

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 23-cv-02837-KAS

**JOHN SHEIL,**

Plaintiff,

v.

**Martin O'Malley, Commissioner, SOCIAL SECURITY ADMINISTRATION,**

Defendant.

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**AMENDED COMPLAINT WITH JURY DEMAND**

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Plaintiff, JOHN SHEIL, pro se, hereby files his amended complaint against the Defendant by the allegations set forth below:

**I. JURISDICTION**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343(4). This is an action authorized and instituted pursuant to of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-et.seq. (hereinafter referred to as "Title VII").

2. The unlawful employment practices alleged herein were committed within the Judicial District of Colorado.

3. This Court has jurisdiction over the parties and claims set forth herein.

**II. PARTIES**

4. Plaintiff, JOHN SHEIL, ("SHEIL") is a black male, began his employment with Defendant in its Denver Hearing Office Operations as an Attorney Adviser in 2010 and was

promoted to a Supervisory Attorney Adviser in January 2015.

5. Defendant is an agency of the federal government. At all times material hereto, Defendant employed more than 15 employees.

6. At all times relevant to Plaintiff's claims, the following employees had the authority to impose conditions of employment: Michael Kidd, James Wascher, and Owen Thilly.

### **III. ADMINISTRATIVE PROCEDURES**

7. On or about February 8, 2023, Plaintiff contacted an EEO Counselor to file his informal Equal Employment Opportunity charge of discrimination against Defendant alleging claims of Race (Black); Color (Black) Sex (Male); Retaliation and Hostile Work Environment under Title VII.

8. SHEIL timely filed his formal EEO charge on these allegations on May 23, 2023, which Defendant accepted and designated as Charge No. DEN-23-0294-SSA (EEOC) and DEN-23-0601-SSA (MSPB) on June 26, 2023.

9. Defendant served its Report of Investigation on September 6, 2023.

10. Defendant issued its Final Agency Decision with its Notice of Rights on September 28, 2023 for MSPB DEN-23-0601.

11. Defendant issued its Final Agency Decision with its Notice of Rights on November 20, 2023, for EEOC DEN-23-0294-SSA.

12. All conditions precedent to the commencement of this lawsuit have been complied with by SHEIL.

### **IV. NATURE OF ACTION**

13. This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of race, color, and sex to provide appropriate relief to SHEIL. As alleged with greater particularity below, SHEIL alleges that Defendant engaged in unlawful discrimination by denying promotions, affording less favorable terms and conditions of employment, discharging or constructively discharging employees because of race (black), color (black), gender (male) and tolerating a work environment that was hostile and retaliatory; and retaliating against SHEIL who filed charges of discrimination and/or opposed what he reasonably and in good faith believed were unlawful discriminatory employment practices because of sex, race, color, and disabilities. SHEIL was subjected to ongoing discrimination, reprisal, and retaliatory harassment by his supervisors and the regional office personnel, including but not limited to: yelling, belittling, humiliation, blacklisted, harm to his professional reputation, false rumors, ostracized, exclusion from meetings concerning matters under his responsible; removal of supervisory duties and authorities, given less prestigious work assignments; blocked from serving on cadres, details, or other career development opportunities; passed over for promotion; overly scrutinized; limited performance review ratings, subjected to sham investigations by the Defendant; and he was constructively discharged.

#### **V. Policies Governing SHEIL's employment**

14. Defendant is required to follow Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-1, *et seq.*, which makes it unlawful to discriminate against employees on the basis

of their race, color, sex, national origin, and/or religion, and makes it unlawful to retaliate for making complaints about any of the above.

15. Pursuant to 29 C.F.R. § 1614.102, as a federal agency, Defendant is required to "maintain a continuing affirmative program to promote equal opportunity and to identify and eliminate discriminatory practices and policies," "Conduct a continuing campaign to eradicate every form of prejudice or discrimination from the agency's personnel policies, practices and working conditions," "Review, evaluate and control managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provide orientation, training and advice to managers and supervisors to assure their understanding and implementation of the equal employment opportunity policy and program" and "[t]ake appropriate disciplinary action against employees who engage in discriminatory practices."

16. Pursuant to the Defendant's "Policy on the Prevention and Elimination of Harassment in The Workplace," Defendant takes seriously its obligation to maintain a work environment free from discrimination, including harassment. Managers and employees are responsible for preventing harassment, and stopping harassment before it becomes severe or pervasive." Harassment can be a form of unlawful employment discrimination. Harassment is unlawful when the conduct is: (1) unwelcome, (2) based on a person's protected class, and (3) the conduct alters the employee's conditions of employment." Defendant defines unwelcome conduct as "verbal or written remarks or communications that contain unwelcome name-calling, jokes, slurs, ridicule, stereotyping, epithets, or other denigrating, insulting, humiliating," and "non-verbal conduct, such as staring, leering, or giving inappropriate gifts." Protected classes are

those defined by statute, e.g., race, color, sex, and engaging in a protected activity and other protected classes as defined by executive order, e.g., parental status. Harassment becomes unlawful the unwelcome conduct alters conditions of employment because it creates a hostile work environment or results in a tangible employment action. Defendant defines a hostile work environment as it must be sufficiently severe or pervasive that it creates a work environment that a reasonable person would consider hostile, offensive, intimidating, or abusive, such as when the unwelcome conduct: alters a term, condition, or privilege of employment (*e.g.*, work assignments, work schedules, or training); or has the purpose or effect of unreasonably interfering with an individual's work performance. Defendant defines a tangible employee action as "one that significantly changes an employee's employment status, such as: hiring or firing; promotion or failure to promote; demotion; undesirable reassignment; ...a significant change in work assignments or duties in a way that blocks opportunities for promotion or salary increase." Further, Defendant requires that managers "are responsible for maintaining a work environment that is free from harassment" and "when an allegation of unwelcome conduct comes to management's attention, management must take appropriate steps to prevent such incidents from escalating into unlawful harassment" and managers have a duty to report harassment allegation to the appropriate Harassment Prevention Officer (HPO).

17. Pursuant to the Defendant's "Agency Strategic Plan | Fiscal Years 2022-2026," to fulfill the Defendant's mission, "it will improve access to Social Security services by addressing systemic barriers to full and equitable participation in our programs through: 1) optimizing the experience of SSA customers; 2) building an inclusive, engaged, and empowered workforce; and 3) ensuring stewardship of SSA programs." The Defendant will

“eliminate barriers to hiring and advancement to foster an inclusive workforce.” The Defendant “will treat our employees equitably and provide support for their chosen career paths. These efforts include hiring and retaining exceptional people, supporting their chosen career paths, continually offering them tools to do their jobs, and investing in our employee development and training programs.” Defendant is “committed to creating an inclusive environment for all employees.” Defendant “will ensure our hiring and promotion practices promote equity as we continue to build a workforce that reflects and delivers customer-focused service to diverse populations.”

18. According to Defendant’s Strategic Objective 2.1 – Promote Diversity, Equity, Inclusion, and Accessibility in Hiring and Advancement, the Defendant is committed to promoting diversity, inclusion, fairness, and equity.” Defendant’s “goal is to attract and retain employees who reflect the public we serve, are committed to our mission, and dedicated to providing quality customer experience. We will promote a workplace that recognizes and celebrates our employees’ unique abilities and encourages the full contributions of all.”

19. Pursuant to the Defendant’s “DEIA Strategic Plan 2022-2023,” in alignment with the Defendant’s mission and Executive Order 14035, Diversity, Equity, Inclusion, and Accessibility (DEIA) in the Federal Workplace, the vision of the DEIA is to “enhance the richness of SSA’s workforce diversity and sustain an inclusive work environment where individual differences are valued, and employees are treated with dignity and respect.” The Defendant’s diversity priority/goal is to “hire and promote the Nation’s best talent and build a diverse and representative workforce through an open and fair process consistent with

merit systems principles.”

20. Defendant has a performance review policy called “Performance Assessment and Communication System (“PACS”). Defendant’s normal appraisal cycle is from October 1 through September 30 of each year. According to PACS requirements, supervisors must apply the principles of equal opportunity and diversity to decisions, including appraisals, promotions, developmental opportunities, assignments, and awards. As a supervisor, the Complainant was subject to the PACS requirements.

21. Defendant’s administrative law judges, including hearing office chief administrative law judges and regional chief administrative law judges, are not subject to performance reviews, PACS, or PACS requirements.

## **VI. GENERAL FACTUAL ALLEGATIONS**

22. The hierarchy of Defendants' hearing office staff, from the lowest-paying to highest-paying position is as follows: legal assistants, legal assistant specialists, attorney-advisers (“AA”), paralegal specialists, and senior attorney advisors (“SAA”).

