusion and therefore no response is required.

3. Defendants admit the factual allegations of Paragraph 3 of Plaintiff's Complaint. The allegation of Paragraph 3 of Plaintiff's Complaint related to 42 U.S.C. 1983 calls for a legal conclusion and therefore no response is required. To the extent a response is required, the Defendants deny the remaining allegation of Paragraph 3 of Plaintiff's Complaint.

4. With regard to the allegations of Paragraph 4 of Plaintiff's Complaint, Defendants admit that this Court possesses jurisdiction over this action to the extent alleged in Paragraph 4. Defendants admit Plaintiff asserts claims under various federal statutes and seeks redress for alleged violations of those statutes, which Defendants deny. Defendants deny that they violated any laws with respect to Plaintiff's employment and state that Plaintiff is not entitled to any of the relief sought by his Complaint.

5. With regard to the allegations of Paragraph 5 of Plaintiff's Complaint, Defendants admit venue is proper in this Court pursuant to 28 U.S.C. §139(b) and 42 U.S.C. §2000e-5(f). Defendants deny that they committed any unlawful employment practices or violations of law.

6. Defendants lack sufficient knowledge or information to either admit or deny the allegations of Paragraph 6 of Plaintiff's Complaint and therefore deny the same.

GENERAL ALLEGATIONS

7. Defendants reincorporate and re-allege their responses to Paragraphs 1 through 6 as if fully set forth herein.

8. Defendants admit that Plaintiff began working for the City of Fort Collins on or about August 4, 2014, and worked as a bus operator. Defendants lack sufficient knowledge or information to either admit or deny the remaining allegations of Paragraph 8 and therefore deny the same.

9. Defendants admit that Plaintiff met the requirements of the sign-off period as a newly hired hourly bus operator. Defendants lack sufficient knowledge or information to either admit or deny the remaining allegations of Paragraph 9 and therefore deny the same.

10. With regard to the allegations of Paragraph 10 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of Mr. Howard's observations of other bus operators, and deny that he was the only black or African-American City of Fort Collins Transfort employee during his tenure. Defendants admit that neither Ms. Walker nor any supervisor or manager of the City in Mr. Howard's line of authority was black or African-American.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of Plaintiff's Complaint and, therefore, deny the same.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of Plaintiff's Complaint and, therefore, deny the same.

13. With regard to the allegations of Paragraph 13 of Plaintiff's Complaint, Defendants admit that Plaintiff was scheduled to work March 11, 2015, and failed to report to work. Defendants state that dispatch received a call less than 15 minutes before Plaintiff's

scheduled start time by a person identifying herself as Plaintiff's wife and that person said that Plaintiff would not be in. As a result, Plaintiff's shift was covered by other Transfort personnel. On Plaintiff's next scheduled work day, March 13, 2015, Plaintiff came to work and told his immediate supervisor Carolyn Harmes that he needed two weeks to a month off for personal reasons and provided no further explanation. Ms. Harmes told Plaintiff he needed to follow up with a manager. Plaintiff elected not to work on March 13, 2015. Defendants deny that Plaintiff was granted a one-week leave of absence and deny all other allegations of Paragraph 13 of Plaintiff's Complaint not specifically admitted herein.

14. With regard to the allegations of Paragraph 14 of Plaintiff's Complaint, Defendants admit that on March 19, 2015, after Defendant Walker contacted Plaintiff by phone, Defendant Walker and Craig Dubin met with Plaintiff to discuss his absences and Plaintiff revealed that he had been arrested and charged with a felony. Defendants deny that Plaintiff fully disclosed the criminal charges against him, and state that Plaintiff never provided a copy of the citation or charging documents as is required by Defendant City's policies, and deny all other allegations of Paragraph 14 of Plaintiff's Complaint not specifically admitted herein.

15. Defendants admit the allegations of Paragraph 15 of Plaintiff's Complaint.

16. With regard to the allegations of Paragraph 16 of Plaintiff's Complaint, Defendants admit that on April 6, 2015, Mr. Dubin met with Plaintiff and discussed with him that he was being terminated from his employment with the City effective that date. Defendants state Plaintiff was provided a copy of the Notice of Termination, and that the document speaks for itself. Defendants deny any allegation of Paragraph 16 that is inconsistent with or contradicted by the Notice of Termination. Defendants deny that Plaintiff was entitled to any

written notice of proposed termination, a pre-termination right to be heard, appeal rights, or any other procedural protections by virtue of his employment. Defendants deny that Mr. Howard was entitled to any or other procedural protections as alleged in Paragraph 16 of Plaintiff's Complaint.

17. Defendants deny the allegations of Paragraph 17 of Plaintiff's Complaint.

18. Defendants admit the allegations of Paragraph 18 of Plaintiff's Complaint.

FIRST CLAIM FOR RELIEF¹

19. Defendants reincorporate and re-allege their responses to Paragraphs 1 through 18 as if fully set forth herein.

20. Defendants deny the allegations of Paragraph 20 of Plaintiff's Complaint.

21. Defendants deny the allegations of Paragraph 21 of Plaintiff's Complaint.

22. Defendants deny the allegations of Paragraph 22 of Plaintiff's Complaint.

SECOND CLAIM FOR RELIEF

23. Defendants reincorporate and re-allege their responses to Paragraphs 1 through 22 as if fully set forth herein.

24. Defendants deny the allegations of Paragraph 24 of Plaintiff's Complaint.

25. Defendants deny the allegations of Paragraph 25 of Plaintiff's Complaint.

26. Defendants deny the allegations of Paragraph 26 of Plaintiff's Complaint.

27. Defendants deny the allegations of Paragraph 27 of Plaintiff's Complaint.

28. Defendants deny the allegations of Paragraph 28 of Plaintiff's Complaint.

¹ It appears that Plaintiff's First Claim for Relief is directed toward the City of Fort Collins only. To any extent the allegations set forth in Paragraphs 19 through 22 could be asserted against Ms. Walker, they are expressly denied.

