

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SEAN JOHNSON,  
Plaintiff,

v.

CITY OF ATLANTA FIRE AND  
RESCUE DEPARTMENT,  
RODERICK M. SMITH, JAMES  
MCLEMORE, AND DEREK HARRIS,  
IN THEIR INDIVIDUAL  
CAPACITIES,  
Defendants.

Civil Action No.

JURY TRIAL DEMANDED

**COMPLAINT FOR DAMAGES**

COMES NOW Sean Johnson, (“Plaintiff” or “Mr. Johnson”), by and through undersigned counsel, and files this, Complaint for Damages, and shows the Court as follows:

**NATURE OF COMPLAINT**

1.

Plaintiff brings this action for damages, and reasonable attorney fees against (“the City of Atlanta Fire and Rescue Department”) for violations of rights under the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12111 et seq. (“ADA”).

**JURISDICTION AND VENUE**

2.

Plaintiff invokes the jurisdiction of this court pursuant to 28 U.S.C. §§ 1331, 42 U.S.C. § 2000e-5(f), 28 U.S.C. §§ 1343, and 42 U.S.C. § 1981.

3.

The unlawful employment practices alleged in this Complaint were committed within this district. In accordance with 28 U.S.C. § 1391, 42 U.S.C. §1981, and 42 U.S.C. §2000e-5(f), venue is appropriate in this Court.

**ADMINISTRATIVE PROCEDURES**

4.

Plaintiff has fulfilled all conditions necessary to proceed with this cause of action under the ADA. Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") on September 6, 2022; the EEOC issued its Notice of Right to Sue on March 26, 2024.

5.

Plaintiff timely files this action within ninety (90) days of receipt of the Notice of Right to Sue from the EEOC.

**PARTIES**

6.

Plaintiff Sean Johnson is a citizen of the United States of America and is subject to the jurisdiction of this Court.

7.

At all times relevant, Defendant was qualified and licensed to do business in Georgia, and at all times material hereto has conducted business within this District.

8.

At all such times, Plaintiff was an "employee" of as defined under the ADA at 42 U.S.C. § 12111(4). During all times relevant hereto, had employed fifteen (15) or more employees for the requisite duration under the ADA. Defendant is therefore covered under the ADA in accordance with 42 U.S.C. § 12111(5). is now and, at all times relevant hereto, has been a for-profit entity engaged in an industry affecting commerce.

9.

Defendant may be served with process by delivering a copy of the summons and complaint to the Mayor of the City of Atlanta at 55 Trinity Avenue Suite 5000 Atlanta, Georgia 30303.

**FACTUAL ALLEGATIONS**

10.

Plaintiff, Mr. Sean Johnson ("Plaintiff"), began his employment with Defendant, City of Atlanta ("Defendant"), on December 10, 1998, as a Fireman.

11.

At all times relevant to this action, Plaintiff held the rank of Battalion Chief.

12.

In the last week and a half of August 2021, Plaintiff was exposed to COVID-19 at fire stations in the course of performing his job duties.

13.

Subsequently, on or about August 30, 2021, Plaintiff was also exposed to an airborne toxic pesticide while on duty.

14.

As a result of these exposures, Plaintiff developed severe "long-Covid" symptoms.

15.

August 30, 2021, marked Plaintiff's final shift worked, and he missed his first shift on September 2, 2021.

16.

Plaintiff attempted to see a physician employed by Defendant on September 1, 2021, but was turned away due to presenting Covid-like symptoms.

17.

Plaintiff experienced severe symptoms due to his condition and consequently exhausted his leave protected under the Family and Medical Leave Act ("FMLA").

18.

On March 14, 2022, Plaintiff requested a light-duty assignment or administrative assignment as an accommodation for his condition.

19.

Defendant denied Plaintiff's request for accommodation on the grounds that they only provide light-duty assignments to firefighters injured in the line of duty.

20.

Defendant has a policy of requiring accommodation of on-the-job injuries for its employees, and Plaintiff was injured on-the-job.

21.

To Plaintiff's knowledge, no firefighter who suffered from Covid was deemed injured in the line of duty, despite confirmed transmission at fire stations.

22.

Plaintiff asserts that due to his high rank, he could have been easily accommodated in a light-duty or administrative assignment without undue hardship to Defendant.

23.

Plaintiff further believes he was discriminated against based on a class of disability because all Covid-related disabilities were automatically mischaracterized as unrelated to the job by Defendant.

24.

Although Defendant purports to provide a legitimate non-discriminatory reason for the adverse action, this reason is a pre-text.