23. The Denver hearing office staff are members of the National Treasury Employee Union and governed by a collective bargaining agreement.

24. Hearing office staff are supervised by Supervisory Paralegal Specialist and Supervisory Attorney Adviser, also known as Group Supervisors.

25. Group Supervisors report to the Hearing Office Director (“HOD”).

26. The HOD reports to the Hearing Office Chief Administrative Law Judge

(“HOCALJ”).

27. The HOCALJ reports to the Regional Chief Administrative Law Judge (“RCALJ”).

28. At all relevant times at issue, the Region VIII regional office, includes, a Labor Relation Employee Relation (“LRER”) team comprised of non-supervisory regional staff attorneys.

29. The Region VIII LRER team reported to the Region VIII Lead Regional Attorney.

30. The Lead Regional Attorney reported to the RCALJ.

31. The OHO’s Regional VIII regional office is located at 1244 Speer Blvd., Suite 600, Denver, CO, 80204. It is one floor below the Denver hearing office located at 1244 Speer Blvd., Suite 752, Denver, CO, 80204.

32. SHEIL has been the only black male group supervisor in the Denver hearing office and management member in Region VIII from 2015 to February 2023. He was the only black management member in Region VIII from 2017 to 2023.

33. SHEIL enjoyed their job, the hearing office, and his co-workers, and he had career aspirations to become an ALJ with the Defendant, following in the footsteps of his grandmother, Patricia Lobo, who had been a supervisory attorney advisor and later an ALJ with SSA.

34. SHEIL’s first line supervisors were HOD Micky Corder (white female) from 2015 to December 2022 and Kimberly Roy (white female) from January 2023 to February 10, 2023.

35. SHEIL’s second line supervisors were HOCALJ Shane McGovern (white male) from April 2018 to April 2020; acting HOCALJ Lyle Olson (white male) was SHEIL’s from May 2020 to July 2020; and HOCALJ James Wascher (white male) from August 2020 to February 10,



2023.

36. In addition to SHEIL, the Denver hearing office had three other group supervisors. From January 2021 to November 2022, the other group supervisors were Lisa Hanley (white female), a paralegal supervisory specialist; Kimberly Roy (white female), a supervisory attorney advisor; and Austin McClanahan (white male), a supervisory attorney advisor. Ms. Hanley and Mr. McClanahan were replaced by Laura Shattuck (white female), a supervisory attorney advisor, and Luke Arrants (white male), a detailee to the supervisory attorney advisor, in December 2022 and January 2023, respectively. On or about November 2022, Jacqueline Smith, (black female) received a six-month detail as a group supervisor as part of SSA's National Leadership Development Program (NLDP).

37. ALJ Melissa Santiago (Hispanic female) was the acting RCALJ for Region VIII from 2018 to 2019. On or around 2019, RCALJ Michael Kidd (white male) became the RCALJ for Regions VIII and X.

38. The Lead Regional Attorneys for Region VIII was Frank Bobbitt (white male) from 2015 to on or about March 2022 followed by Owen Thilly (white male) from April 2022 to present.

39. Since 2017, SHEIL complained that the regional office was targeting women, particularly women with disabilities and holding these employees to higher standards and treating them less favorably than other employees. SHEIL reported that several women had complained to him about the sexist behavior of the lead regional attorney, Mr. Bobbitt. SHEIL also complained that Mr. Bobbitt and the regional office were discriminating against women with disabilities, including a senior attorney advisor under his supervision and three female ALJs.

SHEIL has complained to Defendant, HOD Corder, Mr. Bobbitt, HOCALJs, and OHO's Deputy Commissioner.

40. SHEIL's professional goals and aspirations were to become an ALJ with Defendant, following in the footsteps of his grandmother, Patricia Lobo, who worked for the Defendant in the 1980s and 1990s as an attorney for the Denver Hearing Office and the White Plains, New York Hearing Office. She worked as an ALJ from approximately 2002 to 2014 in the Shreveport, Louisiana Hearing Office; Cleveland, Ohio Hearing Office; and the St. Petersburg, Florida Hearing Office. This fact was well-known by the Defendant.

41. Prior to 2018, SHEIL was selected to attend the "Gerald Ray Academy;" a prestigious in-person training on SSA's performance index in Oakland, California. The other region XIII attendee, Sasha Kurbegov, was later appointed as an ALJ.

42. Prior to 2018, SHEIL participated in a scheduling project with Region IX. More specifically, SHEIL came up with and drafted a scheduling policy for the Denver Hearing Office, which was temporarily adopted. The scheduling policy involved rescheduling subsequent hearings while the claimants and representatives were present at the hearing. Region IX RCALJ Jennifer Horne learned of the policy and reached out to SHEIL about piloting it in Region IX. RCALJ Horne implemented a regional pilot based on SHEIL's draft.

43. Prior to 2018, SHEIL served on several cadres, including a mentoring cadre, training cadre, and the Employee Engagement Team (EET). From 2017 to 2018, he served on the EET where he was the lead of the Leadership Subgroup. In that role, SHEIL had the opportunity to meet and discuss leadership and communication skills with several members of OHO's executive team; including then Deputy Commissioner Teresa Gruber; then Assistant Deputy

Director Joe Lytle; Deputy CALJ Christopher Dillion; HR executives Jim Parikh and Kim Hudson; and other SES executives.

44. From 2010 to 2017, SHEIL's mentor included ALJ Nicholas LoBurgio, a white male, who served as HOCALJ, RCALJ for Region XIII, and turned down SSA's chief ALJ position. In September 2018, SHEIL had the opportunity to speak with Deputy CALJ Christopher Dillon during his visit to the Denver offices. Deputy CALJ Dillon complimented SHEIL for being wiser than his age. In June 2020, then acting HOCALJ of the Denver Hearing Office, Lyle Olson (then HOCALJ of the Fargo Hearing Office and former acting RCALJ of Region's XIII and X) told SHEIL that he wished he had a manager like SHEIL when he was younger.

45. In May 2018, he interviewed and tested for an Administrative Law Judge position with OPM. SHEIL passed the interview portion and online test, but the job announcement was vacated. SSA did not have another job announcement for the ALJ position until April 27, 2022, job announcement #SH11434791.<sup>1</sup> It was announced at approximately 10:00 a.m. MST and closed at approximately 10:00 pm MST that same day once 1,000 applications were received. SHEIL was unable to submit his application before the job announcement closed because it was his regularly assigned day to work in the hearing office to complete the non-portable workloads since the hearing office staff was teleworking full-time due to COVID-19. Defendant sent out an email informing employees that they were not supposed to complete the application during duty time.

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<sup>1</sup> In July 2018, the OPM ALJ hiring process was eliminated and ALJ hiring was passed to the Agencies pursuant to Executive Order 13843.

46. Prior to 2018, SHEIL served as a mentor and acting director. He received monetary performance awards for FY2016 and FY2017 as well as exemplary awards for his work as a group supervisor.

47. Prior to the time of the events at issue in this case, SHEIL participated in statutorily protected activity by filing discrimination complaints against the Defendant. Specifically, on or about January 11, 2019, SHEIL contacted an EEO counselor to file his informal EEO charge of discrimination against the Defendant alleging claims of Race, Sex, Retaliation and Hostile Work Environment under Title VII. On or about May 7, 2019, SHEIL timely filed his formal charge of discrimination against the Defendant. Defendant accepted and designated as Charge No DEN-19-0364-SSA on July 17, 2019. On or about July 15, 2020, Defendant issued its Final Agency Decision with its Notice of Rights. On or about October 12, 2020, SHEIL timely filed a federal lawsuit for discrimination against the Defendant alleging claims of Race; Sex, Retaliation and Hostile Work Environment under Title VII. Case No. 1:20-cv-03057-RM-STV, which is still pending.

48. Plaintiff brought Case No. 1:20-cv-03057-RM-STV against Defendant with Title VII claims of race (black), sex (male), retaliation and hostile work environment. Plaintiff in September 2017, Plaintiff provided testimony as a witness for Carolyn Cooper's (black female) EEO complaint against Defendant. Since that time, he has been the subject of discrimination from Defendant's managers and administrative law judges. He has been accused of being a failure, denied a work schedule with the flexibility to pick up his son from daycare, been verbally assaulted and cussed at during training sessions, been assigned and had to perform the duties of two supervisors; his management decisions are excessively scrutinized and often overruled, his

performance appraisal ratings have gone down, he was denied being selected for a GS-0905-14 supervisory attorney advisor position in December 2018, his supervisory responsibilities have been reduced. Deborah Demic has perpetuated a hostile work environment against Plaintiff, which his supervisors are aware of and have done nothing to remediate. Following his testimony and support of Carolyn Cooper, his supervisors have continually pressured and intimidated him to unfairly discipline her, even though she is engaged in the interactive process for reasonable accommodations relating to her serious medical conditions. He has complained to his supervisors about the pressure and unfair treatment they have tried to inflict upon Carolyn Cooper and complained about the pressure and unfair performance reviews they have tried to make him complete against her.

