

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

WILLIAM BLAKE,

\*

Plaintiff

\*

v.

\* Civil Action L07-CV-50

BALTIMORE COUNTY, MARYLAND, et al.,

\*

Defendants

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\* \* \* \* \*

AMENDED COMPLAINT

Plaintiff William Blake, by and through counsel, Kathleen Cahill, sues the above-named defendants, and in support thereof, states as follows:

Parties, Jurisdiction & Venue

1. Plaintiff William Blake is an individual residing in Pennsylvania. Plaintiff is and at all pertinent times has been a Baltimore County Police Officer (hereinafter "Officer Blake"). Plaintiff has been an exceptional performer and is in excellent standing with the Baltimore County Police Department.

2. The first-named Defendant is Baltimore County.

3. The second-named Defendant is the Baltimore County Police Department, an agency of Baltimore County.

4. The third-named Defendant is Terrence B. Sheridan, Chief of Police of Baltimore County, who is being sued in his individual and official capacities.

**Facts Common to All Counts**

5. Absent judicial intervention, Officer Blake, a Baltimore County Police Officer for close to 20 years, will be unlawfully subjected to a compelled, highly intrusive, and illegal medical procedure on January 10, 2007, or face discharge proceedings. This action has been ordered by defendants wholly without legal basis, and in violation of Officer Blake's rights.

6. On August 31, 2006, Officer Blake was subpoenaed to testify at the County Board of Appeals hearing of a fellow police officer, Phillip Crumbacker. Officer Blake complied with the subpoena and testified truthfully when called by Officer Crumbacker's attorney. See Exhibit 1. In short, Officer Crumbacker is pursuing an appeal before the County Board of Appeals of an order forcibly retiring him following his diagnosis with a seizure disorder. Officer Blake was called to testify in support of Officer Crumbacker's petition to overturn that order, and against the Baltimore County Police Department's actions.<sup>‡</sup>

7. One day later, on September 1, 2006, Officer Blake was ordered by defendants to submit to a compelled

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~~† Those proceedings have led to action in this Court as well. See related case, Crumbacker v. Baltimore County Maryland, Case No. 03-C-06-8319, where defendants were enjoined from their actions to attempt to remove Officer Crumbacker from the police force prior to the outcome of the Board of Appeals hearing.~~

"workability examination," that is, a compelled medical examination to determine whether he was fit to perform his job. He was also ordered to bring with him comprehensive and voluminous medical records and radiologic studies. See Exhibit 2.<sup>2</sup>

8. The order that Officer Blake attend the compelled medical evaluation and disclose extensive confidential medical information was illegal, unconstitutional, in direct contravention of the Americans with Disabilities Act, and in retaliation for Officer Blake having complied with a lawful order of court that he testify truthfully under oath.

9. Despite the unlawful nature of the order, because as a sworn officer he faced discipline up to termination for defying an order of the Chief of Police, Officer Blake submitted to the unlawful medical examination, while expressly preserving his rights to later pursue civil remedies for the violation of his rights. See Exhibit 3.

10. On September 5, 2006, Officer Blake presented for the compelled medical evaluation by Peter Oroszlan, M.D. In

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<sup>2</sup> Note, one other officer who testified pursuant to subpoena at the August hearing was also ordered on September 1, 2006 to submit to a medical examination and turn over his records, but has not yet been ordered to submit to an electroencephalogram. A third officer, who was not called to testify but was identified at the August 31 hearing by Officer Crumbacker's lawyer as another similarly situated officer, has been compelled to submit to a medical examination and turn over his records, and ~~is now facing~~ has been subjected to forced retirement ~~proceedings~~ on account of the alleged findings during the illegal medical exam.

his report, Dr. Oroszlan wrote that Officer Blake had a "single episode of seizure or seizure-like experience presumably without recurrence since [April 24, 1996]". See Exhibit 4, p.1. The April 1996 episode also was described by Dr. Oroszlan as "possible single episode seizure" and "either a seizure or seizure-like experience." Exhibit 4, p.4. Dr. Oroszlan concluded "**from the medical point of view at the present time there is no basis to prevent Officer Blake from continuing to work as a Police Officer.**" Exhibit 4, p.5.

