

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:20-cv-01559-RBJ

SHARHEA L. WISE,

Plaintiff,

v.

MEGAN J. BRENNAN, United States Postal Services Postmaster General,,

Defendant.

FIRST AMENDED COMPLAINT

COMES NOW, Plaintiff, and, with the written consent of Defendant, files this Amended Complaint pursuant to F.R.C.P. 15(a)(2), and pursuant to Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq., 42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act of 1964) as amended by the Civil Rights Act of 1991, The Pregnancy Discrimination Act (Pub.L. 95-955), and the Rehabilitation Act of 1973, for employment discrimination on the basis of disability, sex (pregnancy), and retaliation for opposition to discrimination and reasonable accommodation activity, and hereby submits her Complaint against the above-named defendant on the following grounds:

JURISDICTION AND VENUE

1.

The Court possesses subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. This action is authorized by the Constitution of the United States of America, The Rehabilitation Act of 1973, Section 703 of 42 U.S.C. §§ 2000e-2(a), section 107(a) of the Americans with Disabilities Act of 1990, 42 U.S.C. §12117(a), which incorporates by reference sections 706(f)(1) and 706(f)(3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-5(f)(1) and (3), and section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The amount in controversy exceeds the sum of Seventy Five Thousand Dollars, exclusive of costs and attorneys fees.

2.

This Court possesses jurisdiction over the defendant. Defendant United States Postal Service is located within the District of Colorado. In addition, the acts of which plaintiff complains all occurred within this District.

3.

Venue in this District and division is proper under 28 U.S.C. § 1391 as Defendant is located in the District of Colorado, and the unlawful acts complained of herein occurred in this district. The employment records relevant to the challenged employment action are maintained and administered in this district.

PARTIES

4.

Plaintiff, Sharhea Wise, is a resident of this judicial district. At all times relevant hereto, Plaintiff was pregnant. At all relevant times Plaintiff was working as a City Carrier Assistant (“CCA”) in the District of Colorado.

5.

Defendant, Louis DeJoy, is the Postmaster General for the United States Postal Service.

6.

The responsible management officials (“RMO’s”) in this Complaint are Ron Domingo, Dean Lego, and Sandra Creek.

TIMELY EXHAUSTION OF FEDERAL ADMINISTRATIVE REMEDIES

7.

On February 6, 2015, Plaintiff timely initiated informal contact with The United States Equal Employment Opportunity Commission (“EEOC” or “EEO”) counselor as a federal employee pursuant to 29 C.F.R. § 1614.105. On April 3, 2015, Plaintiff timely filed a Formal Complaint of Discrimination pursuant to 29 C.F.R. § 1614.103.

8.

On May 6, 2019, the EEOC Administrative Judge issued an Order Entering Judgment in favor of Defendant. Subsequently, Defendant issued a Final Agency Decision accepting and implementing the Order Entering Judgment. The Final Agency Decision provided Plaintiff with a notice of right to civil action within ninety (90) days or to appeal to the Equal Employment Opportunity Commission Office of Federal Operations (“OFO”) within thirty (30) days, and Plaintiff chose the latter option. On March 4, 2020 the OFO issued a decision affirming the decision in favor of Defendant. The OFO’s decision provided Appellant the option to file a civil action in this court within ninety (90) days, and Plaintiff timely filed her civil action on May 29, 2020. Accordingly, Plaintiff timely filed her complaint within the 90-day period set forth in said notice, and she properly and timely exhausted her administrative remedies.

FACTUAL ALLEGATIONS

9.

The United States Postal Service, is a federal agency.

10.

At all relevant times, Plaintiff worked as a City Carrier Assistant (“CCA”). On or around November 1, 2014, Ms. Wise began working for the Agency as a City Carrier Assistant (CCA) at the Capitol Hill (Cap Hill) Station in Denver, Colorado, with an appointment scheduled to expire on October 26, 2015.

11.

Plaintiff was reassigned to South Denver Station on or around December 1, 2014.

12.

Plaintiff met Manager Sandra Creek (female) on or about November 10, 2014 when she was assigned to Capitol Hill Station, and she met Supervisor Dean Lego (male) on or about December 1, 2014 when she was reassigned to South Denver Station. Manager Domingo transferred to the South Denver Station in December 2015 to serve as Acting Manager, Customer Service. At first, Manager Ron Domingo (male) worked at Capitol Hill Station when Plaintiff first arrived there, and then Plaintiff worked directly for manager Domingo when Plaintiff

was reassigned to South Denver Station.