49. Defendant spoke freely about SHEIL's 2019 EEO complaint. Judge Kidd acknowledged that he knew of SHEIL's EEO complaint prior to becoming ROCALJ of Region VIII. Judge Wascher acknowledged that Mr. Bobbitt, or someone else, told him about SHEIL's EEO complaint around February 2021. He also stated that HOD Corder spoke with him about SHEIL's EEO complaint and that she did not like the way she was portrayed in the complaint.

50. Following his 2019 complaint, SHEIL contends and still contends that he has been subject to discrimination and retaliation against by the Defendant, including SHEIL was subjected to ongoing discrimination and retaliatory harassment by his supervisors and the regional office personnel, including but not limited to: yelling, belittling, humiliation, blacklisted, harm to his professional reputation, false rumors, ostracized, excluded him from meetings concerning matters under his responsible; removal of supervisory duties and authorities, given less prestigious work assignments; blocked from serving on cadres, details, or other career development opportunities;

passed over for promotion; overly scrutinized; limited performance review ratings, subjected to sham investigations by the Defendant; and he was constructively discharged.

51. On or about January 2020, during an LRER meeting, Mr. Thilly, then the regional staff attorney, stated that Carolyn Cooper, an employee under SHEIL's supervision, was performing successfully under the senior attorney advisor productivity index (SAAPI) expectation of 95% for the year, which he thought was surprising since she was "historically a low performer" and so he looked at her case reviews which are reported in the AWT. Mr. Thilly did not review the AWT entries of any other attorneys. Despite Mr. Thilly's opinion, Ms. Cooper was rated with successful performance by three different group supervisors since 2015; Narissa Weber, Mary Beth Sheehan, and SHEIL.

52. Ms. Cooper is a black female with targeted impairments and prior protected activities. Since 2018, SHEIL has complained that the regional office was discriminating against Ms. Cooper, because of her disabilities, as well as other female employees, especially those with disabilities.

53. On or about June 2020, during an LRER meeting, in response to a question regarding Ms. Cooper, SHEIL complained that the regional office was discriminating against Ms. Cooper.

54. The following day, a telephone meeting was held with RCALJ Kidd, acting HOCALJ Olson, HOD Corder, Mr. Bobbitt, Mr. Thilly, and SHEIL. The meeting began with RCALJ Kidd asserting that SHEIL's complaint of discrimination was "baseless" and told SHEIL "never to complain of discrimination again." SHEIL was so upset by RCALJ Kidd's verbal attack, he had to hang up the phone. SHEIL called back into the meeting, where RCALJ Kidd ridiculed

and continued to humiliate SHEIL and attack his co-workers, the Denver Hearing Office Management team.

55. Following the meeting, SHEIL complained to Ms. Corder about RCALJ Kidd's behavior towards him.

56. RCALJ Kidd and Mr. Bobbitt, the Region VIII harassment prevention officer, failed to take action regarding SHEIL's complaint of discrimination.

57. On or about November 2020, SHEIL reached out to Mr. Thilly regarding Ms. Cooper's performance and her request for information about filing for disability retirement. SHEIL inquired about when an employee's production index was below the "expectation" for three (3) straight months. Mr. Thilly told SHEIL that Defendant was not pushing for performance plans at the time.

58. On or about January 2021, Mr. Bobbitt emailed RCALJ Kidd and Arlene Quinones that "[w]e are where we were with [Ms.] Cooper two years ago with the assignment of low page count cases to pump her DWPI. We will push to implement the OPS in February – even if she files a disability retirement, it will take 2-3 months and there is no guarantee it will be approved." He then ordered Mr. Thilly to review only the cases written by Ms. Cooper for "page size."

59. Between January 2021 and March 2021, Mr. Thilly directed SHEIL to place Ms. Cooper on a performance plan. At the time, Ms. Cooper was filing for disability retirement. SHEIL was working with Ms. Cooper on her disability retirement application, leave options, as well as reasonable accommodation options. Mr. Bobbitt and Mr. Thilly interfered with SHEIL's supervisory authorities and duties.

60. On or about March 2021 SHEIL requested guidance from SSA's Office of General Counsel ("OGC") on the situation with Ms. Cooper.

61. On or about March 2021, a meeting was held regarding SHEIL's request and the situation with Ms. Cooper. In attendance were RCALJ Kidd, HOCALJ Wascher, HOD Corder, Mr. Bobbitt, and HOD Corder. SHEIL was excluded from this meeting.

62. Following that meeting, in March 2021, HOD Corder told SHEIL that it was one of the most intimidating meetings in her 30+ year career, because of RCALJ Kidd's behavior. She proceeded to tell SHEIL how the regional office considers him confrontational. She told SHEIL that RCALJ Kidd directed her to have a meeting with SHEIL regarding his communications with the regional office, case assignments to Ms. Cooper, and AWT entries, and she had to memorialize the conversation by sending an email to SHEIL for the regional office's record. HOD Corder also informed SHEIL that OGC's guidance was that he could initiate a performance plan, he did not have to initiate a performance plan, or Ms. Cooper could take leave while her disability retirement application was pending. She also told him that the regional office never informed her or SHEIL about the MST, because Mr. Bobbitt did not like using the MST. HOD Corder also told him how she and other women felt marginalized during a meeting with the regional office, namely, the HOCALJ meetings where male managers mostly spoke, and female managers' opinions were discounted. She also pointed out how the female HODs who had retired were replaced by Caucasian, white males. SHEIL also discussed how he, Ms. Cooper, and other female employees with disabilities were being discriminated against. For example, Ms. Roy had mentored a male senior attorney in Region X from at least September 2020 to her promotion in January 2021 and how a white female employee under Mr. McClanahan's supervision was



routinely assigned cases to increase her DWPI, but the regional office was not looking into her. HOD Corder reported that Mr. McClanahan does not like conflict and avoid the conversation with the employee. SHEIL felt humiliated and embarrassed that HOD Corder had to be intimidated because of his request and sincerely apologized to her for it. SHEIL also felt threatened due to RCALJ Kidd's intimidation of HOD Corder. SHEIL received an email summarizing portions of their conversation on March 23, 2021. On or about March 2021, SHEIL learned about SSA's Management Support Team ("MST") and asked HOD Corder if they could request a meeting with the MST regarding the Ms. Cooper situation. The meeting request had to be initiated by the regional office.

63. On or about March 2021, a meeting with the MST was held. In attendance were SHEIL, RCALJ Kidd, HOCALJ Wascher, HOD Corder, Mr. Bobbitt, Mr. Thilly, Sandra Wick Mulvaney, Daniel Grunberg, Shawnte Stevinson, Daryl Bailey, and Hugh McPhil. During the meeting, Mr. Bobbitt claimed that the disability retirement application process would take 12 months and insisted the regional office could not wait that long. HOD Corder suggested that Ms. Cooper could perform the outreach of unrepresented claimants, which RCALJ Kidd denied. SHEIL attended the meeting with HOD Corder in her office. SHEIL and HOD Corder noticed that the meeting was about to end without any opportunity for SHEIL to speak. She asked SHEIL to take her seat so he could speak. SHEIL initiated a discussion with Ms. Mulvaney about leave. Ms. Mulvaney recommended proceeding with the request for FMLA, LWOP, and other leave options before initiating any performance actions, which SHEIL had already been in conversations with Ms. Cooper about. SHEIL also said that he had "EEO concerns" which Judge Kidd

immediately discounted saying not to worry about lawsuits. At the end of the meeting, RCALJ Kidd asserted that it was unanimously that performance actions should be taken against Ms. Cooper. Following the meeting, HOCALJ Wascher directed HOD Corder and SHEIL to assign Ms. Cooper cases with 1,000 pages and remanded cases. SHEIL complained to HOD Corder that he and Ms. Cooper were being set up to fail.