11. Despite that explicit finding, defendants have now ordered Officer Blake to submit to a compelled brain study, that is, an electroencephalogram. He has been ordered by the Chief of Police to report to Mercy Medical Center for the test on January 10, 2007, again, subject to discipline up to and including termination for failure to comply with the order. See Exhibit 5.<sup>3</sup>

12. The undisputed facts are as follows: on April 24, 1996, **over ~~ten~~ eleven years ago**, Officer Blake had a single seizure or seizure-like episode on the job. He was treated in the emergency room at GBMC and released. He was then seen in follow-up, as recommended, by Howard Moses, M.D., a nationally-renown Johns Hopkins neurologist, on May 6, 1996. After reviewing the results of the MRI, on May 8, 1996, Dr.

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<sup>3</sup> The initial date was December 20, but Officer Blake rescheduled the appointment for January 10.

Moses determined that Officer Blake required no further treatment or medication, and he released Officer Blake to return to work on May 10, 1996. See Exhibit 6. Note, the full records of Dr. Moses are no longer retained by his office, and therefore cannot be submitted at this time. See Exhibit 7. However, Dr. Moses' Curriculum Vitae is attached hereto. See Exhibit 8.<sup>4</sup>

13. Defendants were fully aware of the episode on the day it occurred in April 1996, given that it happened while Officer Blake was on duty in the precinct. Further, as required by policy, upon his return to work Officer Blake submitted Dr. Moses' release along with the record of GBMC including the diagnosis "new onset seizure." See Exhibit 10. (This copy of the GBMC record was retrieved from Officer Blake's personnel file in September 2006, once this retaliatory course of events commenced.)

14. From the date of his return to duty in 1996, up to August 31, 2006, the date he testified, Officer Blake never heard another word from defendants about that medical episode. Yet, the very next day after he testified, that 1996 incident suddenly became of acute interest to defendants.

15. From April 24, 1996, up to the present, Officer Blake has been in excellent health and has experienced no

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<sup>4</sup>Note, defendants' doctor is an occupational medicine physician, not a neurologist. See Exhibit 9.

syncopal or seizure or seizure-like activity whatsoever. As such, Officer Blake has not sought treatment of Dr. Moses or any other neurologist or physician for such medical issues. Further, in his most recent check-up with Johns Hopkins Community Physicians, Officer Blake was found to be in "excellent health/no restrictions to activity/fit for requirements of police officer." Johns Hopkins Community Physicians also noted the history of "?seizure?vasovagal episode 1996 NO recurrence." See Exhibit 11.

16. The sole reason for the defendants' order that he submit to intrusive, wholly unwarranted medical scrutiny, disclose his medical records, and now submit to a compelled study of his brain, is Officer Blake's sworn testimony before the County Board of Appeals.

17. Defendants cannot now claim that it is incumbent upon them to do this medical testing for legitimate work-related reasons, as if they just learned of Officer Blake's history when he testified in August 2006. To the contrary, the evidence is beyond dispute that defendants knew about Officer Blake's medical episode from the moment it happened, and further, that at the time of their September 2006 order compelling the medical evaluation, the written document proving their notice remained in Officer Blake's personnel file in the form of the 1996 return-to-work documentation. See Exhibit 10.

18. Compelling an employee to submit to a medical evaluation and to turn over medical records, wholly without medical justification, is illegal.

19. Compelling an employee to submit to a medical evaluation and to turn over medical records, in retaliation for his truthful testimony under oath pursuant to subpoena, without medical justification, is illegal.