13.

Plaintiff verbally told Manager Ron Domingo of her pregnancy on December 26, 2014 and submitted medical documentation verifying her pregnancy to Manager Domingo on December 29, 2014.

14.

On January 3, 2015, she informed Manager Sandra Creek of her pregnancy.

15.

Mr. Lego declared that he became aware of Plaintiff's pregnancy following one her absences for a medical appointment.

16.

Plaintiff was a probationary employee until she either completed ninety (90) work days, or was been employed for 120 calendar days (whichever comes first) of HER initial appointment.

17.

Plaintiff's performance evaluations state – incorrectly, as it turned out - that her probationary period ended on January 30, 2015. The letter of separation is dated January 30, 2015, and originally noted it was delivered to Plaintiff that same day but the initial date was crossed out and January 31, 2015, was inserted. Defendant appears to have rushed to terminate Plaintiff before the date it mistakenly believed her probationary period ended and before she could successfully submit her light duty paperwork, thereby suggesting the legitimate, non-discriminatory reasons for its actions might be a pretext for discrimination and/or harassment on one or more of the bases alleged by Plaintiff.

18.

On various dates since January 15, 2015 and thereafter, Plaintiff's light duty request was denied. on January 3, 2015, she gave Manager Sandra Creek a medical excuse verifying her pregnancy and requested Light Duty Paperwork. Manager Creek did not provide the paperwork but told her to get documentation of her work restrictions from her doctor. Plaintiff submitted documentation of her work restrictions to Manager Ron Domingo on January 15, 2015 and

again requested Light Duty paperwork but again, the paperwork was not provided. Plaintiff received the Light Duty Request packet from the Union on or about January 18, 2015 and her doctor successfully faxed the completed paperwork to the Postal Service on January 28, 2015.

19.

Plaintiff's pregnancy-related restrictions were no lifting, pushing pulling anything over 20 lbs. Plaintiff's duties as a City Carrier Assistant included sorting mail into a sorting case; loading trays and tubs of mail, magazines and parcels onto a gurney; pushing the loaded gurney to her delivery vehicle; loading the trays and tubs into her vehicle; driving; delivering the mail by section, on foot, door to door, with a bundle of mail in her hand, a magazine bundle on her arm and with parcels and house-to-house advertisements in the satchel hanging from her shoulder. Her walking route requires walking long distances on sidewalks, across lawns and up and down stairs. After delivering the mail, she would return to the Post Office, unload her vehicle and return empty equipment to her Carrier case. When assigned to work at another station, Plaintiff took a bus to the assigned location because she did not have a car. The duties she could not perform under restriction were lifting packages over 20 lbs. and pushing the gurney loaded with mail out to her truck.

20.

Plaintiff never officially received either approval or denial of the request. After submitting documentation of her restrictions to Ron Domingo on January 15, 2015, he continued to insist that he could not act on her Light Duty request because he had not yet received her completed paperwork. The submission of her Light Duty Request paperwork was delayed because Manager Domingo provided an incorrect fax number for use by her doctor.

21.

Once she was told by her doctor about the restrictions, she began to request assistance with heavy packages and with pushing her loaded gurney. Ron Domingo and Dean Lego did not honor her requests for assistance. Mr. Domingo told her to leave a heavy package but then called her on the street to come back and deliver it and a time when she tried to load her gurney differently and ask for help in pushing the gurney, and she was yelled at by Supervisor Lego that

she couldn't do it "her way", she had to do it "their way". Her male supervisors provided assistance to male Letter Carriers when requested, but not for Plaintiff.

22.

On January 21, 2015, Manager Ron Domingo, in consultation with Manager Dean Lego, issued Plaintiff a Letter of Warning dated January 8, 2015 due to pregnancy-related absences. Plaintiff informed management that her absences were due to pregnancy, specifically stomach and back pain. She was not given advance warning that her attendance was a problem prior to issuance of the discipline.

23.

On January 23, 2015, Manager Lego, in consultation with Manager Domingo, issued Plaintiff a Letter of Warning dated January 22, 2015 for unacceptable work performance when Plaintiff allegedly missed two Priority Scans. The two missed Priority scans were for a closed Saturday business, a scanning process for which Plaintiff had not been trained. The day of the missed scans was Plaintiff's first time delivering on a Saturday with closed Saturday businesses. Previously, Plaintiff missed a scan at Capitol Hill Station prior to being pregnant, and no action was taken. Once management learned she was pregnant, however, action was taken against Plaintiff. Plaintiff was not given specific training on how to handle No Saturday Delivery (NSD) packages.