64. Between January 2021 and March 2021, SHEIL and HOD Corder recommended that Ms. Cooper could work on case reviews and contact claimants regarding their manner of appearance. Case reviews were within her position description. During the MST meeting, RCALJ Kidd said that SHEIL could not assign such a workload to Ms. Cooper. Shortly after the meeting, the regional office assigned such a workload to a white senior attorney advisor from another hearing office. Later, Defendant created a workload for attorneys to perform such outreach activities.

65. On or about May 4, 2021, SHEIL contacted an EEO counselor to file his informal EEO charge of discrimination against the Defendant alleging claims of Race, Color, Sex, Retaliation and Hostile Work Environment under Title VII. On or about August 16, 2021, SHEIL timely filed another formal charge of discrimination against the Defendant which the Defendant accepted and designated as Charge No DEN-19-0364-SSA on October 8, 2021. On or about April 27, 2022, Defendant issued its Final Agency Decision with its Notice of Rights. In his last EEO complaint, SHEIL named RCALJ Kidd and HOCALJ Wascher as the harassers and responsible management officials.

66. Mr. Bobbitt referred the harassment investigation to Collin Worrell. Mr. Worrell was an employee under the supervision of Judge Santiago, who SHEIL has alleged was a harasser

in his 2019 EEO complaint. The referral to an HPO under the supervision of an alleged harasser is in violation of Defendant's policies. Defendant failed to take any corrective actions regarding this policy violation.

67. In July 2021, HOD Corder told SHEIL that he gave the best recommendation on the situation with Ms. Cooper and that it was resolved in the best manner for all. She told him that HOCAJ Wascher had said it was resolved in the best manner, but HOCALJ Wascher never spoke with SHEIL about it.

68. On or about June 17, 2021, Juneteenth was signed into law as a national holiday to commemorate the end of slavery. During a regional management meeting that day, RCALJ Kidd referred to managers as "slavedrivers." Later that day, RCALJ Kidd sent out an unapologetic email. SHEILSHEIL discussed with HOD Corder how he found RCALJ Kidd's comments offensive. He also discussed how RCALJ failed to display any sense of diversity or inclusion in the workforce during other meetings. HOD Corder replied that RCALJ Kidd's email concerning his comment was vague and unapologetic, especially since he did not mention what he said or how it harmed people. On or about June 18, 2021, RCALJ Kidd sent out an email to employees in the region telling them to enjoy their day off and consider researching the reason behind the new holiday. Other managers and executives sent emails commemorating the holiday in recognition of the end of slavery.

69. In August 2021, HOD Corder informed SHEIL that she would be retiring at the end of 2022. She told SHEIL that she really wanted him to get the position and that he was more than qualified for the position. She asked him to request the HOD position as part of his retirement, because she really wanted him to get the position and the regional office was not

going to select him after the issues with Ms. Cooper.

70. In November 2021, SHEILSHEIL applied for the Supervisory Attorney Advisory (General) position, Job Announcement SI-11271605-22-IVOL-MH-22. This position was for the Lead Regional Attorney for Region VIII, pending Mr. Bobbitt's upcoming retirement. Around February 2022, SHEIL was made the best-qualified list and was selected for an interview. The regional office staff member, Dora Ordonez, contacted SHEIL to schedule an interview. Following the meeting invitation, Judge Santiago, one of the interview panelists, informed them that she was unavailable at the time of SHEILSHEIL's interview. Ms. Ordonez contacted SHEIL again to reschedule the interview. She informed him that the only time available was 7:00 am. SHEILSHEIL asked if there were any other times available and was told there were no other times. SHEILSHEIL said he was unavailable at 7:00 am, but he tentatively scheduled the interview. SHEILSHEIL withdrew from the selection, because he was unavailable at the time, since he has young children to care for in the mornings. It was well known to the regional office personnel that SHEIL had two young children who he took to daycare in the mornings as his children had attended the daycare that was in the same building as the regional office and hearing office. Around March 2022, Mr. Thilly was selected for the Lead Regional Attorney position.

71. In September 2022, OHO Deputy Commissioner (DC) Joe Lytle visited the Denver hearing office and solicited feedback from the Denver hearing office management team.

72. SHEIL complained to DC Lytle about the regional LRER teams; specifically, how the regional LRER teams provide inconsistent guidance; the LRER teams fall under the regional offices unlike the SSA counterparts that fall under the Office of Labor Management and Employee Relations (OLMER); they do not always provide objective advice, and there are no

reasonable alternatives if a supervisor disagrees with the LRER.

73. SHEIL also complained to DC Lytle about the marginalization of minorities; in particular, black, and how RCALJ Kidd had intimidated managers by yelling at them.

74. SHEIL also complained to DC Lytle that he was on the agency's "naughty list" and that the regional office did not like him.

75. SHEIL discussed it was discouraging to learn that out of SSA's 1,300 plus ALJs, only approximately 120 were black. SHEIL also explained that he had read SSA's barrier analysis reports that showed SSA had identified problems with promoting black employees to the GS-14 to GS-15 levels. He also said it was sad to learn that about 45% of SSA's firing were of black employees. SHEIL also mentioned how he is precluded from management and leadership development programs that assist with overcoming such barriers, because he is an attorney, excepted service, and precluded from those programs.

76. SHEIL discussed that he was not sure what he would do when HOD Corder retired, because he knew he was not going to be selected since the regional office did not like him and it was already stacked against him, because he was a black male as identified by SSA's barrier analysis reports.

77. SHEIL also complained about bad managers and how good employees were leaving because of them. He reported that he was yelled at and demeaned by his bosses, such as RCALJ Kidd. SHEIL explained that after his experiences it would be better to quit than to report it and stay.

78. DC Lytle failed to take any action regarding SHEIL's complaint.

79. On or about October 2022, Anna Hatch, a white female employee under SHEIL's

supervision filed for reasonable accommodations requests that included a “lower page count.”

80. Pursuant to Defendant’s reasonable accommodation policies, SHEIL was the local delegated official for approving certain reasonable accommodations and recommending denials of reasonable accommodation requests for employees under his supervision.

81. Defendant’s National Reasonable Accommodation Center (NRAC) was responsible for approving reasonable accommodation requests outside of SHEIL’s authority and for reviewing recommended denials of reasonable accommodation requests. Pursuant to Defendant’s reasonable accommodation policies, the reasonable accommodation coordinator does not have the authority to recommend denials of reasonable accommodation requests.

82. On or about November 2022, Mr. Thilly, serving as the regional reasonable accommodation coordinator, Mr. Thilly directed SHEIL to approve certain reasonable accommodation requests and recommend denial on other reasonable accommodation requests.

83. On or about November 2022, SHEIL informed Mr. Thilly that he was going to recommend a denial of the “lower page count” reasonable accommodation request, but for reasons than Mr. Thilly’s opinion.

84. On or about November 2022, Mr. Thilly responded to SHEIL with an email containing “case law” that he purported was provided by OGC that supported Mr. Thilly’s opinion. Mr. Thilly’s request for “case law” to OGC to support his opinion is in violation of Defendant’s reasonable accommodation policies.

85. Between November 2022 and December 2022, Mr. Thilly told RCALJ Kidd and others that SHEIL did not want to follow his opinion and SHEIL wanted to assign a lower page count.

86. Mr. Thilly and RCALJ Kidd's disclosed and discussed Ms. Hatch's reasonable accommodation requests to other employees in the regional office and hearing office is in violation of Defendant's policies.

87. Around November 2022, HOD Corder initiated a discussion with SHEIL about the employee's reasonable accommodations requests, because the regional office had contacted Judge Wascher about it.

88. Mr. Thilly's false accusations and rumors harmed SHEIL's reputation and harmed his promotional opportunities.

89. Around November 2022, Mr. Thilly submitted the recommended denial of the reasonable accommodation request for a lower page count to the NRAC.

90. In December 2022, the NRAC contacted Ms. Hatch to discuss the reasonable accommodation requests.

91. The NRAC did not consult SHEIL to discuss the recommended denial of the employee's reasonable accommodation requests, as required by Defendant's reasonable accommodation policies.

92. Since 2017, SHEIL has complained HOD Corder and the Defendant that the regional office was targeting women, particularly women with disabilities, and holding these employees to higher standards and treating them less favorably than other employees. SHEIL also complained that the regional office was treating him less favorably than his white co-workers as well as other black professionals in the offices. He also complained of being retaliated against for engaging in protected activities and of a retaliatory hostile work environment.