20. Compelling an employee to submit to a brain study wholly without medical justification is an extraordinary and unprecedented intrusion. Further, compelling an employee to submit to a brain study wholly without medical justification and without legal authority, without notice, hearing, impartiality, or pre-deprivation process is illegal, unconstitutional, arbitrary, capricious, and shocks the conscience.

21. Further, this course of conduct is being undertaken by defendants to deliver a chilling effect on police officers' assertion of their rights and their duty to lawfully participate in duly convened judicial proceedings, where the content of their sworn testimony is not consistent with defendants' agenda.

22. Officer Blake has filed a Charge of Discrimination with the Equal Employment Opportunity Commission protesting

defendants' course of action, which is pending at this juncture.<sup>5</sup>

23. Officer Blake has no adequate remedy at law if he submits to the compelled brain study, and none exists.

24. Officer Blake seeks a temporary, preliminary and permanent injunction to compel defendants to cease and desist in further efforts to compel medical evaluation or testing, including but not limited to the January 10, 2006 electroencephalogram, and to refrain from further attempts to retaliate against him or to unlawfully terminate him.

~~25. Injunctive relief is appropriate because Officer Blake will succeed on the merits of his claim.~~

~~26. Unless injunctive relief is granted, Officer Blake will suffer immediate, substantial and irreparable harm before a hearing can be held on injunctive relief.~~

~~27. The benefits to Officer Blake in obtaining injunctive relief far outweigh any potential harm which the defendants might incur if this Court grants the requested injunctive relief. Indeed, as per their own doctor's findings, Officer Blake is healthy and fit for duty.~~

~~28. As such, the public interest is best served by granting the injunction.~~

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<sup>5</sup> The other two officers being pursued since the August hearing, and Officer Crumbacker, have also filed EEOC charges.

25. In balancing the likelihood of irreparable harm to plaintiff against the likelihood of no harm to defendant, and considering the allegations and claims herein, interlocutory relief is proper given that the need for protection outweighs any probable injury to defendants.

26. The public interest is served by granting interlocutory relief while plaintiff's serious claims are fully considered by the court.

27. Plaintiff is likely to succeed on the merits of his claims. Further, plaintiff's success on the merits would vindicate public policy.

**COUNT ONE**

(42 U.S.C. §1983)

28. Plaintiff Blake incorporates by reference the allegations above.

29. In subjecting plaintiff to the treatment described herein, defendants deprived plaintiff of rights secured by the United States Constitution and federal law, including but not limited to the right to privacy, the right to bodily integrity, to procedural and substantive due process, to freedom of speech, and other laws of the United States and the State of Maryland. Further, in retaliating against plaintiff for truthfully testifying pursuant to a lawful order of court, and so as to deliver a chilling effect on truthful testimony by police officers under oath and subpoena, defendants

deprived plaintiff of his rights to free speech and otherwise violated the constitution.

30. In subjecting plaintiff to the treatment described herein, defendants acted with malice and in willful and wanton disregard of plaintiff's rights and well-being.

31. As a direct result of defendants' violations of plaintiff's rights, plaintiff has suffered damages, including but not limited to damage to his privacy and reputation, loss of dignity, emotional distress, and loss of enjoyment of life.

WHEREFORE, plaintiff Blake seeks appropriate equitable and compensatory relief, including but not limited to:

- (1) a temporary restraining order prohibiting defendants from compelling Officer Blake to submit to the January 10, 2007 electroencephalogram;
- (2) a preliminary and permanent injunction prohibiting defendants from compelling Officer Blake to submit to the January 10, 2007 electroencephalogram;
- (3) a temporary restraining order prohibiting defendants from pursuing any additional medical disclosure or examination of Officer Blake stemming from the April 1996 medical incident;
- (4) a preliminary and permanent injunction prohibiting defendants from pursuing any additional medical

- disclosure or examination of Officer Blake stemming for the April 1996 medical incident;
- (5) a temporary restraining order prohibiting defendants from retaliating against Officer Blake due to his August 31, 2006 testimony under oath;
  - (6) a preliminary and permanent injunction prohibiting defendants from further retaliating against Officer Blake due to his August 31, 2006 testimony under oath;
  - (7) declaratory relief;
  - (8) his attorney's fees, expenses and costs; and
  - (9) such additional relief as the Court deems just.