THIRD CLAIM FOR RELIEF

29. Defendants reincorporate and re-allege responses to Paragraphs 1 through 28 as if fully set forth herein.

30. The allegations of Paragraph 30 of Plaintiff's Complaint call for a legal conclusion and therefore no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 30 of Plaintiff's Complaint.

31. Defendants deny the allegations of Paragraph 31 of Plaintiff's Complaint.

32. Defendants deny the allegations of Paragraph 32 of Plaintiff's Complaint.

33. Defendants deny the allegations of Paragraph 33 of Plaintiff's Complaint.

34. Defendants admit the allegations of Paragraph 34 of Plaintiff's Complaint.

35. Defendants deny the allegations of Paragraph 35 of Plaintiff's Complaint.

36. Defendants deny the allegations of Paragraph 36 of Plaintiff's Complaint.

37. Defendants deny the allegations of Paragraph 37 of Plaintiff's Complaint.

In response to Plaintiff's unnumbered WHEREFORE Paragraph, Defendants deny subparagraphs a. through g., and deny that Plaintiff is entitled to any relief sought by him in connection with Plaintiff's Complaint.

STATEMENT OF DENIAL OF ALLEGATIONS NOT SPECIFICALLY ADMITTED

Defendants deny all headings in Plaintiff's Complaint and deny all allegations not specifically admitted herein.

DEFENSES AND AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint and Jury Demand fails to state a claim as to which any relief may be granted against Defendants.

2. Defendants allege that the proximate cause of some or all of the injuries and/or damages alleged were due to the fault of Plaintiff or that his fault contributed to same.

3. Some or all of the damages alleged, if any, by Plaintiff were proximately caused by the actions of third parties, including Plaintiff himself, or by circumstances over which the Defendant possessed no right of control or actual control.

4. Defendant Walker states that Plaintiff's claims against her are barred as, at all times relevant to Plaintiff's Complaint, she did not violate a clearly established statutory or constitutional right of Plaintiff and was performing a discretionary function and was otherwise acting in good faith and is entitled to official and good faith immunity.

5. All or part of Plaintiff's claims against Defendants fail to achieve the level of any constitutional violation sufficient to state a claim under 42 U.S.C. §1983 or otherwise.

6. Defendants allege, on information and belief, that Plaintiff's claims of discrimination are barred, in whole or in part, to the extent that they were not timely filed as required under 42 U.S.C. §2000e-5(e), 42 U.S.C. §2000e-5(f)(1), 28 U.S.C.A. § 1658 and any other applicable statute of limitations.

7. Plaintiff received all process that was due.

8. Defendants substantially performed or substantially complied with any obligations to Plaintiff under the terms of their policies.

9. Plaintiff did not have a property interest in his employment with the City.

10. Plaintiff was not denied equal protection under the laws because of his race or any other impermissible reason.

11. At all times, Defendants conduct was lawful, justified, privileged and made in good faith or made in a good faith effort to act in compliance with applicable federal and state laws, regulations, and statutes.

12. Any alleged adverse, negative or detrimental tangible employment action, if any, was done for legitimate nondiscriminatory reasons based on bona fide business reasons and/or occupational qualifications.

13. The Defendants would have taken the same actions with respect to Plaintiff's employment in the absence of Plaintiff's race, alleged disability, or allegations of engagement in a "protected activity."

14. Defendants allege they relied on the policies and practices of Ft. Collins as job related for the positions in question and consistent with business necessity.

15. Plaintiffs' claim for punitive or exemplary damages is barred or limited to the extent it violates the Excessive Fines Clause of the Eighth Amendment to the United States Constitution; the Due Process Clause of the Fourteenth Amendment to the United States Constitution; the Equal Protection Clause of the United States Constitution; the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution; and any applicable statutes.

16. Defendants are not liable for punitive damages because any alleged improper conduct does not meet the standard to justify punitive or exemplary damages.

17. At all times pertinent herein, Defendants acted in accordance with all common law, statutory and constitutional obligations and without any intent to cause Plaintiff's harm.

18. Defendants possessed a reasonable good faith belief in the lawfulness of its and her conduct.

19. Defendants did not breach any legal duty allegedly owed to Plaintiff.

20. Plaintiff may have failed to mitigate his damages as required by law.

21. All of Defendant Walker's actions were objectively reasonable.

22. On information and belief, Plaintiff failed to mitigate his damages, if any, as required by law.

23. Defendants specifically reserve the right to amend this Answer to include additional defenses and affirmative defenses, or delete defenses and affirmative defenses that become non-applicable upon completion of additional discovery.

WHEREFORE, Defendants request that Plaintiff's Complaint and Jury Demand be dismissed and Defendants be awarded those costs and fees incurred in responding to Plaintiff's allegations.

**DEFENDANTS CITY OF FORT COLLINS AND KATHLEEN WALKER REQUEST A
JURY TRIAL ON ISSUES SO TRIABLE.**

Dated this 24th day of April, 2017.

Respectfully submitted,

S/ Cathy Havener Greer

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Respectfully submitted,

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ATTORNEYS DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 24, 2017, a true and correct copy of the above and foregoing **DEFENDANTS' ANSWER AND JURY DEMAND TO PLAINTIFF'S COMPLAINT AND JURY DEMAND** was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

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