93. Since 2018, including in 2019, January 2020, June 2020, January 2021, March

2021, August 2021, November 2021, April 2022, November 2022, December 2022 SHEIL complained to HOD Corder that he was subject to a greater level of scrutiny than his white colleagues by the regional office. More specifically, he complained that the regional office only looked at the productive index score (SAAPI/DWPI) for attorneys under the supervision of white supervisors, contrary to the collective bargaining agreements and MOUs with NTEU while scrutinizing the performance of employees and ignoring factors beyond the employee's control for employees under SHEIL's supervision. For example, SHEIL discussed how one white female advisor attorney under Mr. McClanahan's supervision was consistently producing a low number of decisional drafts each month, but the regional office did not look at the number of cases, page sizes, or AWT entries of attorney under the supervision of Mr. McClanahan or Ms. Roy.

94. Since 2018, SHEIL and HOD Corder discussed that during LRER meetings, the regional office displayed a clear bias toward women, such as, questioning if a woman had "personal problems" if a female attorney had a low monthly SAAPI/DWPI, while they had no concerns when a white male attorney had a low monthly SAAPI/DWPI, because "he has history of good performance" and made comments about assigning the male attorneys cases to increase their SAAPI/DWPI the next month. SHEIL also complained to HOD Corder that male attorneys were provided mentors for several months before they were placed on a performance plan. For example, Ms. Roy served as a mentor for a male senior attorney advisor in another office from at least September 2020 to January 2021. However, Ms. Cooper was not offered a mentor. SHEIL told HOD Corder that he did not like attending these meetings because the regional office would ignore his answers but accept the same answers from Mr. Clanahan and Ms. Roy. He also complained to HOD Corder how the regional office attorneys would not speak to him outside of



the LRER meetings. They would only communicate with him through email, while they would speak with the other group supervisors over the phone.

95. Since 2020, SHEIL complained to HOD Corder that he was making the work assignments to the attorneys under the supervision of Mr. McClanahan and Ms. Roy; however, they received credit for the attorneys' performance when it was SHEIL who was assigning the employee's work, monitoring their performance to make sure they had the opportunity to performance, successfully, and updated Mr. McClanahan and Ms. Roy about issues,

96. Since January 2019, SHEIL was denied cadre, detail, and other promotional opportunities.

97. Since January 2019, SHEIL's co-workers, Ms. McClanahan and Ms. Roy served on the regional HACPS cadre. Ms. Roy also served on the EET.

98. Other white attorneys in the Denver hearing office and Region VIII regional office would receive details and cadre opportunities. A white female attorney from the Denver Hearing Office received a detail to OGC, a white male attorney from the Denver Hearing Office received a detail to OCALJ, and a white female attorney from the Region VIII regional office received a detail to HOD of the Seattle Hearing Office. Ms. Roy received a multi-year detail as a senior attorney advisor while working in the regional writing unit. On or about October 2020, at the conclusion of her detail, HOD Corder stated the regional office went "to bat" for Ms. Roy to keep the detail. In December 2022, Mr. McClanahan received a detail to the national HACPS cadre.

99. On multiple occasions, including in November 2022, HOD Corder told SHEIL that he could not receive an overall 5 on his performance reviews, because "it has to go to the regional office." White employees and employees who did not engage in protected activities could receive

an overall 5. Ms. Roy received an overall 5 for FY21 during her detail as an SAA in the regional decision writing unit, and she received a Quality Step Increase (“QSI”) award, which is a step/pay increase.

100. On or about November 30, 2022, a regional management meeting was held to discuss the transition of the LRER team into a national unit. In attendance were all the hearing office management teams and regional office managers of Regions XIII and X. Mr. Thilly facilitated the meeting and discussed that regional LRER teams were being merged into a central LRER team under a different component, and the merger was going to happen by March 2023.

101. During the meeting, Dan Chase, the HOD of the Salt Lake City Hearing Office stated that he was opposed to this change. HOD Chase said that he worked in the Operations component of SSA for 19 years and all personnel matters had to be vetted by OCREO. He disliked that cautious approach and was glad he did not have to deal with OCREO or the cautious approach when working with the Region VIII LRER team. Since 2018, SHEIL has complained about the regional office and LRER team's lack of respect for EEO matters on multiple occasions, specifically; how the regional attorneys would tell managers not to worry about EEO.

102. On multiple occasions, including in November 2022, HOD Corder told SHEIL to ask for the Denver HOD position as part of his pending lawsuit settlement, because the regional office would not select him, because he engaged in protected activities.

103. SHEIL applied and was not selected for four (4) positions in Region VIII since 2018. Defendant selected an employee outside SHEIL’s protected class for each position; three white males and a white female. These employees have not engaged in prior protected activities, had less experience with the Defendant, and were less qualified than SHEIL. As noted earlier, he

was forced to withdraw from one application, the Region VIII lead attorney position, after his interview time was changed and he was offered only a 7:00 a.m. interview time, which the regional office staff knew he would not be able to attend, because of his young children.

104. In November 2022, SHEIL had his performance review with HOD Corder. Again, she asked SHEIL to request the Denver HOD position as part of his prior lawsuit settlement. She said that she really wanted him to have the position, he was most qualified for the position because of his experience, time in the office, and he would be an excellent HOD, but the regional office was not going to select him because of the issues with Ms. Cooper. She said that Mr. McClanahan did not want the position. She said that Ms. Roy was not qualified, because she had less than two years of experience as a supervisor and only two years of hearing office experience, which were all during Covid and full-time telework for employees. SHEIL received a 4.7 overall rating on his performance review. He told HOD Corder, if she wanted him to get the Denver HOD position, a 5.0 overall rating would help. HOD Corder replied that she could not do that, because it had to go to the regional office for approval, which is not consistent with Defendant's policies.

105. On or about November 30, 2022, a regional management meeting was held to discuss the transition of the LRER team into a national unit. In attendance were all the hearing office management teams and regional office managers of Regions XIII and X. Mr. Thilly facilitated the meeting and discussed that regional LRER teams were being merged into a central LRER team under a different component and the merger was going to happen by March 2023.

106. On or about November 17, 2022, SHEIL applied for a promotion to the Supervisory Attorney Advisor (Regional Attorney) position, GS-0905-14, advertised under

Vacancy Announcement #S1-11715153-23-IVOL-SJ-62 in Denver, Colorado.

107. Defendant determined that SHEIL was qualified for that position and scheduled him for an interview.

108. At various times, HOCALJ Wascher spoke with Mr. McClanahan, Ms. Roy, and another applicant (white male) about their interest in the Denver HOD position. HOCALJ Wascher never spoke with SHEIL about his interest in the Denver HOD position.

109. On or about December 5, 2022, SHEIL was interviewed by HOCALJ Wascher; Joy Jenkins, Region X Regional Management Officer; and Kelly McNeff-Robinson, HOD of Portland, Oregon Hearing Office via video conferencing using Microsoft Teams.

110. On or about December 5, 2023, HOD Corder directed SHEIL and Ms. Roy to develop a management plan due to Mr. McClanahan receiving a detail. SHEIL and Ms. Roy decided that SHEIL would supervise the scheduling unit until at least the New Year, since he had four years of experience supervising the scheduling unit and she had no experience with the scheduling unit. HOD Corder agreed with their plan.

111. On December 12, 2023, HOCALJ Wascher removed the scheduling unit from SHEIL's duties and assigned it to Laura Shattuck, (white female). Ms. Shattuck was a new group supervisor with an effective date of December 19, 2023, and she had no experience with the scheduling unit. The scheduling unit and the scheduling unit supervisor work closely with the regional office.

112. On December 29, 2022, HOCALJ Wascher informed SHEIL that he was not selected for promotion for the Supervisory Attorney Advisor (Hearing Office Director) position, GS-0905-14, advertised under Vacancy Announcement # S1-11715153-23-IVOL-SJ-62 in

Denver, Colorado.

113. Defendant selected an employee outside SHEIL's protected class for the Hearing Office Director Position. Specifically, they selected Kimberly Roy, a white female employee for the position. Unlike SHEIL, Ms. Roy had not engaged in any prior EEO activity.