25.

Plaintiff requested a reasonable accommodation of disabilities.

26.

Specifically, transfer to a position with light duty work or an administrative assignment.

27.

Defendant failed to engage in the interactive process with Plaintiff, even though doing so would not have been an undue hardship.

28.

But for disability status and/or request for a reasonable accommodation of the same, Plaintiff would not have suffered the adverse employment action.

29.

Plaintiff was treated less favorably in the terms or conditions of employment than others outside of protected class, i.e. non-disabled employees and/or employees who did not request a reasonable accommodation for their disability.

### **CLAIMS FOR RELIEF**

#### **COUNT I: DISABILITY DISCRIMINATION IN VIOLATION OF ADA**

(Against all Defendants)

30.

Plaintiff re-alleges paragraphs 1-29 as if set forth fully herein.

31.

Plaintiff had a Physical impairment which substantially limits one or more major life activities including but not limited to moving, lifting, bending, twisting, pushing, pulling, working, and standing.

32.

Plaintiff's Physical impairment is a "disability" within the meaning of the ADA, as amended.

33.

Defendant was aware of Plaintiff's disability.

34.

Defendant regarded Plaintiff as having a disability such that Plaintiff is a person with a disability and/or perceived disability within the meaning of the ADA, as amended.

35.

Plaintiff has a record of having a disability and/or perceived disability such that < is a person with a disability within the meaning of the ADA, as amended.

36.

At all times relevant to this action, was a qualified individual with a known or perceived disability as defined in the ADA.

37.

By failing to accommodate Plaintiff's disability, perceived disability, or record of having a disability, Defendant violated the ADA, as amended.

38.

Although purports to provide a legitimate non-discriminatory reason for the adverse action, this reason is a pre-text for disability discrimination.

39.

Defendant treated other employees outside protected class differently.



40.

Defendant's actions in subjecting to different terms and conditions of employment constitutes unlawful discrimination on the basis of this violation of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12111 *et seq.*, 42 U.S.C. 2000e *et seq.* and 42 U.S.C. section 1981A.

41.

Defendant has willfully and wantonly disregarded rights, and discrimination against was undertaken in bad faith.

42.

The effect of the conduct complained of herein has been to deprive of equal employment opportunity and has otherwise adversely affected status as an employee because of disability.

43.

As a direct and proximate result of Defendant's violation of the ADA, has been made the victim of acts that have adversely affected psychological and physical well-being.

44.

As a result of discriminatory actions against Plaintiff, Plaintiff has suffered lost compensation and benefits, emotional distress, inconvenience, humiliation, and other indignities.

45.

Pursuant to the ADA, as amended, is entitled to damages including but not limited to back pay and lost benefits, reinstatement, compensatory damages, equitable relief, attorneys' fees, costs of litigation and all other relief recoverable under the ADA, as amended.

46.

Defendant discriminated against , and, in failing and refusing to take any appropriate remedial action to remedy the unlawful employment practices, has not only deprived of equal employment opportunities, but exhibited malice or reckless indifference to the federally protected rights of Plaintiff

47.

Plaintiff thus seeks compensatory and punitive damages pursuant to §102(a)(1) of the Civil Rights Act of 1991, 42 U.S.C. § 1981a(b).

**COUNT II: FAILURE TO ACCOMMODATE IN VIOLATION OF ADA**

(Against all Defendants)

48.

Plaintiff re-alleges paragraphs 1-29 as if set forth fully herein.

49.

Plaintiff has a Physical impairment which substantially limits one or more major life activities including but not limited to moving, lifting, bending, twisting, pushing, pulling, and standing.

50.

Plaintiff's Physical impairment is a "disability" within the meaning of the ADA, as amended.

51.

Defendant was aware of disability.

52.

At all times relevant to this action, Plaintiff was a qualified individual with a known or perceived disability as defined in the ADA.

53.

Plaintiff was able to perform the essential functions of job with a reasonable accommodation.

54.

Plaintiff requested that Defendant accommodate his disability by transfer to a position with light duty work.

55.

Upon receiving request for an accommodation, Defendant failed to meaningfully engage in the interactive process with regarding request for a reasonable accommodation of disability.

56.

Defendant refused to provide with reasonable accommodations, even though to do so would not impose an undue hardship.

57.

By refusing to accommodate , Defendant violated the ADA, as amended.

58.

Defendant has willfully and wantonly disregarded rights, and failure to accommodate disability was undertaken in bad faith.

59.

The effect of the conduct complained of herein has been to deprive of equal employment opportunity and has otherwise adversely affected status as an employee because of disability.