**COUNT TWO**

~~(Mandamus)~~

~~33. Plaintiff Blake incorporates by reference the allegations above.~~

~~34. Defendants have a duty to follow the controlling law and to refrain from violating plaintiff's constitutional and other legal rights, and to refrain from terminating plaintiff's employment in violation of the law. Plaintiff has a right to be free from unlawful or unconstitutional compelled medical examination, testing and disclosure, from unlawful compelled violation of his bodily integrity, and from unlawful or unconstitutional job retaliation and termination.~~

~~35. Defendants have failed to comply with their duty to follow the law with regard to plaintiff's employment, in~~

~~that they have knowingly compelled plaintiff to undergo illegal medical examination, testing and disclosure, under threat to terminate plaintiff's employment without lawful authority.~~

~~36. No adequate remedy exists, other than mandamus, pursuant to which plaintiff's rights can be restored and he can be made whole.~~

~~WHEREFORE, plaintiff Blake seeks issuance of a writ of mandamus directing defendants to:~~

~~(1) cease and desist in all illegal medical evaluation;~~

~~(2) cease and desist in conducting the compelled electroencephalogram or any other such testing;~~

~~(3) cease and desist in any other measures designed to interfere with his right to work;~~

~~(4) refrain from terminating plaintiff's employment in the future unilaterally and in contravention of the law;~~

~~(5) award plaintiff his attorney's fees, expenses and costs; and~~

~~(6) award plaintiff such additional relief as the Court deems just.~~

**COUNT II**

**(Americans with Disabilities Act)**

32. Plaintiff Blake incorporates by reference the allegations above.

33. In subjecting plaintiff to the treatment described herein, defendants violated and threaten to continue violating the Americans with Disabilities Act.

34. Defendants' course of conduct in compelling plaintiff to disclose his confidential medical information, to submit to a medical examination, and to undergo intrusive medical testing, was not job-related and consistent with business necessity.

35. Defendants' course of conduct in compelling plaintiff to disclose his confidential medical information, to submit to a medical examination, and to undergo intrusive medical testing, was undertaken in retaliation for his participation in the August 31, 2006 hearing, and in retaliation for his testifying truthfully under oath at that hearing in support of another officer's assertion of his rights to be free from disability discrimination.

36. In undertaking the course of conduct described herein, defendants acted with malice and in willful and wanton disregard of plaintiff's rights and well-being.

37. As a direct result of defendants' violations of plaintiff's rights, plaintiff has suffered damages, including but not limited to damage to his privacy and reputation, loss of dignity, emotional distress, and loss of enjoyment of life.

WHEREFORE, plaintiff Blake seeks appropriate equitable relief, including but not limited to:

- (a) a preliminary and permanent injunction prohibiting defendants from compelling him to submit to an electroencephalogram;
- (b) a temporary restraining order prohibiting defendants from pursuing any additional medical disclosure or examination of him stemming for the April 1996 medical incident;
- (c) a preliminary and permanent injunction prohibiting defendants from pursuing any additional medical disclosure or examination of him stemming for the April 1996 medical incident;
- (d) a temporary restraining order prohibiting defendants from retaliating against him due to his August 31, 2006 testimony under oath;
- (e) a preliminary and permanent injunction prohibiting defendants from further retaliating against him due to his August 31, 2006 testimony under oath;
- (f) appropriate declaratory relief;
- (g) his attorney's fees, expenses and costs; and
- (h) such additional relief as the Court deems just.

**REQUEST FOR HEARINGS**

Plaintiff William Blake requests an immediate hearing on his request for temporary restraining order, and his requests for an interlocutory and permanent injunction.

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