114. On December 29, 2022, following the conversation with HOCALJ Wascher, SHEIL had a phone conversation with HOD Corder. SHEIL told HOD Corder that he had no choice, but resign following the non-selection for the Denver HOD position, because of the ongoing harassment and discrimination from the regional office and lack of career opportunities as a result of the regional office blacklisting him. He discussed how he had been yelled at, belittled, humiliated, ridiculed, and embarrassed at every opportunity by the regional office, complained of discrimination. He reiterated how Mr. McClanahan and Ms. Roy received favorable treatment from the regional office, including detail and cadre opportunities and more prestigious work on the scheduling unit and HACPS cadre; how attorneys under Mr. McClanahan and Ms. Roy's supervision were not scrutinized by the regional office and they regional office accepted their explanations; and how he was responsible for assigning work to those attorneys and making sure they performed successfully. SHEIL told HOD Corder that the black professional employees, such as Ms. Cooper, Judge Jennifer Simmons, and himself, were eventually forced out, because of the regional office. He discussed how he had wasted 12 years of his career working with the Defendant as all his hard work, consistent outstanding performance history, and extensive job knowledge meant absolutely nothing to the Defendant, because he had complained about discrimination. He explained how he wished he would have stepped down years ago like he had planned or had quit years ago rather than stay and endured all of the

discrimination and harassment for nothing. SHEIL told HOD Corder that he even questioned whether he wanted to be an attorney anymore because the discrimination, harassment, and retaliation were all done at the hands of attorneys and ALJs, and he had seen them violate numerous policies, ethical duties, and attempt to cover up their actions. He explained that the Defendant condoned their actions. SHEIL told HOD Corder that she was correct that the regional office would not select him for the HOD position, because he engaged in protected activities, and it was clear that the Defendant did not value him, and did not want him to work there anymore. SHEIL told her that he had given up his career goal of being an ALJ with the Defendant because it was clear that he was not going to get selected for that position either, especially with ALJ Santiago as part of the hiring process. He expressed how it was embarrassing to work there anymore after the non-selection and being passed over for an employee with a quarter of his experience. SHEIL told HOD Corder how he was aware that Mr. Bobbitt had tried to place him on a performance plan in 2018, and he thanked her for making sure that did not happen. SHEIL explained that he would be placed on a performance plan if he did not follow the regional office's every demand, given Ms. Roy's inexperience. Further, SHEIL described that his reputation had been destroyed, and he had previously asked for transfers, which were denied. He told her that even if he did transfer, it would not help, because RCALJ Kidd, ALJ Santiago, and the other harassers would continue to talk negatively about him. Therefore, if he had to rebuild his reputation, it was best to do it with another employer where their retaliation could not affect him.

115. During the December 29, 2022 phone call, HOD Corder stated to SHEIL that "I would quit, too, if I were you."

116. During the December 29, 2022 phone call, HOD Corder asked SHEIL if he

wanted her to talk to HOCALJ Wascher about their conversation and he replied that it was fine for her to talk with him.

117. On December 30, 2022, HOD Corder told SHEIL that she spoke with HOCALJ Wascher about SHEIL's pending resignation and he said that it was "understandable." HOD Corder told SHEIL that she was unhappy with HOCALJ Wascher's response, he does whatever the regional office wants, and he does not do what is best for the hearing office.

118. On December 30, 2022, SHEIL again told HOD Corder that he was left with no choice, but to resign, because of the ongoing discrimination, retaliation, and harassment from the regional office. They continued to discuss the same issues from the December 29, 2022 phone call. Again, SHEIL told her how he was treated differently than his white coworkers, he was blacklisted for complaining about discrimination, and he could no longer work there, because the regional office's actions would only get worse under the inexperienced HOD and the humiliation and embarrassment from it.

119. Neither HOD Corder nor HOCALJ Wachter reported SHEIL's complaint to the regional HPO as required by the Defendant's anti-harassment policies.

120. In December 2022 and January 2023, Ms. Roy acknowledged that SHEIL was more qualified than her for the HOD position during phone calls with SHEIL.

121. In January 2023, Mr. Thilly directed that SHEIL take action against an SAA (white female) under his supervision due to SAAPI lower than the expectation.

122. At the January 2023 LRER meeting, SHEIL provided justification and the factors beyond the employee's control, in particular, that the employee was one of the most experienced SAA and ALJs routinely requested the employee to research and/or draft decisions

on the most difficult and complex cases and the employee was involved with special projects with the regional office.

123. Mr. Thilly ignored SHEIL's explanation and accused SHEIL of not assigning complex cases to all SAAs in a fair manner.

124. The regional office, including Mr. Thilly, called the employee "a slow writer" and "a low performer," despite the employee's outstanding reputation, among ALJs, managers, and peers, factors beyond the employee's control, and a history of performance awards.

125. Between December 29, 2022 and January 25, 2023, Judge Wascher did not talk to SHEIL about his pending resignation, which he was aware of through his conversation with HOD Corder.

126. On January 25, 2023, SHEIL went to HOCALJ Wascher's office and spoke with him in person about his constructive discharge.

127. On January 25, 2023, SHEIL told HOCALJ Wascher he was resigning. HOCALJ Wachser replied that it was "understandable." SHEIL told him that he was quitting without another job in place and he recommended that SHEIL take a few weeks off between jobs. HOCALJ Wascher told SHEIL that he would recommend him for the ALJ position, which he knew SHEIL coveted, because SHEIL had extensive experience and the "right temperament" for the position. HOCALJ Wascher told SHEIL that he does what ROCALJ Kidd wants, because ROCALJ Kidd "is my boss," and he was serving as acting HOCALJ for the Salt Lake City hearing office, because ROCALJ Kidd asked him to do it.

128. In January 2023, HOCALJ Wascher directed SHEIL to train a new supervisor detailee, Mr. Arrants (white male), and Ms. Roy decided the entire management team, except for



HOCALJ Wascher, should attend the trainings, because SHEIL had extensive experience in several topics, and acknowledged that she did not have as experience in many of the areas.

129. Between January and February 2023, SHEIL provided training to the entire hearing office management team, including Ms. Roy Ms. Shattuck, Mr. Arrants, Jacqueline Smith (a management detailee), and Janet Medina. SHEIL presented trainings on performance management reports (DART, CPMS MI, JIM, and other reports); OHO's Standard Hearing Office Procedures (SHOP); assigning and monitoring workloads in OHO's Case Processing Management System (CPMS); fee petitions; performance reviews; time and attendance; and AWT.

130. In January 2023, Ms. Roy directed SHEIL to provide training to the legal assistants and legal assistant specialists on how to run a query report, because she did not know how to run the specific report.

131. On February 10, 2023, SHEIL was constructively discharged. SHEIL had to show Ms. Shattuck how to perform his exiting interview since Ms. Roy had no experience with an exiting interview.

132. With regards to the most recent non-selection, the Denver HOD position, SHEIL was more qualified than the selectee, Ms. Roy.

133. The interview panel and ROCALJ Kidd provided Ms. Roy with preferential treatment; failed to follow Defendant's policies; and provided inaccurate information regarding Ms. Roy in the selection memorandum.

134. HOCALJ Wascher discussed the HOD position with several white employees about applying for the HOD prior to the job announcement and/or interviews, but he did not

discuss the HOD position with SHEIL.

135. The interview panel consisted of two members outside of Region VIII, which was outside the Defendant's customary interviewing policies and practices.

136. The interview panel and ROCALJ Kidd used the interview to determine a total score for the candidates.

137. HOCALJ Wascher was walking around during SHEIL's interview, which SHEIL found distracting and disturbing.

138. Judge Wascher stated that the interview panel "did not recommend SHEIL be hired, primarily because we unanimously view his overall interview as lackluster, although he answered a number of questions very well."

139. HOCALJ Wascher stated the interview panel had concerns about whether SHEIL could work effectively with the LRER team in response to SHEIL's answer to an unspecified interview question. Later, HOCALJ Wascher stated that based on SHEIL's response to a question during his interview asking how he had handled a conflict with a supervisor or subordinate, members of the interview panel were concerned that he might be unable to work effectively with the LRER team in the regional office if he were selected as the Hearing Office Director.

140. HOCALJ Wascher did not provide any explanation as to why SHEIL's answer to the interview question warranted such concerns or any specifics as to how SHEIL might be unable to work effectively with LRER team in the regional office if he was selected as the Hearing Office Director.

141. The interview did not contain any questions about how SHEIL had handled a

conflict with a superior or subordinate.

142. SHEIL has never received a complaint about working effectively with the regional office's LRER team.

143. During the selection process, the interview panel and RCALJ Kidd were aware that the regional LRER Teams were being removed from the regional office and transitioned to a national unit by March 2023.

144. SHEIL has complained of discriminatory practices from the regional office and regional LRER team. The only time SHEIL had problems working with the regional office and the LRER team was regarding discriminatory practices.

145. RCALJ Kidd and the interview panel gave preferential treatment to Ms. Roy who did not receive the highest interview score among the candidates. She scored 22 points lower than the highest-scoring candidate.

146. The interview panel and ROCALJ Kidd gave Ms. Roy credit for her two (2) years of hearing office experience elevating her over the highest scoring interview candidate.