24.

On January 29, 2015, Plaintiff was issued a Notice of Seven Day Suspension by Supervisor Lego and Manager Domingo, who concurred with the discipline. Plaintiff was accused of leaving work abruptly and failing to follow instructions on January 21, 2015. On this date, Plaintiff reported to work at South Denver Station, was issued a Letter of Warning for attendance and was assigned for the day to Westwood Station, a one hour bus ride away. There was a snowstorm, Plaintiff was not dressed for the weather, and she arrived at Westwood Station wet and cold. 20 minutes after leaving for her assigned route at Westwood, she felt overwhelmed and returned to the station. After speaking at length with Supervisor Anita Chavez, she submitted her resignation to Ms. Chavez, who witnessed the document. Prior to January 21,

2015, when she was feeling overwhelmed by her pregnancy and her job, she was advised by Administrative Support Supervisor Theresa Bianchi that it might be better to resign than to be fired for being unable to do her job. With that advice in mind, when it got to be too much, she resigned, and she wrote on her resignation that it was due to her pregnancy. On that same day, Supervisor Chavez contacted Capitol Hill Supervisor Sharon White who contacted Carrier Wanda Hill, with a message to call her back. that Supervisor White advised that if Plaintiff wanted her job back, she should write a letter rescinding her resignation. On January 22, 2015, Plaintiff submitted the letter rescinding her resignation to Sandra Creek, who forwarded the letter to the Postmaster's office. Plaintiff was then instructed to report for work the following day. At all relevant times, Plaintiff followed the proper procedures for resigning and rescinding her resignation.

25.

On the morning of January 31, 2015, before she punched on the clock, Plaintiff was issued a Notice of Separation for Unacceptable Performance, dated January 30, 2015. The Notice was issued by Supervisor Dean Lego and Manager Ron Domingo, and that Mr. Domingo stated he had gotten approval from Manager Sandra Creek. Management did not conduct an Investigative Interview and provided no explanation for the charge of unacceptable performance or the decision to issue the Notice of Separation.

26.

Management based her unacceptable performance on her thirty and sixty day performance evaluations. The 30 Day Evaluation was conducted by Manager Domingo even though Plaintiff worked for Sandra Creek during the first 30 days. Plaintiff's first supervisor during her first thirty days at the Capitol Hill Station, Sandra Creek, testified in complementary fashion that Plaintiff was a "*pretty steady worker.*" Plaintiff's second supervisor at the South Denver Station, Ron Domingo, prepared Plaintiff's performance review for her first thirty days and was critical of her.

27.

The 60 day evaluation was conducted by Manager Domingo after he and other management learned she was pregnant. The 60-day evaluation was nearly identical to the 30-day Evaluation. Plaintiff told Domingo on January 26, 2015, that she was pregnant and provided supporting medical documentation on December 29, 2014. Domingo subsequently prepared Plaintiff's second negative and almost identical performance evaluation after he knew she was pregnant.

28.

The 80 day evaluation, due on January 20, 2015, was never conducted.

29.

All of Plaintiff's discipline and the letter of separation were issued after the Defendant knew of Plaintiff's pregnancy

30.

After learning she was pregnant and starting on January 3, 2015, Plaintiff repeatedly asked Creek and Domingo for light duty paperwork but they failed and/or refused to provide it; Domingo stated he gave Plaintiff a light duty packet. Plaintiff ultimately obtained the paperwork from her union and gave it to her doctor to complete and submit to the Agency but Domingo initially supplied an incorrect fax number and, consequently, the Agency did not receive the paperwork until after it terminated Plaintiff.

31.

Plaintiff made every effort to be regular in attendance during the time in question, the Plaintiff never arrived late to work from 10-01-2014 through 01-14-2015 which covers the time in question.

32.

Every unscheduled absence occurred when Plaintiff visited Denver Health Hospital with health concerns, and she also provided documentation when she returned to work. The January 3rd and January 12th absences were for pregnancy issues. According to Agency policy, Plaintiff

was well within her rights to seek an absence for medical attention as long as acceptable evidence for absence is provided when required. Plaintiff provided acceptable documentation for her pregnancy-related absences.

33.

Defendant's rules regarding proper training were violated when Plaintiff was not given specific training on how to handle No Saturday Delivery (NSD) packages.