60.

As a direct and proximate result violation of the ADA, has been made the victim of acts that have adversely affected psychological and physical well-being.

61.

As a result of discriminatory actions against, Plaintiff has suffered lost compensation and benefits, emotional distress, inconvenience, humiliation, and other indignities.

62.

Pursuant to the ADA, as amended, Plaintiff is entitled to damages including but not limited to back pay and lost benefits, reinstatement, compensatory damages, equitable relief, attorneys' fees, costs of litigation and all other relief recoverable under the ADA, as amended.

63.

Defendant discriminated against Plaintiff, and, in failing and refusing to take any appropriate remedial action to remedy the unlawful employment practices, has not only deprived of equal employment opportunities, but exhibited malice or reckless indifference to the federally protected rights of Plaintiff.

64.

Plaintiff thus seeks compensatory and punitive damages pursuant to §102(a)(1) of the Civil Rights Act of 1991, 42 U.S.C. § 1981a(b).

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment as follows:

- (a) General damages for mental and emotional suffering caused by Defendant's misconduct;
- (b) Punitive damages based on Defendant's willful, malicious, intentional, and deliberate acts, including ratification, condonation and approval of said acts;
- (c) Special damages and/or liquidated damages for lost wages and benefits and prejudgment interest thereon;
- (d) Reasonable attorney's fees and expenses of litigation;
- (e) Trial by jury as to all issues;
- (f) Prejudgment interest at the rate allowed by law;
- (g) Declaratory relief to the effect that Defendant has violated Plaintiff's statutory rights;
- (h) Injunctive relief of reinstatement, or front pay in lieu thereof, and prohibiting Defendant from further unlawful conduct of the type described herein;
- (i) Compensation for lost compensation, back pay, wages and employment-related benefits;
- (j) Liquidated damages; and
- (k) All other relief to which may be entitled.

**BARRETT & FARAHANY**

*s/ Kate A. Cantolina*

---

Kate A. Cantolina  
Georgia Bar No. 794526

*Counsel for Plaintiff*

P.O. Box 530092  
Atlanta, Georgia 30353  
(404) 214-0120  
kate@justiceatwork.com

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

SEAN JOHNSON

DEFENDANT(S)

CITY OF ATLANTA FIRE AND RESCUE DEPARTMENT, RODERICK M. SMITH, JAMES MCLEMORE, AND DEREK HARRIS, IN THEIR INDIVIDUAL CAPACITIES

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Kate A. Cantonlina
Barrett & Farahany
P.O. Box 530092
Atlanta, Georgia 30353
kate@justiceatwork.com

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
2 U.S. GOVERNMENT DEFENDANT
3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

- PLF DEF PLF DEF
1 1 CITIZEN OF THIS STATE 4 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
2 2 CITIZEN OF ANOTHER STATE 5 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
3 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY 6 6 FOREIGN NATION

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING 2 REMOVED FROM STATE COURT 3 REMANDED FROM APPELLATE COURT 4 REINSTATED OR REOPENED 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District) 6 MULTIDISTRICT LITIGATION - TRANSFER 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT 8 MULTIDISTRICT LITIGATION - DIRECT FILE

V. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Americans with Disabilities Act of 1990, 42 U.S.C. § 12111, et seq.; Civil Rights Act of 1991, 42 U.S.C. § 1981a; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq.

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties. 6. Problems locating or preserving evidence
2. Unusually large number of claims or defenses. 7. Pending parallel investigations or actions by government.
3. Factual issues are exceptionally complex 8. Multiple use of experts.
4. Greater than normal volume of evidence. 9. Need for discovery outside United States boundaries.
5. Extended discovery period is needed. 10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # AMOUNT \$ APPLYING IFP MAG. JUDGE (IFP)
JUDGE MAG. JUDGE (Referral) NATURE OF SUIT CAUSE OF ACTION



**VI. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT
- 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) - a/k/a Hatch-Waxman cases

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395f)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI-TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

**\* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

**VII. REQUESTED IN COMPLAINT:**

- CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ \_\_\_\_\_
- JURY DEMAND  YES  NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

**VIII. RELATED/REFILED CASE(S) IF ANY**

JUDGE \_\_\_\_\_ DOCKET NO. \_\_\_\_\_

**CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)**

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

- 7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. \_\_\_\_\_, WHICH WAS DISMISSED. This case  IS  IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/ Kate A. Cantolina

6/24/2024

SIGNATURE OF ATTORNEY OF RECORD

DATE