147. SHEIL for his twelve (12) years of hearing office experience compared to Ms. Roy's two (2) years. The interview panel and RCALJ Kidd gave no credit or weight to SHEIL's hearing office experience or the 10 more years of hearing office experience that he had than Ms. Roy.

148. The Vacancy Announcement # S1-11715153-23-IVOL-SJ-62 for the Denver HOD position did not require applicants to submit a list of references.

149. Defendant, the interview panel, RCALJ Kidd, or any member of the regional office did not ask SHEIL for a list of references.

150. The interview panel and ROCALJ Kidd solicited three (3) references for Ms. Roy and only one (1) reference for SHEIL.

151. For Ms. Roy, the interview panel and ROCALJ Kidd solicited references from HOD Corder as well as Mr. Thilly and the regional attorney of Region X. Mr. Thilly and the Region X regional attorney are under the direct supervision of RCALJ Kidd.

152. RCALJ Kidd stated that Ms. Roy was rated a level 5 (highest possible) in three of the five competencies for the HOD position on her reference checks.

153. The interview panel and ROCALJ Kidd solicited a reference from HOD Corder for SHEIL. They did not solicit any other references for SHEIL's reference check.

154. HOD Corder rated SHEIL as a level 5 (excellent) in all five competencies of the HOD Position on the reference check.

155. The interview panel and ROCALJ Kidd gave no credit or weight to the ratings or narratives in SHEIL's reference check.

156. The interview panel and ROCALJ Kidd did not seek references from SHEIL's former HOCALJs, including two former HOCALJs who still worked in the Denver Hearing Office: ALJ Shane McGovern and ALJ Jennifer Millington.

157. SHEIL has a Bachelor of Science in Business Administration, he previously represented claimants in disability hearings before Defendant's ALJs, and he was a NTEU regional vice president from 2013 to 2015. The interview panel and ROCALJ Kidd gave no credit or weight to SHEIL's college degree, prior work experience, or union representative experience.

158. Ms. Roy does not have a business degree, she does not have experience

representing claimants before SSA, and she does not have experience working as a union representative.

159. SHEIL has been a licensed practicing attorney longer and was employed by the Defendant for longer than Ms. Roy. The interview panel and ROCALJ Kidd gave no credit or weight to SHEIL's legal experience or years of employment with the Defendant.

160. At the time of the selection, SHEIL had approximately eight (8) years of supervisory experience with the Defendant. Ms. Roy had approximately two (2) years of supervisory experience with the Defendant. The interview panel and ROCALJ Kidd gave no credit or weight to SHEIL's approximately eight (8) years of supervisory experience or six (6) more years of experience than Ms. Roy.

161. SHEIL has received five monetary performance awards as a group supervisor (2016, 2017, 2019, 2020, 2021) as well as five (5) exemplary individual cash awards (2016, 2019, 2021, 2022, 2022). The interview panel and ROCALJ Kidd gave no credit or weight to SHEIL's performance award history. SHEIL has asserted in his pending lawsuit, Case No. 1:20-cv-03057-RM-STV, and he continues to assert that his 2018 performance review rating was lowered in retaliation for engaging in protected activities and he should have received a performance award in 2018. He was eligible for a performance award for 2022.

162. At the time of the selection, Ms. Roy had no monetary performance awards as a group supervisor.

163. The interview panel and ROCALJ Kidd provided inaccurate information in the selection letter regarding Ms. Roy's professional background, such as stating that Ms. Roy was promoted to a SAA when it was a detail and Ms. Roy's hearing office experience.

164. HOD Corder was aware of SHEIL's complaints of discrimination and reported it to HOCALJ Wascher. Neither HOD Corder nor HOCALJ Wascher reported SHEIL's complaints to the HPO or other units in accordance with Defendant's policies.

165. RCALJ KIDD and HOCALJ Wascher minimized SHEIL's complaints of discrimination as "unhappy, "dissatisfaction," and "disaffected." Neither of them spoke with SHEIL about his job satisfaction.

166. HOCALJ Wascher took no remedial actions following the December 29, 2022, conversation with HOD Corder. HOCALJ Wascher said it was "understandable." HOCALJ Wascher acknowledged that he knew SHEIL "might not want to work for a new Hearing Office Director who had been hired instead of him," because of what he described as SHEIL being "disaffected about working for OHO." He claimed that he understood from a number of previous conversations with HOD Corder that SHEIL had been dissatisfied with his job for quite some time and was, in fact, planning to leave the agency. HOCALJ Wascher never had a discussion with SHEIL about the job, either before or after the resignation.<sup>2</sup>

167. RCALJ Kidd made false and inaccurate statements that prior to his arrival in Region VIII, SHEIL had offered a resignation but changed his mind prior to leaving. Judge Wascher made false and inaccurate statements that SHEIL submitted a resignation as a Group Supervisor in about December 2017, but that HOD Corder had refused the resignation.

168. HOCALJ Wascher stated that prior to December 29<sup>th</sup>, he "knew SHEIL had already been disaffected about working for OHO, had talked about leaving the agency, or at least

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<sup>2</sup> As noted earlier, HOCALJ Wascher talked with white male attorneys about pursuing promotional opportunities for the HOD and group supervisor positions.

requesting a voluntary demotion, and, in any event might well not want to work for a new Hearing Office Director who had been hired instead of him.”

169. Therefore, RCALJ Kidd and HOCALJ Wascher foresaw that SHEIL would resign based on the results of their actions.

170. Meanwhile, white employees received more favorable treatment. Mr. McClanahan received a detail to the national HACPS cadre following his voluntary demotion from the group supervisor position. A white female ALJ was set to retire when she received a call from RCALJ Kidd on what would have been her last day, and she decided not to retire. RCALJ Kidd and the ALJ had previously worked together in another hearing office.

171. Following SHEIL’s 2023 informal complaint, Defendant has performed administrative investigations regarding SHEIL complaints of discrimination. SHEIL was interviewed by an HPO and Defendant’s investigators between May and July 2023. During the interviews, SHEIL was asked a series of questions about events, including events from 2017 through 2019, which are part of the pending lawsuit without the presence of his attorney. SHEIL has not heard from the investigators or HPO since the July 2023 interview. Defendant failed to make any findings regarding the administrative investigation until June 2024 and has failed to provide the administrative investigation documents to SHEIL.

172. In his prior EEO complaints, SHEIL requested a transfer, but Defendant did not approve SHEIL’s transfer requests.

173. Defendant failed to take action to stop the discrimination, retaliation, and the retaliatory work environment, allowing it to pollute the workplace, and allowed it to remain unremedied for years.

174. ALJs, including RCALJs and HOCALJs, are not subject to performance standards. RCALJs and HOCALJs are not subject to Defendant's management performance standards. Further, RCALJ Kidd stated that the ALJ position is a lifetime appointment.

175. Since 2022, a female was selected for the Fargo HOD position and when Judge Wascher retired, a female ALJ, was named as acting HOCALJ for the Denver Hearing Office.

176. Defendant in its Barrier Analysis reports identified barriers for lower-than-expected internal competitive promotions of certain minority groups, including Black or African American males and females in the GS-13 to GS-15 pay scale.

177. Defendant has zealously defended a class action for 20 years that included all African-American male employees at the GS-14 level and below at the Agency's headquarters in Baltimore, Maryland, excluding employees in the Office of Disability Adjudication and Review (now the Office of Hearings Operations) and field employees, for the time period of April 7, 2003, to the present." The Class Action alleged that the monetary awards process at SSA Headquarters has discriminated against African-American males by providing fewer awards and less-valuable monetary awards. The class action was settled on May 13, 2024. *Wilkerson v. O'Malley*. EEOC Hearing No. 531-2022-00225X, (May 13, 2024).

178. As a direct result of the continued discrimination, retaliation, and retaliatory hostile work environment maintained by the Defendant against SHEIL, SHEIL was constructively discharged.

**V. FIRST CLAIM FOR RELIEF**  
**(Terms and Conditions of Employment - Title VII - Gender/Male)**



179. SHEIL hereby incorporates and realleges the preceding paragraphs as if stated fully, herein.

180. The conduct of Defendant's supervisors and co-workers were intentional as alleged in the preceding paragraphs above all violate SHEIL's rights as guaranteed by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et.seq.

181. Similarly situated employees who are not black males, like SHEIL have not been similarly treated.

182. As a result of the conduct of the Defendant and its agents as above-described, SHEIL has been damaged in an amount to be determined at trial, including loss of wages, diminution in earning capacity, damage to his reputation, loss of opportunity for promotion, loss of benefits, loss of opportunity for professional growth, constructively discharged, and for pain, suffering, and emotional distress damages.