34.

Anita Chavez testified that on the day in question, CCA Graham Porter informed her of the Plaintiff premature resignation consideration. Anita Chavez testified that she instructed another carrier, Graham Porter, to go back out to finish the route, not the Plaintiff.

35.

Plaintiff never demonstrated any unacceptable performances during her employment with USPS. Plaintiff was under high levels of stress due to a hostile work environment, and hormonal changes stemming from her pregnancy, which she notified management of verbally on December 26, 2014 and through documented proof on December 29, 2014. Plaintiff received the Letters of Warning for the scanning failures and the Failure To Follow Instructions after she notified management of her pregnancy.

36.

Plaintiff was able to perform all of the duties required as a CCA with very minimal request for assistance. Management admitted that they did not know or provide the Plaintiff with an accurate weight of the items, and Defendant therefore could not establish that Plaintiff's 20 lbs. medical restriction was accommodated.

COUNT I-DISABILITY DISRIMINATION

37.

Plaintiff realleges the preceding paragraphs of this Complaint.

38.

At all relevant times, Plaintiff's pregnancy-related complications precluded her from lifting 20lbs, and this affected her major life activities, such as caring for herself. Plaintiff could

perform the essential functions of her job, with an accommodation for her lifting restrictions, which Defendant admitted was not an undue burden.

39.

After learning of Plaintiff's disability, Defendant took the adverse actions of disciplining her and terminating her, in violation of the Pregnancy Discrimination Act and Section 501 of the Rehabilitation Act of 1973, which incorporates the same standards applied under Title I of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12111, et seq., and the provisions of Sections 501 through 504 and 510 of the ADA, 42 U.S.C. §§ 12201-12204 and 12210, as such sections relate to employment. 29 U.S.C. 791(f);

40.

Defendant regards Plaintiff as having a physical impairment that substantially limit one or more of her major life activities.

41.

Plaintiff has a record of her physical impairment that substantially limit one or more of her major life activities.

42.

Management was aware of Plaintiff's medical restrictions.

43.

By taking adverse actions due to its perception of Plaintiff's disability; adverse actions that include disciplining and terminating Plaintiff's employment, Defendant is liable for disability-based discrimination.

COUNT II-RETALIATION FOR REQUESTING A REASONABLE ACCOMMODATION AND
OPPOSING DISCRIMINATION BASED ON SEX/PREGNANCY

44.

Plaintiff requested a reasonable accommodation when she made a light duty request for her lifting restrictions as described above.

45.

Plaintiff expressed that she was being treated differently because of her request for an accommodation, and she opposed discrimination based on her sex and pregnancy.

46.

At all relevant times, the RMO's were aware of Plaintiff's protected activity prior to taking the adverse actions complained of herein.

47.

Defendant's actions were wrongful and illegal where the actions were motivated by Plaintiff's protected activities, and they treated similarly situated employees better.

48.

The adverse actions - discipline and termination - were sufficient to dissuade a reasonable employee from making a charge of discrimination, thus constituting unlawful retaliation pursuant to the anti-reprisal provision of Title VII and the Rehabilitation Act.

COUNT III-HARASSMENT AND HOSTILE WORK ENVIRONMENT
BASED ON SEX AND REPRISAL

49.

Plaintiff realleges the facts alleged in the preceding paragraphs of this Complaint.

50.

Plaintiff belonged in a protected class where she engaged in protected activity by way of her reasonable accommodation requests and opposition to pregnancy-related discrimination, and she was a pregnant female during the relevant time period.

51.

For reasons discussed above, Defendant lacked a legitimate non-discriminatory reason for its actions. Thus, Plaintiff's protected class motivated Defendant's adverse actions against Plaintiff.

52.

The adverse acts complained of were sufficiently severe and pervasive where they occurred with frequency, in a short period of time after learning of Plaintiff's protected status, and where the acts had the purpose or effect of unreasonably interfering with a term or condition of Plaintiff's employment, and created an intimidating, hostile, and offensive working environment. Specifically, she endured the following adverse actions:

- a. on various dates since January 15, 2015, and thereafter, her light duty and reasonable accommodation requests were denied or not honored;***
- b. on January 21, 2015, she received a Letter of Warning, which is disciplinary in nature, dated January 8, 2015;***
- c. on January 23, 2015, she received a Letter of Warning, which is disciplinary in nature, dated January 22, 2015;***
- d. on January 29, 2015, she received a Notice of Seven-Day Suspension, which is disciplinary in nature and affected Plaintiff's salary; and***
- e. on January 31, 2015, she received a Letter of Separation, dated January 30, 2015.***

53.

Plaintiff was severely damaged as a result of Defendant's action, losing wages and benefits from time taken off work due to medical ailments caused by the discrimination, and suffering the stigma and loss of professional standing associated with Defendant's discriminatory treatment of Plaintiff. Plaintiff is entitled to compensation for mental anguish, lost benefits and lost wages and the other relief hereinafter requested.

54.

Defendant's actions caused Plaintiff to suffer mental and emotional distress, entitling Plaintiff to compensatory damages pursuant to 42 U.S.C. § 1981a

55.

Defendants have engaged in discriminatory practices with malice and reckless indifference to Plaintiff's federally protected rights.

COUNT IV- FAILURE TO ACCOMMODATE

56.

Plaintiff realleges the preceding paragraphs of this Complaint.

57.

At all relevant times, Plaintiff's pregnancy-related complications precluded her from lifting 20lbs, and this affected her major life activities, such as caring for herself. Plaintiff could perform the essential functions of her job, with an accommodation for her lifting restrictions, which Defendant admitted was not an undue burden to accommodate.

58.

Management failed to accommodate Plaintiff's weight restrictions where management admitted it failed to weigh packages and took no steps to ensure Plaintiff's packages were within her restrictions.

59.

Management failed to accommodate Plaintiff when Domingo told Plaintiff to leave a heavy package but then called her on the street to come back and deliver it and a time when she tried to load her gurney differently and ask for help in pushing the gurney, and she was yelled at by Supervisor Lego that she couldn't do it "her way", she had to do it "their way". Her male supervisors provided assistance to male Letter Carriers when requested, but not for Plaintiff.

60.

Plaintiff has a record of her physical impairment that substantially limit one or more of her major life activities.

61.

Management was aware of Plaintiff's medical restrictions. Management took no steps to engage in the interactive process with Plaintiff, nor discuss the possibility of reassigning her.

62.

By failing to accommodate Plaintiff's restrictions, including failing to engage in the interactive process, forcing Plaintiff to work outside her medical restrictions, and failing to

consider reassigning Plaintiff, Defendant is liable for discrimination based on a failure to accommodate Plaintiff.

COUNT V- SEX-BASED DISCRIMINATION

63.

Plaintiff realleges the preceding paragraphs of this Complaint.

64.

At all relevant times, Plaintiff was pregnant.

65.

After learning of Plaintiff's pregnancy status, Defendant took the adverse actions of disciplining her and terminating her, in violation of the Title 7, the Pregnancy Discrimination Act, and Section 501 of the Rehabilitation Act of 1973, which incorporates the same standards applied under Title I of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12111, et seq., and the provisions of Sections 501 through 504 and 510 of the ADA, 42 U.S.C. §§ 12201-12204 and 12210, as such sections relate to employment. 29 U.S.C. 791(f);

66.

By treating Plaintiff differently than similarly situated males, Defendant violated Title VII, which prohibits discrimination on the basis of sex.

PRAYER FOR RELIEF

67.

WHEREFORE, Defendant prays for a judgment as follows:

- A. That the Court grant Plaintiff compensatory damages for the humiliation, emotional distress, and other damages caused by Defendant's conduct;
- B. That the Court grant Plaintiff all employment benefits she would have enjoyed had she not been discriminated against;
- C. That the Court grant Plaintiff the expenses of litigation, including reasonable attorney's fees, pursuant to Title VII, and 42 U.S.C. § 1988;

- D. That the Court grant Plaintiff a jury trial;
- E. That the Court grant all other relief this Court deems just and equitable.

DATED this 23rd day of December, 2020.

Respectfully Submitted,

CRAYON LAW FIRM

s/ Kevin C. Crayon II
Kevin C. Crayon II, Esq.
GA Bar No. 903973

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served the foregoing *First Amended Complaint* as follows:

Victor William ("Bill") Scarpato III
Assistant United States Attorney
United States Attorney's Office | District of Colorado
1801 California Street, Suite 1600
Denver, CO 80202
Phone: (303) 454-0342
Email: victor.scarpato@usdoj.gov

via Electronic Filing System (ECF)

This 23rd day of December, 2020

Respectfully Submitted,

s/ Kevin C. Crayon II
Kevin C. Crayon, II, Esq.
GA Bar No. 903973