183. SHEIL claims reasonable attorney's fees pursuant to Title VII in an amount to be determined at trial and requests injunctive and declaratory relief, and compensatory damages for the discrimination complained of.

**VII. SECOND CLAIM FOR RELIEF**  
**(Terms and Conditions of Employment - Title VII Race (Black))**

184. SHEIL hereby incorporates and realleges the preceding paragraphs as if stated fully herein.

185. The conduct of Defendant's supervisors and co-workers as alleged in the preceding paragraphs above all violate SHEIL's rights as guaranteed by Title VII of the Civil

Rights Act of 1964, as amended, 42 U.S.C. § 2000e et.seq.

186. Similarly situated employees who are not black like SHEIL have not been similarly treated.

187. The conduct of the Defendant, its supervisors/managers and co-workers as above alleged are intentional.

188. As a result of the conduct of the Defendant and its agents as above-described, SHEIL has been damaged in an amount to be determined at trial, including loss of wages, diminution in earning capacity, damage to his reputation, loss of opportunity for promotion, loss of benefits, loss of opportunity for professional growth, constructively discharged, and for pain, suffering, emotional distress.

189. SHEIL claims reasonable attorney's fees pursuant to Title VII in an amount to be determined at trial and requests injunctive and declaratory relief, and compensatory and punitive damages for the discrimination complained of.

**VIII. THIRD CLAIM FOR RELIEF**  
**(Terms and Conditions of Employment - Title VII Color (Black))**

190. SHEIL hereby incorporates and realleges the preceding paragraphs as if stated fully herein.

191. The conduct of Defendant's supervisors and co-workers as alleged in the preceding paragraphs above all violate SHEIL's rights as guaranteed by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et.seq.

192. Similarly situated employees who are not black like SHEIL have not been similarly treated.

193. The conduct of the Defendant, its supervisors/managers and co-workers as above alleged are intentional.

194. As a result of the conduct of the Defendant and its agents as above-described, SHEIL has been damaged in an amount to be determined at trial, including loss of wages, diminution in earning capacity, damage to his reputation, loss of opportunity for promotion, loss of benefits, loss of opportunity for professional growth, constructively discharged, and for pain, suffering, emotional distress.

195. SHEIL claims reasonable attorney's fees pursuant to Title VII in an amount to be determined at trial and requests injunctive and declaratory relief, and compensatory damages for the discrimination complained of.

**VIII. FOURTH CLAIM FOR RELIEF**  
**(Terms and Conditions of Employment - Retaliation - Title VII)**

196. SHEIL hereby realleges and incorporates the preceding paragraphs as if stated fully, herein.

197. The conduct acts or omissions of the Defendant and its managers/supervisors as above-alleged are directed at the SHEIL due to his repeated complaining of being treated differently, being subject to discrimination and reasonably advocating his rights under Title VII, are retaliatory and violate his rights as guaranteed by Title VII of the Civil Rights Act of 1964, as amended.

198. Similarly situated employees who have not participated in similar activity like SHEIL have not been similarly treated.

199. As a result of the conduct of the Defendant and its agents as above-described, are intentional, show malice or reckless indifference to SHEIL's federally protected rights and resulted in him being treated differently than other employees who did not advocate their rights and violate him rights as guaranteed by Title VII of the Civil Rights Act of 1964, as amended.

200. As a result of the conduct of Defendant's supervisors/managers as above-alleged, SHEIL has been damaged in an amount to be determined at trial, including front pay, back pay, loss of income, diminution in earning capacity, damage to his reputation, loss of opportunity for promotion, loss of benefits, loss of opportunity for professional growth, constructively discharged, and for pain, suffering, emotional distress and compensatory damages.

201. Plaintiff claims reasonable attorney's fees pursuant to Title VII in an amount to be determined at trial. Further, Plaintiff requests injunctive and declaratory relief.

**X. FIFTH CLAIM FOR RELIEF:**  
**(Title VII – Hostile Work Environment (Race/Color))**

202. SHEIL hereby incorporates and realleges the preceding paragraphs as if incorporated herein.

203. Defendant intentionally discriminated against SHEIL with severe and pervasive acts of discrimination and retaliation, after he complained about how female employees and employees with targeted impairments were being discriminated against: Carolyn Cooper (black female) and Corrina Hatch (Caucasian, white, female) who were under his supervision, where management wanted him to hold them to a higher standard than similarly situated male and non-disabled employees.

204. As a direct and proximate result of the foregoing actions and conduct of

Defendant, SHEIL has suffered, and will continue to suffer, damages including but not limited to diminution of future earning capacity, including but not limited to future wage loss, loss of earning capacity, loss of reputation and damages to career; constructively discharged; and non-economic damages such as, but not limited to, compensatory damages, mental anguish, inconvenience; pre and post judgment interest, costs and expenses, attorney fees and other damages to be determined at trial.

**X. SIXTH CLAIM FOR RELIEF:**  
**(Title VII –Hostile Work Environment (Retaliatory))**

205. SHEIL hereby incorporates and realleges the preceding paragraphs as if incorporated herein.

206. Defendant intentionally discriminated against SHEIL with severe and pervasive acts of discrimination and retaliation, after he complained about how female employees and employees with targeted impairments were being discriminated against: Carolyn Cooper (black female) and Corrina Hatch (Caucasian, white, female) who were under his supervision, where management wanted him to hold them to a higher standard than similarly situated male and non-disabled employees.

207. As a direct and proximate result of the foregoing actions and conduct of Defendant, SHEIL has suffered, and will continue to suffer, damages including but not limited to diminution of future earning capacity, including but not limited to future wage loss, loss of earning capacity, loss of reputation and damages to career; constructively discharged; and non-economic damages such as, but not limited to, compensatory damages, mental anguish, inconvenience; pre and post judgment interest, costs and expenses, attorney fees and other

damages to be determined at trial.

208.

**XI. SEVENTH CLAIM FOR RELIEF:**  
**(Constructive Discharge)**

209. SHEIL hereby incorporates and realleges the preceding paragraphs as if incorporated herein.

210. Defendant intentionally discriminated against SHEIL at any chance it had. As a result of Defendant's actions SHEIL was left with no choice, but to resign. He previously requested a voluntary demotion due to Defendant's discriminatory practices towards others and it was denied. In his previous EEO complaints, his requests for transfers were denied. SHEIL was left with no choice, but to resign.

211. As a direct and proximate result of the foregoing actions and conduct of Defendant, SHEIL has suffered, and will continue to suffer, damages including but not limited to diminution of future earning capacity, including but not limited to future wage loss, loss of earning capacity, loss of reputation and damages to career; constructively discharged; and non-economic damages such as, but not limited to, compensatory damages, mental anguish, inconvenience; pre and post judgment interest, costs and expenses, attorney fees and other damages to be determined at trial.

WHEREFORE, SHEIL prays that this Court enter an Order as follows:

A. Grant a permanent injunction prohibiting Defendant from engaging in any employment practices which violate Title VII of the Civil Rights Act, as amended.

B. Reinstatement to SHEIL all benefits, wages, back pay, reinstatement with an appropriate promotion, or front pay in lieu of, which were lost as a result of the discriminatory and retaliatory acts directed at him.

C. Reimburse SHEIL for all reasonable and necessary expenses incurred due to the discriminatory actions of Defendant.

D. Award SHEIL compensatory, liquidated, and other damages against Defendant in an amount to be determined at trial for the personal humiliation, severe emotional pain, inconvenience, mental anguish and loss of enjoyment of life he has suffered due to the actions of Defendant;

E. Order Defendant to stop all retaliation against SHEIL for having engaged in a protected EEO activities under, Title VII of the Civil Rights Act of 1964, as amended..

F. Award SHEIL his costs of this action and reasonable attorney's fees, expert fees, pre and post judgment interest;

G. Retain jurisdiction over this action to ensure full compliance with the Orders of this Court; and

H. Grant SHEIL such other and further relief as this Court deems just and proper.

**SHEIL REQUESTS TRIAL TO A JURY ON ALL ISSUES SO TRIABLE**

DATED this 26th day of July, 2024.

/s/ John Sheil  
John Sheil  
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Denver, CO 80219  
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Email: [john@sheil-law.com](mailto:john@sheil-law.com)  
*Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 26, 2024, I electronically filed the foregoing with the Clerk of Court via email and emailed a copy of such filing to the following individual:

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/s/ John Sheil  
Plaintiff